



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA19/06623

Date and time of decision: 19 June 2019 14:39:00
R Mikhail, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of 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. On 16 December 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 10 May 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

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) (review material).
3. On 27 May 2019 the applicant sent a letter to the IAA. The letter, in part, refers to his dissatisfaction with the delegate's decision. I do not consider this to be new information.
4. In his letter, the applicant also refers generally to the recent terrorist attack that occurred in Sri Lanka on Easter in April 2019 (Easter terrorist attacks). The delegate considered information in her decision in relation to these events so I do not consider the applicant's reference to these events to be new information.
5. In his letter, the applicant further states that there were few attacks on mosques and one person killed by riots. I consider this to be new information as I am satisfied the applicant is referring to events or information that was not before the delegate. The applicant has not identified the source of this information nor provided an extract or copy of that source. This does not comply with the requirements of the IAA Practice Direction (December 2018). Pursuant to ss.473DC(2) and 473FB(5) of the Act I have decided not to accept this information.
6. I have also considered new country information in relation to the recent targeting of Muslims in Sri Lanka in response to the Easter terrorist attacks.¹ These reports refer to events that occurred after the delegate's decision and are in respect of the treatment of Muslims, as class of person of which the applicant is a member. I consider it important to consider the most recent country information in assessing the applicant's claims for protection on the basis of his Muslim identity and these recent events are significantly material in that regard. I am satisfied there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:

- He is a citizen of Sri Lanka and is of Moor ethnicity and Muslim faith.

¹ "Mosques attacked in Sri Lanka town after Facebook row, curfew imposed", Reuters, 12 May 2019, 20190513140437; "Sri Lankan towns rocked by Christian-Muslim riots", Agence France Presse (AFP) - France, 13 May 2019, 20190514153901; "Sri Lanka clashes kill one; imposes nationwide curfew after mosques attacked", Reuters, 13 May 2019, 20190514155658; "Sri Lanka vows 'maximum force' against anti-Muslim rioters", BBC News, 14 May 2019, 20190514160351; "Sri Lanka under nationwide curfew after crowds attack mosques", Aljazeera, 14 May 2019, 20190514155949; "Sri Lanka extends nationwide curfew after anti-Muslim riots", BBC News, 15 May 2019 accessed at <https://www.bbc.com/news/world-asia-48269240>; "In Sri Lanka, Muslims say Sinhala neighbours turned against them", Aljazeera, 21 May 2019, 20190522080309; "Arrests, new curfews in Sri Lanka after anti-Muslim riots", Agence France Presse (AFP) - France, 15 May 2019, 20190516122105; "Sri Lanka army denies colluding with anti-Muslim rioters" Agence France Presse (AFP) - France, 16 May 2019, 20190517134224

- He has been targeted and mistreated by the Liberation Tigers of Tamil Eelam (LTTE) because he is Muslim and by the Sinhalese because he is Tamil.
- In 1990 the LTTE forced his family to leave their home in Mannar District and shortly after the Sri Lankan Navy took their land and they are still on their land.
- His family moved to Puttalam district but the local people did not accept them as they were Moors who were displaced people (IDP) and not from the area and the Sinhalese would pick on him for speaking Tamil.
- In 2002 he was arrested by airport police for speaking Tamil and he was detained for two days and interrogated.
- He was a member of the Sri Lankan Muslim Congress and two of his [relatives] had been candidates for this party. In 2006 he supported one of his [relative]'s election campaigns and was subsequently harassed by the All Ceylon Makka Congress party. Two of his brothers were arrested in 2018 after supporting one of his [relative]'s election campaigns that year.
- He also fears harm on return to Sri Lanka because he left illegally and applied for protection and resided in Australia.

Refugee assessment

8. 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

9. 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.
10. The applicant provided credible supporting documentary evidence to support his claimed identity. Having considered the evidence before me I accept that the applicant is a citizen of Sri

Lanka and is of Muslim faith. I am satisfied that Sri Lanka is the receiving country for the purpose of this assessment.

Political Activities

11. During the applicant's protection visa interview held on 9 April 2019, he claimed that he was a member of the Sri Lankan Muslim Congress (SLMC) and had been supporting them for generations. He claimed that he had two [relatives] who had been candidates for this party in previous elections. He claimed that in 2006 he had supported one of his [relative]'s election campaigns by [undertaking specific tasks]. He claimed that the All Ceylon Makka Congress (ACMC) subsequently harassed him for the next six years for supporting the SMLC and his [relative]'s campaign and would throw stones at his property and burnt his shop and broke his car. They harassed his [relative] as well and broke his house. The applicant claimed he left Sri Lanka in 2012 for this reason. He also claimed that his two brothers had been arrested around three times in 2018 after the election that year, during which one of his [relative]'s had contested for the SLMC. They had assisted their [relative] in his election campaign. He claims his brothers were arrested for no reason but due to the influence of [an official] of the ACMC, "[Mr A]". They knew it was due to [Mr A] as the police came in his vehicle. Both of his brothers were released after being threatened and told not to get involved in the election campaign. One of his brothers made a complaint against the police to the Human Rights Commission. The applicant fears the ACMC will target him in Sri Lanka as they may think he might be a future contestant for the SLMC.
12. The applicant did not raise any of the above claims in his application for protection. When the delegate asked the applicant why he had not mentioned that he had been involved in elections in 2006, he responded that he did mention his involvement in politics but did not mention [Mr A]. When asked by the delegate why he did not mention [Mr A], he said he was afraid to but did not say why he was afraid. Although an introductory paragraph in his written statement of claims states that it is not an exhaustive statement of the reasons why he cannot return to Sri Lanka, I find it very difficult to believe he would not mention in his statement what he now claims is the main reason he left Sri Lanka. I also find the explanation he gave for not raising these claims unconvincing. I find the applicant's lack of reference to the above claims in his application for protection weighs against the credibility of these claims.
13. Further, when asked by the delegate why the applicant would have been targeted specifically by the ACMC as he was not a candidate, he said that may be they thought he would be a threat in the future as might contest for the SLMC. The applicant has claimed that he was not a candidate in the elections and that he merely supported his [relative]'s election campaign in 2006 so I find it very difficult to believe that the ACMC would continue to harass him as he has claimed for the next six years given what relatively little involvement he had in his [relative]'s campaign and with no expressed intention to run as a candidate.
14. The applicant claimed that he requested voluntary return to Sri Lanka in 2018 but after he heard about his brothers' arrest that year, he changed his mind. He said he told his caseworker the situation and cancelled his trip. There is information in the referred materials that confirms that he requested voluntary return to Sri Lanka in May 2018 as he missed his family and that he was scheduled to depart Australia [in] August 2018. The information also confirms that he cancelled his request the day before his scheduled departure but no reason is noted for his change of mind.
15. During the protection visa interview the applicant claimed he would email the delegate a copy of his brother's complaint to the Human Rights Commission. It appears the applicant

subsequently emailed the delegate two documents on 12 April 2019 with the subject heading “[Boat ID] police Commissioner late and human rights”. The documents appear to have been dated in 2018 but as they are both untranslated I cannot give them much weight in assessing this aspect of his claims. The applicant has not provided any other supporting evidence in relation to these claims.

16. During the applicant’s Irregular Maritime Arrival Entry Interview (arrival interview) held on 20 October 2012 he indicated that his [relative] ran for the council election in 2011 as a member of the SLMC but he was not successful. In his statement of claims the applicant indicated that he had looked at the record of his arrival interview and made quite a number of detailed corrections to that record in his statement but did not change or correct the information he provided during that arrival interview about his [relative]’s political activities which suggests that he considered that information correct at the time he prepared his application for protection and, as noted, the timing of his new claims at the protection visa interview is problematic.
17. Having considered the evidence before me I accept that the applicant’s [relative] campaigned for the SLMC in 2011 as he stated in his arrival interview, and did not win. I also accept that the applicant was a supporter of the SLMC but I am not satisfied he was a member. I do not accept that the applicant assisted his [relative] in his political campaign in 2006 or that he had another [relative] who also contested the elections on behalf of the SLMC. I do not accept that the applicant, or his [relative], was harassed by the ACMC. I do not accept that he had an [relative] who contested the elections in 2018 on behalf of the SLMC and that his brothers were involved in his [relative]’s election campaign and were subsequently arrested. I do not accept this was the reason the applicant changed his mind about returning to Sri Lanka. On the evidence before me, I am not satisfied the applicant faces a real chance of harm from the ACMC or any other group or person in Sri Lanka because his [relative] contested the election in 2011 for the SLMC and/or because the applicant is a SLMC supporter.

Muslim IDP

18. The applicant claims that, in 1990, the LTTE forced his family to leave their home in Mannar. They started a new life in Puttalam district that year which was mainly a Sinhalese area. The local people did not accept them because they were Moors who were displaced and not from the area. His father’s shop was robbed and he was attacked. The applicant claims he was not allowed to sit in the front row at school because he was called a “bloody refugee dog” by his teachers. He was often hit by parents of other students because he was not from the area and was Muslim. He also claims that his children were refused enrolment in one of the local schools because they were displaced people and the school had to give priority to the people in the area and he had to enrol them in another school. In his statement the applicant further claimed that, in 2012, he was being intimidated by the local Muslim Sinhalese people because he was a displaced person and his paddy field and truck were set on fire and he could not work as it would be set on fire again. He further claimed that, in early 2012, he went grocery shopping [but] the shopkeeper refused to serve him because he was not a local and was Muslim. He was physically attacked by the shopkeeper’s [relatives] and called him a “refugee dog” and the local villagers did not help. During the protection visa interview he clarified this happened because he was a displaced person and not because he was Muslim. As he was constantly living in fear, and things were getting worse, he decided to leave to go to Australia.
19. The applicant did not initially refer to these claims when discussing why he left Sri Lanka during the protection visa interview and claimed to have left due to his political activities referred to above. Further, when initially asked by the delegate if he had experienced any other problems

from any other group, he said no. It was not until the end of the protection visa interview, when specifically questioned about the claims in his statement by the delegate, did the applicant claim there was discrimination between the locals and the IDPs and only referred to some of these written claims in response to specific questions from the delegate.

20. I accept that the applicant's family were expelled from Mannar in 1990 by the LTTE and were displaced to Puttalam where they resided in an IDP camp. This is corroborated by country information before me about this event.² The applicant also provided an IDP identification card and National ID Card which corroborates his account of being displaced from Mannar to Puttalam.
21. I also accept that his family would have experienced discrimination from the local population when they moved to Puttalam and that tension likely still exists between the two populations as country information indicates that the arrival in Puttalam of the vast bulk of Muslims evicted by the LTTE from the North in 1990 exacerbated existing resource shortages. The result was discrimination of IDPs in their access to these resources and to opportunities to rebuild their lives; scarcity and loss of opportunities for the host populations; and an environment of tension, hostility and sometimes violence between the IDP and host populations. I also accept the applicant's claims about having trouble enrolling his children in a local school as country information also indicates that the host community and IDPs in Puttalam are forced to compete for scarce resources in sectors including education.³
22. Nonetheless, although country information above indicates that tensions between the communities can sometimes escalate to violence, I do not accept that, in 2012, his property was burnt and he was beaten by local villagers because he was an IDP. In rejecting this claim I have given consideration to the inconsistency in the applicant's written and oral evidence about the reasons why he claims he departed Sri Lanka in 2012. I note that applicant did not refer to his property being burnt at all by the local villagers during the protection visa interview and only discussed in general terms the incident in the shop when specifically asked about it by the delegate and claimed he had been attacked because he was an IDP and not because he was Muslim which is not what he claimed in his statement. He then only referred generally to the discrimination the people in the camps face from the local people. He was then given an opportunity to have a break by the delegate to think about whether there was anything else he wanted to add in relation to his claims but the applicant claimed he did not need a break and did not have anything else to say.
23. Although the country information before me indicates that Muslim IDPs in Puttalam face challenges accessing resources and services, the applicant has given evidence that he left the IDP camp in 2009 and lived with his wife's family, he completed high school, worked as an [Occupation 1] for four years and then worked in his family [shop]. He was also able to enrol his children into an alternative local school.
24. The applicant also claims that it became harder every year to be a Muslim in Puttalam district as mosques were being attacked with stones by Buddhist people. After 2010 there were more problems because of the Bodu Bala Sena (BBS) who are Sinhalese Buddhists who do not like Tamil and Muslim people. They killed several people and took the property of Muslims in

² Secretariat for Muslims (Sri Lanka), "Violations of Muslims' Civil & Political Rights in Sri Lanka", 9 September 2014, CIS2F827D91432

³ Internal Displacement Monitoring Centre, "SRI LANKA: Civilians displaced by conflict facing severe humanitarian crisis: A profile of the internal displacement situation", 1 May 2009, CIS17345; Secretariat for Muslims (Sri Lanka), "Violations of Muslims' Civil & Political Rights in Sri Lanka", 9 September 2014, CIS2F827D91432; "Is Sri Lanka's spurned Muslim minority ripe for fundamentalism?", The Christian Science Monitor, 7 December 2007, CX189545

Darga Town near Puttalam and he and his wife were scared they would be targeted as well. Since 2012 nearly 34 mosques have been attacked and the Sri Lankan authorities have fired on many mosques. In Puttalam there were attacks from the “grease men” during Ramadan and recently and are believed to be members of the navy and army who attack mosques and women and target Tamils and Muslims. He fears these attacks will continue. He fears that he will be targeted by Sinhalese individuals and groups such as Bodu Bala Sena (BBS) because he is Muslim. He will not be able to move around his community or country freely and will not be able to practise his faith freely and will be stopped from going to mosque. The Sri Lankan government will not protect him as they do not like Muslims and think of them as dogs.

25. Country information before me indicates that religion plays a significant role in daily life in Sri Lanka and strongly correlates with ethnicity: most Sinhalese are Buddhist and most Tamils are Hindu. Muslims are considered a separate ethnic group and are the third largest religious group in Sri Lanka. The government has publicly declared its commitment to religious and ethnic reconciliation. However, Article 9 of the Constitution grants Buddhism a ‘foremost place’. In 2003, the Supreme Court ruled that the state was constitutionally required to protect only Buddhism. The constitutional reform process has included discussion of amending Article 9. Attacking places of worship or religious objects is punishable with a fine and/or a maximum of two years’ imprisonment.⁴
26. Reports before me indicate that religious tensions between Muslims and the Sinhala Buddhist majority have risen since the end of the conflict, and in recent years, Sri Lanka has witnessed a spate of anti-Muslim violence linked to ultra-nationalist Sinhalese Buddhist groups and sporadic riots and attacks against Muslims occur. These include attacks on mosques, Muslim property and businesses, violence which has led to several deaths and anti-Muslim rhetoric. A hate campaign, led by the BBS has targeted Muslims and focused particularly on the community’s religious and social practices. International Crisis Group reported that, having ceased during the first two years of the current coalition government, attacks on Muslims began again in 2017, with militants apparently emboldened by the government’s failure to prosecute those responsible for violence and hate speech under the former Rajapaksa regime. Sources claim the government has done very little to address either the underlying mistrust and misunderstandings between the two communities, or to rein in the small number of Buddhists who promote or use violence and police, in a number of locations, have been credibly accused of siding with the mobs. Other sources also state that the authorities reportedly arrest suspects but there are concerns of police inaction during such incidents. Minority Rights Group International reported 60 incidents of hate speech, discrimination or attempts to desecrate or destroy Muslim religious buildings in the first six months of 2016. In May 2017 the general secretary of the BBS called Islam a “mental illness” and threatened a “bloodbath” in predominantly Muslim areas. On 6 March 2018, the government declared a nationwide State of Emergency for twelve days in response to incidents of communal unrest between members of the Sinhalese Buddhist and minority Muslim communities in Kandy District, Central Province. Police arrested the leader of the Buddhist extremist group Mahason Balakaya, in relation to the violence. President Sirisena has committed to investigate anti-Muslim hate crimes and bring perpetrators to justice, although local sources claim that for political reasons authorities are reluctant to address violence perpetrated by religious clerics due to concern of public backlash.⁵

⁴ DFAT, “DFAT Country Information Report Sri Lanka”, 23 May 2018, CIS7B839411064

⁵ Human Rights Watch, “Human Rights Watch World Report 2019”, 17 January 2019, 20190118091502; Minority Rights Group International, “Confronting intolerance: Continued violations against religious minorities in Sri Lanka”, 10 December 2016, CIS38A80123005; Secretariat for Muslims (Sri Lanka), “Violations of Muslims’ Civil & Political Rights in Sri Lanka”, 9 September 2014, CIS2F827D91432; “Sri Lanka arrest five over anti-religious violence”, Reuters, 11 June 2017,

27. In May 2018 DFAT assessed that, while there have been incidents of property damage and personal violence against Muslims, overall violence remains sporadic. DFAT assesses that Sri Lankan Muslims face a low risk of official and societal discrimination and a low risk of violence.⁶
28. On 21 April 2019 (Easter Sunday) Islamist suicide bombers targeted churches, hotels and a guesthouse in attacks three separate cities in Sri Lanka and killed more than 200 people and wounded about 500.⁷ The Islamic State of Iraq and the Levant (ISIL or ISIS) group claimed responsibility for the bombings.⁸ Fears of revenge attacks against Muslims prompted heavy security deployments, curfews and a declaration of a state of emergency.⁹ Since the attacks, there have been reports of mosques and Muslim owned businesses being attacked with stones and one local man beaten in Chilaw on 12 May 2019 which resulted in a police curfew. A week prior there were clashes between Muslims and Christians in Negombo after a traffic dispute.¹⁰ This curfew was subsequently extended across the North Western Province and then the entire country after further attacks on 13 May and 14 May 2019 against mosques and Muslim businesses with reports of one death. These attacks occurred in Kottampitiya, Kiniyama, Minuwangoda, Madulla, Hettipola in Kurunegala district and Puttalam district. The government authorities then claimed that they had restored calm in the areas affected by violence but some local Muslims claimed they did not take action against the violence.¹¹ During these attacks it was reported that Sinhala mobs rampaged through at least 24 towns in western Sri Lanka, looting and attacking Muslim properties with stones, swords and petrol bombs. In addition to killing one person, the mobs wounded at least 14 other Muslims and destroyed over 540 Muslim-owned houses, shops, and mosques as well as nearly 100 vehicles. Authorities said that Buddhist hard-line groups were likely to blame for the wave of anti-Muslim riots. Meanwhile, residents in the affected towns report their long-existing relationships with their neighbours had deteriorated.¹² On Wednesday 15 May 2019 it was reported that the authorities had arrested over 100 suspects in relation to the mob violence and some additional 5,500 police were deployed to the North Western Province to contain the violence and a night curfew was reimposed in the area and the military claimed the situation was under control. The police also made several changes in the command structure by removing senior officers in the troubled areas after allegations officials did nothing to stop the rioters.¹³ On 16 May 2019 it was reported the government did not impose further night

CXC9040668979; "Fear grips Muslims in Sri Lanka's Ginthota after attack", Aljazeera, 24 November 2017, CXC90406618281; US Department of State, "International Religious Freedom Report for 2017 - Sri Lanka", 29 May 2018, OGD95BE927541; US Department of State, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333; Minority Rights Group International, "State of the World's Minorities and Indigenous Peoples 2016 - Sri Lanka", 12 July 2016, NGE43874C348; International Crisis Group, "Buddhist Militancy Rises Again In Sri Lanka – OpEd", 12 March 2018, CXBB8A1DA23692; Ayesha Zuhair, "Dynamics of Sinhala Buddhist Ethno-Nationalism in Post-War Sri Lanka", Centre for Policy Alternatives, 1 April 2016, CIS38A80121742; DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

⁶ DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

⁷ "What We Know and Don't Know About the Sri Lanka Attacks", The New York Times, 22 April 2019, 20190423102213

⁸ "Sri Lanka bombings: All the latest updates – 2", Aljazeera, 30 April 2019, 20190501142357

⁹ "The suicide bombs in Sri Lanka might have been prevented", The Economist, 27 April 2019, 20190426144009

¹⁰ "Mosques attacked in Sri Lanka town after Facebook row, curfew imposed", Reuters, 12 May 2019, 20190513140437

¹¹ "Sri Lankan towns rocked by Christian-Muslim riots", Agence France Presse (AFP) - France, 13 May 2019, 20190514153901; "Sri Lanka clashes kill one; imposes nationwide curfew after mosques attacked", Reuters, 13 May 2019, 20190514155658; "Sri Lanka vows 'maximum force' against anti-Muslim rioters", BBC News, 14 May 2019, 20190514160351; "Sri Lanka under nationwide curfew after crowds attack mosques", Aljazeera, 14 May 2019, 20190514155949; "Sri Lanka extends nationwide curfew after anti-Muslim riots", BBC News, 15 May 2019

¹² "In Sri Lanka, Muslims say Sinhala neighbours turned against them", Aljazeera, 21 May 2019, 20190522080309

¹³ "Arrests, new curfews in Sri Lanka after anti-Muslim riots", Agence France Presse (AFP) - France, 15 May 2019, 20190516122105

curfews because there had been no reports of violence around the country in the past 24 hours.¹⁴

29. I have considered the country information about anti-Muslim violence perpetrated by extremist Buddhist groups and note that the applicant claimed that he and his family were never previously attacked by the BBS. I have also considered the recent deterioration in communal relations after the Easter terrorist attacks and recent mob violence against the Muslim community in certain areas of Sri Lanka. However, I note that the country information indicates that the recent incidents were confined to certain areas and did not appear to have occurred in the applicant's previous home area of [in] Puttalam district. I have also given weight to the fact that the authorities appeared to have responded to claims that were ineffective in dealing with the violence by deploying more officers to the affected areas and arresting perpetrators and removing certain officers. It also appears to have restored security and calm to those areas and there are no further reports before me of communal violence since then. Although I accept that the recent Easter terrorist attacks have inflamed the tension between the Muslim and other religious communities, violence in response to these tensions have remained sporadic and the Sri Lankan authorities have restored calm since the latest events. There is also no recent country information before me to support the applicant's claims in relation to "grease men" attacks in his area or Sri Lanka.
30. The applicant also claims that, since he was born, the LTTE targeted his family because they were Muslim. The only mistreatment by the LTTE the applicant refers to is their expulsion from Mannar in 1990 which I have accepted occurred. Country information notes that the civil war ended in 2009 after the LTTE were defeated and DFAT has assessed that the LTTE no longer exists as an organised force in Sri Lanka.¹⁵ I am not satisfied there is a real chance he will be harmed by the LTTE as a Muslim or for any other reason.
31. I am also not satisfied there is a real chance he will be subject to a level of discrimination or other harm that will amount to serious harm due to the individual or combined factors as a Muslim IDP by any other person or group in Sri Lanka.
32. The applicant has also claimed that the BBS will physically attack him or even kill him because he left Sri Lanka and because he is Muslim. It is not evident from the country information before me, or the applicant's own evidence, why the BBS would take an adverse interest in him and attack him because he is a Muslim who left Sri Lanka. I am not satisfied there is a real chance the applicant will be harmed by the BBS because he is a Muslim who left Sri Lanka.

Tamil Language

33. In his statement the applicant claimed that he was targeted by the Sinhalese population because he was Tamil. However, I note that the applicant has otherwise consistently claimed that that he is of Moor ethnicity and his identification documents also indicate this. Country information also confirms that most Sri Lankan Muslims speak Tamil as their first language and the applicant spoke Tamil during his protection visa interview.¹⁶ In his statement he subsequently raised claims of being targeted because he is a Tamil-speaker so I am satisfied that the reference in his statement to being Tamil was likely an error and that it was likely meant to indicate that he was been previously targeted for being Tamil-speaking. I am satisfied the applicant is of Moor ethnicity and not Tamil ethnicity and I accept that he speaks Tamil.

¹⁴ "Sri Lanka army denies colluding with ant-Muslim rioters" Agence France Presse (AFP) - France, 16 May 2019, 20190517134224

¹⁵ DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

¹⁶ Ibid.

34. The applicant claims that for many years he could not speak Tamil in public because if he did the Sinhalese people would pick fights with him and accuse him of being LTTE and forced him to speak Sinhalese. He claims in 2002 he was on a train going to the airport and speaking Tamil on the phone and was arrested by airport police for speaking Tamil. They asked him who he was speaking to and why he was speaking Tamil and interrogated him and detained him for two days and physically hit him and threatened him and called him a “Tamil dog” and “son of a bitch”. The cousin of one of the men who hit him threatened him so he did not complain to the police about his treatment. He feared being targeted if he left the Tamil area. I accept these claims and have given consideration to country information which indicates that many Tamils, particularly in the north and east, reported being monitored, harassed, arrested or detained by security forces during the conflict.¹⁷ As he was Tamil-speaking I accept, as plausible, that he may have been imputed to be Tamil and consequently a LTTE supporter or associated with the LTTE by the Sinhalese community and the Sri Lankan authorities during the civil war. The civil war ended in 2009 after the defeat of the LTTE and, in 2018, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that monitoring of Tamils in day-to-day life has decreased significantly under the current government, but surveillance of Tamils in the north and east continues, particularly those associated with politically sensitive issues including missing persons, land release and memorial events.¹⁸ The applicant has not given more recent examples of mistreatment, since the end of the civil war, on the basis of being a Tamil-speaker and did not refer to this particular aspect of his claims during his protection visa interview and I am not satisfied he is associated with politically sensitive issues. Although there is a real chance the applicant may be imputed to be Tamil because he speaks Tamil, I am not satisfied there is a real chance the applicant will be imputed to be associated or a supporter of the LTTE by any group or person for this reason and/or originates from the North. Having considered the change in the country conditions since the end of the civil war, I am not satisfied the applicant will face a real chance of harm from the Sri Lankan authorities or any other group or person because he speaks Tamil and/or originates from the North.

Land Dispossession

35. The applicant claims that after his family were forced to leave their home in Mannar District the Sri Lankan Navy came and took their land and are still on their land today. His family tried to write to the government around 2009 to try and get their land back but the government did not respond and they have never been allowed back on their land. I accept these claims as it is corroborated by country information before me indicating that the military continues to occupy land in the north. Many homes or areas were occupied by the Sri Lankan Army (SLA) as a result of the creation of High Security or military zones and substantial land area is occupied by the SLA in Mannar.¹⁹ Under previous legislation, landowners who had abandoned their land for more than 10 years forfeited their property rights, which happened to a large number of property owners displaced by the 27-year war.²⁰ Human Rights Watch has stated that some of the land was seized during the conflict, while some new land was occupied after the conflict ended. Although the government claims it needs to hold onto areas occupied by the military for national security reasons, activists say in some places the land is being instead used for commercial gain through farms, businesses, and tourism.²¹

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Internal Displacement Monitoring Centre, “SRI LANKA: Civilians displaced by conflict facing severe humanitarian crisis: A profile of the internal displacement situation”, 1 May 2009, CIS17345

²⁰ US Department of State, “Country Reports on Human Rights Practices for 2017 - Sri Lanka”, 20 April 2018, OGD95BE927333

²¹ Human Rights Watch, “Human Rights Watch World Report 2019”, 17 January 2019, 20190118091502

36. Since January 2015, the new Government has begun a process of returning some of the land to the previous owners but there has been reported resistance from some sectors of the military.²² Freedom House noted that there have been few official attempts to help Muslims forcibly ejected from the north by the LTTE to return to their homes.²³ In March 2017, the government declared four forest areas in the Northern Province as conservation reserves; this land has been contested as the place of origin of a number of Muslim IDPs evicted by the LTTE in the 1990s. In 2018, DFAT noted that the Sri Lankan government has committed to returning land to people displaced during the civil conflict, including people who were landless. By November 2017, the Sri Lankan government had identified land it would retain, for which compensation would be provided.²⁴
37. On the evidence before me, although not specifically claimed by the applicant, I accept that he may have suffered from financial loss as a result of his family land being occupied by the Sri Lankan authorities. He has not made any claims in relation to being unable to subsist for this reason and I note that he has worked since finishing school and that he most recently lived with his wife's family in Puttalam and his family owns a [store]. I am not satisfied the applicant or his family were unable to support themselves as a result of the loss of their land. I accept that the Sri Lankan government may continue to occupy this land. On the evidence before me I am not satisfied the the continued occupation of his family land in Mannar amounts to a threat to the applicant's capacity to subsist or otherwise constitutes serious harm.
38. The applicant has not claimed that he or his family were harmed for requesting their land previously and merely stated the Sri Lankan government did not respond. Given this and the country information before me, if he were to return to Sri Lanka and seek to have his land returned, I am not satisfied he will face a real chance of harm from the Sri Lankan authorities or any other group or person.

Failed asylum seeker and illegal departure

39. The applicant claims that because he has been in Australia for many years he will be a greater target because the Sri Lankan government will accuse him of complaining against them. He fears the police because he left Sri Lanka. He also claims if he is returned to Sri Lanka as a failed asylum seeker he will be harassed or targeted by the government because he left Sri Lanka illegally.
40. During his protection visa interview the applicant stated that he had to come to Australia with his brother and that his brother had returned to Sri Lanka in 2016 and they had raised the same claims before the Australian government. When his brother returned he was arrested and became scared of [Mr A] and told "them" what their claims for protection were. He is scared of being harmed on return because "they" know what he has told the Australian government about the Sri Lankan government and the political parties. The applicant explained that his brother was first arrested on arrival by the Sri Lankan authorities as a failed asylum seeker but was then subsequently arrested in his home area for political reasons in 2018. It is unclear from the applicant's oral evidence who his brother told his protection claims to and on which occasion he was detained, that is, in 2016 or 2018. I note the applicant did not raise any claims for protection in relation to "political parties" until his protection visa interview in 2019. I have also not accepted that his brother was arrested in 2018 nor is it convincing that he would reveal their protection claims due to fear of "[Mr A]". I do not accept that his brother

²² Office of the United Nations High Commissioner for Human Rights, "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358

²³ Freedom House, "Freedom in the World 2018 - Sri Lanka", 5 April 2018, NGED867A635

²⁴ DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

revealed their protection claims to the Sri Lankan authorities or to any other group or person in Sri Lanka.

41. I accept that the applicant departed Sri Lanka illegally without a passport and that he will return to Sri Lanka as a failed asylum seeker and will be identified as such by the Sri Lankan authorities.
42. Recent DFAT reporting²⁵ indicates that there is a real chance the applicant will be subject to an investigative process by the police to confirm his identity on his return to Sri Lanka. It also indicates a real chance the applicant will be charged for illegal departure and could remain in police custody for up to two days after arrival if a Magistrate is not available. Sources indicate a prevalence of torture and mistreatment of detainees by the Sri Lankan authorities whilst in custody. However, I have given weight to DFAT's recent assessment that returnees are not subject to mistreatment during processing at the airport and sources indicate all returnees are subject to these standard procedures, regardless of ethnicity and religion.²⁶ I also do not accept that there is a real chance the applicant will be of adverse interest to the Sri Lankan authorities and accused of complaining against them because he lived in Australia for many years and applied for protection or for any other reason. I also note the applicant claimed that his brother was charged or illegal departure after returning to Sri Lanka and detained for two days and has not claimed his brother was mistreated during this process. I am not satisfied the applicant will face a real chance of serious harm whilst being detained and questioned by the authorities on return to Sri Lanka.
43. According to DFAT, there may be legal and costs incurred as a result of having to attend court in relation to the illegal departure charge. Penalties for leaving Sri Lanka illegally can include imprisonment of up to five years and a fine. In practice, most cases result in a fine and not imprisonment. The Sri Lankan Attorney-General's Department claims no mere passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally. DFAT further notes that, 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. 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. I am satisfied that if the applicant pleads guilty or is found guilty, he will be fined and I am not satisfied there is a real chance he will be sentenced to imprisonment.
44. DFAT is aware of anecdotal evidence of regular visits and phone calls by the Criminal Investigation Department to failed asylum seekers in the north as recently as 2017. A UNHCR survey in 2015 reported that 49 per cent of refugee returnees in the north had received a visit at their homes for a purpose other than registration. DFAT also indicates that returnees may face some societal discrimination upon return to their communities, which could also affect their ability to secure housing and employment. Continued surveillance of returnees contributes to a sense of mistrust of returnees within communities.²⁷ Even if the applicant were to be subject to surveillance and visits from the Sri Lankan authorities I am not satisfied this amounts to serious harm or that he will face a real chance of serious harm during such visits or surveillance for any reason.

²⁵ Ibid.

²⁶ Immigration and Refugee Board of Canada, "LKA103815.E: Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka", 22 August 2011, LKA103815.E

²⁷ DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

45. I have also given consideration to whether being detained for several days in a Sri Lankan prison amounts to persecution. A recent report by the United States Department of State claims prison conditions in Sri Lanka were poor due to old infrastructure, overcrowding, and a shortage of sanitary facilities.²⁸ Nonetheless, if the applicant were detained for a few days I find this period to be brief and does not rise to the level of threat to his life or liberty or to other forms of serious harm as per s.5(J)(4)(b).
46. I consider that being questioned, fined, being subject to monitoring and surveillance, social discrimination, costs associated with travelling to court and a short period of detention do not, individually or cumulatively, arise to the level of serious harm and I am not satisfied there is a real chance the applicant will face any further harm beyond the above. I further find that the application of the I&E Act in respect of those Sri Lankans who have departed unlawfully is an application of the law which applies to all Sri Lankans and I am not satisfied on the evidence that the enforcement of this law is applied in a discriminatory manner.
47. I am not satisfied the applicant has a well-founded fear of persecution as a returned failed asylum seeker who lived in Australia for a number of years and who departed Sri Lanka illegally.
48. Having considered the applicant's profile and experiences I find they do not cumulatively give rise to a real chance of serious harm.

Refugee: conclusion

49. 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

50. 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

51. 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.

²⁸ US Department of State, "Country Reports on Human Rights Practices for 2017 - Sri Lanka", 20 April 2018, OGD95BE927333

52. Having considered the applicant's circumstances and the country information before me, I am not satisfied there is a real risk he will be subject to discrimination or other harm due to the individual or combined factors of being a Muslim IDP that amounts to an arbitrary deprivation of his life, the death penalty, torture, or involve the level of pain, suffering or humiliation described in the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.
53. I accept that the applicant has suffered a financial loss as a result of his family land in Mannar being occupied and retained by the Sri Lankan government. However, on the evidence before me, I am not satisfied that any loss the applicant may suffer will amount to severe pain or suffering or pain and suffering that could reasonably be considered as cruel or inhuman in nature. Nor am I satisfied that the loss of the land amounts to act intended to cause extreme humiliation. Not does it amount to an arbitrary deprivation of the applicant's life, being subject to the death penalty or torture. I am not satisfied that it amounts to significant harm as defined in the Act
54. I accept that there is a real risk the applicant will be questioned by Sri Lankan authorities at the airport and charged for illegal departure and fined and may spend a brief period of time in detention and may have to return to court if he pleads not guilty. I also accept there is a real risk he may also experience monitoring and surveillance by the Sri Lankan authorities and societal discrimination. I am not satisfied that the investigation process, a fine and costs associated with attending court or brief period of stay in a Sri Lankan prison, individually or cumulatively, involve the level of pain, suffering or humiliation described in the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment nor does it amount to an arbitrary deprivation of his life or the death penalty. It does not involve the requisite intention to inflict pain or suffering or to cause humiliation as it arises from the enforcement of Sri Lankan law and a lack of resources in respect of the poor prison conditions.
55. I am also not satisfied there is a real risk the monitoring, surveillance and societal discrimination he may experience on return amounts to an arbitrary deprivation of his life or the death penalty or that these experiences would individually, or cumulatively, reach the level of pain or suffering or extreme humiliation, as defined, so as to amount to significant harm. I also do not consider the cumulative effect of the investigation process, fine, travel costs, brief period of detention, monitoring and surveillance and social discrimination to amount to significant harm.
56. I have otherwise found there is not a real chance of the applicant being harmed in Sri Lanka in respect of his other claims. As "real chance" equals "real risk",²⁹ I am similarly not satisfied there is a real risk of the applicant suffering significant harm in Sri Lanka.
57. I have considered the applicant's claims cumulatively and I do not find that he will face a real risk of significant harm.

Complementary protection: conclusion

58. 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).

²⁹ *MIAC v SZQRB* (2013) 210 FCR 505.

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.