



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA19/07227

Date and time of decision: 22 November 2019 12:41:00
C Wilson, 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 Tamil from Northern Province, Sri Lanka. He arrived in Australia [in] March 2013 as an unauthorised maritime arrival. He applied for a Safe Haven Enterprise Visa (SHEV) on 27 May 2016.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 25 September 2019. The delegate did not accept the applicant had an actual or perceived link to the LTTE, or that he was of adverse interest to the police or the Eelam People's Democratic Party (EPDP).

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 9 October 2019 the applicant's representative provided a statement from the applicant, an extract from an article dated 19 September 2019, and travel advice from the Department of Foreign Affairs and Trade (DFAT) for Sri Lanka.
5. The applicant's statement is in response to the delegate's decision. The applicant responds to the delegate's findings that there was no evidence provided to support the claim that his siblings had been recognised as refugees in [Country] and Australia. In relation to his [sibling] in Australia, the applicant invites the Authority to obtain [her/his] file from the Department. I have considered this request, but for the following reasons I decline to exercise the discretion to obtain this new information. I accept his [sibling] has been granted a Safe Haven Enterprise Visa, as a dependent applicant, based on evidence provided by the applicant on 22 October 2019 which for reasons given below I have accepted as new information. I consider that if his [sibling] wanted to share with [her/his] brother, and the Department or the Authority, the reasons claimed in [her/his] or [her/his] [spouse]'s applications, a statement or a copy of their statement of claims could have been given to the applicant to provide with his application. [Her/his] visa was granted in August 2017, more than two years before the delegate's decision. In circumstances where the applicant could have provided information from his [sibling], I am not satisfied I should exercise my discretion to obtain a third party's personal information.
6. The applicant provided information in his statement regarding a 'pass' he says he was not issued by CID. He says when the [a number of] families were released from [Location] Camp everyone but 5 people, including him, were given a pass by the CID so that they could move freely. Because he was not given a pass, he was required to report weekly. He was later issued a pass but still told not to leave the area without permission. I consider this information is not 'new' but is a clarification on information already given. I have taken it into account in my review.
7. The article extract dated 19 September 2019 'Sri Lanka to hold presidential election on November 16' is from Aljazeera. The extract states the election date and speculates on the candidates. There are no submissions from the applicant as to why there may be exceptional circumstances to justify considering this information, and none are apparent to me. I do not find the election date and speculation about the candidates and who may win to be of

obvious relevance to the applicant's claims. I am not satisfied there are exceptional circumstances to justify considering it. I find s.473DD(a) is not met and therefore I must not consider this new information.

8. The applicant provided an extract of travel advice for Australian citizens from the DFAT 'smartraveller' website. The DFAT travel advice was printed 9 October 2019, but the contents were dated 25 August 2019. The information does not contain credible personal information. The applicant claims he could not have provided it to the delegate as it was published after the decision was made. I accept he accessed it after the decision, but the extract indicates it was last updated 25 August, which was a month prior to the delegate's decision. I do not accept it could not have been provided to the Department before the decision was made. In any event, the information on the DFAT smartraveller website is for Australian citizens visiting Sri Lanka. There is other more detailed and relevant sources of country information before me on the security situation in Sri Lanka and the situation for Tamil returnees. I find the DFAT travel advice is not sufficiently relevant to the applicant's claims as a returning Sri Lankan citizen, and nor do I accept the information could not have been provided earlier. In all the circumstances I am not satisfied there are exceptional circumstances to justify considering this new information. I find s.473DD(a) is not met and therefore I must not consider it.
9. On 22 October 2019 the applicant provided new information in the form of identification cards, with translations, for his siblings in [Country] and a copy of his [sibling]'s visa grant in Australia. I accept these all amount to credible personal information that may have affected the consideration of his claims, as it supports his claims that none of them live in Sri Lanka and (at least some of them) have been granted protection. I am also satisfied there are exceptional circumstances to justify considering this information because of its relevance to his claims and that he would not have known before the decision was made that the delegate would not accept any of his siblings had been granted protection. I find s.473DD(a) is met.
10. I have obtained new information from the DFAT *Country Information Report Sri Lanka*, dated 4 November 2019. In particular, I have obtained new information on the treatment of Tamils and persons involved or suspected of involvement with the LTTE, returnees, the EPDP, and internal relocation. I am satisfied there are exceptional circumstances to justify considering this information because it is the most up to date information on the conditions in the applicant's home country and the report replaces the previous DFAT report relied upon by the delegate.
11. On 6 November 2019 I wrote to the applicant pursuant to s.473DE putting to him new information from the DFAT report that was not subject to the s.473DE(3)(a) exemption, and invited him to comment on it.
12. On 11 November 2019 the applicant responded to the invitation. In response to the new information regarding the EPDP he maintains they have an office near his house and he still fears harm from them. He also raised new information that he had not told the delegate. He claimed for the first time that the CID told his parents that LTTE members had told the CID the applicant was an LTTE member and had buried weapons. Because of this his name is on a stop and watch list and he will be arrested at the airport. He says he became aware of this information in 2012, after he arrived in Australia. He says he did not tell this earlier because his friends in the detention centre told him if he told the truth he would be sent back to Sri Lanka. I have considered his reasons for not raising this earlier, but I do not accept it. I can accept he may not have told his full claims when interviewed on arrival in detention. However, it was some years later when he applied for the SHEV visa (2016) and was

interviewed (2019). By that time he was no longer in detention and could have discussed with a migration agent any concerns about what to include in his claims. Throughout the SHEV application process he was assisted by a migration agent, and they provided comprehensive claims and submissions for him. He would have been aware he needed to put all his claims forward, and this was again discussed at the SHEV interview. Even when his application was refused, he made no mention of these new claims in the statement provided to the Authority. I also note he claims to have become aware of this information in 2012 after arriving in Australia. However, he did not in fact arrive in Australia until March 2013. Taking into account the lateness of the claim, his unpersuasive reason for not raising it earlier, and the error in when he said he learned of it, I do not accept this information is credible. I find it is not credible personal information and I find s.473DD(b)(ii) is not met. I also find s.473DD(b)(i) is not met because he claims to have known this information since 2012, and if so I do not accept it could not have been provided to the Department prior to the decision being made. As s.473DD(b) is not met, I must not consider this information.

13. On 13 November 2019 the applicant provided a photograph that he claims was taken recently of the EPDP office in his home area [Village]. This is not credible personal information. Whilst the photograph was purportedly only taken recently, I do not accept it could not have been taken and provided earlier. There is nothing to suggest the EPDP office has only just opened in [Village], rather his claim is that it continues to operate in [Village]. The applicant previously claimed there was an EPDP office near his house, and also raised this in the SHEV interview. I acknowledge the photograph may have been provided now in response to my invitation to comment on information regarding the EPDP. However, unless the information meets the requirements of s.473DD I cannot consider it. I do not accept a photograph of the EPDP office in [Village] could not have been provided earlier and I find s.473DD(b) is not met. If I am wrong in relation to s.473DD(b)(i), I also consider there are not exceptional circumstances to justify considering the new information. The photograph is undated. There is no evidence how close it is to the applicant's home. It contains minimal information: just a sign and no indication of the size of the office or how active it is, if at all. I consider the photograph is of minimal evidentiary value. In all the circumstances I am not satisfied there are exceptional circumstances to justify considering this new information. I find s.473DD(a) is not met and therefore I must not consider it.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:
 - The applicant is a Tamil from a village in [Village], Jaffna, Northern Province, Sri Lanka. He is married with [number] children. His wife and children live with his parents in [Village].
 - During the civil war in Sri Lanka the applicant's family were internally displaced and lived in a number of camps. Towards the end of the civil war they lived in the [Location] Detention Camp.
 - The family were released from the camp in 2009 and returned home to [Village]. The Criminal Investigation Division (CID) came looking to question him. They interrogated and beat him, asking if he was a member or supported of the LTTE. He maintained he was not a member, but admitted to digging bunkers for the LTTE and being forced to undertake two days of self-defence training. He was released but told to report every Sunday, which he did.

- The applicant worked in fishing. In 2011 he was getting ready to take his boat out when he was approached by men from the EPDP. They wanted him to take them to a nearby island. He refused and they started throwing his net and other equipment off the boat. He tried to stop them and one man fell in the water. They were going to beat him, so he ran away. He heard later from a neighbour they came to his house looking for him. He stayed away from his home for a few days.
- One night the EPDP and CID came to his house. He was arrested and taken to an EPDP building and detained there for a month. He was beaten and tortured every day. When he was released a month later they told him they were only releasing him so they could shoot him on the street.
- He moved to Colombo and stayed there with relatives until he got a passport and left Sri Lanka in late 2012. After he left Sri Lanka the CID and EPDP kept coming to his wife's house, and later to his parents' house, to look for him. They threatened his [sibling A] four to six times and told [her/him] they would shoot [her/him] if he didn't tell them where the applicant was.
- None of the applicant's siblings live in Sri Lanka. His [sibling B] went to [Country] in 1998, and his [sibling C] also went to [Country] to join [her/his] [spouse]. His [sibling D] travelled to Australia in 2013 with [her/his] [spouse] and child and they were granted temporary protection visas in 2017. His [sibling A] went to [Country] in 2015 to seek asylum because [s/he] was targeted over the applicant's issue with the EPDP.
- If he returns to Sri Lanka he will be targeted by both the CID and EPDP. They suspect he is a member of the LTTE and that the LTTE helped him to leave Sri Lanka. He cannot relocate because you have to register your presence with the Army and CID wherever you move, and in this way they will know where he is and know where to find him. He will be targeted as a Tamil, for an imputed political opinion as a Tamil from the North, as an imputed LTTE supporter, and for his membership of a particular social group 'Tamil men resident in the LTTE controlled areas of Jaffna and the Vanni in Kilinochchi and Mannar, and imputed to have connections with the LTTE and pro-Tamil separatists'.

Refugee assessment

15. 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

16. 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.
17. I accept the applicant is a citizen of Sri Lanka, based on the identity documents he has provided to the Department. The applicant was born in and returned to [Village] after the conflict ended in Sri Lanka. His wife, children and parents continue to live in [Village], Jaffna where his father owns property. I find Sri Lanka is his receiving country and [Village] is his home area and the area he would return to.
18. The applicant claims to have fled Sri Lanka because of an incident with the EPDP that led them to detain, torture and threaten to kill him. He claims also to have been of interest to the CID because of suspicion he was a member or supporter of the LTTE.
19. The applicant's claimed history of his family being displaced during the civil war and living in an LTTE controlled area is consistent with country information. The LTTE were a separatist Tamil militant group advocating for an independent Tamil state in the north and east of Sri Lanka. In July 1983 full-scale conflict broke out between the LTTE and the Sri Lankan military. The conflict ended in May 2009 when the Sri Lankan government declared victory over the LTTE and complete territorial control over Sri Lanka. At its peak in 2004 the LTTE had an armed force of approximately 18,000 combatants with an extensive administrative, political and intelligence support structure. At the end of the conflict large numbers of LTTE members were arrested and detained by government security forces. The Sri Lankan authorities managed a large-scale 'rehabilitation' process for former LTTE members, with 24 rehabilitation centres in Northern, Eastern and Western Provinces for around 12,000 people. By December 2017 only 1 centre remained open, with 8 inmates. At the end of the conflict any association with the LTTE at that time could be grounds for arrest. Many civilians were also questioned or monitored.¹
20. As a young Tamil man from the north it would not be unusual for him to be suspected of involvement with the LTTE. However, that suspicion was not evident when he and his family were released from the [Location] Camp at the end of the war. I accept that on one occasion in 2009, shortly after returning to their home in [Village], the applicant was interrogated, and that this interrogation included physical mistreatment in being beaten and kicked. Such mistreatment is consistent with country information.² The applicant claims after being interrogated he was required to report weekly. He does not claim to have been interrogated or mistreated on those occasions. He told the delegate at the SHEV interview he just had to go and sign in every Sunday. I consider it plausible there was some monitoring or reporting obligation to local authorities, as monitoring of Tamil civilians is known to have occurred at that time. However I do not accept it was weekly from 2009 to 2011 as claimed. He said he was interrogated and had to report because he, along with 5 other men, were the only ones not initially given a pass by the CID to move freely. However he says he was later given a pass, but still told to report before leaving the area. I find once he was issued the pass, the

¹ DFAT Country Information Report Sri Lanka, 23 May 2018.

² UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012; Landinfo, Sri Lanka: Human rights and security issues concerning the Tamil population in Colombo and the Northern Province, 1 December 2012.

weekly reporting would not have continued. In any event he could not continue reporting from 2011 when he went to Colombo. There is no claim or evidence he was harassed in Colombo or followed up for not reporting. He was able to obtain a passport and leave Sri Lanka legally. I consider this raises doubts about any ongoing obligation to report weekly.

21. I accept that during the interrogation in 2009 the applicant may have confessed to doing self-defence training and being forced by the LTTE to dig bunkers. But such work and contact with the LTTE was common for residents in the Northern Province. DFAT reports the majority-Tamil populations of areas controlled by the LTTE were required to interact with the LTTE as a matter of course.³ The applicant confirmed this at the SHEV interview. He said everyone in his area had to do the same training and dig bunkers. I do not accept this type of interaction meant he was considered to be an LTTE member or active supporter. I find that if he were imputed as such, he would not have been released after the interrogation but would have been sent to a rehabilitation camp.
22. The applicant claims he is considered to be associated with the LTTE, and that the authorities now believe he left Sri Lanka with the assistance of the LTTE. I consider this claim is mere speculation, as he cannot know what the authorities believe. On the remote chance the applicant may be imputed with an association to the LTTE because he is from the Northern Province or may be related to someone with an LTTE connection, the county information indicates that 10 years after the conflict ended this is now unlikely to give rise to a real chance of harm. DFAT reports the Sri Lankan authorities are not actively looking for non-rehabilitated former LTTE members, and there is no information of rehabilitation being imposed on any former LTTE members who have returned from Australia.⁴ The UK Home Office reported the Sri Lankan authorities maintain sophisticated intelligence on activities within Sri Lanka and in the diaspora. They know both that many Sri Lankan Tamils travelled abroad as economic migrants and that everyone in the Northern Province has some level of involvement with the LTTE during the civil war. Returnees with some previous connection to the LTTE are able to return to their communities without suffering ill-treatment. Ordinary Tamils from the Northern Province are not at risk. Those who may face a risk are former leaders or persons who committed serious terrorist or criminal acts during the conflict or who are perceived to be a threat because they have, or are perceived to have, a significant role post-conflict in relation to Tamil separatism.⁵ There is no evidence the applicant fits any of these profiles. There is no evidence he has involved himself in any pro-separatist activity in Australia. I do not accept the applicant was imputed to be an LTTE member, because I find if he was he would have been referred to a rehabilitation camp, and he would not have been able to obtain a passport and leave Sri Lanka legally. I do not accept he will now be imputed as an LTTE member if he returns to Sri Lanka now or in the reasonably foreseeable future merely because he is a Tamil from the North or because he left Sri Lanka. I find he does not have a real chance of harm as an imputed LTTE member, because I find that he will not be imputed as such. It follows I find he is not a member of a particular social group 'Tamil men resident in the LTTE controlled areas of Jaffna and the Vanni in Kilinochchi and Mannar, and imputed to have connections with the LTTE and pro-Tamil separatists', even if such a group exists, because I do not accept he is imputed to be connected to the LTTE or pro-Tamil separatists.
23. The applicant provided two support letters from priests in Sri Lanka. The first is dated 14 March 2016 and is from a parish priest Rev Fr [E] in [Village]. Rev Fr [E] says he knows the

³ DFAT Country Information Report Sri Lanka, 23 May 2018.

⁴ DFAT Country Information Report Sri Lanka, 4 November 2019.

⁵ UK Home Office, Sri Lanka: Tamil Separatism, June 2017.

applicant and his family as devoted Catholics and regular church attendees. He says the applicant had to flee Sri Lanka because 'some unidentified men were after him...because he had some relationship with some militant cadres who were killed by the para military group that favoured the government'. I consider this information is vague and not entirely consistent with the applicant's claims. The other letter is undated and is from Rev Fr [F] from the [Organisation], Jaffna. Rev Fr [F] says he knows the applicant and he hails from a good Catholic family. He says the applicant was forced to escape Sri Lanka to save his life, like many young Tamil men from the North. He says the applicant was supporting the LTTE. I consider this letter is also vague and not quite consistent with the applicant's claims, who does not profess to have been a supporter of the LTTE. The applicant submits when Rev Fr [F] says he was a 'supporter' of the LTTE he was referring to the applicant digging bunkers. I consider both letters add little real support for his claims, and could have been written about almost any young Tamil man from the north. I note neither letter mentions the EPDP incident or the alleged one month detention and torture by the EPDP, nor any problems for the [sibling] since the applicant left. In this way they do not provide support for his core claims.

24. The applicant claims the incident in 2011 is what caused him to flee Sri Lanka. He claims to have had a run-in with members of the EPDP who wanted him to take them to a nearby island on his fishing boat. As a result of a minor altercation, one of the EPDP men fell into the water. The applicant fled, but claims they later came to his house with the CID. He claims he was arrested by the EPDP and CID and detained for a month in an EPDP building, during which time he was tortured.
25. The EPDP was a paramilitary and political group, mostly based in the north of Sri Lanka. It was founded in 1990 by Douglas Devananda, who has served in parliament for the Jaffna District since then. The EPDP fought alongside the Sri Lankan Army in the civil war against the LTTE, and had a reputation for human rights abuses and criminal activity.⁶ Post-war the EPDP has been accused of harassing and intimidating suspected former members of the LTTE and supporters of its political rivals. However, their influence has waned significantly since the current government took office in 2014. They no longer maintain an armed wing. Whilst some Tamils, particularly those with links to the LTTE, continued to fear the EPDP, DFAT reports the group no longer poses a major concern. DFAT assess the EPDP presents only a low threat of violence and intimidation to members of the Tamil community.⁷
26. Taking into account the country information regarding the harassment and criminal behaviour by the EPDP, I accept it is plausible the applicant had an incident with them, and may have moved from [Village] to Colombo to avoid them. I note he claimed from the earliest opportunity (the Entry Interview on 27 March 2013) that he was arrested and held by the EPDP for the month of December in 2011. He says he was tortured during this time. No medical or other evidence has been provided in support of this occurring. But for the purpose of this assessment I am accepting as plausible that he was detained and mistreated by the EPDP in late 2011. I note however he was released. I consider this was the end of the harassment of him by the EPDP. He remained in Sri Lanka for another 10 months. He was not harmed during this time. He moved to Colombo and applied for a passport. He departed Sri Lanka legally. Although he claims the EPDP acted against him with the support of the CID, I consider his ability to relocate, obtain a passport, and depart from the international airport without problem, indicates he was not a person of adverse interest to the Sri Lankan

⁶ Danish Immigration Service, 'Human Rights and Security Issues concerning Tamils in Sri Lanka', 1 October 2010; DFAT Country Information Report Sri Lanka, 4 November 2019.

⁷ DFAT Country Information Report Sri Lanka, 4 November 2019.

authorities. I do not accept the CID or EPDP maintained an active ongoing interest in the applicant after he was released.

27. The applicant claims his [sibling] was harassed after he left Sri Lanka, to the point [s/he] too had to flee. He claims his [sibling] was harassed four to six times from 2012 to 2014, and then fled to [Country] in 2015. He claims the reason his [sibling] was harassed was because they were looking for the applicant. He says his [sibling] was told [s/he] would be shot if [s/he] did not tell them where the applicant was. I consider this claim unlikely. The applicant was already outside of Sri Lanka. This should have been known to the EPDP and CID, given the sophistication and level of surveillance in Sri Lanka, and noting he left the country legally so that his leaving was recorded. Alternatively, the family could have told them the applicant was no longer in Sri Lanka. It also appears to have been an 'empty threat' if they visited him four to six times over a two year period and fortunately never acted on the threat. I also note there is no evidence from this [sibling], or the applicant's parents or wife, to support these claims. Nothing of this is mentioned in the support letters from the priests. He says his [sibling] was granted refugee status in [Country] because of what [s/he] suffered due to the applicant, yet the evidence he provided for his [sibling] is ambiguous on this. [She/He] has in fact been granted '*protection subsidiare*' (subsidiary, or complementary, protection). No evidence or statement from the [sibling] in [Country] has been provided to disclose on what basis [s/he] was granted this protection. On the information before me, I accept the applicant's [sibling] has gone to [Country] where [s/he] has been granted temporary protection. I do not accept the claim his [sibling] was harassed in Sri Lanka because of [her/his] relationship to the applicant. I do not accept the CID or EPDP were visiting the family home and threatening them to tell them where the applicant was. I do not accept that because his [sibling] has been granted subsidiary protection in [Country] that this is evidence the applicant was and continues to be a person of adverse interest to the CID or EPDP.
28. The applicant claims the Sri Lankan authorities will be aware his siblings have been granted refugee status in [Country] and Australia, and that he would be of adverse interest for this reason. However, evidence has only been provided of his [sibling]'s grant of the temporary protection visa. Identity cards provided for the older [siblings] show they have residency in [Country], but not how they obtained that residency. He has previously said both [sibling B] and [sibling C] joined spouses in [Country], but he has also claimed [sibling B] fled there in 1998 as a refugee. The identity cards provided do not contain evidence their residency is based on refugee status. [Sibling A] who moved to [Country] more recently has been granted temporary protection under subsidiary protection; it does not state [s/he] has been recognised as a refugee. I accept however it is likely to be known by the local authorities in [Village] that none of the adult children in his family have remained in Sri Lanka, whether or not they know that they are in [Country] or Australia or on what type of visa.
29. The applicant claimed [Sibling D] was granted protection in Australia as a dependent of [her/his] [spouse], because [her/his] father is linked to the LTTE. No more detail or evidence was provided of this. However for the purpose of this review, I will accept on face value that the [sibling]'s [spouse]'s family has some association to the LTTE. This would have been the case before the applicant left Sri Lanka, and there is no claim or evidence he was harassed or harmed for reason of [Sibling D]'s in-laws. There's no claim or evidence the applicant's family in Sri Lanka have been harassed or harmed because of [Sibling D]'s in-laws at that time. As the LTTE is a spent force and the conflict ended more than 10 years ago, I do not accept that the applicant would now be imputed with an LTTE association because of [Sibling D]'s [spouse] when he was not in the past. I do not accept he faces a real chance of harm because [Sibling D]'s [spouse]'s family has an association with the LTTE.

30. Monitoring and harassment of Tamils in northern Sri Lanka was widely reported during the conflict, as all Tamils in that area were imputed at some level to be LTTE supporters. DFAT advises the Sri Lankan military, intelligence and police continue to maintain a high level of awareness of returned internally displaced persons to the north and east of the country. Monitoring was undertaken by military intelligence and the CID, who often dressed in plain clothes and did not identify themselves. Public gatherings and protests were monitored, as well as targeted surveillance and questioning of individuals. DFAT reports monitoring and surveillance of ordinary Tamils has decreased significantly, but does still occur for people associated with politically sensitive issues. In recent years however the authorities have tolerated Tamil public ceremonies and celebrations such as Great Heroes Day and an event to mark the 10 year anniversary of the end of the civil war.⁸
31. I have considered whether cumulatively the applicant faces a real chance of monitoring and harassment amounting to serious harm if he returns to his local area. I accept he may not be seen as an ordinary Tamil returning from Australia. I accept all of his adult siblings have left Sri Lanka, and one [sibling] is married to a [person] whose father may have been in the LTTE and has been granted a temporary protection visa in Australia, and this may give him a point of difference to other Tamil men returning to his area. I accept he was briefly interrogated in 2009, and may have reported a few times after that. In addition, I accept he had a run in with the EPDP in 2011. I consider it is possible on return he may attract some adverse interest from the local authorities such as the CID because of these past events. Also whilst the EPDP no longer have an armed wing, they may still present a low threat of violence or criminal attention. Taking all of this into account, I consider that whilst the chance of the applicant being targeted for harassment amounting to serious harm in his home area is small, it may be more than remote and may amount to a real chance.
32. I have considered whether the applicant's chance of harm extends to all areas of Sri Lanka. As he has lived in Colombo before with relatives, I have considered whether he would face a real chance of harm in Colombo for any of the reasons claimed.
33. I do not accept the applicant is generally a person of adverse interest to the authorities. I consider his ability to live in Colombo previously without issue and to obtain a passport and leave Sri Lanka legally is strong evidence he was not on a stop and watch list or otherwise of adverse interest. I consider his chance of harm for reason of past events with the CID and EPDP is localised, and that there is only a chance of him attracting such attention if he returns to his home area. I do not accept his profile is such that he would be searched for or noticed in another part of Sri Lanka.
34. The applicant left Sri Lanka legally on his own passport, but I accept he no longer has his passport and that it would no longer be valid. He would be returning on a temporary travel document and may be returning involuntarily. DFAT advises all returnees on temporary travel documents are checked and processed by the police on return. This includes an identity check, including checks on whether the returnee has a criminal or terrorist related background. There is no evidence the applicant has such a background, and I do not accept one would be imputed to him. As someone who left legally, the applicant would not face the additional questioning or possible longer detention that is faced by illegal departees. DFAT advises returnees are not subject to mistreatment during the processing at the airport. DFAT also advises these checks are undertaken regardless of ethnicity. DFAT reports anyone not already rehabilitated is unlikely to be now, and that they are not aware of any returnees from Australia being rehabilitated. I accept the applicant may be questioned at the airport on

⁸ DFAT Country Information Report Sri Lanka, 23 May 2018; DFAT Country Information Report Sri Lanka, 4 November 2019.

return but I do not accept such questioning amounts to serious harm. I find that he does not face a real chance of harm as a returnee.

35. Tamils are the second largest ethnic group in Sri Lanka and whilst they are concentrated in the Northern Province they do live throughout the country. DFAT assesses Sri Lankans of all ethnic backgrounds face only a low risk of discrimination based on ethnicity. Some Tamils report discrimination in public sector employment, but DFAT assessed this may be due to disrupted education during the civil war and language constraints, rather than any official discrimination.⁹ Census information in Sri Lanka indicated 18% of the population lived in a different district to where they were born. Colombo was one of the top 5 districts where people had migrated to. The conflict was a driver for internal migration and there are large Tamil communities in the south for this reason. DFAT assessed individuals seeking to relocate internally to minimise monitoring or harassment by local level officials can safely do so. I am not satisfied on the information before me that Tamils are targeted in Colombo for reason of their ethnicity, and I find the applicant would not face a real chance of harm in Colombo because he is Tamil.¹⁰
36. The applicant claims he'll be imputed with a political opinion as a Tamil from the north. For reasons already given, I do not accept he'll be imputed with an association with the LTTE. Noting the large numbers of Tamils who relocated throughout Sri Lanka, I do not accept the applicant will stand out in the city of Colombo as a Tamil from the north who may be imputed with a political opinion. He has already lived there for 6 months without attracting adverse attention, and that was at a time much more proximate to the civil conflict than now. I do not accept he'll be imputed with a political opinion because he is a Tamil from the north, nor that he would be targeted for this reason. I do not accept he faces a real chance of harm for an imputed political opinion as a Tamil from the north.
37. The previous representative stated in the pre-interview written submissions that the applicant faces the possibility of extortion as a returnee from a wealthy country. The applicant did not expand on this in his claims or in the interview. The applicant told the delegate at the SHEV interview that his father was a successful businessman (in [work sector]) before retiring and has a lot of money and property. There is no claim his family have ever been extorted for money. Given the lack of details about this claim, and no evidence any one in his family have been extorted or threatened in this way, I consider the claim is mere speculation and does not amount to a real chance of harm.
38. I find the applicant could safely relocate to Colombo, where he has lived before and has relatives. I do not accept he would be targeted for harm there for reason of his ethnicity, his family, as a Tamil from the north, or a returnee. I do not accept the local officials who may have an interest in monitoring or harassing him if he returned to [Village] would have sufficient interest or ability to monitor his return to Sri Lanka or to know he was in Colombo. Even in the event locals in [Village] became aware from his family that he had returned to the country, I do not accept his profile is such that the local authorities would have any reason or interest to investigate him in Colombo. I am satisfied the chance of serious harm does not extend to all areas of Sri Lanka.

⁹ DFAT Country Information Report Sri Lanka, 23 May 2018.

¹⁰ DFAT Country Information Report Sri Lanka, 23 May 2018.

Refugee: conclusion

39. 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

40. 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

41. 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.
42. I rely on my findings above to find the applicant may face a real risk of significant harm if returned to his home area. For the same reasons given above, I find the applicant would not face a real risk of significant harm in Colombo.

Qualifications to the real risk threshold

43. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
44. I have considered whether the applicant could reasonably relocate to Colombo to avoid any risk of significant harm he may face in his home area.
45. The applicant claims he cannot relocate to Colombo because as a Tamil he would have to register his move with the Army and they would refuse his registration or inform on him to the local authorities in his home area. He also claims it would be too expensive and his family property is all in his home area.

46. I do not accept the applicant would be unable to relocate to Colombo for the reasons he claims. The Sri Lankan constitution provides for freedom of movement, and as noted above, 18% of Sri Lankans are living in areas other than where they were born. Many Sri Lankans have migrated from the north to Colombo, largely for economic reasons. The military's forced registration of residents from the Northern Province ended in 2011, and the military no longer compels registration of Tamils in the south.¹¹
47. I have considered the applicant's claim that it would be expensive to move, and all of his family property is in his home area. However, I also note the applicant has disclosed that his father was a successful businessman with a lot of money and property. I consider his father could help him financially to settle in Colombo. In addition, the applicant has relatives in Colombo who have helped him in the past by housing him and there is nothing to indicate they could not help him again. I note the applicant is married with [number] children, and I accept he would want to be reunited with them such that he would need to support them in Colombo as well. They have been living with and financially supported by his parent whilst he has been in Australia, and I consider this arrangement could continue until the applicant was settled enough to support himself and his family.
48. The applicant is an able bodied man of working age. He has worked in a variety occupations, including [work sector] and fishing in Sri Lanka, and for a [workplace] in Australia. He completed [a level] at high school in Sri Lanka. He comes from a family with property and money. I do not accept there are any practical barriers to him relocating. He would not need to register to relocate. In all of the circumstances I find it would be reasonable for him to relocate to Colombo where I find there would not be a real risk of significant harm.

Complementary protection: conclusion

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

Decision

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

¹¹ DFAT Country Information Report Sri Lanka, 4 November 2019.

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.