



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA22/10242

SRI LANKA
IAA reference: IAA22/10243

SRI LANKA
IAA reference: IAA22/10244

SRI LANKA
IAA reference: IAA22/10247

SRI LANKA
IAA reference: IAA22/10246

SRI LANKA
IAA reference: IAA22/10245

Date and time of decision: 14 April 2022 13:49:00
D Power, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) claim to be Tamils from Sri Lanka. On 31 July 2017, they lodged applications for Safe Haven Enterprise visas (SHEVs).
2. On 18 February 2022, a delegate of the Minister for Immigration (the delegate) made a decision to refuse to grant the applicants protection visas. The delegate did not accept that the male applicant had been actively involved with supporting the LTTE. The delegate also did not accept that he or his family faced a real chance or real risk of serious or significant harm on return to Sri Lanka, pointing to considerable social and political change in Sri Lanka since the applicant's departure. The delegate also did not accept that the applicants had been involved in a land dispute with, and been threatened by, a powerful local figure. The delegate accepted that the applicants may be charged with offences related to their travel to Australia but that any resultant fine or brief period of detention would not amount to serious or significant harm. The delegate also found that the applicants did not face a real chance or real risk of serious or significant harm for any other reason including having sought asylum in Australia.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicants' claims for protection

5. The applicants' claims can be summarised as follows:

Applicant 1

- The applicant is a Tamil male from the Eastern Province of Sri Lanka.
- He was involved in supporting the Liberation Tigers of Tamil Eelam (LTTE) during the civil conflict. He was detained and tortured by the Sri Lankan Army (SLA) because of his LTTE involvement.
- He fears being targeted by the Sri Lankan authorities because of previous LTTE involvement.
- He was also a supporter of the Tamil Makkal Viduthalai Pulikal (TMVP) party and clashed with the members of an opposition party and a powerful local Muslim politician, [Mr A], because of this work.
- Before he left, the applicant also purchased a valuable property which [Mr A] seized illegally after the applicant's departure. The applicant's parents lodged a court case on his behalf to reclaim the land, which led to [Mr A] threatening the applicant and his family.
- He fears harm from the Sri Lankan authorities, including the SLA, and from [Mr A]. He fears that his past involvement with the LTTE will be used against him in the land dispute.

- He fears that he will be tortured and/or killed and his children will be seriously harmed because of his support for the LTTE and his opposition to [Mr A].
- The Sri Lankan authorities will be unwilling or unable to protect him or his wife or their children.
- He is unable to safely relocate within Sri Lanka.
- He and his family will be destitute if their family loses the court case over the land dispute.
- He suffers from [a disability] as a result of being tortured by the Sri Lankan army for 15 days.
- He fears harms as a failed asylum seeker, and because of his extended stay in Australia. In February 2014, the then Department of Immigration and Border Protection (DIBP) allowed unauthorised access to the applicant's personal details on the internet.
- He departed Sri Lanka illegally.

Applicant 2

- The applicant is a Tamil female from Eastern Province in Sri Lanka.
- Along with her husband, she was involved in supporting the Liberation Tigers of Tamil Eelam (LTTE) during the civil conflict. Her husband was detained and tortured by the Sri Lankan Army (SLA) because of his LTTE involvement.
- She fears harm from the Sri Lankan authorities because of their previous LTTE involvement.
- Her husband was also a supporter of the Tamil Makkal Viduthalai Pulikal (TMVP) party and clashed with the members of an opposition party and a prominent Muslim politician because of this work.
- Before he left, her husband became involved in a still ongoing land dispute with the same powerful local Muslim politician, [Mr A].
- She fears that she will be harmed and/or killed. She fears for her children's lives. She fears the SLA will harm her grown up daughter if they find out who her father is and that they will kidnap her son as revenge for his father's support of the LTTE.
- She fears harm as a Tamil (woman) from the Eastern Province of Sri Lanka.
- Sri Lankan authorities will be unwilling or unable to protect her or her husband or their children.
- She is unable to relocate within Sri Lanka to an area where she would not be harmed.
- She and her family will be destitute if they lose the court case over the land dispute.
- She is currently receiving treatment for depression.
- She will return as a former asylum seeker who illegally departed from Sri Lanka. She has resided in Australia for an extended period. In February 2014, the then Department of Immigration and Border Protection (DIBP) allowed unauthorised access to the applicant's personal details on the internet.

Other Applicants

- The other applicants included in this review, the children of the primary of the applicants, did not raise their own claims for protection and rely on their parent's claims.

Well-founded fear of persecution

6. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
7. The adult applicants are Tamil Hindus from Eastern Province. The applicants have given a consistent account of their identity and provided several documents in support of that identity. They provided consistent information on their ethnicity and their interviews with the Department were conducted in Tamil. Although the female applicant has been known by other names, these are very minor variations and I accept her explanations as to how these variations arose. I accept that the applicants' identity, ethnicity, and nationality are as claimed, that they are nationals of Sri Lanka, and that Sri Lanka is their receiving country for the purposes of this decision.
8. The applicants were born and grew up in [a] District in Eastern Province. Their remaining family still reside there. Although the male applicants\ briefly travelled abroad on several occasions, the applicants otherwise spent their entire life living in Eastern Province. I consider that Eastern Province is the area to which the applicants would very likely return if they went back to Sri Lanka.
9. The applicants claimed that their families were directly affected by the civil conflict in Sri Lanka. In 1983, the LTTE began an armed insurgency against the Sri Lankan government in pursuit of a separate Tamil state¹. The civil conflict that followed is estimated to have cost 100,000 lives and displaced 900,000 more. The LTTE surrendered in May 2009 but not before atrocities on both sides that may have cost the lives of 40,000 civilians².

¹ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

² Ibid

10. Both applicants ran their own business during the civil conflict. Although they were not combatants, they claimed that they provided food and other goods to the LTTE and collected money for them. In the case of the female applicant, she claimed that her father had previously been active with the LTTE and that he had been killed by the Sri Lankan Army (SLA) as a result.
11. The male applicant claimed at interview that he and his wife carried out their supply role to the LTTE on a 'minor' level for about three years. However, for a further year after that, they claimed to have been much more active in supplying the LTTE and in gathering funds for them.
12. The male applicant claims that as a result of his work with the LTTE, he was detained by the SLA in 2010. He stated at interview that his detention lasted for 14 days, during which time he was interrogated and beaten with cables.
13. He was finally released after his wife intervened. In her statement dated 16 November 2021, the female applicant claims that she went regularly to the camp where her husband was being held and even threatened suicide, in order to obtain his release. She eventually returned to the camp with the GS officer (village officer). After the male applicant agreed to sign a piece of paper admitting that he assisted the LTTE, he was then released. The male applicant contends that he was forced to admit to some things that he did not actually do, such as transporting weapons.
14. After his release, the male applicant had no more issues with the authorities for a while and concentrated on running his shop. He claims that [he bought some property] from another Tamil family. The property turned out to be quite valuable.
15. A prominent Muslim politician, who the applicant referred to as [Mr A], also wanted the property. He described [Mr A] as an underworld figure who had strong connections with local politicians and the security forces. When [Mr A] found out that the applicant had bought the plot of land in question, he began a campaign of harassment against the applicant. [Mr A] used his influence to get the army to harass the applicant, using his previous LTTE association against him.
16. The applicant also claims that he assisted the TMVP during elections. In his written claims, he refers to helping the TMVP during [elections] held [in] 2012. He clashed with opposition supporters of the same powerful Muslim politician, [Mr A], who opposed his land purchase. His written claims state he assaulted one of [Mr A]'s "gang members" and nearly killed him.
17. Because of the clash with the opposition supporter and the land dispute, the applicant left Sri Lanka on [date] November 2012. After his arrival in Australia, [Mr A] seized the land that the applicant had previously purchased. The applicant's parents lodged a court case on the applicant's behalf to reclaim the land, which resulted in further threats from the applicant.
18. There are some issues with the applicants' account.
19. At interview, the applicant claims that the [Mr A] was powerful and well-connected, such that he was able to persuade the SLA to regularly attend the applicant's store and disrupt the applicant's business in order to pressure the applicant to give up the valuable land he had purchased. After the applicant departed, [Mr A] allegedly seized the land, divided it into 70 parcels and sold it off. The applicant's parents lodged a court case on his behalf to get the land back. The applicant says that [Mr A] then threatened him over the phone after the applicant had arrived in Australia. He also claimed that [Mr A] had threatened his parents. When asked

how [Mr A] had threatened his parents, the applicant stated that the case came to court every three to six months, and on those occasions [Mr A] had threatened his parents.

20. I do not consider it plausible that a powerful, well-connected underworld figure with the power to send the army in at his behest to intimidate the applicants would wait until court hearings every three to six months to deliver threats to the male applicant's parents. I note that the applicant said that the supposed land dispute was lodged in court approximately a year after the applicant came to Australia – sometime around 2013 or 2014. In all that time, this supposedly powerful underworld figure has been unsuccessful in either persuading the applicant's parents to drop the case or having the case dismissed. Although the applicant claims that this powerful underworld figure would kill him and target his children on return, the applicant's parents continue to live in the same area. However, despite allegedly having threats made against them, the applicant's parents have not been killed or even physically harmed in the eight years or so that the case has been pending.
21. The applicant stated at interview that since coming to Australia, he had only one threat from [Mr A] in eight years. The applicant said that "somehow" [Mr A] had got his number. The applicant was asked how the [Mr A] had got his number and the applicant speculated that he may have got it off his parents. I find it very difficult to believe that the applicant's parents would have given [Mr A] their son's contact details. If they had, I find it difficult to believe they would not have told the applicant.
22. In the male applicant's statement to the delegate of 30 November 2021, he claimed that [Mr A] had "tried to physically beat my parents at one point". Beyond this one line in the statement, the applicant gives no further details surrounding this alleged attempted assault. The applicant did not refer to this incident in either his written claims or at interview. Given the lack of detail surrounding this incident and the significant delay in the applicant putting forward this information, I do not accept that such an incident occurred. I note that the applicant also said in the same statement that [Mr A] would not kill his parents because they were elderly. However, at interview the applicant made some startling claims regarding [Mr A], stating that he would kill him and harm his children. It is difficult to understand how the applicant could be so sure that his parents were safe from the same man he believes attempted to assault them and whom he claims is capable of killing him and targeting his children. I consider that the applicant has added this line in an attempt to explain the fact that his parents have resided in the same area of Sri Lanka unharmed throughout the almost decade long period during which he contends they were being threatened by a powerful and influential underworld figure.
23. The applicant has filed documents that variously attest to ownership of a parcel of land, and allegedly to a court case involving a plot of land. The documents are copies only with no assessable security features. DFAT notes that document fraud is common in Sri Lanka, and particularly notes instances of fraudulently obtained land title deeds being put forward as evidence³. Even in establishing that a court dispute exists, the documents have limited value and do not outweigh the other significant credibility concerns with the applicant's land dispute claim as noted above. They certainly provide no evidence that the person noted in the dispute [is] a powerful underworld figure with influence such that he can get the army and law enforcement to do his bidding.
24. The applicant also gave conflicting accounts of the circumstances that led him to flee his store and go into hiding.

³ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

25. The male applicant's written statement says that there was a clash between the TMVP and the [Mr A]'s supporters. During the clash, the applicant hit one of [Mr A]'s gang members and almost killed him. As a result of that incident and the other problems, the applicant decided to leave Sri Lanka.
26. In his interview with the delegate, the applicant claimed that the SLA had come to his store and started harassing his wife. He came upon the SLA harassing his wife and pushed one of the SLA officers, who fell down. The other SLA officer put his gun to the male applicant's head. His wife screamed and his neighbours arrived. He claimed the SLA officers tried to 'kidnap' him but he was able to escape in the confusion with the assistance of his wife and neighbours. He then went into hiding.
27. The applicant claimed at interview that he only stayed two or three days at his mother's house, before moving to a friend's house on the advice of his wife. He repeated this claim in his written statement to the delegate dated 16 November 2021. However, in her interview, his wife stated that she had told her husband to go to his mother's place and that he had stayed with his mother the whole time prior to departing Sri Lanka. She did not mention that her husband had moved to a friend's house during his alleged time in hiding or that she had ever advised him to do so.
28. When asked why they had stopped supporting the LTTE, the female applicant claimed that they had stopped because the male applicant had been detained, notwithstanding that the applicant was detained in 2010. The male applicant stated that they had stopped because war ended and the LTTE disbanded. The civil conflict ceased in 2009⁴.
29. The male applicant's evidence about his political involvement was unconvincing. He stated that he was a strong supporter of the TMVP but when asked, he was unable to articulate what the TMVP stood for at the time or who the leader was when he supported them. The delegate asked him if he was a member or just a supporter of the TMVP, and the applicant confirmed that he was a member. He was asked when he joined the party, and the applicant then stated that he was not a member, just a party worker. Despite claiming to be a strong supporter of the party, he also clarified that he had only put up posters on one or two occasions because he was mainly looking after his business. Although prompted on a couple of occasions to describe the issues he encountered when supporting the TMVP, he failed to mention at interview the incident set out in his written claims where he allegedly assaulted a member of [Mr A]'s 'gang' and nearly killed him.
30. However, at her interview, the female applicant remembered the precise date of the election, [in] 2012, in which her husband had allegedly assisted the TMVP. Further, she said that on the day of the election her husband had a fight with men from another party and it became a problem. She said that ten days later, Army men came to the store and harassed her. She says this was the incident that led to the conflict between her husband and the army personnel.
31. I do not consider the discrepancies between the statements of the male and female applicants to be determinative in themselves. With the passage of the years, memories may differ or recollections become unclear. Nonetheless, there are enough differences between the accounts of the two applicants on some key points that I find that it adds in some measure to my concerns with the applicants' claims.

⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

32. The delegate also discussed with the applicants the difference between their current claims and their statements during their entry interviews soon after arriving in Australia. The applicants did not raise any of the claims involving the LTTE, the male applicant's work for the TMVP, or the land dispute in their entry interviews. The male applicant stated at interview that he did not discuss his claims because other Tamils in the detention centre told him that if he revealed all his claims he would be detained indefinitely. He also claims that the entry interviewer urged him to brief in his replies. I consider it is plausible that the applicants were initially reluctant to disclose their alleged affiliation to the LTTE. However, I am not satisfied that this, or an instruction to be brief, explains the absence of any reference to the claims they later relied on, such as membership of the TMVP or their issues with a land purchase. I note that their entry interview included specific questions regarding (relatively uncontroversial) issues such as whether they were associated or involved with any political groups, to which both applicants responded no. Although I do not place undue weight on the entry interview, I consider that the absence of any reference to male applicant's membership of the TMVP, the land dispute and other specific incidents adds in some measure to my concerns about the credibility of the applicants' claims.
33. The applicant has produced medical reports showing that he needed surgery on his [Body Part 1]. The applicant claimed that the injury was incurred while he was held and detained by the SLA in 2010. The document is from [named] Hospital and is dated 28 July 2017. The document gives no indication as to how the [injury] or condition arose, nor does it indicate that the injury was originally occurred in Sri Lanka. The applicant acknowledged at interview that he did not have any documents or other evidence attesting to the treatment he allegedly got for his [Body Part 1] in Sri Lanka.
34. I consider that the applicant has embellished the level of his involvement with the LTTE. I accept that he may have given the LTTE some level of material support during the civil conflict. Given the country conditions at the time, I also accept that he was detained briefly in 2010 and that he was mistreated while detained. Nonetheless, by the applicant's own account, he was released after two weeks and allowed go back to operating his business.
35. For the reasons set out above, I do not accept that the applicant was or is involved in a land dispute with a powerful local politician or that he was targeted by the SLA as a result. I do not accept that he was forced to go into hiding or that he was of any interest to the authorities at the time of his departure from Sri Lanka.
36. Notwithstanding the above, the applicant is a Tamil male and would be returning to an area in Eastern Province previously controlled by the LTTE. I have therefore considered whether he would be subject to harm on account of his ethnicity or profile more generally, and whether the female applicant would also be targeted on that account.
37. It is not disputed that the Tamil population suffered significantly during the civil conflict that ended in 2009 and in the years immediately following its cessation⁵. Multiple sources have noted widespread abuses of the Tamil population during the civil war by both government forces and non-state actors, such as militia groups⁶. Tamils were also disproportionately subject to arrest under the Prevention of Terrorism Act (PTA), even after the end of the civil conflict⁷. Abuses under the PTA have been documented by DFAT, the UK Home Office and

⁵ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

⁶ Ibid

⁷ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil Separatism", May 2020, 20200527172009

other reliable sources⁸ and I do not discount the terrible toll such treatment must have taken on the individuals themselves and the Tamil community.

38. Some sources have also pointed to issues such as a recent tightening in the latitude given to civil society actors and lack of progress towards reconciliation and accountability for actions carried out during the civil war⁹. There have also been reports of some people being prevented from carrying commemorations related to the LTTE or being harassed (or even detained) when they have attempted to do so¹⁰.
39. I have noted reports from the OHCHR, and others that discuss the current situation in Sri Lanka, particularly the re-emergence of former President Mahinda Rajapaksa (and his brother Gotabaya) as a political force¹¹. These sources highlight the Rajapaksa's allegedly authoritarian governing style, their anti-minority sentiments, and moves to walk back commitments to international human rights bodies concerning crimes committed during the war.
40. There are also reports of high-profile commentators, journalists or government critics who have been allegedly been harassed or intimidated¹². I have considered these reports carefully. In consider that they are credible and match findings in the DFAT report that journalists or those who actively criticise the government or report on sensitive issues are subject to the close attention of the Sri Lankan authorities.
41. It is understandable that the revival of the Rajapaksa political fortunes would make many Tamils nervous who lived through the civil conflict. It is also understandable that some might raise concerns as to whether those who may have committed crimes during the civil conflict under Mahinda Rajapaksa's previous term in office will be brought to justice by any government led by a Rajapaksa or with which they are closely involved. However, while there is evidence that some high-profile activists have been targeted by the government, there is little evidence that the Rajapaksas have sought to actively harm the Tamil minority as a whole since retaking office. I do not accept that persons with the applicant's profile and attributes are currently subject to detention or torture by the government.
42. As discussed, more Tamils were detained under the PTA during the civil conflict than any other ethnic group. In its most recently country report on Sri Lanka, DFAT does note that up to 60 Tamils are currently detained under the PTA and acknowledges that some of those appear to be held on charges where the nexus to terrorism is unclear¹³. This includes offences such as sharing a photo of the Prabhakaran (the deceased leader of the LTTE) or other offences seen to promote separatist or LTTE causes¹⁴. However, DFAT also stated that it was not aware of returnees from Australia to Sri Lanka being charged under the PTA¹⁵.

⁸ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; UK Home Office, "Country Policy and Information Note. Sri Lanka - Tamil Separatism", Version 7.0, 17 June 2021, 20210624114752

⁹ OHCHR, "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka", 18 February 2020,

¹⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; INFORM Human Rights Documentation Centre, "Repression of Dissent in Sri Lanka: 1st - 31st May 2020", 29 June 2020, 20200702160949

¹¹ OHCHR, "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka", 18 February 2020, 20200221140652; The Economist, "Sri Lanka is becoming a one-family state", 15 August 2020, 20200814111514

¹² OHCHR, "Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka", 18 February 2020; INFORM Human Rights Documentation Centre, "Repression of Dissent in Sri Lanka: 1st - 31st May 2020", 29 June 2020, 20200702160949

¹³ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

¹⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

¹⁵ Ibid

43. As noted above, DFAT does state that some Tamils have been arrested in 2021 under the auspices of the PTA¹⁶. However, those arrests appear to have been related to persons celebrating or promoting the LTTE or promoting separatist causes¹⁷. Neither the applicant nor his wife have ever claimed to have any involvement LTTE commemorations or celebrations here in Australia or to have been involved in any sort of diaspora activities. Neither have the applicants expressed an intention to pursue such activities or be active in promoting separatist causes on return.
44. Country information indicates that the situation for Tamil political parties has changed significantly during the time that the applicant has been in Australia. Country information confirms that Tamil political parties remain active and hold seats in parliament¹⁸. DFAT states that independent election monitors found that both the 2019 presidential elections and 2021 Parliamentary elections, held while the Rajapaksas were candidates and after they had assumed power respectively, were free of security concerns despite COVID restrictions in place at the time¹⁹. DFAT also notes that domestic and international observers deemed the 2020 parliamentary elections to be mostly credible, despite some reported incidents of voter intimidation²⁰.
45. Although the applicants may face a brief period of questioning on return to Sri Lanka as discussed further below, these are standard procedures and DFAT's understanding is that detainees do not face mistreatment during processing at the airport²¹.
46. The UK Home Office notes that those who are active in pursuing separatists causes or who actively participate in diaspora activities expressing criticism of the government may be at risk of persecution²². However, it also notes that those who have not taken a "significant role" in Tamil activism may be monitored on return but that this will not generally amount to persecution²³. DFAT's understanding is that most returnees, including failed asylum seekers, are not actively monitored on an ongoing or long-term basis²⁴.
47. The applicant's migration agent stated that the DFAT report should not be relied upon, referring to a UK Tribunal decision which was critical of some aspects of the 2019 DFAT Country Information Report²⁵. The UK tribunal's decision is not binding on the IAA. I note also that DFAT has issued an updated country information report for Sri Lanka since the UK Tribunal decision and which is referenced in this decision. Leaving aside whatever observations the UK tribunal may have made about the DFAT report, the delegate also had access to a number of different country information sources, many of them from reputable sources and which are even more recent than the 2019 DFAT report. While no single source of information should be relied upon exclusively, I also do not consider that DFAT report is wholly unreliable or without value. However, I have also given consideration to the other country information sources before the delegate.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² UK Home Office, "Country Policy and Information Note. Sri Lanka - Tamil Separatism", Version 7.0, 17 June 2021, 20210624114752

²³ Ibid

²⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

²⁵ 'KK RS (ANONYMITY DIRECTION MADE) AND SECRETARY OF STATE FOR THE HOME DEPARTMENT', Upper Tribunal (Immigration and Asylum Chamber), 27 May 2021, 20210601113225

48. I have noted the evidence in the sources before me that some high-profile activists and journalists have allegedly been the subject of harassment and intimidation. However, DFAT notes that despite some self-censorship, even journalists in the North and East continue to openly criticise the government and security forces²⁶. Although some journalists reported monitoring and harassment such as anonymous telephone calls, they are not subject physical violence²⁷.
49. Further, neither the male or female applicant are journalists, nor have they ever been involved with the media. They have not indicated that they have been involved in any political activities in Australia, let alone diaspora activities such as championing Tamil causes or advocating for Tamil separatism. The applicant noted at his interview that he had not been involved in politics, including Sri Lankan political causes, since his arrival in Australia. The applicants have not claimed to have any involvement with remembrance or celebrations of the LTTE or the civil conflict, either in Sri Lanka or here in Australia.
50. There is evidence that some of the applicants' personal details were the subject of an unauthorised disclosure on the internet. I accept that the applicants (including some of the dependent applicants) were subject to unauthorised disclosure of their personal details (the "data breach") by the Department of Immigration in February 2014. It is possible this information may have been accessed and viewed by the Sri Lankan government, or by other parties. However, there is nothing to indicate that the applicants would be subject to undue attention from the Sri Lankan Government on account of seeking protection in Australia. The data breach occurred while the applicant was detained more than three years before the applicants made SHEV applications in July 2017.
51. The applicants were provided with an official letter which notes that the information disclosed about the applicants consisted of name, date of birth, nationality, gender, details about his detention (when detained, reason and where) and if he had other family members in detention. The letter specifically notes that the breach did not include any details of the applicants' protection claims or even whether they had made an application for protection. I am not satisfied the information released about the applicant would have disclosed whether the applicant had sought protection in Australia, or the nature of his claims. The information before me does not suggest that any individuals returning to Sri Lanka have been targeted for reasons relating to the data breach, nor has the applicant put forward any tangible evidence that this would be the case. The UK Home Office reports IOM as stating that claiming asylum abroad is not an offence, and also finds that there were no media reports of returnees being interrogated on such grounds²⁸.
52. I have also considered whether the female applicant would face harm more generally on account of her gender if she returned to Sri Lanka.
53. DFAT has noted that sexual harassment and gender-based violence is a significant issue in Sri Lanka, particularly in domestic settings²⁹. Although Sri Lanka leads South Asia in positive social indicators for women, DFAT notes that this has not led to greater political or economic participation³⁰. A Women's Wellbeing survey carried out in 2019 by the Sri Lankan Department

²⁶ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

²⁷ Ibid

²⁸ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928

²⁹ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

³⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

of Census and Statistics found that one in five women who were with or formerly had a partner had experienced physical and/or sexual violence in their lifetime³¹.

54. However, there are signs that the Sri Lankan authorities are committed to addressing issues of gender-based violence and discrimination. Sri Lanka is also a party to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol³². In November 2016, the government launched a national action plan to address gender-based violence³³.
55. There have been high profile female politicians in Sri Lankan political life, including three-time former Prime Minister Sirimavo Bandaranaike and her daughter, former President Chandrika Bandaranaike Kumaratunga³⁴. The first female mayor of Colombo was elected in March 2018³⁵. Legislative measures passed in 2017 to address female participation in the political process resulted in nearly 25% female representation at the last local elections in 2018-19³⁶.
56. District hospitals have mental health facilities and NGOs provide mental health support to women, including in Tamil populated areas³⁷. Legal aid and counselling for victims of gender-based violence, including through legal officers, is provided by the government³⁸. The Ministry of Women and Child Affairs operates a helpline available in Sinhala, Tamil and English to victims of gender discrimination³⁹. DFAT notes a source in Eastern Province as stating that support services for women there compared favourably or were even superior to services available in Colombo⁴⁰.
57. DFAT has noted local sources as indicating that there is social stigma attached to single women in Sri Lanka⁴¹. Traditional attitudes carry an expectation that women will marry and bear children by a certain age⁴². DFAT also indicates that the greatest issues were those faced by females who were previously involved with the LTTE, and this includes difficulties finding a partner. However, the female applicant is married, and that relationship appears stable.
58. I note that although the female applicant claimed that she also assisted the LTTE in a support role, she never claimed to have been detained authorities. She was able to go to the SLA camp with the village officer and obtain her husband's release. As noted above, I am not satisfied that her husband would be of interest to the Sri Lankan authorities because of his previous assistance to the LTTE. Given that there is no evidence that the authorities had any particular interest in the female applicant even at the conclusion of the civil conflict, I do not accept that they would have any interest in her or that she would suffer any stigma because of her involvement with the LTTE.
59. The applicant would also be returning to Sri Lanka with her husband. She would be returning to Sri Lanka as a married woman with the full rights of a citizen. She has not ever claimed or

³¹ Department of Census and Statistics (Sri Lanka), "Women's Wellbeing Survey – 2019", October 2020, 20201109211001

³² DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

indicated that she had previously faced any violence or abuse from her present husband, and indications are that he appears to be supportive of her and committed to her well-being.

60. Attitudes in Sri Lanka are also changing. DFAT notes sources as saying that divorce in Sri Lanka is more common today than in previous generations⁴³. There is also the country evidence cited above indicating that the authorities have made tangible efforts to address issues of gender discrimination and female participation in Sri Lankan society.
61. While there are still considerable issues and resourcing constraints, I also consider that the measures outlined above indicate a level of genuine commitment to addressing the challenges faced by women in Sri Lankan society. I have also considered the applicant's personal circumstances, such as the fact that she has a supportive male partner. I consider that she does not meet the profile of more vulnerable groups, such as female heads of household or former female LTTE combatants⁴⁴. As noted above, she has not made any claim that her current partner is or would be violent towards her.
62. The female applicant stated at her interview that she is suffering from depression and indicated that she was taking some medication related to her mental health.
63. DFAT states that Sri Lanka's health care system "has a long record of strong performance" and that Sri Lanka offers free universal health care⁴⁵. It does note that health outcomes are worse in the North and East, but attributes this to delays in rebuilding destroyed infrastructure and otherwise recovering from the effects of war⁴⁶.
64. I am mindful of the resourcing and infrastructure constraints in the Sri Lankan health sector, particularly in the North and East, that are noted above. Nonetheless, government spending on health has increased since the war⁴⁷. DFAT also notes that improving access to mental health services, particularly at the community level, is a government priority⁴⁸. District hospitals have mental health facilities and NGOs provide mental health support to women, including in Tamil populated areas⁴⁹.
65. DFAT notes local sources as saying that mental health issues carry a stigma in Sri Lanka and often elicit pity for those concerned⁵⁰. However, DFAT also notes that, overall, the stigma around mental health has "declined considerably", with Sri Lankans now accessing counselling services (where available) more freely than in the past⁵¹.
66. Moreover, I consider that both applicants are coping adequately with their mental health issues. The male applicant ran his own shop in Sri Lanka. At his interview, he indicated that he works as a [Occupation 1] here in Australia. The female applicant also indicated at interview that she has also begun [Occupation 1] work a couple of days per week. She has not presented any evidence of a formal diagnosis or indicated that she is currently receiving therapy. There is no evidence before me that she has required any sort of intervention or urgent treatment for her mental health issues in the past.

⁴³ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

67. As noted above, mental health has begun to receive more attention in Sri Lanka, with DFAT quoting local sources as suggesting that the health system has a strong mental health focus with a good cohort of trained counsellors⁵². DFAT previously reported that district hospitals have mental health facilities and NGOs provide mental health support to women, including in Tamil populated areas⁵³. The World Health Organisation (WHO) states that access to all 'required medicines' in the state system is given free of charge⁵⁴. DFAT also notes that Sri Lankan returnees from Australia are provided with cash to assist their return⁵⁵.
68. Notwithstanding the above, the health system faces significant resourcing pressures. Access to health services varies by regions and DFAT notes that health outcomes are lower in the North and East. However, I do not accept that the applicants currently require a significant level of support or intervention due to their health, including their mental health. Further, there is nothing before me to suggest that the applicants would be prevented from accessing such health services (including mental health services) as are available, if they became unwell.
69. I note that the applicants have claimed that if they lose the court case involving a land dispute, they will be left destitute. I note that the applicant has stated that the case is being fought on a no win, no fee basis. If that is true, a loss in court may see them lose the parcel of land but should mean that they are unlikely to incur significant out of pocket expenses. However, for the reasons set out above, I do not accept that the applicants are currently locked in a land dispute with a powerful Muslim politician. The male applicant works [here] in Australia and previously ran his own business in Sri Lanka. The female applicant noted her [medical condition] limited the work she could do, but that she had also recently begun [working] a couple of days a week. As noted above, DFAT also states that returnees to Sri Lanka are provided with cash to assist their return⁵⁶.
70. The applicants' noted at interview that they had not registered the birth of their son born in Australia with the Sri Lankan authorities. The applicants have not raised any specific claim to fear harm regarding their child's statelessness.
71. The citizenship laws of Sri Lanka indicate that any child born to Sri Lankan parents is entitled to citizenship, but that parents must register their child within one year of the birth for citizenship to be granted⁵⁷.
72. However, even if parents register their child after one year, citizenship will still be granted⁵⁸. The only disadvantage appears to be the application of a very modest fine (less than \$5) for each year the parents delay the registration⁵⁹. There is nothing to indicate that either the parents or the child would face any ongoing disadvantage, let alone harm, from delaying the registration.
73. The applicant claimed that if he returns to Sri Lanka, he would be detained and interrogated by the Sri Lankan authorities. He also claimed that he would be questioned by authorities about his extended stay in Australia, and that he would receive adverse attention because of previous LTTE involvement and his land dispute with [Mr A].

⁵² DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

⁵³ DFAT, "DFAT Country Information Report – Sri Lanka", 4 November 2019, 20191104135244

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Country of Origin Information Services Section (COISS), "Sri Lanka: CI170224170546729 – Citizenship Registration – Children born overseas to Sri Lankan parents", 16 March 2017, CR8DFDCEA88

⁵⁸ Ibid

⁵⁹ Ibid

74. The relevant sections of the Immigrants and Emigrants Act (I&E) Act make it an offence to depart Sri Lanka from other than approved port of departure, usually a seaport or airport⁶⁰. The applicant did not indicate in his entry interview that he had any involvement in crewing the vessel that brought him to Australia. There is nothing before me to suggest that he was involved in facilitating that journey. There is no evidence he has been charged with any immigration offences in Sri Lanka nor is there any evidence he ever faced such charges in Australia. DFAT indicates that the I&E Act carries penalties of up to five years imprisonment for more serious offences, although it is unaware of a prison sentence being imposed merely for illegal departure⁶¹.
75. DFAT also states that it is not aware of any mistreatment of returnees during the entry procedure on return to Sri Lanka⁶². In its 2020 report, the US Department of State does not cite any instances of abuse of returnees, stating simply that the “law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights”⁶³. It also notes that the government co-operated with the UNHCR in providing protection and assistance to “returning refugees”⁶⁴. As noted previously, the UK Home Office reports IOM as stating that claiming asylum abroad is not an offence, and also finds that there were no media reports of returnees being interrogated on such grounds⁶⁵.
76. DFAT confirms that although custodial sentences are theoretically possible, in practice a fine is invariably imposed for illegal departure instead⁶⁶. I note that there is no indication (nor have the applicants claimed) that they ever left Sri Lanka illegally prior to coming to Australia and that this would therefore be the applicants’ first offences. A guilty plea will attract a fine which can be paid by instalment and then the defendant is free to go⁶⁷. A plea of not guilty will usually lead to the grant of bail. Although bail may continue for many years, the end result is again usually the payment of a fine⁶⁸. The applicants have not given any indication that they would not plead guilty and accept a fine. Given that they have worked here in Australia, and would return with at least some cash assistance, I do not consider that the applicants would have any difficulty paying such a fine as was imposed.
77. The applicants did not indicate in their entry interviews that they had any involvement in crewing the vessel that brought them to Australia. There is nothing before me to suggest that they were involved in facilitating that journey. There is no evidence that they have been charged with any immigration offences in Sri Lanka nor is there any evidence they ever faced such charges in Australia. Although returnees may be interviewed to determine whether they have a criminal record, outstanding warrant or similar matters⁶⁹, neither applicant has indicated that they have ever committed or been charged with a criminal offence either in Australia or Sri Lanka.
78. The male applicant has claimed that he would be questioned by authorities about his extended stay in Australia, and that he would suffer harm as a result. As set out above, I do not accept that the applicant would be of any interest to the Sri Lankan authorities on return or that he is

⁶⁰ DFAT, “DFAT Country Information Report - Sri Lanka”, 23 December 2021, 20211223094818

⁶¹ Ibid

⁶² Ibid

⁶³ US Department of State, “Country Reports on Human Rights Practices for 2020 - Sri Lanka”, 30 March 2021, 20210401122412

⁶⁴ Ibid

⁶⁵ UK Home Office, “Report of a Home Office fact-finding mission to Sri Lanka”, 20 January 2020, 20200123162928

⁶⁶ DFAT, “DFAT Country Information Report - Sri Lanka”, 23 December 2021, 20211223094818

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Ibid

locked in a dispute with a powerful local figure. DFAT states that it is not aware of any mistreatment of returnees during the entry procedure on return to Sri Lanka⁷⁰. It also states that is not aware of returnees in 2021 being detained for matters other than illegal departure (such as former membership of the LTTE)⁷¹. Former asylum seekers, including Tamil asylum seekers, have been returned to Sri Lanka in significant numbers and there is nothing in the information before me to suggest that seeking asylum in Australia or spending an extended period elsewhere overseas has attracted the adverse attention of authorities⁷². DFAT also assesses that returnees do not face societal discrimination for having sought asylum elsewhere⁷³.

79. I also refer to the country information above that indicates even former LTTE members are not of adverse interest to the Sri Lankan authorities on return, and that barring an especially high profile, there may be some additional questioning but no evidence of mistreatment. The applicants have not had any altercations with the law or any sort of criminal record here in Australia. As noted above, I do not accept that the applicants are (or were) of adverse interest to the Sri Lankan authorities at the time of their departure and would not be of interest to them more than a decade after their departure from Sri Lanka.
80. I note that the applicants' agent has raised concerns with the applicants' departmental interviews being conducted via phone rather than via some type of videoconference. However, neither the agent nor the applicants have provided any specific examples of how this allegedly disadvantaged the applicants in the assessment of their claims. The applicants were represented by the Refugee Legal and have provided the delegate with additional statements post-interview. I note that although the applicants were provided information in their own language outlining the process for providing further information relevant to this review, they have not chosen to make any submissions to the IAA. I have noted concerns raised about the interview and the way concerns were put to the applicants under s.57 of the Migration Act. However, I am satisfied that the applicants received a fair hearing and that they have had the opportunity to raise any outstanding concerns with the IAA.
81. I am not satisfied that the applicants face a real chance of harm from the Sri Lankan government, including any branch of security or law enforcement, or from a powerful local figure or anyone associated with him. I am not satisfied that the applicants face a real chance of harm due to the fact that they departed the country illegally, any previous involvement with the LTTE, their imputed political opinions, health, capacity to subsist, ethnicity, or on any other account.

Refugee: conclusion

82. The applicants meet do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

⁷⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

Complementary protection assessment

83. Under s.36(2)(aa) of the Act, 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

84. 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.

85. 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.

86. I accept that the applicants will very likely be detained briefly at the airport on arrival, where they are likely to pay a relatively small fine or, alternatively, be released on bail, which may incur costs (and involve additional court visits or procedures)⁷⁴. Information from DFAT quoted above does not indicate that returnees are subject to mistreatment during entry procedures or during the brief period the applicants may be questioned on return before being released. The country information before me does not include any accounts indicating that there is any intention to inflict severe pain or suffering, or pain and suffering that could reasonably be regarded as cruel and inhuman, or extreme humiliation. Nor I am satisfied there is a real risk of the death penalty being carried out, the applicants being arbitrarily deprived of his life or tortured in these circumstances.

87. As noted above, I have considered whether the applicants are likely to be monitored on return and consider such a prospect to be remote. Even if such monitoring or questioning was to occur, I am satisfied that, while possibly unwelcome, it would not rise to the level of significant harm.

88. The applicants are also Tamil and would be returning to Eastern Province which has a majority Tamil population⁷⁵. The male applicant previously operated his own business in Sri Lanka (and worked [here]) and he has not indicated why he could not resume that work or do similar work for others.

89. In respect of the remainder of their claims I have otherwise found that the applicants do not face a real chance of any harm. Based on the same information, and for the reasons set out

⁷⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818

⁷⁵ Ibid

above, I find that the applicants do not have a real risk of suffering significant harm on return to Sri Lanka in connection with those claims.

90. After having regard to all of the applicants' circumstances, and the country information noted above, I am not satisfied that the applicants face a real risk of suffering significant harm on return to Sri Lanka.

Complementary protection: conclusion

91. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

92. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include dependent children.

93. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.