



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA22/10287

Date and time of decision: 13 June 2022 13:30:00
N Micallef, 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 Tamil who had lived as a refugee in India. He arrived in Australia [in] June 2013 as an unauthorised maritime arrival. He applied for an XE-790 Safe Haven Enterprise Visa (SHEV) on 31 August 2016 claiming to fear serious and significant harm in Sri Lanka.
2. After having interviewed the applicant on 15 February 2017 (the SHEV interview), a delegate of the then Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 24 February 2017. The delegate was not satisfied that the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Sri Lanka.
3. Upon review, the IAA affirmed the delegate's decision on 16 May 2017. [In] March 2022, by consent, the Federal Circuit and Family Court of Australia (Division 2) remitted this matter back to the IAA for reconsideration.

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) (the review material).

Submissions and New Information to the first IAA Review

5. On the first IAA review of this decision, the applicant's former representative provided to the IAA a brief signed statement by the applicant (the 2017 IAA submission), and several copies of news reports and country information, by email of 22 March 2017. Further country information was provided on 29 March 2017. The 2017 IAA submission reiterated the applicant's claimed links to the former LTTE and his fears of harm in Sri Lanka on that basis, and having no family in Sri Lanka where Tamils face ongoing persecution. These were matters already raised before the delegate and his submission and not new information.
6. On 20 April 2022 the applicant's current representative provided to the IAA a new written submission (the 2022 IAA submission), together with copies of country information reports published between 2019 and 2022. The 2022 IAA submission expressed the applicant's continued reliance on his former 2017 IAA submission as to why he disagrees with the delegate's refusal decision. The 2022 IAA submission also reiterated the applicant's claimed profile and referred to the new country information reports in support of submissions that Tamils, including Tamils with the applicant's claimed profile still continue to face harm and persecution and that the situation in Sri Lanka for them is deteriorating. Apart from referring to the new country reports and information, the 2022 submission does not otherwise raise any new claim or new information. The applicant further advanced that the 2022 IAA submission and country information were to address claims or matters the applicant presented which the Department overlooked - by which he referred to the updated country information. The 2022 IAA submission addresses this new country information in the context of the applicant's claims.

New Country Information - 2017

7. The 2017 country reports provided in the March 2017 emails from the applicant's then-representative were offered in support of the applicant's "*well-founded fear that it is not safe*

for him to go back to Sri Lanka". These country reports were not before the delegate when the visa decision was made, and are new information. They are copies of news articles and their translations, concerning Tamils in Sri Lanka and arrest of returned asylum seekers or of reports of harm and torture, from Ceylon News; ibctamil.com news; tamilsvoice.com. Also included was a long document purporting to be an English translation made in Erode India, of a document entitled 'Sri Lanka Military Article'. Of this compilation document, pages 1, and 5 to 7, are translations of news reports from ibctamil.com news covering interviews with the directors of human rights NGOs (sources copied at pages 19 and 24). The remainder pages appear to be irrelevant news headlines, an essay (or extract of) from an unnamed source to unnamed recipient on unknown date, and a long article said to be from Vavuniya Net concerning allegations of harm to Tamils including of being kidnapped for organ harvesting (of these 24 pages only a four-page original news source copy was provided).

8. The ibctamil.com news report dated 7 November 2016 (about a Human Rights Watch (HRW) report) and the purported translation article from Vavuniya Net dated 19 February 2017 predate the delegate's decision. The long essay (at pages 8 to 14 of the Sri Lanka Military Article) is undated. There was no explanation why this new information was not and could not have been provided to the delegate before her decision was made and I am not satisfied that s.473DD(b)(i) is met. The other reports post-dated the refusal decision and I am satisfied of s.473DD(b)(i) for these.
9. The tamilsvoice.com article reported on the arrest on arrival in Sri Lanka of unnamed Sri Lankan returnees from Australia to Sri Lanka. This is not credible personal information. The report was devoid of context or explanation about the alleged arrests. I am not satisfied that any of the elements of s.473DD(b)(ii) are met.
10. The remaining reports contain references to identifiable individuals. The applicant does not claim he is personally connected to or was involved with any of these individuals, nor has he explained if or how these reports amount to credible personal information which was not previously known and, which if known, may have affected the consideration of his claims.
11. Concerning the Sri Lanka Military Article, apart from the pages identified above as translations of source ibctamil.com news concerning NGO reports, I note that the remaining translated ibctamil.com screenshots are irrelevant news headlines, which I am not satisfied might have affected the consideration of his claims; and the remainder of the document essay including the Vavuniya Net passages are of unknown provenance and authorship, which I consider undermines any integrity in the capacity of this information to be believed. The ibctamil.com news article of 13 March 2017 identifies the director of International Truth & Justice Project (ITJP). The article is not relevantly about her but reports on general criticism of the Sri Lankan government concerning transitional justice and human rights for Tamils, and I am not satisfied amounts to personal information for the purposes of this consideration. The applicant has not satisfied me that new information of these articles is credible personal information which was not previously known and, which if known, may have affected the consideration of his claims under s.473DD(b)(ii). No exceptional circumstances are apparent to me to consider this new information, and I am not satisfied there are any. In any event, concerning the ibctamil.com article, I note in this regard that other material, including from the ITJP, addressing those issues are already in the review material before me. Section 473DD(a) is not met.
12. The Ceylon News article names Sri Lankan government politicians – in the context of the Sri Lankan foreign minister representing the government at a United Nations (UN) discussion on torture in Sri Lanka, and reports on the political pronouncements or views of other Sri Lankan Government politicians. The 2016 ibctamil.com news article identifies the HRW director,

interviewed about a HRW report published on Sri Lanka and also identifies alleged victims (including Tamils) of human rights abuse in Sri Lanka. It is possible these articles, which contain credible personal information, may have affected the consideration of the applicant's claims and I am satisfied of s.473DD(b)(ii). I note that a broad range of other reports addressing the relevant issues for determination in the review were already before the delegate, including as referred to her by the applicant's then representative, and including addressing the issues canvassed in these new reports (including the tamilsvoice.com article).¹ These new reports do not materially alter or clarify the country material before the delegate and referred to her by the applicant only very recently before her decision (and before me in the review material).² Significantly, I also note that these reports are now very old, and that more recent updated country reports are before me addressing the issues canvassed in these reports. Notwithstanding that s.473DD(b) is met for this new information, for the reasons given I am not satisfied there are any exceptional circumstances to justify considering any of this new information.

New Country Information - 2022

13. The 2022 country information reports provided by the applicant's current representative are said to meet s.473DD because they were not previously available to give to the delegate or to the IAA, and that they are critical to assessment of the applicant's claims, as the latest country information.³ It was also submitted that the basis of the court remittal of this matter back to the IAA, namely that the first reviewer conflated the concept of exceptional circumstances in s473DD with the discretion to obtain new information in s.473DC was reason to take into account the new 2022 IAA submissions and country information. I am not persuaded by this latter argument.
14. I note that five years have passed since the delegate's decision. I accept that these new country information reports were not and could not have been provided to the delegate before her decision was made, and I am satisfied that s.473DD(b)(i) is met in relation to all of these new reports provided.
15. The article from ABC News, *"UN labels Sri Lanka cremation of COVID-19 dead, including Muslims, a human rights violation"*, 26 January 2021 addresses the complaints of Muslims affected by the government's Covid-19 policies on cremation of Covid victims. The applicant is not a Muslim. The article does not contain or amount to personal information. It does not

¹ Including: Freedom from Torture, "Sri Lanka – Update on torture since 2009", 6 May 2016, CIS38A8012881; International Truth & Justice Project Sri Lanka ("ITJP"), "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; Ceylon News, "Torture in criminal investigation – an unwritten rule in Sri Lanka" - video, 9 December 2016; Ceylon News, "UN urges member states not to return Tamils back to Sri Lanka", 26 January 2017; United Kingdom Home Office (UKHO), "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77; Department of Foreign Affairs and Trade ("DFAT"), "DFAT Country Information Report, Sri Lanka", 24 January 2017, CISED50AD105

² Submissions sent to the delegate on 14 February 2017 and 21 February 2017

³ DFAT, "DFAT Country Information Report Sri Lanka", 23 December 2021 (DFAT Sri Lanka Report 2021); UKHO, "Country Policy and Information Note. Sri Lanka - Tamil Separatism", Version 7.0, 17 June 2021; Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of the Special Rapporteur on Promoting reconciliation, accountability and human rights in Sri Lanka", 9 February 2021, A/HRC/46/20; OHCHR Press Release, "Sri Lanka on alarming path towards recurrence of grave human rights violations – UN report", 27 January 2021; United Nations UN News, "Human Rights Council strengthens rights office probe into Sri Lanka's long civil war", 23 March 2021; Human Rights Watch (HRW), "Thousands March for Justice in Sri Lanka, Despite Ban", 9 February 2021; Committee to Protect Journalists, "Unidentified men attack residence of Sri Lankan Journalist Chanuditha Samarawickrama", 14 February 2022; Daily Mirror Online, "'White van culture' raises its head again: NPP Lawyers", 15 February 2022; ABC News, "Tamils fear ongoing persecution in Sri Lanka as Australia prepares to deport Biloela family", 4 September 2019; Justsecurity.org, "Tamils – and Justice – Can't Wait: The Need for Decisive UN Action on Sri Lanka", 19 February 2021; ABC News, "UN labels Sri Lanka cremation of COVID-19 dead, including Muslims, a human rights violation", 26 January 2021

otherwise address Tamils or the material issues before me. The accompanying submission does not refer to this article, other than it is included in the annexure 1 bundle of country information provided in support of the applicant's claims to have a well-founded fear of persecution in Sri Lanka. The applicant has not satisfied me that it is credible personal information not previously known which may have affected the consideration of his claims. I am not satisfied of s.473DD(b)(ii). Whilst s.473DD(b)(i) is met, given the content of the material, I am not satisfied there are any exceptional circumstances to justify considering this new information.

16. Concerning the remainder of the reports, they all refer to identifiable individuals, for example Sri Lankan government politicians, former leaders of the Liberation Tigers of Tamil Eelam (LTTE), Sri Lankan police or military officers, human rights abuse victims, journalists, activists, Tamil asylum seekers in Australia. The reports variously address the treatment of Tamils in Sri Lanka and returnees to Sri Lanka, including those with LTTE links, the changed government in Sri Lanka and the human rights situation in Sri Lanka. I am satisfied that these new reports contain credible personal information which was not previously known and, which if known, may have affected the consideration of the applicant's claims, and s.473DD(b)(ii) is met. I note the passage of time since the delegate's decision and that reports in the review material before me are now at least five years old, many older than that. I accept these new reports provide more updated information relevant to the issues for determination before me and are from credible sources. They are updates of reporting that had been relied upon by the delegate and referred to the delegate, including reports from Department of Foreign Affairs and Trade (DFAT), the United Kingdom Home Office (UKHO), HRW and UN. I am satisfied that there are exceptional circumstances to justify considering the new information of these new reports.
17. I have also obtained new information, namely the UKHO, "Report of a Home Office fact-finding mission to Sri Lanka", dated 20 January 2020, 20200123162928. This report, from a credible source, was not available to the delegate and it addresses issues concerning the situation for Tamils in Sri Lanka and returnee failed asylum seekers to Sri Lanka including Tamils. It supplements the 2021 report from the UKHO referred above. I am satisfied there are exceptional circumstances to justify considering this new information.
18. The 2022 IAA submission also referred to the DFAT "DFAT Country Information Report Sri Lanka", 4 November 2019, which was new information not before the delegate. However, contrary to the IAA Practice Direction, the applicant's representative did not provide a copy of this report. Consequently, I do not accept this new information. In any event I note that similar information relied upon by reference to that report was already in the 2017 DFAT report in the review material before me and consequently I have not obtained the 2019 report.

Interview requests

19. In the 22 March 2017 email to the IAA from his former representative, the applicant had requested that he "*have another interview with the department to provide further information on his refugee claim that had been rejected*". The applicant expressed hope his fear would be accepted and his protection claim reassessed. As the applicant was before the IAA for fast-track review of the decision, I take the request to have been intended to be for an interview before the IAA. The applicant was not interviewed by the IAA in the first review.
20. The IAA is bound by the fast-track review procedures under Part 7AA of the Act, to make its review by considering the review material given by the Secretary, and is under no obligation to get, request or accept any new information, although it has discretion to do so. The applicant

has had the opportunity to provide written submissions to the IAA addressing reasons for disagreement with the delegate's decision, or any presented claims or matters that had been overlooked. The 2017 IAA submission reiterated his claims and fears concerning Sri Lanka but other than referring to 'his refugee claim that had been rejected' did not point to any further information about his refugee claim not addressed before the delegate, nor specify any detail or aspect of his claims about which he had further information that he sought to be interviewed about. He gave no explanation why any such further information could not be advanced in the written submission or could only or preferably be presented at an IAA interview. I note that the applicant was represented throughout the SHEV application process by the same migration agent, including at the SHEV interview, in post-interview submission. The delegate questioned the applicant during the SHEV interview about, and he gave evidence about, each of his protection claims he had raised. He was advised at the conclusion of the interview that any further information provided before the decision would be considered. He gave no further information about his claims other than some country reports. In his 2022 IAA submission, apart from providing new country information discussed above, the applicant has not advanced any further information concerning his 'refugee claim that had been rejected'.

21. In the 2022 IAA submission, referring the DFAT Sri Lanka Report 2021 to the IAA as new information, the applicant's representative professed to "*assume that the IAA will be addressing the contents of the DFAT report with the applicant at an interview*". I take this also to be a request for an IAA interview. This was explained on the basis that the applicant cannot review the contents of the report himself because it is only in English and he requires an interpreter for immigration matters and he cannot advocate on his own behalf or address the DFAT report in its entirety. Again, I note that the applicant is represented before the IAA by immigration lawyers. He has availed himself of the opportunity to present written submission to the IAA, and has done so with detailed references to this DFAT report of 2021 and with submission as to its relevance to his claims. In these circumstances I am not satisfied that the applicant has not had full opportunity to review the report with professional advice and address the matters in it relevant to his claims. I have considered his submissions concerning this report.
22. In undertaking the review and assessing the protection claims I have considered whether an interview is necessary to discuss with the applicant his refugee claims, the DFAT Sri Lanka Report 2021 or any other information, but for all the reasons discussed above I have decided otherwise. In all the circumstances, I am satisfied that the applicant has had ample opportunity to put forward all his evidence and information concerning his refugee claims. I have determined not to exercise my discretion under s.473DC, and I have not invited any new information from the applicant.

Applicant's claims for protection

23. The applicant's claims from his 2016 SHEV application, and later statutory declaration and submission both provided on 14 February 2017, can be summarised as follows:
 - He is a Tamil and a Hindu from Kilinochchi District in Northern Province of Sri Lanka where he was born in [Year]. He grew up with his family there in [Location].
 - In the late 1980's his uncle and his cousin were involved in the LTTE. His cousin S., lived with his family and was an LTTE member. His maternal uncle, R., was a journalist for [a pro-LTTE newspaper]. R. frequently visited the family home.

- The Sri Lankan Army (SLA) were monitoring his family. The SLA, armed, searched their house one day when the applicant was about five years old, asking about S. They returned two days later to arrest S. When his mother tried to prevent this the applicant was thrown against a tree and injured, and S. ran away from the house. S. returned later that night, but it was no longer safe for him to live there, so he left.
- The SLA also later searched their house looking for uncle R. When his mother tried to prevent this the applicant's older brother was stripped naked and tortured by the SLA. His father was arrested on the way home and detained for two weeks and tortured. Uncle R came to visit them secretly at this time, but the SLA came to the house and arrested R., and he was jailed for six months and then released.
- The family moved to live elsewhere for safety. S. came to visit, at which time the Indian Army and EPRLF, whom the government had installed in charge of the Northern and Eastern provinces, came to the house to arrest S. The family and S. all ran away, and the Indian army shot after them, in which S. and some of his friends were shot dead. His family later left for India.
- He has lived as a refugee in India since the 1990s, with no citizenship there. He lived a poor and restricted life as a refugee, denied education and forced only into poor-paying labour jobs, subject to harassment and abuse by the Indian police.
- His uncle came to India by boat in 2010 to escape the atrocities in Sri Lanka. He did not stay long and returned to Sri Lanka with his wife, but they then went missing and disappeared.
- He will be harmed in Sri Lanka including being tortured or killed because of his Tamil ethnicity and origins, that he speaks only Tamil and his family left illegally. He knows no-one and has no relatives in Sri Lanka to help him. He has no Sri Lanka National Identity Card (NIC) or citizenship documents.

24. The applicant raised in the SHEV interview that his personal information was released in Australia in the 'data breach'. The Sri Lankan authorities will know about his details and claims here and that he made statements against the Sri Lankan government. He will be questioned and tortured.

Factual findings

25. The applicant has consistently maintained the claims of his identity and origins and that he and his family left the civil conflict in Sri Lanka to live in India in about 1990, where they remained living as refugees. His evidence and the documentary evidence he provided, including the family's Sri Lanka Refugees Identity Card and the Refugee Certificate and educational documents support these claims. I accept the applicant's identity is as claimed.

26. He claimed in the SHEV application form that he was a Sri Lankan citizen at birth, and that his parents were Sri Lankan citizens, although noted he was no longer sure of his status due to living many years in India. He elsewhere claimed at question 96 of the form that he is stateless. The applicant confirmed in the SHEV interview that his nationality is Sri Lankan and that he had no visa or citizenship rights in India. He did not pursue a claim to be stateless before the delegate, or before the IAA. I accept the applicant was born in Sri Lanka in Kilinochchi District, Northern Province to Sri Lankan citizen parents in [Year], and I accept and find that he is a Sri Lankan citizen. I accept that with his parents and siblings he left Sri Lanka in 1990 for India and thereafter lived in a Sri Lankan refugees camp in Tamil Nadu until he came to Australia in 2013.

I am satisfied and find that Sri Lanka is the applicant's receiving country for the purpose of this review. I accept the applicant and his family are of Tamil ethnicity.

27. The applicant's claims about why he left Sri Lanka and fears being returned there shifted and escalated, to the claims presented before the delegate, by late introduction of the claimed LTTE familial links with resulting targeting of his family by security forces. These claims were raised a few hours before the SHEV interview, in his statutory declaration and the pre-interview written submission to the delegate. Prior to this, the applicant's claims (the "prior claims") were that his family left Sri Lanka to flee the civil war, and they were victims of the civil war. He claimed his parents had experienced harm and threats from the authorities. He claimed he would be harmed or killed in Sri Lanka because he had been told this by his parents, and because he is Tamil, and because he knows nothing about Sri Lanka, knows no one there and was not sure of his citizenship status there and had no Sri Lankan identity documents. He had seen people who returned to Sri Lanka get killed and missing.
28. The new claims detailing the LTTE involvement of the applicant's uncle R. and cousin S. and resulting attention of the authorities and incidents of mistreatment of the applicant and his family members, were described in some detail in the statutory declaration; and then closely repeated in the SHEV interview that followed soon after it.
29. Although with more detailed reasoning than recorded by the delegate, I have below made the same findings concerning claims accepted and claims rejected as reached by the delegate.
30. I note DFAT reporting that over a hundred thousand Tamils escaped the war in Sri Lanka to India, and that the civil conflict was an era in which many Tamils, particularly in the north and east of the country, reported being monitored, harassed, arrested and/or detained by security forces.⁴ Country information also indicates that the authorities conducted general cordon and search operations during the war.⁵ That Tamils were targeted in such measures reflected not only that LTTE members and supporters were almost entirely Tamil, but also likely instances of discrimination in the application of emergency regulations and the *Prevention of Terrorism Act* (PTA), with LTTE support at times imputed on the basis of ethnicity. I consider the applicant's prior claims reflected the similar general experience of many thousands of Tamils who left Sri Lanka to avoid the war. And I consider that his added new descriptions of occasions when security forces searched the home and that his father was arrested and then released, and that his older brother (who was a male, Tamil teenager of LTTE-recruitable age) was viewed with LTTE suspicion to be consistent with that country information and the era and the general suspicions of and monitoring of Tamils. I also consider them consistent with the prior claims.
31. I have some concern with the new claims that the applicant's immediate family were under particular surveillance of, were personally targeted for harm, and remain of interest to, the Sri Lankan authorities, causing the disappearance of an uncle and aunt, because cousin S. was an LTTE member living in their home and Uncle R. was an anti-government LTTE journalist/sub-editor. That this is now the significant and fundamental reason for his claimed fear of return to Sri Lanka is difficult to reconcile with his prior claims up until the eve of the SHEV interview. Those prior claims encompassed no more than a generalised fear based on ethnicity and ethnically targeted incidents, and having left the country during wartime many years ago and

⁴ DFAT Sri Lanka Report 2017

⁵ United Nations High Commissioner for Refugees ("UNHCR"), "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8 (UNHCR Eligibility Guidelines 2012); Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345

knowing little about it or anyone in Sri Lanka anymore, and hearing of people who went missing after return.

32. The applicant's explanation in the SHEV interview, about why he had never at all previously mentioned these claims, concerned fear and uncertainty upon first arrival in Australia, about what to say in an interview or how to mention any LTTE involvement, having arrived from a long journey by sea to save his life, from India where people with LTTE involvement were sent to special camps. Whilst I accept this might explain omission to raise these claims in his early arrival interviews back in 2013, I do not accept that that also explains the significant omission of his now fundamental claims several years later in his application for refugee protection. Particularly as I note that the applicant was represented by a migration agent for advice and assistance in preparation of this SHEV application, as he was throughout the whole SHEV application process, including the same agent in preparing the new statutory declaration claims, and to its decision.
33. Challenged by the delegate in the interview that this did not explain their omission from his SHEV application, the applicant's only explanation was that *"I had problems, I was asked to disclose anything further, my life is depending on this and so I told this."* I consider this explanation to be unpersuasive. I do not consider this satisfactorily explains why, if the applicant genuinely feared harm for his life in Sri Lanka from claimed known family links to the LTTE and personal targeting of his family by the authorities, he did not raise these claims in his application seeking a protection visa in Australia in which he was assisted by a migration agent. I consider the late introduction of these detailed claims that his family were personally targeted for LTTE links due to cousin S. and uncle R. raises some credibility concern of embellishment and exaggeration in his statutory declaration of his prior claims.
34. In this regard, I note that the applicant claimed in his statutory declaration that in India, as a refugee, he was denied education and could not access higher education and was forced only into poor-paying labour jobs. But this is belied by his other evidence to the delegate that he completed high school education in a government school in Tamil Nadu, and then completed tertiary college education (in a fee-paying private college) gaining a Bachelor of [Subject] degree in [Specialisation]; and had had employment in India, including with a [company] [for] a period of time.
35. Having regard to the country information⁶, I accept that as Tamils, living in LTTE-associated Northern Province, in that era of civil war before the family left for India in 1990, the applicant's family were subjected to some harassment by security forces in Sri Lanka, including home checks, searches and questioning, and that the applicant's father and older brother were viewed with LTTE suspicion. I accept that his father was once detained by the SLA for about two weeks in 1989 or 1990 for questioning and was then released. I accept his father was physically mistreated during this time. I consider this was on the basis of imputation arising because they were Tamil males in the north. It is also consistent with the country information and the applicant's prior claims, and noting he became distressed in the interview when discussing security forces' treatment of his mother and brother, that the security forces may have threatened and physically or verbally mistreated the applicant and his mother and brother during incidents of house searching and questioning, which many Tamils experienced at that time, and I accept this occurred. It is also not implausible that the applicant had a

⁶ Including: UKHO, "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77

cousin who was in the LTTE. I am willing to accept that the applicant had a cousin. S., in the LTTE.

36. However, given the lack of any prior claim in his SHEV application of fear that connection to S. (or R.) created ongoing risk to the applicant or created adverse profile of concern for him with authorities in Sri Lanka if returned there, I have significant doubt about the claimed level of close connection to S., to his family or that the family had been marked with an LTTE profile or were under surveillance. I find it difficult to believe that if the applicant genuinely feared harm in Sri Lanka on such a basis that this would never have been mentioned in his SHEV application. It is difficult to believe he would never have mentioned as a harm he and his family had experienced and as a reason to fear return to Sri Lanka his claim that they were all shot at by military forces whilst fleeing from his home with LTTE members, in which event his cousin was shot dead. Moreover, I consider it far-fetched that soldiers shooting after a fleeing family would have shot only S. and two of his friends, and that no other of the applicant's family were shot. The applicant claimed that his family all returned home after his cousin was shot and killed. He agreed with the delegate's suggestion that they were harassed and monitored thereafter. I do not consider it credible, in that era, that on his claims that his family were targeted on account of their links to S. and that having fled from the military, from their home with LTTE members who were then killed, that none the family including his father were arrested or detained, or charged with any offences including under the *Prevention of Terrorism Act* (PTA), in the wake of this event, on return to that home. There was no such claim or indication. Whilst I accept that S. was shot dead in about 1990, I do not accept that it was in the circumstance claimed. I do not accept that S. was living with the family whilst he was an active LTTE member, nor that the family were under surveillance for this reason. There is no claim before me that S. had a high profile of senior rank or influence in the LTTE. I am not satisfied on any evidence before me that S. was any more than a low-level LTTE member.
37. In addition to the concerns discussed above, I note also the contradictory evidence given by the applicant about which uncle he claimed returned to and disappeared in Sri Lanka. Throughout his statutory declaration the applicant referred to R. as "my uncle". He claimed that in around 2010 "*my uncle could not bear the atrocities and could no longer stay in Sri Lanka and came to India by boat in 2010. He did not stay long and returned to Sri Lanka where he went missing with his wife*". However, in the SHEV interview the applicant stated that his journalist uncle, R., remains living in India; and then that it was a different maternal uncle, K., who had come over to India in 1990 at the same time as the applicant's family, who returned to Sri Lanka in 2011 and disappeared, with his wife. He said the written claim was an error. Although this was the "corrected" version of the statutory declaration, it too is problematic. The applicant's claims indicate on the one hand the disappeared uncle was only briefly in India before returning to Sri Lanka, yet on the other hand spent a considerable number of years there. I have concern at the explanation of error, particularly noting it was contained in a "corrected" version of claims. I do not accept this explanation. I do not consider the claim of an uncle and aunt having disappeared on return to Sri Lanka to be credible.
38. I also note that in the SHEV interview, the applicant was asked if anything had happened to his uncle, R., after R.'s release from claimed imprisonment following arrest (at the family home before they left for India in 1990), and what problems he faced after the end of the war. The applicant's evidence was that his uncle R. had remained living in Kilinochchi, and in the LTTE controlled area until the end of the war in 2009. He said that after the war ended, R. was harassed; as a journalist he was questioned and tortured as the authorities were looking for activists, so he left for India in 2010. I have concern at the credibility of this account in light of

uncle R.'s claimed LTTE profile in the context of the country information.⁷ The focus of the security forces at and after the end of the war in May 2009 was to identify all LTTE members and supporters, and a massive detention and screening program was conducted, including for those surrendering or captured from the LTTE controlled north at the end of the war when the government forces defeated the LTTE there. Many thousands of actual or suspected LTTE members and supporters were detained for lengthy periods for either rehabilitation or further investigation or charges under terrorism or criminal laws. People detained for rehabilitation included not just LTTE combatants but reportedly also anyone with links or affiliation or who had worked for the LTTE. Yet, despite the claimed targeting, there is no claim or evidence before me that uncle, R. was ever detained or sent for rehabilitation at or after the end of the war in the almost 12 months before he purportedly went to India. I find this considerably at odds with the country advice given the claims that R. worked as a journalist and sub-editor, since at least the late 1980's, on the LTTE newspaper which published pro-LTTE and anti-government articles, had remained living to the end of the war in the LTTE controlled north, and was known to the authorities to be LTTE. I do not find it credible, in that era, that the Sri Lankan authorities would simply harass and question R. (even with mistreatment), in order to find activists, if indeed R. had the profile claimed, and not detain or send him for LTTE rehabilitation.

39. Moreover, I also have concern regarding the claimed arrest of R. at the family home and targeting of the applicant's family because of his LTTE profile. The applicant claimed that the SLA searched his family home for R. (despite no claim that R. lived there) and tortured his brother. R. was not there, and the SLA arrested and detained the applicant's father on his way home. R's arrest occurred later when he came to visit the family during the detention of the father. It is difficult to believe that if R. was an LTTE journalist, targeted and being searched for at the applicant's family home by the authorities, that he would go to visit that family there, even in claimed secret, at this claimed time of heightened scrutiny of them by the authorities due to R., they having already, on the claims, been tortured and harassed and the applicant's father arrested because of R. I do not find these claims credible.
40. For the reasons discussed, I have significant concern with the credibility of the applicant's claims that his family was and remains particularly targeted by Sri Lankan authorities or any others because of LTTE family members. Like the delegate, I do not accept that the applicant's uncle R. had the profile claimed, and I do not accept R. was an LTTE member or LTTE journalist or sub-editor of [Newspaper] or otherwise had or has a profile of adverse concern to the authorities beyond that he was a Tamil male from the Vanni. Like the delegate, I accept that cousin S. was an LTTE member, killed in 1990. I do not accept that the applicant's family were targeted by any state or non-state actors because of S., but rather that this was on the basis of their ethnicity and location in LTTE areas at that time. I also do not accept the claim that the applicant's uncle K. (or any other uncle) and his wife went missing or were disappeared in Sri Lanka as claimed. I do not accept that the applicant's family were or are of adverse interest to any Sri Lankan authorities or others as claimed.
41. The applicant's SHEV interview evidence was that none his immediate family members were involved in the LTTE. Although he later stated that the reason his family had never returned to Sri Lanka was because they had been LTTE supporters, he then clarified that this was because they had given refuge to his uncle and his cousin. As discussed, I do not accept that R. was associated with the LTTE. I accept that S., an LTTE member, may have spent time in their home,

⁷ UNHCR Eligibility Guidelines 2012; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345; UKHO, "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77

but as discussed, I do not accept that the family were targeted as LTTE because of this. I accept that none of the applicant, his parents or immediate family members were involved in the LTTE, and I find they were not otherwise supporters of the LTTE.

42. I accept that having left Sri Lanka as a young child in midst of war, having heard from his parents and others and news media of wartime abuses and of reports that violence and harm still occur in Sri Lanka, the applicant has trepidation about return there. I accept that the applicant's immediate family members remain living in India. Although I have some doubt that he has no extended relatives at all remaining in Sri Lanka, I accept that having not lived in Sri Lanka for over 30 years the applicant does not have any close contacts or close family connections there.

Refugee assessment

43. 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

44. 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.

45. I have had regard to the applicant's submissions including to the delegate pre-interview and to the IAA. The pre-interview submissions made in 2017, and an email of country information reports to the delegate after the interview, referred to ongoing human rights abuses still being committed against Tamils in Sri Lanka, both Tamils generally and against former LTTE members and supporters and anti-government critics. In his 2022 IAA submission the applicant continues to rely on those submissions of continuing harm to Tamils and Tamils of the applicant's claimed profile. He also provided more recent country reports in support of this and his submission that the human rights situation in Sri Lanka, including for Tamils, is deteriorating.⁸ The country

⁸ DFAT Sri Lanka Report 2021; UKHO, "Country Policy and Information Note. Sri Lanka - Tamil Separatism", Version 7.0, 17 June 2021 (UKHO Tamil Separatism report v.7 June 2021); OHCHR, "Report of the Special Rapporteur on Promoting

information referred to the delegate in 2017 is now quite dated, and I place greater weight on the more recent reports before me in my assessment.

46. The applicant claimed he will be seriously harmed in Sri Lanka on the basis of his actual or imputed LTTE political opinion, or profile as an LTTE member or supporter. The applicant was not an LTTE member or supporter in Sri Lanka or anywhere else. He left Sri Lanka aged only about [Age] years old in 1990 and he was not in Sri Lanka during the remaining years of the war.
47. I find that if the applicant returned to Sri Lanka it would be as a Tamil Hindu male with no personal history of adverse concern or interest to the Sri Lankan authorities or any other groups or persons.
48. I accept that during the civil conflict between the Sri Lankan government and the LTTE and in its aftermath many Tamils, particularly in the formerly LTTE-controlled areas of the north and east, faced considerable violence, discrimination and harassment. This was an era of heightened suspicion of Tamils, particularly in or from those areas, and their potential to be LTTE members or supporters.⁹ I accept that like many Tamils the applicant's family experienced some incidents of harassment and threats, house checks, and arrest and detention of the applicant's father, and physical mistreatment. However, the country advice before me¹⁰ indicates that since the end of the war and the defeat of the LTTE, the government has effective control across all of Sri Lanka. The security situation significantly improved, and armed militia groups are no longer prevalent. Wartime security checkpoints on major roads have been removed. There is no longer the prevalence and level of security checking of Tamils as was the case during the war. The election of the Sirisena government in 2015 led to greater political cooperation, reform and improvements in state institutions. The improvement in the security situation resulted in a decrease in Tamils held in detention, notwithstanding that some Tamils have remained in prolonged detention under the PTA since the war. Moreover, whilst reports of human rights abuses continued to be made to bodies such as Freedom from Torture, the ITJP and UN Special Rapporteurs, the incidence of torture, extrajudicial killings and disappearances of Tamils has significantly decreased since the end of the war.¹¹
49. I accept that many Tamils feared the change of government in Sri Lanka in 2019, to one led by President Gotabaya Rajapaksa, who was Defence Minister in the former Rajapaksa government

reconciliation, accountability and human rights in Sri Lanka", 9 February 2021, A/HRC/46/20 (OHCHR Special Rapporteur Report 9 February 2021); OHCHR Press Release, "Sri Lanka on alarming path towards recurrence of grave human rights violations – UN report", 27 January 2021; United Nations UN News, "Human Rights Council strengthens rights office probe into Sri Lanka's long civil war", 23 March 2021; Human Rights Watch (HRW), "Thousands March for Justice in Sri Lanka, Despite Ban", 9 February 2021; Committee to Protect Journalists, "Unidentified men attack residence of Sri Lankan Journalist Chanuditha Samarawickrama", 14 February 2022; Daily Mirror Online, "'White van culture' raises its head again: NPP Lawyers", 15 February 2022; ABC News, "Tamils fear ongoing persecution in Sri Lanka as Australia prepares to deport Biloela family", 4 September 2019; Justsecurity.org, "Tamils – and Justice – Can't Wait: The Need for Decisive UN Action on Sri Lanka", 19 February 2021

⁹ Including: Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345

¹⁰ Including: DFAT Sri Lanka Report 2017; United States Department of State (USDOS), "Sri Lanka – Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320 (USDOS Sri Lanka Report for 2015); Human Rights Watch, "World Report 2016: Sri Lanka – Event of 2015"; Ceylon News, "Sonya says torture, sexual abuses still ongoing in Sri Lanka", 1 March 2016; DFAT Sri Lanka Report 2021; OHCHR Special Rapporteur Report 9 February 2021

¹¹ Including: DFAT Sri Lanka Report 2017; UKHO, "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77; Ceylon News, "UN urges member states not to return Tamils back to Sri Lanka", 26 January 2017; Ceylon News, "Sonya says torture, sexual abuses still ongoing in Sri Lanka", 1 March 2016; Freedom from Torture, "Sri Lanka – Update on torture since 2009", 6 May 2016, CIS38A8012881; ITJP, "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; DFAT Sri Lanka Report 2021; UKHO, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928 (UKHO FFM Report 2020)

of his brother, Mahinda, which presided over the defeat of the LTTE and who are accused of many war-time atrocities. I accept there has been concern expressed by many minority groups and civic and humanitarian groups about a winding back of reforms and increasing anti-Tamil (and anti-minority) and pro-Sinhalese-Buddhist sentiment and rhetoric in Sri Lanka under this new government, and its increasingly centrist authoritarianism and appointment of military officials, including those with war-abuse allegations against them, to government or senior or administrative posts.¹² I accept that the indications are that under this government, reform of the PTA and accountability for war-time abuses and disappearances, hoped for by many Tamils, will likely not occur; and that there has been disappointing reversal of emblematic measures of ethnic reconciliations, such as cancellation of the previously welcomed singing of the national anthem in Tamil at Independence Day. However, I also note that Tamils maintain political influence and inclusion in the political dialogue in Sri Lanka, with numerous Tamil political parties, and with no constitutional, legal or other restrictions to prevent minorities from participating in politics.¹³ Whilst the overall numbers of Tamil members of parliament (MPs) have slightly reduced after the recent elections and change of government to 27 Tamil MPs, down from the 29 Tamil MPs in parliament during the Sirisena government, notwithstanding this decline, there is a Tamil cabinet minister and two Tamil state ministers.¹⁴ Whilst reform and reconciliation that was ushered in under the former Sirisena government has not been complete and issues of concern remain, I find that in the years since the end of the war there was substantial improvement in Sri Lanka both generally and for Tamils. Since the elections of President Gotabaya Rajapaksa and the coalition Sri Lanka People's Freedom Alliance (SLFPA) there have been reports of increasing repression of dissent and government criticism.¹⁵ However, for reasons to be discussed below, I am not satisfied that this is targeted at, or systemically affects Tamils generally or Tamils with the applicant's profile.

50. Significantly, it is to be noted that the security concerns of the Sri Lankan authorities have shifted since the applicant and his family left Sri Lanka. The weight of country advice before me indicates that it is no longer the case that imputation of LTTE support or opinion would arise merely on the basis of ethnicity or origins or being a Tamil male from Northern Province. Such a profile does not, without more, suffice to attract international refugee protection. The country information also does not support that being a Tamil male from Northern Province who lived since childhood as a Sri Lankan refugee in Tamil Nadu would without more cause any Sri Lanka authorities to impute the applicant to be an LTTE supporter or activist or to have any adverse profile.
51. Country advice indicates that the security interest of the Sri Lankan authorities is no longer concerned with Tamils with mere old familial links to the LTTE, but is focussed on activists, including in the diaspora, who are or are perceived to be currently working to establish Tamil Eelam in Sri Lanka and thereby a threat to the integrity of the Sri Lankan state, or committed to reviving the LTTE.¹⁶ To this end the Sri Lankan authorities rely on sophisticated intelligence on former LTTE members and supporters and separatist activists, in Sri Lanka or abroad, including a database list of people to "stop" (for arrest for outstanding arrest warrants/court orders) or "watch" (for people of existing profile of adverse interest, including for suspected separatist or criminal activities, sufficient to arrest after surveillance, or otherwise to monitor).¹⁷ The applicant was never an LTTE member or supporter. There is no claim or evidence before me

¹² Including: OHCHR Report 27 January 2021; DFAT Sri Lanka Report 2021; Justsecurity.org, "Tamils – and Justice – Can't Wait: The Need for Decisive UN Action on Sri Lanka", 19 February 2021

¹³ DFAT Sri Lanka Report 2021

¹⁴ DFAT Sri Lanka Report 2017; DFAT Sri Lanka Report 2021

¹⁵ Including: DFAT Sri Lanka Report 2021; OHCHR Special Rapporteur Report 9 February 2021

¹⁶ DFAT Sri Lanka Report 2021; UKHO Tamil Separatism report v.7 June 2021

¹⁷ DFAT Sri Lanka Report 2021; UKHO Tamil Separatism report v.7 June 2021

that he supports or is an activist for Tamil separatism, or has ever joined or associated with or had any form of involvement in any pro-Tamil separatist or political groups or activities in India or in Australia, or that he has any relevant criminal history. I am not satisfied the applicant would be on any stop or watch list in Sri Lanka or would be a person of concern.

52. I acknowledge there have been reports to the ITJP that family members of former or suspected former LTTE members have been subject to harassment and detention in Sri Lanka.¹⁸ DFAT is unable to verify these claims, but understands that close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring. A Human Rights Activist told the UKHO fact finding mission (FFM) that some family members may be harassed if the police are looking for someone who has fled abroad. And whilst some LTTE cadres may continue to be monitored, the UKHO reporting indicates this is more particularly for ex-cadres with criminal connections, or otherwise for prominent LTTE sympathisers who actively support the LTTE or raised funds for them in the past, and whose activism or background indicate a significant role in current Tamil separatism.¹⁹
53. I am not satisfied on any evidence before me that any of the applicant's family members have any such a profile. His cousin S. was a low-level LTTE member. Moreover, S. died more than 30 years ago. I am not satisfied S. is wanted by any Sri Lankan authorities. None of the applicant's other family members were involved in the LTTE or were LTTE members or supporters. His family members left Sri Lanka with the applicant to India more than 30 years ago and were not present during the war thereafter. There is no claim or evidence before me that they provided funds to the LTTE from overseas or have engaged in any Tamil-separatist activities or groups in India, and I find they have not.
54. The applicant expressed concern in his submissions about the uncertain and deteriorating situation in Sri Lanka for Tamils and that disappearances, torture and human rights abuses continue to occur and many Tamils fear return to Sri Lanka, as he does. In its FFM to Sri Lanka conducted in late 2019 the UK Home Office spoke with a range of agencies and informed sources about conditions and the security situation in Sri Lanka, particularly for Tamils, including UNHCR, IOM, international and local human rights bodies and journalists, and non-government organisations, in addition to official Sri Lankan sources. I also take into account that sources of this reporting included politicians from the Northern Province and from the Tamil National Alliance. Regarding the treatment of Tamils, the FFM report noted that since the end of the civil war the focus of the Sri Lankan government has changed, and most sources noted that Tamils are not specifically targeted and do not suffer persecution just for being Tamil but that "certain Tamils may be subject to closer scrutiny" indicating that these would be political activists and journalists. I find this consistent with the more recent reporting before me referred by the applicant. This indicates that whilst Tamils are disproportionately monitored and harassed by security forces, this is not all Tamils or ordinary Tamils generally; and the reports of harassment or detention or human rights abuses including torture or other extra-legal violence, largely concern those with profiles for being political activists, journalists, lawyers, human rights defenders, particularly when associated with sensitive matters, victims of and campaigners for accountability for wartime abuses, and former or suspected former LTTE members (with DFAT observing a higher risk of this for high-profile ex LTTE members and the families of those who remain wanted) and activists for separatism, and drug traffickers.²⁰

¹⁸ Cited in DFAT Sri Lanka Report 2021

¹⁹ UKHO FFM Report 2020; UKHO Tamil Separatism report v.7 June 2021

²⁰ Including: UKHO FFM Report 2020; UKHO Tamil Separatism Report v7 2021; DFAT Sri Lanka Report 2021; OHCHR Special Rapporteur Report 9 February 2021; Committee to Protect Journalists (CPJ), "Unidentified men attack residence of Sri Lankan Journalist Chanuditha Samarawickrama", 14 February 2022; Daily Mirror Online, "'White van culture' raises its head again: NPP Lawyers", 15 February 2022

The article relied upon by the applicant in support of his concern, apart from citing historical reporting by ITJP of torture complaints, indicated that the person reporting being targeted by police for questioning and harassment was a Tamil activist and political organiser.²¹

55. The applicant does not have any such of these profiles.
56. The applicant submitted that previous reporting by DFAT that monitoring and harassment of Tamils in day-to-day life had significantly decreased no longer appears in its 2021 report, which observed that surveillance of Tamils in the north and east continues.²² I am not satisfied that the slightly changed wording by DFAT amounts to a new elevated assessment of increased risk for Tamils generally. DFAT did note in its recent 2021 report, consistent with the above profiles of those who attract adverse interest of the authorities including for monitoring, that those most likely to be monitored or targeted for surveillance and questioning are people associated with public gatherings and protests, and associated with politically-sensitive issues, including those related to the war, such as missing persons, land release and memorialisation events. Moreover, DFAT's indication of the generally reduced monitoring of Tamils, and the profiles of those more particularly at risk of this is also echoed in the UKHO FFM report and other credible recent reporting.²³ DFAT reported that monitoring included being photographed at public gatherings and protests, and that physical violence against those being monitored is not common. Tamils defying bans on commemorating LTTE leader Prabhakaran's birthday or Maveerar Naal, or displaying LTTE or Prabhakaran images may also come to adverse attention. More recently Tamils have been arrested, some under the PTA, for allegedly defying such bans, and breaching Covid-19 quarantine restrictions against end of the war commemorations in the north and east.²⁴ There is no claim or indication before me that the applicant has engaged in any such activities in Australia, and I am not satisfied he has any interest in such issues or that he would engage in any such activities in Sri Lanka, as I find he has no real interest in such issues. DFAT stated that it was not aware of returnees from Australia being detained under the PTA.
57. Contrary to assertion in the 2022 IAA submission, DFAT does not report that abduction of Tamils is common, including from 'white van abductions', rather it acknowledged that this occurred during the war and in the period after. Even for people with the adverse profiles discussed above, the country information does not support that 'white van' disappearances or extra-legal violence are common, although legal mechanisms such as warrants, seizures and disinformation campaigns are reportedly used to suppress dissent.²⁵
58. Reports commonly indicate that criminal suspects detained under arrest, or imprisoned, might be mistreated to extract confession, as a routine tool of policing, and that torture is common, and was particularly so in and after the civil war of Tamils suspected of national security threat. Whilst human rights groups report that instances of torture of Tamils have continued since the end of the war, overall, the country information indicates that the risk of torture, and its brutality, has decreased since the end of the war and DFAT assesses that Sri Lankans face a low risk of torture overall.²⁶

²¹ ABC News, "Tamils fear ongoing persecution in Sri Lanka as Australia prepares to deport Biloeala family", 4 September 2019

²² See: DFAT Sri Lanka Report 2017

²³ See also: OHCHR Special Rapporteur Report 9 February 2021; UKHO Tamil Separatism Report v7 2021

²⁴ DFAT Sri Lanka Report 2021

²⁵ DFAT Sri Lanka: Report 2021; see also UKHO FFM Report 2020; OHCHR Special Rapporteur Report 9 February 2021

²⁶ Including: DFAT Sri Lanka Report 2017; UKHO, "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77; ITJP, "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; Ceylon News, "UN urges member states not to return Tamils back to Sri Lanka", 26 January 2017; Ceylon

59. DFAT assesses that ordinary Tamils living in the north and east of Sri Lanka are at low risk of official harassment. Although a significant military presence remains in the north, and is involved in economic activities, military involvement in civilian life has decreased overall since the end of the war. As noted, major checkpoints were removed in 2015. Some were set up, then later removed after the Easter Sunday 2019 terrorist attacks (primarily focussed on the Muslim population). Some roadblocks have been re-established (reportedly more common in the north and east than in Colombo); however, DFAT reported these were in response to COVID-19 restrictions and for counter drug-trafficking measures. I note DFAT's observation that rising religious and ethnic tension in the past few years from the Sinhalese majority has been with the Muslim minority population, particularly since the 2019 Easter Sunday terrorist attacks, which is echoed also in other credible reports before me. Many of the recent PTA arrests have been of Muslims, either for suspected association to the terrorist attacks of 2019 or other activities of dissent.
60. DFAT assesses that non-Muslim Sri Lankans, including Tamils, face a low risk of official or societal discrimination based on ethnicity or caste, including in their ability to access employment or housing. Moreover, DFAT assesses that Tamils' under-representation in public sector employment was largely the result of language constraints and disrupted education because of the war. Monolingual Tamil-speakers can have difficulty communicating with authorities and many Sinhalese public servants do not speak Tamil.²⁷ The government has taken steps to address language barriers faced by Tamil-only speakers, with incentivising public servants to become proficient in Tamil and Sinhala (the two national languages), and making English a third language of communication throughout Sri Lanka, and planned in 2021 to recruit 2000 Tamil speakers to the police force in the north and east. The applicant had claimed that he speaks only Tamil. However, I note that he has been living in Australia for the last nine years and had employment [here], and he demonstrated some understanding of English in the SHEV interview. Whilst it is possible the applicant does not speak Sinhalese, I am not satisfied that he would be unable to communicate with any Sri Lankan official such that his capacity to subsist would be threatened or that he would otherwise face a real chance of harm. I am not satisfied there is any real chance that he would be denied accommodation or shelter or access to basic services or employment or means of earning a livelihood on the basis of his ethnicity or profile.
61. The applicant expressed concern about confiscation of Tamil lands and resettlement of Sinhalese in Tamil areas. Reportedly a large majority of the Tamil lands seized by the military during the war have been returned; although concerns remain that it retains some important agricultural and fishing land; and DFAT reported that some activists have claimed that recent Covid-related road-blocks are the military again acquiring private land.²⁸ There are also reports that some Sinhalese resettled after the war, with government assistance, in the north and east, and of the construction of Buddhist statues or temples in non-Buddhist populated areas, with reports that these are then used to claim that land as Buddhist. Whilst some Tamils may have concern that this could change the demography of their local area, DFAT reports that it is unable to verify that Sinhalese settlers received preferential treatment to establish businesses in the north and east. There is no claim or indication before me that any of the applicant's family or their lands have been affected by military acquisition or Sinhalese settlement. Moreover, DFAT reports that the Constitution of Sri Lanka provides for freedom of religion and freedom for public and private worship, and recognition of religious holidays, including Hindu,

News, "Sonya says torture, sexual abuses still ongoing in Sri Lanka", 1 March 2016; Freedom from Torture, "Sri Lanka – Update on torture since 2009", 6 May 2016, CIS38A8012881; DFAT Sri Lanka Report 2021; UKHO FFM Report 2020

²⁷ DFAT Sri Lanka Report 2021

²⁸ DFAT Sri Lanka Report 2021; UKHO FFM Report 2020

and freedom to study at Hindu schools. There have been reports of extremist Buddhist groups attacking or vilifying or impeding minority religions and their practice. But these primarily target Muslims and evangelical Christians.

62. The country advice does not support, and I am not satisfied that the applicant's ethnicity, origin from Northern Province, connection to any of his family members, including S., and or having lived as a refugee since childhood in Tamil Nadu, India would cause the applicant to be perceived to be an LTTE member or supporter or to be a committed activist for Tamil Eelam on return to Sri Lanka now or in the reasonably foreseeable future. I am not satisfied that for any of these reasons he faces a real chance of being imputed with any adverse profile or political opinion, or being arrested or abducted or detained or monitored or tortured or sent to rehabilitation or otherwise harmed on such a ground. The applicant has no profile of adverse concern to any Sri Lankan authorities or other groups or persons and I am not satisfied that there is any real chance that he would come to any adverse interest in Sri Lanka if returned now or in the reasonably foreseeable future. Having considered the applicant's profile and circumstances and the country advice, I am not satisfied that the applicant would face a real chance of harm in Sri Lanka on return now or in the reasonably foreseeable future for reason of any or all of his ethnicity, religion, language, origins, or family background or relationships.
63. As the applicant has no passport, any return to Sri Lanka will likely be on temporary travel documents (TTD) issued by the relevant Sri Lankan consular mission in Australia.²⁹ I accept the applicant may be considered a (Tamil) failed asylum seeker on return to Sri Lanka.
64. The IAA submissions advance that he will be unable to account for his lengthy time living abroad in India and Australia, and his status as a failed asylum seeker who departed illegally will increase his risk of persecution and adverse scrutiny. Failed asylum seeker returnees to Sri Lanka on TTD are questioned and processed by immigration and police authorities on arrival at the airport in Sri Lanka to confirm identity and checked against immigration, intelligence and criminal databases for any outstanding warrant or criminal proceedings or terrorist background. Country advice indicates the interview usually is brief, and any questioning or further investigation beyond this is only reasonably likely to occur if the person is already on a database list of people to "stop" (for arrest for outstanding arrest warrants/court orders) or "watch" (for people of existing profile of adverse interest sufficient to arrest after surveillance or otherwise to monitor), has a criminal convictions record or otherwise arouses suspicion of immigration officers, or for those referred to the airport police for further questioning and arrest procedure when immigration records indicate they departed Sri Lanka illegally.
65. DFAT reports that illegal departure from Sri Lanka (including by irregular boat passage or without passport as the applicant did) is an offence under the *Immigrants and Emigrants Act (1948)*, carrying penalties of imprisonment and fine. The minimum age of criminal responsibility in Sri Lanka is 12 years old. On the evidence that the family departed Sri Lanka in 1990, indicated by the Family Refugees card, the applicant was only about [Age] years old when he left Sri Lanka. He was not of an age of criminal responsibility. I do not accept that he will be investigated or charged under the I&E Act and am not satisfied that he faces any real chance of arrest, detention or prosecution for the manner of his departure from Sri Lanka.
66. I note the applicant's claim that he was affected by the 'data breach', accepted and confirmed by the delegate as the departmental leak on 31 January 2014 of personal information of people then in immigration detention in Australia. I accept this claim. He claimed to fear that because of this leak, the Sri Lankan government or CID will know of his protection claims in

²⁹ UKHO FFM Report 2020; DFAT Sri Lanka Report 2021

Australia and will question and torture him for speaking against the Sri Lankan government. The applicant discussed these claims in the SHEV interview. In response to the delegate putting to him that country information did not support that he would be targeted in any way in Sri Lanka on the basis of the data breach or for applying for asylum in Australia, the applicant said he had heard from friends and seen in social media that as a result of the information leak some people returned to Sri Lanka from Australia had been questioned by CID and taken away. It is possible that Sri Lankan authorities may have accessed or seen personal identifying information of the applicant leaked in the data breach. Even if they have done so, and inferred or came to know that the applicant has been in Australia since 2013 and has raised claims against Sri Lanka in seeking asylum protection in Australia, I consider such inferences would be available to be, and would likely be drawn by Sri Lankan authorities in any event from the circumstances of his return to Sri Lanka after failing to secure asylum here, including that he had lived for many years in India as a Sri Lankan refugee.

67. I am not satisfied any country information before me supports that returnees to Sri Lanka are targeted or taken away by CID (or any other Sri Lankan authorities) or harmed as a result of the data breach or on the basis of claiming refugee protection from Sri Lanka in Australia or living as a refugee in India, and the applicant has not pointed to any. It is not an offence to seek asylum outside Sri Lanka, and length of time spent abroad by a failed asylum seeker was not of concern to authorities – the International Organization for Migration (IOM) reported to the UKHO FFM that the only concern of the authorities was whether there were criminal offences committed in Sri Lanka.³⁰ The IOM indicated that questioning of returnees about activities abroad no longer occurred. Independent sources informed the UKHO FFM they were not aware of ordinary Tamils being targeted on return to Sri Lanka. Moreover, the UKHO reported that the Sri Lankan authorities do not regard the entire cohort of the Tamil diaspora as either holding separatist views or being politically active in any meaningful way - as discussed, the concern of the authorities is with those who are of interest for their committed activism or whose existing profile raises such perception.³¹ The applicant has no such profile and has not been involved in any activities or groups in India or Australia that would cause or lead to any such imputation arising. Moreover, DFAT understands that most returnees, including failed asylum seekers are not actively monitored on an ongoing or long-term basis, and is not aware of returnees from Tamil Nadu being subjected to monitoring or harassment. Whilst some Tamils might be monitored on return, the weight of the country advice before me indicates the chance of this arising, including for Tamil returnees, depends upon their profile of risk. Even if it may be that some Sri Lankan authorities have seen personal information of the applicant in the data breach back in 2014, I am not satisfied there is a real chance this leak would cause any Sri Lankan authorities or any other groups to impute the applicant to have any profile of adverse concern, including for LTTE links or Tamil separatism, or would increase the chance of any such imputation or any other adverse profile of concern arising to him on his profile and background circumstances.
68. I am not satisfied that the country information before me supports that any of the applicant's circumstances as a Tamil failed asylum seeker, who left Sri Lanka illegally as a young child, and lived in India and then Australia for many years even considered with the data breach, are factors that would cause any Sri Lankan authorities or any other groups to impute the applicant to have any profile of adverse concern, including for LTTE links or Tamil separatism, or would increase the chance of any such imputation arising to him on his profile and background circumstances.

³⁰ UKHO FFM Report 2020, citing the International Organization for Migration

³¹ UKHO Tamil Separatism Report v7 2021

69. I accept the applicant may face a brief period of questioning at the airport on return to Sri Lanka under the standard returnee processing procedures. DFAT's understanding is that such detainees do not face mistreatment during this processing at the airport.³² I do not accept that the applicant will be questioned in Sri Lanka, whether in airport processing or after return, about protection claims he raised in Australia. Even if briefly asked about his time lived abroad, which chance I consider to be no more than remote on the country information, I am not satisfied the applicant would be unable to account for himself. I am not satisfied that he faces a real chance of being arrested or abducted or disappeared or mistreated or being subjected to monitoring or otherwise harmed as a result of being a failed Tamil asylum seeker who departed Sri Lanka illegally, and or having lived in India and Australia for an extended time, and or as a result of the data breach, whether at the airport or after release from the airport, by CID or any Sri Lankan authorities or other persons.
70. I accept that the applicant has no close family contacts in Sri Lanka on return, and will also need to apply for his identity documentation, including NIC, having left Sri Lanka too young to be issued with one. DFAT reports that identity documents can be sought from the relevant Sri Lankan consular mission abroad, but that the NIC can only be obtained within Sri Lanka.³³ Some returnees, particularly if returning without UNHCR or IOM assistance, might experience some delay in obtaining identity documentation, which facilitates access to social welfare schemes and public healthcare and ability to open bank accounts and find formal employment. Nevertheless, given the country advice discussed above, that TTD are issued to Sri Lankans to return to Sri Lanka, and are used to then confirm their identity and (any) criminal histories on arrival, I am not satisfied that with TTD the applicant will be unable to prove his identity and citizenship in Sri Lanka until he obtains his NIC; and I am not satisfied that any delay in obtaining an NIC would be prolonged. Moreover, any delay in obtaining necessary documentation would be due to bureaucratic inefficiencies, according to DFAT. There is no indication before me that there is any official discrimination against failed asylum seekers to delay or impede access to, or operating to deny access to, any necessary documentation or services, nor that he would be denied access to healthcare, accommodation or means of subsistence in any private capacity whilst awaiting his NIC. The government provides services to assist Sri Lankans affected by the war or tsunami in obtaining or replacing key identity documents they may lack. I am not satisfied that there is a real chance the applicant will be refused or denied access to necessary basic services, including healthcare, even if there is any delay in obtaining an NIC, and moreover, I am not satisfied that any such delay would amount to serious harm for the applicant.
71. I accept the applicant may face some challenge reintegrating into a culture and society he left as young child, and doing so without his close family. I acknowledge there are poorer economic conditions in the north and east of Sri Lanka, should he choose to return there; however, I note the applicant is an educated man, including to tertiary level with a Bachelor of [Subject] in [Specialisation], and has work skills and experience, both in India and in Australia. He has demonstrated his ability to adapt to a foreign land on his own without his close family in Australia, and there are no personal impediments apparent before me to indicate the applicant would be unable to support himself and secure accommodation or employment, or that his capacity to subsist would be threatened. I am not satisfied that the applicant will have a profile of those who attract some societal mistrust from being subject to official surveillance, or of receipt of financial reintegration assistance which can attract some societal resentment, noting failed asylum seekers receive only limited such assistance.³⁴ DFAT understands that societal

³² DFAT Sri Lanka Report 2021; see also UKHO FFM Report 2020; UKHO Tamil Separatism Report v7 2021

³³ DFAT Sri Lanka Report 2021

³⁴ Ibid

discrimination is not a major concern for returnees, including failed asylum seekers and assesses it is a low risk. I am not satisfied the applicant would face a real chance of harm on this basis on return to Sri Lanka in the reasonably foreseeable future.

72. Having considered all the aspects of the applicant's profile and circumstances, I am not satisfied the applicant has a well-founded fear of persecution in Sri Lanka on any or any combination of his claims.

Refugee: conclusion

73. 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

74. 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

75. 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.

76. 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.

77. I accept that as a returnee Tamil failed asylum seeker re-establishing a new life back in Sri Lanka and without his close family contacts, the applicant might face various practical challenges, and some possible delay in obtaining identity documentation such his NIC. I have regard to the country information discussed above, that such challenges would be due to the general economic conditions in Sri Lanka and bureaucratic inefficiencies. I note that Sri Lanka makes provision for social welfare and that in the meantime the applicant would have his TTD as identification. He is a fit, educated adult male with a history of work skills and I am not satisfied he would be prevented from securing employment or accommodation to support himself. Having regard to the country information previously discussed and the applicant's personal circumstances, I am not satisfied that any delay in obtaining his formal identity documentation, or re-integration challenges in Sri Lanka the applicant might face amounts to, or would result in significant harm as defined in the Act, as I am not satisfied that these circumstances amount to the death penalty, arbitrary deprivation of life or torture, and the evidence does not indicate there is any intention to inflict pain or suffering or severe pain or

suffering or cause extreme humiliation. I am not satisfied the applicant will face a real risk of significant harm for these reasons if returned to Sri Lanka.

78. I have otherwise found there is no real chance that the applicant would face harm in Sri Lanka on return now or in the reasonably foreseeable future for any of his grounds claimed, considered singly or together. Having regard to the same information and analysis, I find there is no real risk of significant harm if returned to Sri Lanka. I am not satisfied that the applicant will face a real risk of significant harm if returned to Sri Lanka.

Complementary protection: conclusion

79. 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.