



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA20/08065

Date and time of decision: 30 April 2020 17:02:00
V Price, 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 of Sinhalese ethnicity from the Matara District in the Southern Province of Sri Lanka. On 20 September 2016 he lodged an application for a protection visa with the Department.
2. On 24 January 2017 a delegate of the Minister of the Department (the delegate) refused to grant the visa to the applicant. This decision was affirmed by the Immigration Assessment Authority (the IAA) on 18 August 2017. However, on 24 March 2020 the Federal Circuit Court of Australia (FCCA) quashed this decision and remitted the matter to the IAA for redetermination on the basis that the IAA failed to consider a claim that arose on the material, specifically whether the applicant feared harm as a failed asylum seeker or due to his illegal departure from Sri Lanka.

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).

February 2017 submission

4. On 24 February 2017 the IAA received a submission from the applicant's then representative (the February 2017 submission). The submission discusses the applicant's claims (which were before the delegate) and makes legal arguments in response to the decision, including reference to a previous Refugee Review Tribunal decision¹ and a submission that there were interpretation errors at the protection visa interview. I do not consider these matters to be new information for the purpose of s.473DC(1) of the Act and I have had regard to them in my assessment. The submission did however include new information consisting of a 2016 report from the United Nations Human Rights Council² (the UNHRC Report) and new claims that: the applicant was a member of the SLFP (Sri Lanka Freedom Party); and that his wife 'suffered recent abuse at the hands of the police'.
5. The UNHRC report is best described as country information, rather than personal information. The UNHRC report pre-dates the delegate's decision, and does not relate to new issues or claims arising only after the making of the decision. During the protection visa interview, the applicant was advised that he was a fast track applicant and may not have an opportunity to provide additional material to the IAA. The delegate stated he needed to provide his claims and evidence early, including during the protection visa interview. The February 2017 submission does not provide reasons as to why this report could not have been provided to the delegate before the decision was made. Further, I note that this report is now almost four years old and the IAA has before it more recent information pertaining to the situation in Sri Lanka. In the circumstances, I am not satisfied that this information could not have been provided before the delegate's decision was made. Nor am I satisfied the new information is credible personal information or that there are exceptional circumstances to justify considering this material. It does not meet s.473DD(a) or (b) and I must not consider it.

¹ 071196773 [2007] RRTA 91 (22 May 2007).

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

6. The new claim that the applicant was a member of the SLFP also relates to events that pre-date the delegate's decision. As noted above, the applicant was advised in protection visa interview of the need to provide claims and evidence early, and that he may not have the opportunity to do so at the IAA. Moreover, this new claim is at odds with the applicant's oral evidence in the protection visa interview that he was a party supporter but not a member of the SLFP. The February 2017 submission does not explain why this new claim could not have been provided prior to the making of the decision, or address why it is different to his oral evidence at the interview and should be considered credible. In the circumstances, I am not satisfied this new claim has any probative value and it does not assist my assessment of the applicant's claims for protection. I am not satisfied that it could not have been provided before the delegate's decision was made or that it represents credible personal information and nor, having regard to all of the matters I have identified, am I satisfied that there are exceptional circumstances to justify considering this material. It does not meet s.473DD(a) or (b) and I must not consider it.
7. It is not clear on the face of the February 2017 submission whether the claim relating to 'recent' abuse experienced by his wife relates to events that pre-date the delegate's decision, as no date or other details were provided for the claimed incident. The applicant has not previously claimed that his wife had any adverse interactions with the police or had been harmed in Sri Lanka for any reason, including due to the political activities of the applicant and his family. Nor does the submission state why the police would now seek to harm her so many years after the claimed events and eight years after the applicant's departure from Sri Lanka.
8. The submission requested one week to provide further evidence in relation to this claim. The IAA responded, noting that the period within which to provide submissions and new information, as set out in the 'IAA Practice Direction for Applicants, Representatives and Authorised Recipients', had ended. However, the IAA stated a decision was not anticipated until 6 March 2017 and that any information received prior to a decision may be considered subject to the requirements of s.473DD of the Act. No further information relating to this new claim was provided to the IAA.
9. Having regard to the scant detail regarding the claimed harm to the applicant's wife, and the matters I have identified above, I am not satisfied this claim has any probative value in my assessment of the applicant's real chance or risk of harm on return to Sri Lanka. In all the circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new claim for s.473DD(a) of the Act. I must not have regard to it.

Information obtained by the IAA 2020

10. As noted above, the FCCA remitted the matter to the IAA for reconsideration in March 2020. The applicant did not expressly or impliedly raise any claims to the Department or to the IAA to fear harm as a failed asylum seeker or due to his illegal departure. Nor did the delegate make any findings on these matters in the decision. Nonetheless, given the FCCA decision, I now have to consider these matters in my assessment. I have obtained recent reports from the Australian Department of Foreign Affairs and Trade (DFAT), the United Kingdom Home Office (UKHO) and the International Crisis Group (ICG) regarding the current political circumstances in Sri Lanka and the current treatment of returnees and those who departed the country illegally.³ The reports from DFAT and the UKHO update material relied upon by the delegate. Given, it is now over

³ Australian Department of Foreign Affairs and Trade (DFAT) 'Country Information Report on Sri Lanka', 4 November 2019, 20191104135244 (DFAT 2019 Report); the United Kingdom Home Office (UKHO), 'Report of a Home Office fact-finding mission to Sri Lanka', 20 January 2020, 20200123162928 (UKHO 2020 Report); and the International Crisis Group (ICG), 'Sri Lanka's Presidential Election Brings Back a Polarising Wartime Figure', 18 November 2019, 20191119144914 (ICG 2019 article).

three years since the delegate's decision and noting the circumstance described above regarding the remittal of this matter to the IAA, I am satisfied there are exceptional circumstances to justify considering this new information for s.473DD(a) of the Act.

11. The IAA invited the applicant to provide comments and information in response to information contained in the new material. The IAA did not receive a response to this invitation by the due date of 28 April 2020 and nor has anything been received at the time of making the decision. I note that the IAA sent the invitation to the applicant's nominated representative via email, and there is no indication it was not received (it did not bounce back to the IAA). Nor is there any indication that other correspondence sent to the applicant and his representative has not been received and the applicant has not otherwise communicated with the IAA. I have decided obtaining further information from the applicant is not warranted in all the circumstances before me.

Other matters

12. The IAA has not obtained or received any further information.

Applicant's claims for protection

13. The applicant claims to be Sinhalese who was born in, and resided in, the Matara District, in the Southern Provinces of Sri Lanka. He is married with two [children] and his wife and children continue to reside in the Matara district.
14. He participated in an Irregular Maritime Arrival Entry Interview (entry interview) [in] November 2012 and I have had regard to relevant information contained therein. His claims for protection were set out in a written statement dated 14 September 2016, which was provided with his protection visa application (protection visa statement). His claims can be summarised as follows:
 - In 1993 his [Relative 1] was a member of the Regional Council of the United People's Freedom Alliance (UPFA), which at that time, was in opposition to the United National Party (UNP) who were in power. His [Relative 2] was also a Provincial Member of the UNFP and his role was to support the applicant's [Relative 1].
 - The applicant's [Relative 1] and [Relative 2] were attacked by UNP members working for H R Piyasiri, leader of the UNP, during celebrations held after the 1993 elections. His [Relative 2] was killed and his [Relative 1] and two other men were involved in the death of a UNP member. His [Relative 1] was prosecuted and sentenced to approximately two years in prison from about 1993 - 1995.
 - Following his release from prison, his [Relative 1] refused to leave their village. The applicant believes he was receiving serious threats. In 1996 his [Relative 1] was attacked by men he believed to be working for H.R. Piyasiri. He was hit with a [weapon] but escaped.
 - In 1995, the applicant became involved with the UPFA, putting up posters for the election campaign and continued to support the party until 2012, though this work often had to be put on hold when he went into hiding due to threats against his [Relative 1]. The applicant was publically recognised due to the assistance he provided to the UPFA during the 2003 elections and his [Relative 1]'s previous influential position within the party. He assisted with the polling booths during the 2005/2006 elections.
 - In early 2008 the applicant was on his way home from his work as a fisherman when he was attacked by six men on motorcycles. He believes he was targeted due to his [Relative

1]'s political history. He was struck about 16 times with a knife and received cuts over his body. He reported the incident to the police and was taken to the hospital. His mother recorded a complaint with the police but she later found out that it had not been taken. There was bomb threat against his parents' house while he was in hospital, though it was not acted upon. The applicant remained in hospital for one month and has scars from the attack.

- In mid-2008 the police searched his home without a warrant. He was taken to the police station and shown some cannabis. He was asked to put his fingerprints on the cannabis, and was forced to agree it was his. He was given a small fine and released. That evening three men stole his bike from outside his house. He reported the theft to the police but they did not do anything.
 - In another incident in mid-2008, he was struck on his head by a man on a motorcycle. He required stitches, has lost all feeling in the right side of his head and now has difficulty with his memory as result of the incident.
 - Between 2008 and 2012 he received many threatening telephone calls and decided to come to Australia, arriving by boat on approximately [Date] October 2012.
15. The applicant claimed to fear harm on return to Sri Lanka from members and supporters of the UNP due to his own political profile and that of his [Relative 1].
16. At the protection visa interview the applicant stated he had also experienced difficulties with the [utility] board as they were significant delays in getting [utility] installed to his new home and he was required to pay a large fee to do so. As noted above, the FCCA remitted the matter to the IAA on the basis that claims to fear harm due to the applicant's illegal departure and status as failed asylum seeker arose on the material and had not been considered.

Refugee assessment

17. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

18. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and

- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Receiving country and applicant's background

19. On the basis of the documentary and oral evidence before me I accept the applicant is of Sinhalese ethnicity, and is an adherent of the Buddhist faith, from the Matara District in the Southern Province of Sri Lanka. I accept he is a national of Sri Lanka and find this is his receiving country. Having regard to his previous residence in the Southern Province and noting that his family, including his wife and children, continue to reside there, I find this is the area to which he would return.
20. The applicant has not claimed to fear harm for any reason relating to his religion and I am not satisfied that any such claim arises on the material before me.

Applicant's ability to participate in the protection visa interview and related matters

21. The applicant provided evidence that he has difficulty remembering things, particularly names and dates, due to a head injury he sustained in 2008. He provided a letter from an Australian medical professional, [Dr A], to the Department to substantiate these claims (the medical certificate). The medical certificate refers to the incident in which the applicant claims he was attacked, notes that there were no medical reports presented to him, and states that the applicant 'reports that he has on and off problems with his memory since that incident.'
22. The medical certificate is undated, appears to be based on a single appointment with the applicant and re-states the applicant's own assertions to the Doctor. Moreover, the medical certificate does not provide any details pertaining to the nature of the applicant's claimed memory issues or indicate that his ability to give evidence to the Department would be impaired by any such issues. I am not satisfied the medical certificate represents an independent medical diagnosis that the applicant has ongoing issues with his memory such that he has difficulty recalling dates and names as he has claimed, or that it otherwise suggests he was unable to participate in the interview.
23. Further, to the extent that medical certificate purports to corroborate the applicant's claims to have been harmed in the past, I give it little weight. As noted above, the statements of the Doctor are based on the applicant's own reports to him, appeared to be based on a single appointment, and were not made with the benefit of all the information that is now before me, including independent information and evidence given by the applicant.
24. The February 2017 submission to the IAA contended that there were 'notable' translation errors in the protection visa interview. However, the submission was not supported by any further details regarding the nature of the alleged errors. Nor did it cite specific examples of the claimed errors or indicate how these errors many have affected the assessment of the applicant's claims.
25. I have listened to the recording of the protection visa interview and no issues with either the quality of the interpretation or the applicant's ability to participate in the interview are apparent. The applicant stated he understood the interpreter and at no time did he indicate that he had concerns with the competency of interpretation. Moreover, he appeared able to engage with the delegate and the interpreter, responding appropriately to questions raised by the delegate.
26. On the totality of the evidence before me, I am not satisfied that the applicant was impaired from presenting his claims and evidence due to any issues with his memory or that there was any issues with the interpretation during the interview such that his claims and evidence could

be said to have been misunderstood. I am satisfied that the applicant had a meaningful opportunity to present his claims and evidence to the Department, and he has also the opportunity to provide material to the IAA.

Assessment of claims

27. The applicant has contended he faces harm on return to Sri Lanka due to the involvement of him and his family in politics. The applicant has consistently claimed since his arrival in Australia (including in his entry interview) that he, his [Relative 2] and his [Relative 1] were involved in politics in Sri Lanka. There are some apparent discrepancies in the applicant's evidence regarding the party he claimed his family supported. Specifically, he stated in his protection visa application that he, his [Relative 1] and his [Relative 2] supported the UPFA. In contrast, his evidence during the protection visa interview was they supported the Sri Lanka Freedom Party (SLFP). Further, evidence indicates that the UPFA was not formed until 2004, which appears at odds his protection visa statement that they had been involved with this party since the early-mid 1990's.⁴ However, independent information states that the UPFA was the successor to a party known as the People's Alliance (PA) which was formed in 1993.⁵ Information also confirms the SLFP was among the coalition of parties that formed both the PA and UPFA.⁶ As such, I do not place any adverse weight on the apparent discrepancies in the applicant's evidence on these matters and consider it plausible, and accept that the applicant and his family were supporters of the SLFP which was part of both the PA/UPFA.
28. In his protection visa statement the applicant described his [Relative 1]'s position as a member of the Regional Council. In contrast, he stated in both his entry interview and in his protection visa interview that he was part of the Provincial Council. He submitted a copy of his [Relative 1]'s identity card to the delegate during the protection visa interview. This does not appear to have been retained by the delegate and nor was it included in the material referred to the IAA by the Secretary. Nonetheless, an interpretation of this document was provided by the interpreter at the interview, and I accept this as an accurate record of the identity card. According to the interpreter, the card identified the applicant's [Relative 1], referred to the Provincial Council of the Southern Province, and confirmed that he was a local member for [Electorate]. Information confirms that the PA/UPFA have dominated membership of the Southern Provincial Council since 1994⁷ and I accept on the evidence before me that the applicant's [Relative 1] was involved with the Provincial Council as a local member for [Electorate]. I accept that the applicant's [Relative 2] had an official role within the Provincial Council which involved supporting his [Relative 1]'s position.
29. At the time of the claimed events the UNP were in opposition to the PA/UPFA.⁸ While election related violence is not widespread, some high profile active members of opposing political parties were assassinated and election campaigns were often disrupted by supporters of the ruling party, paid thugs or members of the state's security sector (police and army) during election periods.⁹ Having regard to this information, and noting that the applicant's evidence regarding his [Relative 2]'s death has been broadly consistent since his arrival in Australia, I accept his claim that his [Relative 2] was killed during an assault by UNP supporters in about

⁴ DC: CQ Press, 'Political Handbook of the World 2015 - Sri Lanka', 1 January 2015, CISEC96CF12933 (Political Handbook 2015).

⁵ Ibid.

⁶ Ibid.

⁷ Worldstatesmen, 'Sri Lankan Provinces from 1988'; and DFAT, 'Country Information Report Sri Lanka', 24 January 2017, DB50AD105 (DFAT 2017 Report).

⁸ Political Handbook 2015.

⁹ Ibid; and Bertelsmann Stiftung, 'BTI 2016 – Sri Lanka Country Report', 1 January 2016, CIS38A8012383 (BTI 2016 Report).

1993 and that his [Relative 1] went to prison for two years due to his involvement in the death of a UNP supporter killed in the same incident.

30. I also accept the applicant's evidence that he supported the party between 1995 and 2012. I accept that during this time he campaigned for local members and that his tasks included painting and distributing posters and talking to locals. I also accept he assisted in the polling booths in 2005 and 2006 and that he was recognised locally due to his work as well as his [Relative 1]'s previous role. However, while I have found the applicant's claims and evidence to be credible in relation to the aforementioned matters, for the reasons set out below, I am not satisfied as to his claims that his [Relative 1] was threatened or targeted following his release from prison, and nor am I satisfied that the applicant was targeted for any harm due to his political beliefs and activities as he has claimed.
31. In his written statement the applicant indicated that though he did not know the details, he believed there were serious threats (against his [Relative 1]) and as such his [Relative 1] wanted him to leave the village. This is at odds with his oral evidence in the protection visa interview that there had in fact been 'many' threats against the applicant personally, and his [Relative 1] wanted him to leave because he was in danger. The difference between these accounts raises doubts about the reliability of his evidence that either he or his [Relative 1] were threatened. Further, on the account provided in his written statement, it is not clear why the applicant went into hiding, but his [Relative 1] who was the target of the purported threats and other members of the family, remained at home. To me, the fact that his [Relative 1] and other family members remained at home indicates there were no threats against the family.
32. In addition to the above, the applicant's evidence was that after his 1995 release from prison, his [Relative 1] was unable to have any formal role in politics and ceased his political involvement. Further, given his [Relative 1] had already served prison time for his role in the death of the UNP supporter, I am not satisfied that the UNP (including H R Piyasiri) would be interested in any retaliation against him. In these circumstances, it is not evident why supporters of the UNP would continue to threaten him, including attacking him in 1996, more than three years after he ceased his political activities. Additionally, noting he was released from prison in 1995 it is not clear why his political opponents would wait until 1996 to harm him if they were genuinely interested in doing so. Moreover, nor is the claimed continued interest in his [Relative 1] consistent with independent information above that high profile individuals active within the parties were subject to assassination attempts and that political related violence was not widespread but if did happen, it generally occurred around periods of election. In all of the circumstances, I do not consider it is plausible that the applicant's [Relative 1] would be of continued interest to members of opposing political parties, including of the UNP. This conclusion is further supported by the applicant's own evidence that (aside from the claimed 1996 assault) his [Relative 1] has resided in the family home in the same area without incident for over twenty-five years, which strongly indicates he is not of any interest to anyone for either his political beliefs and activities or his role in the death of the UNP supporter in 1993.
33. The applicant has also provided different evidence to the Department regarding his claimed assaults. In the entry interview, he indicated that he was assaulted in 2012. In contrast, he stated in his protection visa application that these incidents occurred four years earlier in 2008. In respect of the first attack, he stated in his written statement that: he was attacked by six people on motorcycles while on his way home from fishing; he couldn't see his attackers because they wore helmets; they did not give a reason for the attack; his mother reported the incident to the police but later found out they had not recorded the complaint. In contrast, at the protection visa interview he stated that: this incident occurred one day after returning home from fishing; the police accepted his mother's complaint but his [Relative 1] withdrew it, presumably after

being threatened. I also have concerns with the applicant's claim in his written statement that there were bomb threats against his family home while he was in hospital. I consider implausible that his friends, who advised him of the plan, would not advise the applicant how they came to be in possession of this information. I also consider implausible that his family would continue to reside in the home if there had been a threat to bomb it.

34. In respect of the second claimed attack, the applicant stated in his protection visa statement that his attackers were wearing helmets, he was unable to see their faces and he did not know who they were or why they attacked him. In contrast, at the protection visa interview, he claimed that he was attacked by the same individuals responsible for the first attack. This later evidence is also at odds with his claims that he could not identify the perpetrators of the first incident. The applicant claimed at interview that he believed the UNP supporters who threatened his [Relative 1] were responsible for these assaults. However, I consider it entirely implausible that the UNP supporters would attack the applicant some 15 years after his [Relative 1] ceased his own political involvement and that they would choose to attack the applicant rather than his [Relative 1]. Further, for the reasons set out above, I am not satisfied that his [Relative 1] remained of any interest to the UNP and in these circumstances, it is implausible the UNP would harm the applicant due to their familial association.
35. The applicant has also provided differing evidence regarding this claimed arrest by the authorities in 2008. In his entry interview, he claimed he was arrested and fined for a traffic offence. In contrast, in his protection visa application he indicated that he was arrested and fined on (false) drug charges. Moreover, and in any event, in relation to that drug offence he claimed in his written statement that: the police attended his home, searching it without a warrant; they took him to the police station; he was shown a small amount of cannabis and told to put his fingerprints on it; he agreed to do so after they threatened to say that had taken it from his home; he paid a small fine of [Amount 1] rupees and was released. However, he provided a different account of this event in his oral evidence to the delegate stating that: the police first arrested him and took him to the police station; they showed him a parcel of cannabis and asked him to hold it; he refused so they then went and searched his home where they found [Amount] milligrams of cannabis that was old and had been left in his home by someone else (he didn't know who); he touched the [Amount] milligram bag; was taken to court; and the court fined him [Amount 2] rupees.
36. The applicant stated in his protection visa application that he gave different evidence in his entry interview because he was distressed and confused after the boat journey. While I accept the journey to Australia, and the interview would have been stressful, I am not satisfied to this explanation as he was otherwise able to provide accurate information pertaining to his background and familial circumstances in Sri Lanka and was generally able to raise some matters related to the political issues he says they faced. I acknowledge that caution must be exercised before relying on evidence (or omissions) given in the entry interview, particularly noting the different purpose of that interview. However, this is a case where the applicant has made positive statements which differ to information he later provided. He has acknowledged he has provided different evidence to the Department, and ultimately I am not satisfied as to the explanations for doing so. I consider the evidence he provided in his entry interview to be relevant to the assessment, and the fact he has provided different information regarding the timing of his claimed assaults and the basis of his 2008 arrest, contributes to my concerns regarding his claims. Further, any in any event, as noted above, there are other problematic aspects of the evidence provided in the applicant's written statement and at the protection visa interview in relation to these matters, which also contributes to my doubts regarding his claims.

37. I have found above that I am not satisfied that the applicant was impaired from presenting his claims and evidence due to any issues with his memory or that there was any issues with the interpretation during the interview such that his claims and evidence could be said to have been misunderstood. I am not satisfied these matters account for the above concerns I have identified in the applicant's evidence. I have also found above that I am not satisfied that the medical certificate provided to the Department corroborate the applicant's claims.
38. Moreover, in addition to the matters I have identified above, I also note that the SLFP/UPFA, the party whom the applicant and his family supported, were the government in power at the time of the claimed events.¹⁰ In these circumstances, it is entirely implausible that the authorities would be targeting the applicant for political reasons or that they would not protect him in the event of being threatened. Overall, I consider the applicant has provided different evidence regarding the claimed threats against him and his [Relative 1] and I find that aspects of his claims are implausible, particularly in light of independent information cited above. The above matters lead me to doubt his evidence on these matters.
39. The applicant claimed that he faced difficulties from the [utility] board getting [utility] installed to the new home he and his wife built. On his evidence that he and his wife built their home in 2008, this appears to have occurred in or about 2008. He contended it took six months and he was required to pay [Amount 3] rupees to get the [utility] connected. Independent information confirms that there have been credible reports of corruption within the government and public sector,¹¹ and I accept this occurred as claimed. However, having regard to the information cited above, that the SLFP/UPFA were the government in power at the time, I am not satisfied that he was targeted in this manner for any reason associated with the political activities of him or his family. Rather, I accept his evidence that his house was in a good position near the beach and he was targeted in an act of corruption. Information states that while corruption still exists, the Sri Lankan government is taking steps to address it, and now has several anti-corruption bodies which do carry out investigations into any allegations of fraud and corruption.¹² I consider the chance that the applicant will face similar treatment on return to Sri Lanka to be remote, and I am not satisfied he faces a real chance of harm for this reason on return.
40. The applicant has not provided any supporting evidence in relation to his claimed scars. However, I accept that the applicant may have scars on his body, but I am not satisfied that he received these in the manner claimed, or that they corroborate the above claims to have been attacked for political reasons. Nor does that the independent information before me indicate he will face a real chance of harm on return to Sri Lanka for reasons associated with those scars,¹³ and I am not satisfied that he will.
41. On the totality of the evidence before me, I am not satisfied that: the applicant or his [Relative 1] were subject to threats following his [Relative 1]'s release from prison; the applicant had to move around due to these threats; his [Relative 1] was assaulted in 1996; the applicant received any threats against his life by telephone between 2008 and 2012; the applicant was assaulted on two separate occasions in 2008; that the applicant was arrested by the authorities on false drugs related charges in 2008; or that his bike was stolen and the police refused to act on this matter. I accept that the applicant was fined for a traffic violation, but this was resolved on the applicant's payment of a fine, it has now been 12 years since this incident and I am not satisfied

¹⁰ Political Handbook 2015.

¹¹ DFAT 2017 Report.

¹² Ibid.

¹³ DFAT, 'Country Information Report Sri Lanka', 18 December 2015, CISEC96CF14143; DFAT 2017 Report; and DFAT 2019 Report.

that he would be of any interest to the authorities or that he faces a real chance of harm for this reason on his return to Sri Lanka in the reasonably foreseeable future.

42. I am not satisfied that the applicant's [Relative 1] was of any ongoing adverse interest to UNP supporters or anyone else after his release from prison. Noting this, and having regard to the fact he has not faced any threats or harm in over 25 years, I am not satisfied that the applicant faces a real chance of any harm on return to Sri Lanka for any reason associated with his [Relative 2] or [Relatives 1's] political beliefs and activities, and/or his [Relative 1]'s role in the 1993 death of a UNP supporter. Nor am I satisfied that the applicant had a profile of adverse interest on his departure from the country, and in these circumstances and noting it is now more than 12 years since he left Sri Lanka, I am not satisfied he faces a real chance of harm on return to Sri Lanka now or in the reasonably foreseeable future for any reason associated with his past political activities.
43. The applicant has not claimed that he will continue to support the SLFP or engage in any political activities on his return to Sri Lanka and given it has now been 12 years since he was last active with the party, I am not satisfied that he will. However, in any event, even if he does continue to support the SLFP/UPFA on his return, I find that it would be at a similar level to his previous activities, providing low level campaign support in elections.
44. There has been a recent change in government in Sri Lanka, with the SLFP losing power upon the election of new President Gotabaya Rajapaksa in November 2019.¹⁴ He and the new Prime Minister, Mahinda Rajapaksa, represent the Sri Lankan Podujana Peramuna Party (SLPP) which is popular within the Sinhalese community.¹⁵ The next provincial elections are expected to occur sometime in 2020.¹⁶ However, as noted above, information states that Sri Lankan elections have never been marred by large-scale violence.¹⁷ The 2015 election was deemed credible by international observers, and the most recent November 2019 election was one of Sri Lanka's most peaceful, with only a handful of violent incidents.¹⁸ DFAT assessed in 2017 and 2019 that political parties are able to operate freely across Sri Lanka and contest elections.¹⁹ The 2017 DFAT report stated that this freedom extends to high-profile elected representatives and office holders and low-profile party members, supporters and volunteers, and this assessment was not altered by the 2019 report.²⁰ In this case, having regard to this information and the applicant's particular profile and circumstances I consider the chance that the applicant will face harm on return due to his political beliefs and activities to be remote. I am not satisfied that the applicant faces a real chance of harm for this reason on return to Sri Lanka now or in the reasonable foreseeable future.
45. On the totality of the evidence before me, including the independent information and the applicant's particular profile and circumstances, I am not satisfied that he faces a real chance of harm on return to Sri Lanka from the UNP, the government, the authorities (including the military and police), or anyone else, for any reason associated with the political beliefs and activities of the applicant and his family members, his [Relative 1]'s role in the death of a UNP member, corruption, his scars and/or his past traffic violation.

¹⁴ Ibid.

¹⁵ Ibid; and DFAT 2019 Report.

¹⁶ ICG 2019 article.

¹⁷ DFAT 2017 Report.

¹⁸ ICG 2019 article

¹⁹ DFAT 2017 Report; and DFAT 2019 Report.

²⁰ DFAT 2017 Report; and DFAT 2019 Report.

46. I accept that the applicant departed Sri Lanka illegally. I also accept that due to the manner of his departure and return, his illegal departure will become known and he will be identified as a failed asylum seeker. On arrival in Sri Lanka the applicant's travel documents and identity information will be checked against immigration databases, intelligence databases and records of outstanding criminal matters.²¹ I accept he will be interviewed, he may be questioned about the reasons he left the country and that further enquires may be undertaken, and that this process can take several hours due to the administrative processes, interview lengths, and staffing constraints at the airport.²² The applicant will be processed in a group, and individuals in that group cannot exit the airport until all returnees have been processed.²³ DFAT has advised that all returnees are treated according to these standard procedures irrespective of their ethnicity and religion, and considers that returnees are not subject to mistreatment during processing at the airport.²⁴ Moreover, DFAT has also assessed that, overall, Sri Lankans face a low risk of torture.²⁵
47. DFAT advises that some returnees have been charged with immigration offences (people smugglers) or with outstanding criminal convictions,²⁶ however these do not apply in the applicant's circumstances. I have found that I am not satisfied that the applicant was of interest for any reason on his departure from Sri Lanka, and that he will not be of adverse interest on return for the past political beliefs and activities of he and his family members, for his [Relative 1]'s role in the death of a UNP supporter, or any other reason. Having regard to the independent information above and to the applicant's profile and circumstances discussed above, I am not satisfied he will be found to have an adverse profile of any kind on return. Having regard to the non-exhaustive list set out in s.5J(5) of the Act, I am not satisfied the processing of itself amounts to serious harm, and having regard to the applicant's profile and the independent information above, I am also not satisfied that he faces a real chance of harm in the returnee processing phase at the airport.
48. DFAT advises that persons in breach of the Immigrants and Emigrants Act (I&E Act) are questioned at the airport, subject to enquires and that they will be arrested and charged with an offence.²⁷ After investigations are completed, police transport the individual to the closest Magistrate's Court, where responsibility for the individual shifts to the prison services. In general, prisons in Sri Lanka do not meet international standards but this is due to overcrowding, poor sanitary conditions and a lack of resources rather than any intentional conduct on the part of the authorities.²⁸ Where a magistrate is unavailable, a returnee may be held for several days in an airport holding cell. However, as noted above, returnees are not subject to mistreatment at the airport and are treated the same irrespective of their background. DFAT advises that passengers on a people smuggling venture are generally issued with a fine, which can be paid by instalments, rather than a custodial sentence.²⁹ If they plead guilty to a charge, they are fined and are free to go. If they plead not guilty, they are generally granted bail on personal surety or a family member may be required to act as guarantor. Bail conditions are discretionary and may involve monthly reporting to police at the returnee's expense. An accused will only need to

²¹ DFAT 2017 Report; DFAT 2019 Report; and UKHO 2020 Report.

²² DFAT 2019 Report; and UKHO 2020 Report.

²³ DFAT 2017 Report; and DFAT 2019 Report.

²⁴ DFAT 2019 Report.

²⁵ Ibid.

²⁶ DFAT 2017 Report; and DFAT 2019 Report.

²⁷ DFAT 2017 Report; and DFAT 2019 Report.

²⁸ DFAT 2017 Report; and DFAT 2019 Report.

²⁹ DFAT 2017 Report; and DFAT 2019 Report.

return to court when the case against them is being heard, or if summonsed as a witness in a case against the organiser/facilitator of a boat venture.³⁰

49. In this case, I accept that the applicant will be subject to questioning and possible short term detention while awaiting appearance before a magistrate. DFAT advises that they are not aware of mistreatment of returnees during this process.³¹ On this information, and considering his profile and the independent information above, I find he would not face a real chance of serious harm during any questioning or during any brief period of detention, and even having regard to information above regarding poor prison conditions, in my view this does not rise to the level of a threat to his life or liberty, or to significant physical harassment or ill treatment or, having regard to the non-exhaustive list in s.5(J)(5) does it otherwise amount to serious harm. Moreover, the information also indicates that the conditions may face in detention do not arise from any intentional conduct on the part of the authorities to harm him for a s.5J(1)(a) reason.³² I am also not satisfied that the poor prison conditions he faces is for the essential and significant reason of a s.5J(1)(a) reason, as such s.5J(4)(a) is also not satisfied.
50. The applicant was a passenger on a people smuggling vessel and has not claimed to have been involved in organising or facilitating people smuggling. I find that he will not be subject to any custodial sentence but that he will be fined for his illegal departure, which does not amount to serious harm. Having regard to his personal circumstances and profile, I accept he will be issued a fine and then released, or if he pleads not guilty, he will be released either on his own personal surety, or a family member may be required to act as a guarantor. I am not satisfied on the evidence before me that his family will not be available to act as guarantor if required, and nor having regard to all of his circumstances, am I satisfied that the applicant will not be able to pay any fine issued to him. I find that the applicant does not face a real chance of serious harm for his illegal departure on return to Sri Lanka now or in the reasonably foreseeable future.
51. In any event, I also find that the evidence is that all persons who depart Sri Lanka illegally are subject to the terms of the I&E Act on return to the country. The law is therefore not discriminatory on its terms and or in its application. For these reasons, I find that this is a law of general application. Case law confirms that a generally applicable law will not ordinarily constitute persecution because the application of such a law does not amount to discrimination. As noted above, the information before me does not support that the law is selectively enforced or that it is applied in a discriminatory manner. Accordingly, even having regard to the applicant's profile, I find that the investigation, prosecution and punishment for his illegal departure under the I&E Act would be the result of a law of general application and does not amount to persecution for the purpose of ss.5H(1) and 5J(1) of the Act.
52. I have considered what may occur when the applicant returns home. DFAT advised that some returnees have been the subject of monitoring on return, specifically visits to their homes and telephone calls by the CID.³³ However DFAT states that most returnees, including failed asylum seekers, are not monitored on an ongoing basis and is not aware that they are being treated in a way that endangers their safety and security.³⁴ Where monitoring does occur, DFAT assessed that this may contribute to a sense of mistrust within communities and notes that financial reintegration assistance provided to returnees may lead to some social stigma. DFAT states that

³⁰ DFAT 2019 Report.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

some returnees may face financial difficulties on reintegrating into their communities. However, overall DFAT assesses that returnees face a low risk of societal discrimination.³⁵

53. In this case, having regard to the independent information and his profile and circumstances described above, I am not satisfied that the applicant will be monitored on return. However, even if he is, on his profile and circumstances, and having regard to the independent information cited above, I am not satisfied that any such visits/monitoring the level of serious harm, having regard to the non-exhaustive list set out in s.5J(5) of the Act. The applicant is an adult; he is Sinhalese, which forms the majority community in Sri Lanka;³⁶ according to his protection visa application he has been employed in a variety of occupations Sri Lanka in the past and has gained skills working in Australia; is returning to an area where he previously resided; and he has family who continue to reside there. On the independent information above, I am not satisfied that he faces a real chance of societal discrimination. I am also not satisfied that he will be unable to find accommodation and employment on return to Sri Lanka, or that he will be unable to access basic necessities and services on return.
54. On the totality of the evidence before me including the independent information and the applicant's profile and circumstances as discussed above, I am not satisfied that he faces a real chance of harm or persecution for any reason associated with his illegal departure and/or his asylum application in Australia.
55. I am not satisfied that the applicant faces a real chance of harm or persecution on return to Sri Lanka now or in the reasonably foreseeable future for the reasons he has claimed and discussed above. His fear of persecution is not well-founded.

Refugee: conclusion

56. 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

57. 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

58. 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

³⁵ Ibid.

³⁶ DFAT 2017 Report.

- the person will be subjected to degrading treatment or punishment.

59. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

60. I have set out above my findings in relation to the applicant's profile and circumstances. I have described above the process the applicant will face on arrival in Sri Lanka as a returnee and have found that I am not satisfied he will be found to have an adverse profile of any kind on return. Having regard to the independent information set out above and the applicant's accepted profile, I am not satisfied that he faces a real risk of significant harm in the returnee processing phase for the purpose of s.36(2)(aa) of the Act.

61. I have accepted that he will be charged with an offence under the I&E Act and that he will be subject to questioning and possible short term detention while awaiting appearance before a magistrate. Considering his accepted profile and circumstances, and having regard to the independent information cited above, I am not satisfied the applicant faces a real risk of significant harm during any questioning or during any brief period of detention, and even having regard to the poor conditions, in my view this does not rise to significant harm as defined: it does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, I am not satisfied that there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman, or that it amounts to degrading treatment or punishment intended to cause extreme humiliation. In these circumstances, the poor prison conditions to which the applicant may be subject do not of themselves constitute significant harm as defined under ss.36(2A) and 5 of the Act. I am not satisfied the applicant will face a real risk of significant harm during any brief time spent in detention.

62. On the independent information and the applicant's profile and circumstances, I accept that he will be fined for his illegal departure, which does not of itself amount to significant harm as defined. I find he will then be released, or if he pleads not guilty, he will be released either on his own personal surety, or a family member may be required to act as a guarantor. I am not satisfied on the evidence before me that his family will not be available to do so if required, and nor having regard to his particular circumstances am I satisfied that the applicant will not be able to pay any fine issued to him. I am not satisfied that his illegal departure from Sri Lanka gives rise to a real risk of significant harm for the purpose of s.36(2)(aa) of the Act.

63. Having regard to his profile and the above information, I am not satisfied that the applicant will be monitored on return. However, even if he is, I am not satisfied that any such visits/monitoring will amount to significant harm. The applicant is an adult; he is Sinhalese, which forms the majority community in Sri Lanka; according to his protection visa application he has been employed in a variety of occupations Sri Lanka in the past and has gained skills working in Australia; is returning to an area where he previously resided; and he has family who continue to reside there. On the independent information above, I am not satisfied that he faces a real chance of societal discrimination. I am also not satisfied that he will be unable to find accommodation and employment on return to Sri Lanka, or that he will not be able to access basic necessities and services such that he faces significant harm for any reason on return to Sri Lanka. I am not satisfied that these matters give rise to a real risk of significant harm for the purpose of ss.36(2)(aa) and 36(2A) of the Act.

64. On the totality of the evidence, including the independent information and the applicant's profile and circumstances, I am not satisfied that he faces a real risk of significant harm for the

purpose of ss.36(2)(aa) of the Act for any reason associated with his illegal departure or his asylum application in Australia

65. I have otherwise found above that the applicant does not have a real chance of harm on return to Sri Lanka for the reasons he has claimed which are set out and discussed above. I note the Court has confirmed that 'real chance' and 'real risk' involve the same standard,³⁷ I similarly find having regard to the evidence, independent information and his particular profile discussed above, that these matters do not give rise to a real risk of significant harm to the applicant for the purpose of ss.36(2)(aa) of the Act.
66. On the totality of all the evidence before me, including the independent information and the applicant's particular profile and circumstances, taken individually and cumulatively, I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm for the purpose of ss.36(2)(aa) and 36(2A) of the Act for the reasons he has claimed.

Complementary protection: conclusion

67. 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.

³⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

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.