



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA21/10216

Date and time of decision: 4 February 2022 14:21:00
M Currie, 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 Sri Lankan citizen of Tamil ethnicity and an adherent of the Hindu faith. He arrived in Australia in October 2012 and lodged an application for a Safe Haven Enterprise Visa (SHEV Application) in March 2016. In January 2017, a delegate of the Minister for Immigration decided under s.65 of the *Migration Act 1958* (the Act) to refuse the visa, finding that Australia did not owe protection obligations to the Applicant. On 24 January 2017, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. An IAA reviewer affirmed the delegate's decision on 17 March 2017. However, this decision was later quashed by the Federal Circuit and Family Court of Australia after the Department conceded that the initial IAA review had failed to assess new information against the criteria specified in s.473DD(b)(ii) of the Act. The Court remitted the matter back to the IAA for reconsideration of the applicant's claims for protection.
3. This is a *de novo* decision, not a review of the delegate's decision or reasoning. My task is to consider the applicant's claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate, or the IAA.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. In February 2017, a migration agent emailed the IAA on behalf of the applicant. The email contained an attached document which was a four-page written statement from the applicant dated 19 February 2017 (the 2017 written statement). This statement further outlined the applicant's existing claims and argued against the findings of the delegate. I have considered the further explanations of the applicant's existing claims, and the arguments within the 2017 written statement. I do not consider these to be new information.
6. Within the 2017 written statement was a reference to comments made by the Chief Minister of the Northern Province of Sri Lanka which were cited from a Ceylon News article published in October 2016. This reference to the information from the Ceylon News article was not before the delegate, and is new information. This new information was published in October 2016, around three months prior the date of the delegate's decision and so I am not satisfied that this new information could not have been provided to the minister before the date of the s.65 Decision and so s.473DD(b)(i) is not met for the new information from the Ceylon News article. The new information relates to public comments by a public figure in Sri Lanka. It is not credible personal information in the relevant sense, and so s.473DD(b)(ii) also not met for the new information from Ceylon news article and so, neither limb of s.473DD(b) is met. Furthermore, I note that the applicant was represented by a migration agent when his case was before the delegate. His migration agent had sent further information to the Department in October, and December 2016, indicating that both the applicant, and his agent were aware that further information, such as the Ceylon news article, could be provided. No explanation was included in the applicant's 2017 written statement for why this information was not provided earlier or identifying any exceptional circumstances to justify why it should be considered. No exceptional circumstances are apparent to me to justify

considering this material. Taking all of these factors into account, I am not satisfied that there are any exceptional circumstances to justify considering the new information cited from the Ceylon News article. As neither limb of s.473DD is met, I must not consider it.

7. During the first IAA review of this applicant's case, the IAA had obtained a copy of a 2017 report which had been published by the Australian Department of Foreign Affairs and Trade (DFAT)¹. That report had been cited by the IAA in its original review of the applicant's case. The information in the DFAT report was said to be authoritative information from a reliable source which was published more recently than the information cited by the delegate. The information was not specifically about the applicant and was just about classes of persons of which the applicant is a member (Tamils, persons with links to the LTT and Sri Lankan citizens who had sought asylum). For the same reasons, I have obtained the 2017 DFAT report, and I am satisfied that there are exceptional circumstances to justify considering this report.
8. On 14 January 2022, the IAA wrote to this applicant indicating that his case was being considered again by the IAA. That correspondence indicated that recently published country information from the DFAT² and the UK Home Office³ which had been obtained by the IAA indicated that persons of his profile would not face a real chance persecution, or other problems, if returned to Sri Lanka now. Copies of the recent reports from DFAT and the UK Home Office which had been obtained were provided to the applicant and he was invited to comment on this material.
9. On 27 January 2022, the applicant's representative emailed the IAA, in response to the IAA's earlier correspondence. The email to the IAA contained eight attached documents. These were: (a) an 11 page written statement from the applicant dated 27 January 2022 (the 2022 written statement); (b) a 36 page document titled '*Country Information (1)*' which when examined was found to contain 15 separate news articles which had been compiled into a single document in the Portable Document Format (PDF); (c) a 45 page document titled '*Country Information – New Government (2)*' which when examined was found to contain a further news articles which had been compiled into a single PDF document; (d) a copy of an article published by The Hindu newspaper in April 2021 relating to the arrest of the Jaffna Mayor; (e) a 50 page document which was a news article published by the Colombo Telegraph in April 2021; (f) a five page article from the Tamil Guardian published on 1 July 2020; (g) a four-page article published by Lanka News Web on 10 April 2021; and, (h) a 31-page country information report about Sri Lanka published by the Combined Refugee Action Group of Geelong, Victoria dated 15 June 2021. None of the large amount of country information provided to the IAA in January 2022 was before the delegate. It is all new information.
10. Turning first to the applicant's 2022 written statement. This document argues that in its original review of the applicant's case, the IAA had "*overlooked*" his claims and did not consider country information. The 2022 written statement goes on to argue that the applicant has a profile that would put his life in danger in Sri Lanka and asserts that in his home country he would be identifiable due to his identity documents; that his life would be at risk, and that he would suffer from significant physical harassment and ill-treatment; that he would be perceived as an associate of the Liberation Tigers of Tamil Eelam (LTTE) and

¹ Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017", 24 January 2017, CISED50AD105

² Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

³ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752

targeted under the Sri Lankan Prevention of Terrorism Act (PTA); that his profile would prevent him from working in Sri Lanka and he would suffer significant economic hardship and be denied access to services and unable to subsist; that he would be forced to undergo rehabilitation; that he would be placed under surveillance in Sri Lanka; that recent elections in Sri Lanka have led to a deteriorating situation in the country; that a bombing incident from Easter 2019 has led to an increased security presence including more roadblocks and checkpoints.

11. Though the applicant's 2022 written statement indicates that he has "*no new claims from my original claims that I put forward to the Department*". However, in point of fact, the applicant had not made any arguments about his capacity to subsist previously, and so his arguments about this issue, as summarised in the preceding paragraph, amount to a new claim⁴. As this is a new claim, it is new information. The 2022 written statement also contains many citations to country information that was not before the delegate⁵ and consequently, these citations are also new information. Furthermore, none of the voluminous country information provided to the IAA in January 2022⁶ was before the delegate and so this material is also new information.
12. The applicant's new claim that he would be unable to subsist in Sri Lanka (because he could not work, and because he would be denied access to basic services and because he would face significant economic hardship) was not made previously. It is a new claim, and new information. This claim relates to him personally, and to his personal circumstances. The applicant's past employment in Sri Lanka had been central to his original claims for protection and these issues were canvassed in his 2016 Protection Visa Application and his 2016 Protection Visa Interview. Given these factors, I am not satisfied that this new claim could not have been made prior to the date of the s.65 Decision and so s.473DD(b)(i) is not met for this new claim. This new claim does relate to him personally, and so it is credible personal information in the relevant sense, and it may have affected the consideration of the applicant's claims for protection and so s.473DD(b)(ii) is met. However, I observe that the applicant has not pointed to any exceptional circumstances which justify considering this new claim now and none are apparent to me. He has not explained why he believes he could not work, or access services and these claims are merely assertions on his part. He has not explained why he did not make this claim sooner, during either the Department's (2016) or the IAAs (2017) original assessment of his case. In the circumstances, even taking into account the factors leading to my s.473DD(b)(ii) finding, I am not satisfied that there are any exceptional circumstances which might justify considering this new claim, and so s.473DD(a) is not met, and I must not consider these new claims about the applicant's capacity to subsist.
13. The remaining new information provided by the applicant is new country information. He has provided a large volume of this material in the form of separate documents (mostly news articles), and citations from his 2022 written statement. For the sake of convenience where possible I could consider material related to the same or similar issues together; for example, portions of the new country information which has been submitted relate to the election of a new Government in Sri Lanka and I will consider all the new information relating to this issue

⁴ That he would be unable to subsist because he could not work, would be denied access to basic services and would undergo significant economic hardship.

⁵ These were citations to: a 2016 report by Human Rights Watch; document (d); a 2016 UK Home Office Report; a 2017 report by the International Truth and Justice Project; document (e); a 2017 Report by DFAT; a 2018 article by the Tamil Guardian a copy of which was included in document (b); a 2019 DFAT report; and a Wikimedia article about the 2019 Sri Lankan elections.

⁶ Documents: (b) – (h)

at one time. Despite submitting all of this new material to the IAA, neither his 2022 written statement nor his email to the IAA identified any exceptional circumstances to justify considering any of the new material.

14. For the avoidance of any doubt, I also note that within the 2022 written statement there were a number of citations to a 2017 DFAT report about Sri Lanka. This is the same DFAT report mentioned earlier, which had been obtained and considered during the original IAA review and which I have already obtained. As this report is already before me, I have considered the citations to the 2017 DFAT report, contained within the 2022 written statement.
15. In the 2022 written statement, the applicant cited information from a July 2015 report by the International Truth and Justice Project (ITJP) a 2016 report by the UK Home office and a 2016 Report from Human Rights Watch. Each of these reports was published well prior to the date of the delegate's decision. The applicant has not explained why these references were not provided prior to the date the s.65 Decision was made. In the circumstances, I am not satisfied that s.473DD(b)(i) is met for the citations to the reports by the ITJP, HRW or the UK Home Office. None of the citations to these three sources was credible personal information in the relevant sense, and so s.473DD(b)(ii) is also not met for these citations. As neither limb of s.473DD(b) is met for the information cited from the reports by ITJP, HRW or the UK Home Office, this information cannot pass the threshold of s.473DD. In any case, as I have already noted, the applicant has not identified any exceptional circumstances, to justify consider this material, and given its age, none are apparent to me. In the circumstances, I am not satisfied that s.473DD(a) is met for any of this material. As none of the limbs of s.473DD are met, I have not considered the citations to reports by ITJP, HRW or the UK Home Office from the 2022 written statement.
16. The 2022 written statement contains citations to two articles about the arrest of the Mayor of Jaffna in 2021. Copies of both of these articles have been provided separately to the IAA (as documents: (d) & (e)). These articles were both published in April 2021, well after the date of the s.65 Decision and so I am satisfied that they (and the citations) could not have been provided earlier and that s.473DD(b)(i) is met for them. In the written statement the applicant asserts that these articles (amongst many others) were submitted to demonstrate that Tamils who are imputed to support the LTTE still face problems in Sri Lanka. The articles do identify credible personal information about the Jaffna mayor which may have affected the consideration of the applicant's claims, and so I am satisfied that s.473DD(b)(ii) is also met for these two articles and the citations to them in the 2022 written statement. While the applicant has not identified any exceptional circumstances to justify considering these articles, I consider that they demonstrate that the Sri Lankan Government is still suspicious of the LTTE and persons perceived to be supports of the movement and so I am satisfied that there are exceptional circumstances to justify considering these articles and the citations to them in the written statement and s.473DD(a) is met. As both limbs of s.473DD are met for the articles, and the citations to the articles in the 2022 written submission, I have considered them.
17. The 2022 written statement contained a citation to a 5 February 2018 article published in the Tamil Guardian. A copy of this article had been provided separately as one of the many articles included in (b), the document titled '*Country Information (1)*'⁷. This article was published well after the date of the s.65 Decision and could not have been provided to the delegate prior to that decision being made. I am satisfied that s.473DD(b)(i) is met for this

⁷ PDF document (b) titled '*Country Information (1)*' also contained 14 other articles which I will discuss later.

article. The article relates to an apparent threat by a Sri Lankan Military Official to a group of Tamil protesters in London in February 2018. The article identifies the Official and gives some details about his background. According to the 2022 written submission, the article demonstrates “*the mentality of the Sri Lankan authorities*” and the spitefulness with which “*the authorities treat people with profiles in Sri Lanka*”. While the article does contain credible personal information, I am not satisfied that this was anything more than an isolated and tactless incident. I am not satisfied that the incident has any wider implications for policy in Sri Lanka as has been argued by the applicant. I am not satisfied that this article, or the citation to it, may have affected the consideration of the applicant’s claims for protection and so s.473DD(b)(ii) is not met for this article, or the citation. The applicant has not pointed to any exceptional circumstances to justify considering this article or the citation. I have already indicated that I am not satisfied by the applicant’s argument in relation to this document. I am not satisfied that this article shows the “*mentality*”, or the “*spitefulness*” of the Sri Lankan Government and I am not satisfied that there are any exceptional circumstances to justify considering this article, or the citation to it in the 2022 written statement and so s.473DD(a) is not met. As s.473DD(a) is not met I have not considered this material.

18. In the 2022 written statement the applicant the applicant included several pages of discussion about what is said to be the “*newly elected*” Government of President Gotabaya Rajapaksa. Within this section of the 2022 written statement, he cited a large amount of information from a 2019 DFAT Report and information from Wikimedia Commons. The applicant also provided a large volume of country information about the 2019 election in the 45-page document titled ‘*Country Information – New Government (2)*’ which he provided to the IAA (and which is recorded as (c) above) contained a further 8 articles⁸ about the 2019 election which were published by The Guardian, The Independent, the BBC, SBS and Al Jazeera. All of this material relates to elections held in 2019, well after the date of the s.65 Decision and so I am satisfied that these materials meet s.473DD(b)(i). This material is general country information rather than credible personal information in the relevant sense and so s.473DD(b)(ii) is not met. The 2021 DFAT report which the IAA has already obtained and provided to the applicant superseded the 2019 report cited by the applicant. The applicant has not indicated that there are any exceptional circumstances to justify considering the material relating to the 2019 election from the 2019 DFAT Report and none are apparent to me. The 2021 DFAT report supersedes the 2019 DFAT report and contains information about this issue. In the circumstances, I am not satisfied that there are any exceptional circumstances to justify considering the citations to the 2019 DFAT report about this issue.
19. The 2022 written statement also cites the 2019 DFAT report in relation to the 2019 Easter Bombing in Sri Lanka. As noted, this material was not before the delegate. Given the date of publication, I am satisfied it could not have been provided earlier and so s.473DD(b)(i) is met. The material cited from the 2019 DFAT report does not contain credible personal information in the relevant sense, and so s.473DD(b)(ii) is not met for this citation. The citation from the 2019 DFAT relates to the security situation in Sri Lanka, however, this event occurred over two and half years ago. As I have noted above, I have obtained a copy of a DFAT report published in December 2021. The 2021 DFAT report superseded the 2019 report cited by the applicant. The applicant has not indicated that there are any exceptional circumstances to justify considering the material relating to the 2019 Easter bombing from the 2019 DFAT Report and none are apparent to me. The 2021 DFAT report supersedes the 2019 DFAT report and contains information about this issue. In the circumstances, I am not satisfied that

⁸ A ninth article, published by The Diplomat on 7 January 2016 was included in (c), apparently in error, as it does not relate to the new Government elected in 2019. It will be considered separately.

there are any exceptional circumstances to justify considering the citation to the 2019 DFAT report.

20. In addition to the citations from the 2022 written statement, the applicant has provided large volume of other material to the IAA in his email of 27 January 2022. The vast majority of this material is news articles from a variety of sources⁹. Some, but not all, of these articles are mentioned at the end of the 2022 written statement where the applicant asserts that these articles have been submitted in order to represent “*the situation for Tamils with imputed political opinion in Sri Lanka which is relevant to my profile*”. Other than this statement, no specific reasons have been provided for the submission of this material.
21. Document (f) is a five-page article from the Tamil Guardian, published on 1 July 2020. It relates to the 2020 arrest of a group of Tamil youths who was charged with attempting to revive the LTTE. This article postdates the s.65 Decision by several years. I am satisfied it could not have been provided to the delegate prior to the decision, and so s.473DD(b)(i) is met for this article. The article contains credible personal information, which was not known, and which may have affected the consideration of the applicant's claims for protection. I am satisfied that s.473DD(b)(ii) is also met for this article. As noted, the applicant has not provided any specific reasons for the submission of this article. On its face, the article relates to the treatment of persons who are suspected of being LTTE supporters. The applicant claims that he would be suspected of being an LTTE supporter in Sri Lanka and so I infer he offers this article as an example of what might happen to him upon return. In my view, such reasoning on his part is rather speculative. Nevertheless, I am satisfied the article shows what might happen to a person who is genuinely imputed as a LTTE supporter in contemporary Sri Lanka, and I am satisfied that there are exceptional circumstances to justify considering the article and so s.473DD(a) is also met, and I have considered it.
22. Document (g) is a news article published by Lanka News Web relating to the arrest of two Tamil journalists in March 2021 in Sri Lanka. The journalists are said to have been critical of the Sri Lankan Government. This event, and the article postdate the delegate's decision and so I am satisfied that this article could not have been provided prior to the date of the s.65 Decision and that s.473DD(b)(i) is met. The article does contain credible personal information which may have affected the consideration of the applicant's claims, so s.473DD(b)(ii) is met. Nevertheless, the applicant has not explained the relevance of this article to his claims. He is not a journalist, nor has he claimed that he is politically outspoken or that he is a critic of the Sri Lankan Government. The applicant has not identified any exceptional circumstances to justify considering this article, and none are apparent to me. Even taking into account my positive findings in relation to both limbs of s.473DD(b), I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met, and I must not consider it.
23. Document (h) is a 31-page report by the Combined Refugee Action Group of Geelong, Victoria (CRAG). It was published in June 2021. I am satisfied that this document could not have been provided to the delegate prior to the date of the s.65 Decision and so s.473DD(b)(i) is met for this report. This document purports to be an independent and objective country information report about conditions in Sri Lanka. The report is general country information, rather than being credible personal information, and so s.473DD(b)(ii) is not met. Though the CRAG report purports to be objective and independent of the risks faced

⁹ These news articles were: The remaining 14 news articles from Document (b) titled ‘*Country Information (1)*’, the single remaining article from Document (c) titled ‘*Country Information – New Government (2)*’; Document (f) published by the Tamil Guardian; and Document (g) published by Lanka News Web. The final document submitted to the IAA was the 31-page report published by the Combined Refugee Study Group of Geelong, Victoria.

by Tamils in Sri Lanka, a review of the content indicates the purpose of the report is to argue against the return of any Tamil refugees to Sri Lanka. In this sense, I am not persuaded it can be said to be truly objective. I have reviewed the content of the report and I am not persuaded it is entirely without bias as the report concludes that it would be unsafe to return any Tamil to any part of Sri Lanka at any time. I am not persuaded by this argument since millions of Tamils do continue to live in Sri Lanka. The report does not refer to the applicant personally, or to his particular circumstances and so it is unclear how the events reported in this document relate to the assessment of this applicant's specific claims. In general, I find the conclusions of this report to be overly broad and unpersuasive. In the circumstances, I am not persuaded by the reasons offered to consider this report, and I am not satisfied that there are exceptional circumstances to justify considering it.

24. As noted earlier, Document (c) titled '*Country Information – New Government (2)*' contained one article which was published in 2016 by The Diplomat. I did not consider this article earlier when I accepted the remainder of the articles submitted in Document (c). The Diplomat article was published in January 2016, over a year prior to the date of the delegate's decision when the applicant was represented by a migration agent. In the circumstances, I am not satisfied that the article from The Diplomat could not have been provided to the Department prior to the date of the s.65 Decision and so s.473DD(b)(i) is not met. On its face, the article from The Diplomat relates to the publication of a 2016 report by the ITJP. It does not contain credible personal information in the relevant sense, and so s.473DD(b)(ii) is not met either. As neither limb of s.473DD(b) is met, it cannot pass the s.473DD threshold and so I have not considered this article.
25. The remaining articles submitted to the IAA were all provided as part of Document (b), titled '*Country Information (1)*'. I have already considered one of the articles in this document (para 17 above), however, 14 further articles were included in that document. These articles were published by Eela Naadu, Ceylon News¹⁰, Tamil Voice, Eelamurasu Australia, The Toronto Star, Athavan News, IBCTamil.com, Malaimurasu News, TamilNet, the Daily Mirror, the Colombo Telegraph, The Washington Post, and Redflag. As noted earlier, the 2022 written statement indicates that these articles have been submitted in order to represent "*the situation for Tamils with imputed political opinion in Sri Lanka which is relevant to my profile*".
26. A number of these articles were published before the date of the s.65 Decision. These were the articles published by Eela Naadu, Athavan News, IBCTamil.com, Malaimurasu News, TamilNet, Ceylon News and Redflag. The article by Eelamurasu Australia is undated. The applicant has not offered any explanation for why these documents could not have been provided to the Department before the delegate's decision was made. In the circumstances, I am not satisfied that these articles could not have been provided to the delegate prior to the date of the s.65 Decision and so s.473DD(b)(i) is not met for any of these articles. Having made this finding for each of these documents, I will separately assess the other aspects of s.473DD for each article below:
 - The article published by Eela Naadu relates to the disappearance of several persons who were connected with the LTTE in 2016. The article indicates that these persons were taken by the Sri Lankan security forces due to suspicions they were still LTTE supporters, or otherwise opponents of the Sri Lankan Government. The applicant fears that he would be linked to the LTTE like the persons in the article. The article contains credible personal information which may have affected the consideration of applicant's claims for protection and so s.473DD(b)(ii) is met. Nevertheless, even considering the

¹⁰ Two articles by Ceylon news are included.

s.473DD(b)(ii) factors I have considered, and the applicant's explanation about the consequences of being imputed as a LTTE supporter, I am not persuaded about the relevance of this article since it was published around six years ago and no further information about these persons, or their circumstances is available to me. I am not satisfied that there are any exceptional circumstances justify considering this article and so s.473DD(a) is not met and I must not consider it.

- The article by Athavan News and the article by Ceylon News both related to the same event. Comments by the Chief Minister of the Northern Province of Sri Lanka, which were made in 2016, and in which he advised Tamils in Switzerland should not be returned to Sri Lanka. The article published by Athavan News is a translation. The original news article has not been provided. Neither of these articles contain credible personal information in the relevant sense, and so s.473DD(b)(ii) is not met for either article. As neither limb of s.473DD(b) is met for either of these articles article, neither can pass the threshold of s.473DD and so I will not consider them.
- The article published by Eelamurasu Australia is a translation. It relates to the abduction of a Tamil man from Australia, who had returned to Sri Lanka. The man alleges that he was kidnapped, mistreated and questioned by the Sri Lankan security forces while he was on a trip to Sri Lanka. This article contains credible personal information in the relevant sense and may have affected the consideration of the applicant's claims for protection. I am satisfied that s.473DD(b)(ii) is met for this article. On its face, this article is perinate to the applicant and his profile. However, this article appears to be around five to six year of age and contains very limited information about the victim. It does not indicate whether the victim's circumstances and profile in Sri Lanka was similar to this applicant's. The issues of abduction and mistreatment of suspects by the security forces of Sri Lanka are heavily canvased in other country information before me, including information obtained by the IAA and provided to the applicant. The applicant has not identified any exceptional circumstances to justify considering the article from Eelamurasu Australia. None are apparent to me. Even considering that I have found s.473DD(b)(ii) to be met, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met and I must not consider it.
- The article published by IBCTamil.com is also a translation. The original news article has not been provided. The article refers to a statement by a Human Rights lawyer. It is not credible personal information in the relevant sense and so s.473DD(b)(ii) is also not met for this article. As neither limb of s.473DD(b) is met for this article, it cannot pass the threshold of s.473DD and so I will not consider it.
- The article published by Malaimurasu News is also a translation for which the original news article has not been provided. The article relates to an incident in May 2014, when security personnel found a weapon in Sri Lanka which had been dropped by two unidentified men. Following the incident, a search was conducted. The article does contain credible personal information in the relevant sense but given that the article does not identify the men, or the outcome of the search the relevance of this article to this applicant and his claims is unclear. In the circumstances, I am not satisfied that this article could have made a difference to the consideration of this applicants' claims and so s.473DD(b)(ii) is also not met for this translated article. As neither limb of s.473DD(b) is met for this article, it cannot pass the threshold of s.473DD and so I will not consider it.
- The article published by TamilNet relates to the shooting of two Tamil students from Jaffna University the by the Sri Lankan Police in October 2016. The article indicates that he circumstances of the shooting are disputed. The article contains credible personal

information about the two Tamil victims of the shooting and may have affected the consideration of the applicant's claims, so I am satisfied that s.473DD(b)(ii) is met for this article. Nevertheless, given the passage of time, the isolated nature of this event, and the disputed facts it is unclear why the applicant has provided this article. I have much more recent country information about security conditions and the treatment of Tamils in Sri Lanka before me. Even taking into account the s.473DD(b)(ii) factors, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met, and I must not consider it.

- The article published by Redflag related to the rape and murder of a Tamil child in Northern Sri Lanka in January 2016. The article implies that Sri Lankan Naval personnel were responsible, but this is not confirmed. The article does contain credible personal information in the relevant sense, and it may have affected the consideration of the applicant's claims for protection. Nevertheless, the outcome of this event is unclear. While the article implies the Sri Lankan military is responsible, this is not certain. In any case, this unpleasant event appears to be an isolated incident. given the passage of time, the isolated nature of this event, and the unclear circumstances, not clear to me why the applicant has provided this article. I have much more recent country information about security conditions and the treatment of Tamils in Sri Lanka before me. Even taking into account the s.473DD(b)(ii) factors, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met, and I must not consider it.
27. The last remaining articles submitted to the IAA as part of Document (b) were published by the Ceylon News, the Tamil Voice, The Toronto Star, the Daily Mirror, The Colombo Telegraph and The Washington Post. Each of these articles was published after the date of the delegate's decision. Given that they were published after the date of the s.65 Decision, I am satisfied that none of these articles could have been provided to the delegate before the decision was made and that s.473DD(b)(i) is met for each of these articles. Having made this finding for each of these documents, I will separately assess the other aspects of s.473DD for each article below:
- The Ceylon News article was published on 28 February 2017 and related to statements made by the Sri Lankan Foreign Minister at the 34th session of the United Nations Human Rights Council in Geneva. In the article, the Foreign Minister stated that the then Sri Lankan Government was treating allegations of continuing incidence of torture by the Sri Lankan security forces seriously. This article does not contain credible personal information in the relevant sense and so s.473DD(b)(ii) is not met for this article. This article is now some six years old and relates to a policy goal that was articulated by the previous Government, which has been out of office for almost two years. I have much more recent information about these issues before me and I have provided copies of the recent information to the applicant. Even taking into account that I have found the s.473DD(b)(i) factors are met, I am not satisfied that there are any exceptional circumstances to justify considering this article, and so s.473DD(a) is not met, and I must not consider it.
 - The Tamil Voice article is a translation that was published on 27 January 2017. It relates to comments made by a representative of the United Nations about the return of Tamils to Sri Lanka. The article is general country information about Sri Lanka, rather than credible personal information in the relevant sense and so s.473DD(b)(ii) is not met for this article. The comments referred to in the article are more than four years old. Issues relating to the return of Tamils to Sri Lanka are discussed at length in other country information before me, including country information provided by the IAA to

the applicant. Though this applicant is himself a Tamil, he has not identified any exceptional circumstances to justify considering this article, and none are apparent to me. In the circumstances, even taking into account my findings in regards to s.473DD(b)(i), I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met, and I must not consider it.

- The article published by The Toronto Star was written by the then Mayor of Toronto (Canada) after he had visited Sri Lanka in 2017. In the article the Mayor opines about his impression of the visit, noting that the North of Sri Lanka is heavily militarised, that Tamil memorials are under pressure from Government, that many Tamils are still missing and that accountability mechanisms for wartime atrocities are not effective. This article does not contain credible personal information about these issues in the relevant sense and I am not satisfied that s.473DD(b)(ii) is met for this article. Around four years have passed since this article was published. The observations made by the author are consequently some four years out of date and are merely the impressions of a non-expert who only visited Sri Lanka briefly. The applicant has not identified any exceptional circumstances which justify considering this article and none are apparent to me. Overall, even taking into account that s.473DD(b)(i) is met, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met, and I must not consider it.
- The article published by the Daily Mirror in 2017 relate to a statement by a member of ITJP who alleges that the security forces in Sri Lanka continue to act with impunity and that the then Government of Sri Lanka was complicit. This article does not contain credible personal information in the relevant sense and so s.473DD(b)(ii) is not met for this article. This article was published around four years ago and so the comments made by the ITJP are dated. The country information obtained by the IAA and provided to the applicant canvases these issues is much more recent than this article. The applicant has not identified any exceptional circumstances which justify considering this article and none are apparent to me. Even taking into account that s.473DD(b)(i) was met, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met and I must not consider it.
- The article published by the Colombo Telegraph also relates to comments by the member of the ITJP stating that the right to mourn is universal, and that the Government of Sri Lanka should not prevent Tamils from mourning persons who died in the war. The article is merely a report of the statement, and it does not contain any credible personal information in the relevant sense and so s.473DD(b)(ii) is not met. Country information continues to report that wartime memorial events are issues of controversy in Sri Lanka but other country information before me is much more recent than this article and canvases these issues. The applicant has not identified any exceptional circumstances which justify considering this article and none are apparent to me. Even considering that I found s.473DD(b)(i) was met, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met and I must not consider it.
- The final article provided in Document (b) is from The Washington Post and was published in November 2017. This article discusses the mistreatment of Tamils arrested by the security forces of Sri Lanka. This article is general country information about Sri Lanka, not credible personal information and so s.473DD(b)(ii) is not met for this article. The content of the article provides information about the mistreatment of suspects by the security forces. This issue is heavily canvassed in other country information before me, including country information I have provided to the applicant. The applicant has not identified any exceptional circumstances which justify considering this article and

none are apparent to me. Even considering that I found s.473DD(b)(i) was met, I am not satisfied that there are any exceptional circumstances to justify considering this article and so s.473DD(a) is not met and I must not consider it.

Applicant's claims for protection

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

- He is a Sri Lankan citizen of Tamil ethnicity and an adherent of the Hindu faith. He was born in [Year] in the Northern Province of Sri Lanka. He lived in the Jaffa region with his family throughout his life in Sri Lanka. He and his family were displaced on several occasions when he was a child.
- From 2002 until 2006, the applicant was employed as a driver of [a Vehicle]. He operated a [service]. This was a period of ceasefire between the LTTE and the Sri Lankan Government. During this period, the applicant provided driving services to members of the LTTE, and to members of the Sri Lankan security forces. During the peace, he would often decorate his [Vehicle] for special events. Some events related to the Sri Lankan army he would often fly the Lion Flag. For LTTE events, he would fly a Tiger flag.
- In 2006, the civil war resumed. The security forces became suspicious of drivers like him, who were known to have provided driving services to members of the LTTE. He was suspected of being a member or supporter of the LTTE. He was detained at Sri Lankan Army (SLA) camp for seven to eight days and questioned about the LTTE. During this period of detention, he was badly mistreated by the Sri Lankan authorities.
- A family friend was able to secure his release from the army by negotiating with one army officer. This officer released the applicant without the knowledge of other army personnel. Despite his need for medical attention, as soon as he was released, the applicant's parents took him to a nearby Christian church whose priest was a friend of his father. The priest agreed to hide the applicant at his church.
- The applicant lived in hiding at the church for the next six years, until January 2012. During this period, he saw nobody except the priest. During this six-year period of hiding, the applicant did not leave the church premises. He lost contact with his family and became estranged from them.
- In January 2012, members of the SLA questioned the priest about the whereabouts of the applicant. The SLA men threatened the priest. The priest became worried, believing the army knew he was hiding him. He discussed this issue with the applicant. They decided he should leave the Church.
- A week later the applicant travelled to Colombo. In Colombo, the applicant obtained a Sri Lankan Passport issued in his own name with the assistance of an agent. The applicant departed Sri Lanka via Colombo International Airport and travelled to Australia via [Country 1] and [Country 2]. He departed Sri Lanka illegally and was only able to escape Sri Lanka due to assistance by the agent.
- After he arrived in Australia the applicant re-established contact with his family in Sri Lanka. He learned that during his period of hiding, the Sri Lankan security forces had searched for him and harassed his family in order to find him. They had visited his parents' home looking for him on a number of occasions. They also visited and harassed his brother, who has been forced to move around constantly to avoid the security forces in the years since the applicant's departure.

- In Australia, the applicant has attended counselling in order to deal with his traumatic experiences, He suffers from memory problems, anxiety and other problems.
- The applicant fears to return to Sri Lanka as he believes that the Sri Lankan authorities are still looking for him and believe he is a member or supporter of the LTTE.
- He fears his work as [a Vehicle] driver, and his Tamil ethnicity and his residence in the North would also lead to him being suspected of supporting the LTTE.
- He believes his illegal departure and his attempt to claim asylum overseas would lead to him being targeted upon return to Sri Lanka.

Factual findings

29. As part of his SHEV Application, the applicant has provided copies of several identity documents in order to establish his identity. This includes a copy of a Sri Lankan Drivers Licence, a Sri Lankan Birth Certificate and a Sri Lankan National ID Card. Each of these documents is issued in his name. He has provided accredited translation for the Sri Lankan Birth Certificate. These documents provide consistent identity information, which is also consistent with the applicant's verbal claims.
30. I have reviewed all of this material. The applicant has established his identity to my satisfaction. I accept that he is a Sri Lankan citizen, of Tamil ethnicity as he claims. I accept that he was born on [Date] in Jaffna District of the Northern Province of Sri Lanka. For the purposes of this decision, I find that Sri Lanka is his receiving country.

[Organisation] Report

31. At times during his 2016 Protection Visa Interview, when he was pressed for further details about his life in Sri Lanka, this applicant asserted that he was unable to provide further details due to problems with his memory. He said that these memory problems arose from the treatment he had faced in Sri Lanka. Later, he provided a copy of an October 2016 report by a Counsellor employed by [Organisation] (the [Organisation] Report). The report indicated that the applicant had attended counselling sessions at [Organisation] in the past and continued to attend on a monthly basis.
32. The [Organisation] report indicated that the applicant had some symptoms consistent with Post Traumatic Stress Disorder (PTSD), though the report did not indicate that the applicant had actually been diagnosed with PTSD. In the report, the applicant's symptoms were said to be insomnia, intrusive memories, anxiety and confusion. However, the report also indicated that the applicant's attendance at counselling and his understanding of his symptoms allowed him to 'manage' his symptoms and to 'rebuild' his sense of hope.
33. I have considered the contents of the [Organisation] report. I accept that the applicant has suffered from PTSD like symptoms, including insomnia, intrusive memories, anxiety and confusion in the past, however, the [Organisation] report is over five years old, so this was some time ago and he has not provided more recent information about these issues. Nevertheless, I have taken these factors into account throughout this decision. For the sake of clarity, I note that the [Organisation] Report did not indicate that this applicant suffers from memory problems which would have prevented him from providing evidence to the Department, or from being wholly forthcoming during his Protection Visa Interview.

Furthermore, there is no evidence before me that indicates the applicant still requires counselling now.

[Vehicle] driver/interest from Government

34. This applicant's central claim is that in Sri Lanka he worked as [a Vehicle] driver and that his work as a driver led to him facing problems in Sri Lanka. According to the applicant he:
- Was employed as a [Vehicle] driver between 2002 and 2006. This work commenced during a period of ceasefire between the LTTE and the Sri Lankan Government.
 - The applicant operated his [Vehicle] as a [service]. As a consequence of the ceasefire, the applicant's work as a driver brought him into contact with members of the LTTE, and members of the Sri Lankan Government and security forces. At various times during the ceasefire, he carried passengers from both parties. He routinely took passengers through security checkpoints in the area. Because of these activities he was well known to the security forces in the local area
 - During this time, he occasionally decorated his [Vehicle] on days of public celebration. For example, he would display 'lion' flags of Sri Lanka during 'army' celebration days, and 'tiger' flags, on LTTE celebration days.
 - When the ceasefire between the LTTE and the Government ended in 2006, he was targeted by the Government. Due to his work as a [Vehicle] driver, he was suspected of being a member or supporter of the LTTE. He was suspected of attending LTTE training in 2004.
 - After the ceasefire ended, he was detained at a Sri Lankan army camp. He was held for around seven or eight days. During this time, he was repeatedly questioned about the LTTE and mistreated. His father was able to secure his release with assistance from a family friend who spoke Sinhala and who negotiated with one of his captors. According to the applicant, his release was not cleared with the other officers.
35. Despite his release, the applicant asserts that he was still of interest to the Sri Lankan security forces. He says, his father took him straight to a nearby church where he was entrusted to the care of the local priest. According to the applicant he lived in hiding at the church for the next six years (2006 – 2012). During this period, he says he had no contact with his family.
36. Around 2012, the applicant says that members of the security forces had approached the priest at his home (located away from the church) and questioned the priest about the applicant. The priest reported this questioning to the applicant. Fearful, the applicant decided to depart Sri Lanka. Within a week, he left the church and travelled to Colombo. In Colombo he obtained a Passport and made arrangements to travel to Australia. He says his Passport was not genuine, and that it was obtained by an agent who facilitated his travel. After he arrived in Australia, the applicant asserts that the security forces of Sri Lanka started to harass his brother. At his Protection Visa Interview, he said that his brother, who resided in Sri Lanka, moved around every 10 days in order to avoid the security forces and that he had been living this way in the years since the applicant's departure. In the same interview, the applicant also asserted that his parents had undergone some harassment from the security forces. He asserted that the reason his family members were suffering this harassment was that the Government was looking for the applicant and was attempting to pressure his family into revealing his whereabouts.

37. There was a ceasefire in Sri Lanka between 2002 and 2006. I accept that during this period the applicant operated [a Vehicle] [service] as his primary employment. I also accept that while he operated his [Vehicle], he carried a mixture of passengers, including some who were affiliated with the LTTE, and some who were aligned with Government. I also accept that at times, he decorated his [Vehicle] with flags, sometimes pro-Government flags, and sometimes LTTE flags.
38. As evidence of his claims the applicant has provided a copy of a letter form the Jaffna District [Vehicle] Owners Association which indicates he was a driver between 2002 and 2006. Credible country information provided by the applicant in Submissions from October and December 2016 indicate that in Sri Lanka during the civil war, persons suspected of being LTTE members, or supporters, could be detained by the security forces. Furthermore, persons who were detained for this reason were often subjected to mistreatment while in detention. He has provided other information to indicate that [Vehicle] drivers came under suspicion during the period, and that some were killed. Documents (d), (e) and (f), submitted by the applicant in 2022 show what can happen to persons suspected of being supporters of the LTTE, even now, more than a decade after the war ended. In the circumstances, accept that the applicant was [a Vehicle] driver. I am willing to accept that this applicant was detained as he claims. I also accept that he was held in detention for around seven to eight days, and that he was questioned about whether he was a member or supporter of the LTTE. Given the country information, I further accepted that he was mistreated during this period of detention.
39. Nevertheless, even after accepting that he underwent a brief period of detention and was mistreated, I have real concerns about the remainder of the applicant's claims. Turning first to his claims about being released from detention, to my mind, it seems doubtful that a family friend, even if a Sinhala speaker, could have convinced a member of the security forces to release him from detention, against the wishes of other members of the security forces. It also seems very doubtful that the applicant would be released from detention after eight days unless the security forces had found that he was not of further interest. If the security forces did have an ongoing interest in him, country information indicates that they could have used the powers of the Sri Lankan Prevention of Terrorism Act to detain him further. Furthermore, when asked, the applicant could not provide any details about the family friend who is said to have secured his release, or the Sri Lankan security forces officer who is said to have released him. It was argued in submissions that one of the reasons that the applicant did not know, or ask his parents about these details, was that he was in such pain after his release (from his mistreatment) that he was unable to speak at that time and that since that time was unwilling to revisit the trauma of his detention. Overall, I did not find these claims about the applicant's release, or the explanations he has offered, to be persuasive.
40. There are other reasons to doubt the applicant's claims. Though I have accepted that he was [a Vehicle] driver, I note that he has provided a copy of Sri Lankan Drivers Licence to the Department. He has provided this in support of his claims. However, I note that the licence indicates it was issued to the applicant in 2008. That is, it was issued to him during the period he says he was in hiding in the church. The applicant put forward an explanation that the 2008 license was mere a re-issue of a previously issued licence. He has stated that that his father received a letter requesting that applicant renew his license, and that his father conveyed the letter to the priest when they met in a location outside of the Church. The applicant says that the priest then assisted the applicant to fill out the form and posted it to the Registry Office, whereupon the replacement licence was issued. The applicant's own written explanation for these events, provided to the Department in December 2016,

acknowledges that the applicant's account is, on its face, contradictory to country information, however, it is argued that the account is still truthful and credible.

41. Overall, I do not find this account to be credible, since on its face, it undermines other aspects of the applicant's account. Chiefly, that he had not contact with his family, and was estranged from them when in hiding. Moreover, his willingness to submit routine administrative documents to the Sri Lankan Government during the period when claims to have been hiding from the Government and in fear of his life is also, in my view, inexplicable and further undermines his account.
42. At his Protection Visa Interview the applicant asserted that he lived in hiding in the church for the next six years. He said that during this period, he did not leave the church premises, and only left his "room" when there were no other persons at the church. He said the priest delivered his meals daily, but that he never knew how the priest knew his father, or how they had met. He said that he and the priest never spoke about his father, that they never discussed his father in the six years they lived together. He said that he and the priest did not discuss other issues either, and so he was unaware of who, if anybody, was paying for his food and lodging at the church for six years, though he asserts it was not his family. When questioned about the time he spent in the church, the applicant was only able to provide what I considered to be very brief account of his six years of hiding. During his Protection Visa Interview, the delegate also expressed clear doubts about the applicants account of his life, his claims of detention, mistreatment and release and his assertion that he had been in hiding for six years. During the Protection Visa Interview the delegate characterised the applicant's verbal evidence as being "vague" and lacking specific detail. I also found the applicant's evidence to lack detail and that his explanations were unconvincing. To my mind the applicant's account was unpersuasive, especially the parts of his story relating to the six-year period when he says he was in hiding.
43. As I have noted above, the applicant has cited unspecified 'memory' problems for the lack of detail in his account. He has also argued that his mistreatment, his extended period of hiding (six years), his consequent isolation and estrangement from his family during that period, and the extremely traumatic nature of these events account for why he cannot provide further detail. However, even considering these explanations, and the content of the [Organisation] Report he provided, his account was not persuasive, and I am not satisfied that he has been entirely forthcoming.
44. Having taken into account the applicant's various explanations and submissions, he has not satisfied me that his account was truthful. I have accepted that the applicant was briefly detained and mistreated. However, like the delegate I do not accept that he was released by a single army officer without the knowledge of consent of other army personnel. I do not accept that after his release that he was of any further interest to the authorities in Sri Lanka. I do not accept that he was still suspected of being a member or supporter of the LTTE. I do not accept that he went into hiding, or that he lived secretly in a church for the next six years. I do not accept that he ever lived with the priest or at the church or that the priest was questioned about his whereabouts in early 2012. I do not accept that his either his parents, or his sibling was ever harassed by the Sri Lankan authorities in order to pressure them to provide his location. I do not accept that his brother 'moves around' regularly in Sri Lanka to avoid further harassment from the authorities.
45. The applicant says that after he fled to Colombo, he paid an agent who obtained a Sri Lankan Passport for him. The Passport was issued in his own name and in his 2016 Statement of Claims he says he was advised that this was a genuine Passport, but that he did not obtain it

through “regular channels”. He says that at the time of his departure via the Colombo airport, some immigration officials looked at his Passport, and took him to another room for questioning. He says his agent spoke to another official at the airport who released the applicant and that he was allowed to continue his journey, travelling to Australia via [Country 1] and [Country 2] (where his Passport was confiscated by smugglers). In a post interview submission, the applicant argued that in fact, his departure from Sri Lanka was illegal.

46. Country information indicates that in Sri Lanka, there are robust customs and immigration checks for persons who depart, especially at the Colombo airport¹¹. The applicants account implies that his Passport was either non-genuine or was genuine but obtained via irregular channels. His account also implies that his agent used some irregular mechanism to secure his release from the immigration officials in Sri Lanka. However, on his own evidence he was allowed to depart Sri Lanka on this Passport, and that he used the Passport to transit through [Country 1], where he stayed for almost two weeks according to his Protection Visa Application, before arriving in [Country 2], it appears that officials in Sri Lanka, [Country 1] and [Country 2] all thought his Passport was genuine. In the circumstances, I am not satisfied that there was anything irregular about the applicant’s Passport. I do not accept that his Passport was not genuine, or that it was obtain by irregular means or that he departed illegally. I am satisfied that the applicant was allowed to leave Sri Lanka by the authorities in that country because he was not of any interest to the Government or the security forces of Sri Lanka.

Refugee assessment

47. 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

48. 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

¹¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Sri Lanka', DFAT, 16 February 2015, CISEC96CF1164; Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report - Sri Lanka”, 18 December 2015 CISEC96CF14143; Department of Foreign Affairs (DFAT), “DFAT Country Information Report – 24 January 2017” CISEDB50AD105; Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

- 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.

49. I have found that Sri Lanka is this applicant's receiving country. This applicant claims that prior to departing Sri Lanka he lived in a church in hiding for six years. I have not accepted this claim. Prior to his period of detention this applicant says he lived with his family and having found that he was not in hiding for six years, and in the absence of other evidence, I conclude he continued to reside with them until his departure. I conclude that if returned to Sri Lanka now, he would return and reside with his family in the Northern Province of Sri Lanka as he did previously.

50. Despite accepting that this applicant was detained once, in 2006, and that he was mistreated at that time, I have not accepted this applicant's other principal claims including that he was still of interest to the authorities in Sri Lanka, that he lived in hiding for six years, or that his family or a priest was pressured and harassed by the authorities to provide his location. I do not accept that he left Sri Lanka illegally or that he was of any interest to the Sri Lankan authorities for any reason at any time after his detention in 2006. Having made these findings, I am only left to consider what I might describe as the applicant's residual profile. That he is a Sri Lankan Tamil, that he lived in the North of Sri Lanka, and that he sought asylum in Australia.

Sri Lankan Tamil, resident of the North

51. The applicant would return to Sri Lanka as a Tamil citizen, who formerly lived in the North of Sri Lanka. He has provided a range of country information relating to the current Government of Sri Lanka and which he says indicates conditions have deteriorated for Tamils¹².

52. Ethnicity does continue to be a source of tension in Sri Lanka and the Government of Sri Lanka had continued to be suspicious of the Tamil population since the end of the war in 2009¹³. This is unsurprising given the long running civil war in Sri Lanka was fought along ethnic lines with the minority Tamil community seeking to establish a separate state. According to a recent census in Sri Lanka, there are 3.1 million Tamils in the country, up from 2.7 million in 1981. Tamils are the second largest ethnic group in Sri Lanka constituting approximately 15% of the Sri Lankan population¹⁴. Most Sri Lankans tend to live within their own ethnic communities, although different ethnic groups live within close proximity in major urban areas. Tamils live throughout Sri Lanka but are concentrated in the Northern and Eastern Provinces. In the Northern Province, Tamils comprise around 93% percent of the population¹⁵. Since the end of the war, various Government of Sri Lanka made commitments to ethnic reconciliation¹⁶.

¹² Document: (c) titled 'Country information – New Government (2)'.

¹³ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

¹⁴ DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

¹⁵ DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

¹⁶ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Sri Lanka', DFAT, 16 February 2015, CISEC96CF1164; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143; Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105; Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

53. The Sri Lankan Constitution provides that ‘no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds’¹⁷. Tamils have a substantial level of political influence and their inclusion in political dialogue has increased since the change of government in 2015. Tamil political parties are numerous, with the largest coalition of parties operating under the umbrella of the Tamil National Alliance (TNA). Tamils faced less harassment during the 2015 presidential and parliamentary elections than in earlier elections conducted soon after the end of the war¹⁸. There has been a trend towards election of more hard-line candidates, but no return to the violence and intimidation of the past¹⁹. DFAT understands Tamils do not receive unwarranted attention from authorities because of their political involvement. DFAT assesses there are no barriers to Tamil political participation²⁰. Even former members of the LTTE are actively engaged in the Sri Lankan political process.
54. DFAT reporting in the years since the end of the war indicates that many Tamils in Sri Lanka report that the authorities continue to monitor public gatherings in Sri Lanka and conduct surveillance on persons of interest; usually people involved in politically sensitive issues such as land rights, missing persons and memorial events²¹. These complaints are most commonly voiced in the north of Sri Lanka where a military presence remains²². I have found this applicant would return to the Northern Province. The applicant does not claim to have had any involvement in issues such as land rights, missing persons and memorial events. He was never a member of the LTTE and I have found was not suspected of links to the LTTE after 2006. He lived for another six years in Sri Lanka and I have found he was not of any interest to the authorities in Sri Lanka after his release in 2006 and that he was allowed to depart Sri Lanka legally. In these circumstances I am not satisfied that he would be of any interest now, some 11 years after his departure, 12 years after the end of the civil war.
55. During his Protection Visa Interview and in his Protection Visa Application this applicant indicated he maintains regular contact with his family in his home country. I have not accepted his family was ever harassed in order to pressure him to return to Sri Lanka. He has not indicated that any person he knows, including his parents, or his siblings, suffers from any ongoing harm merely for being Tamil, or for residing in the Northern Province. The applicant lived in the Northern province throughout his life prior to coming to Australia including for six years after his release from a single, brief period of detention. The government of Sri Lanka had resumed control of the entire Northern province by 2009 when the civil war ended, however Jaffna had been under Government control since the mid-1990s. The applicant did not depart the Northern Province until 2012. He has not pointed to any specific incident,

¹⁷ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

¹⁸ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Sri Lanka', DFAT, 16 February 2015, CISEC96CF1164; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143; Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105

¹⁹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

²⁰ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Sri Lanka', DFAT, 16 February 2015, CISEC96CF1164; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143; Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105

²¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Sri Lanka', DFAT, 16 February 2015, CISEC96CF1164; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143; Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105

²² Department of Foreign Affairs (DFAT), "DFAT Country Information Report – 24 January 2017" CISED50AD105

where his residence in the North, or his family's residence in the North was a problem. It seems unpersuasive to argue that this would be a problem now.

56. Country information indicates that in the 12 years since the end of the civil war conditions in Sri Lanka have changed markedly. Conditions for Tamils have substantially improved over the last decade²³. The Sri Lankan military presence in Tamil areas which occurred after the end of the war, has largely been removed. Military checkpoints in Tamil areas have been dismantled. Militia groups have been disarmed. Widespread political violence no longer prevails in Sri Lanka²⁴. While the Sri Lankan Government remains sensitive to any resurgence of Tamil separatism, former members of the LTTE are now able to fully participate in society. Former LTTE members do not face legal barriers to participating in public life, including politics²⁵. Low-profile former LTTE member, including former combatants, those employed in administrative and other roles, and those who provided non-military support to the LTTE might be monitored but would generally not be prosecuted²⁶.
57. Returnees to Sri Lanka can expect a short period of monitoring, but only those who are deemed to have had a significant role in the separatist movement are likely to be of further interest to the government²⁷. Furthermore, thousands of Tamils have returned to Sri Lanka in the last decade. Returnees who departed Sri Lanka illegally, or who sought asylum overseas, but who are not of further interest, may face charges for breaches of Sri Lanka's Immigrants and Emigrants Act (1948), but in general, do not face custodial sentences in Sri Lanka and are not of other interest to the Sri Lankan Government²⁸. This applicant did not have any role in the separatist movement.
58. Around 12 years have passed since the end of the civil war. The LTTE was defeated in 2009, and no longer exists²⁹. Around 15 years have passed since the applicant was briefly detained. I have found he would not be of further interest to the Sri Lankan authorities or be prosecuted in Sri Lanka now. He is not involved in any politically sensitive issue such as land rights, missing persons or memorial events. He is not otherwise involved in the separatist politics.
59. Overall, I am not satisfied that this applicant's ethnicity, or his former residence in the north, would lead to him being of renewed interest to the authorities in Sri Lanka now. I am not satisfied he would face a real chance of harm for any of these reasons. He does not have a well-founded fear of persecution on these grounds.

Attempt to Claim asylum

60. The applicant has claimed that he fears harm based upon his status as a failed asylum seeker

²³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015 CISEC96CF14143; UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752; DFAT, 'DFAT Country Information Report Sri Lanka', 4 November 2019, 20191104135244; DFAT, 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

²⁴ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752

²⁵ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752

²⁶ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

²⁷ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021

²⁸ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

²⁹ UK Home Office, 'Country Policy and Information Note. Sri Lanka - Tamil Separatism', Version 7.0, 17 June 2021, 20210624114752; DFAT, 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

61. I have found that the applicant did not depart Sri Lanka illegally, and so he did not depart in breach of ss.34 and 45(1)(b) the *Immigrants and Emigrants Act (1949)* which governs exit and entry from Sri Lanka³⁰. He would return to Sri Lanka as person who departed legally who is returning to Sri Lanka.
62. The applicant's submissions argue that he would be an not return to Sri Lanka voluntarily. An so I conclude that upon return to Sri Lanka, the applicant will likely be identified at the airport. Due to the circumstances of his departure, he will likely undergo an investigative process which will likely involve a range of Sri Lankan agencies including Department of Immigration and Emigration, the State Intelligence Service and the Criminal Investigation Department and, at times, the Terrorism Investigation Department. These agencies who will check travel documents and identity information against the immigration databases, intelligence databases and records of outstanding criminal matters³¹. This processing occurs in arrival groups at the airport and can take several hours. During this time, the applicant can expect to be held at the airport while the entire cohort of returnees is interviewed³². These processes are standardised and are applied to all returnees regardless of ethnicity or religion³³.
63. Whilst the applicant does not have a current Sri Lankan passport, he does have a range of other Sri Lankan identity documents in his possession including, a Sri Lankan Birth Certificate, a Sri Lankan national identity card and an expired Sri Lankan Drivers licence. I conclude the applicant would be able to establish his identity without difficulty if returned to his home country. As the applicant departed legally, I do not accept that he would face charges under the *Immigrants and Emigrants Act*.
64. DFAT assesses that failed asylum seekers face practical challenges to a successful return to Sri Lanka due to the expenses incurred to undertake their outward journey, difficulty finding suitable employment and reliable housing and delays in obtaining official documentation³⁴. Refugees and failed asylum seekers have also reported social stigma from their communities upon returning to some communities as people resent the financial support provided to refugee returnees³⁵. DFAT assesses that returnees may also face some societal discrimination upon return to their communities, which could affect their ability to secure housing and employment. DFAT further assesses that continued surveillance of returnees contributes to a sense of mistrust of returnees within communities³⁶.
65. Nevertheless, I note that the challenges outlined above are everyday difficulties faced by persons seeking to re-establish themselves after being away from the country for an extended period of time. I note my earlier finding that the applicant will return and with his family, as he did previously. In my view, the presence of family will mitigate many of these challenges. There is no information before me to suggest that Tamils who have lived abroad

³⁰ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

³¹DFAT, 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818

³² Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

³³ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

³⁴ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

³⁵ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

³⁶ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

are facing harm at the airport or in their home areas on their return to Sri Lanka simply due to the time spent out of Sri Lanka.

66. Whilst government monitoring does continue in Sri Lanka, DFAT assesses that monitoring of Tamils in day-to-day life has decreased significantly³⁷. I accept that if the applicant is returned to Sri Lanka and returns to the Northern Province where he previously lived, he may be the subject of monitoring for a short period by the authorities. However, I am not satisfied that he would otherwise face any real chance of harm by them. I also accept that he may experience some social stigma within his community as a failed asylum seeker and a person who has not lived in Sri Lanka for a several years. However, I am not satisfied that this treatment, if it does occur, amounts to harm. I do not accept that such challenges, any social stigma or monitoring as he may face as a returning asylum seeker from Australia constitute serious harm, individually, or taken together.
67. Overall, I do not accept that the applicant would face a real chance of any harm, or persecution arising from his status as a failed asylum seeker or any combination of these or his other claims.

Refugee: conclusion

68. 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

69. 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

70. 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.
71. 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.
72. I have found that this applicant would not face a real chance of harm arising from any of his claims for protection. As 'real chance' and 'real risk' have been found to meet the same

³⁷ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Sri Lanka', 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report – 24 January 2017" CISED50AD105

standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

Complementary protection: conclusion

73. 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.

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.