



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA22/10343

Date and time of decision: 26 August 2022 13:28:00
S Kamandi, 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 national of Sri Lanka and of Tamil ethnicity. He arrived in Australia in October 2012 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in June 2016.
2. On 2 February 2017, a delegate of the Minister for Immigration (the delegate) made a decision refusing to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The matter was referred to the Immigration Assessment Authority (IAA) which made a decision affirming the delegate's decision on 1 September 2017.
3. [In] June 2022, the Federal Circuit and Family Court of Australia remitted the matter to the IAA for redetermination on the basis that the IAA fell into jurisdictional error by misconstruing and/or misapplying ss.473DD and 473DC (1)(b) of the *Migration Act 1958* (the Act).

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the Act. The review material includes a number of documents which have been identified as information not provided to the IAA when the matter was originally referred in 2016. Some of the documents are administrative in nature and not relevant to the assessment of the applicant's claims. Others include various identity documents, some untranslated, and letters that appear to have been included in the applicant's SHEV application that was before the delegate, and I do not consider them to be new information.
5. On 15 May 2017 the IAA received an email from Mr FB, who has identified himself as a member of the Tamil community, a professional, and a citizen of Australia. The email attached three documents, namely statutory declarations from the applicant and Mr FB, dated 14 May 2017 and a document described as a letter of authority dated 24 April 2017, indicating that due to her advisor withdrawing from his case, he has asked Mr FB to be his "recipient" and assist him with writing in English and translating to assist in furthering his application. The letter of authority is provided for administrative purposes.
6. Part of the applicant's statutory declaration relates to his claim that he escaped [Location] and regarding the YouTube clip provided to the delegate, claims made before the delegate and I do not consider to be new information. The rest of the applicant's statutory declaration and Mr FB's statutory declaration has been provided in response to the delegate's conclusion that the applicant instructed his then migration agent to withdraw paragraphs 50 and 51 of his SHEV statement and his disregard of paragraphs 52,53, 54 and 55 of the applicant's SHEV statement because in the delegate's view they were casually connected to the withdrawn paragraphs. The applicant's statutory declaration indicates that he did not instruct his lawyer to withdraw his claims and that his lawyer acted unprofessionally and blamed her lack of understanding of the content of the applicant's statement on Mr FB, who assisted the applicant in preparation and translation of his SHEV statement. Parts of Mr FB's statutory declaration echoes the applicant's concerns and indicates that Mr FB translated exactly what he was told and refers to the applicant's former migration agent's conduct at the interview, and her dealings with her clients more broadly, as unprofessional. I consider the information

to be arguments in response to the delegate's decision to disregard the applicant's claims that his house was searched by the CID, he was arrested and had to comply with reporting requirements during which he was tortured, on the basis that these claims were withdrawn at the SHEV interview. It relates to the issue of whether these claims were fabricated or withdrawn during the interview. Even if I am wrong and the information can be more properly characterised as new information, I am satisfied that the requirements under s.473DD of the Act are met. I am satisfied that the information is credible personal information and given the delegate's disregard of the applicant's claims, this information may have affected the consideration of the applicant's claims. I also note the applicant claims that he was confused at the interview about the withdrawal of his claims and that parts of the discussions between the delegate and his former representative were not translated to him. Given these matters, I am also satisfied that there are exceptional circumstances to justify considering the new information.

7. On 23 June 2022, the IAA received an email from Refugee Legal attaching a statement from the applicant dated 16 June 2022. It is submitted that the statement contains no new information but elaborates on issues previously raised by the applicant. The email submission and the applicant's statement reiterate that the information in the applicant's SHEV statement is accurate and that the applicant continues to rely on that statement. The information presented also reiterates the applicant's concern regarding the withdrawal of parts of his SHEV statement by his former representative and his unawareness of his migration agent ceasing to act for him after the interview. I consider this information to be arguments in response to the delegate's decision and will consider it in undertaking this review.
8. In his Statement the applicant indicates that he wishes to be able to explain what he has said in his statement in person and to be given that opportunity before a decision is made. No further information or submission is provided in support of the request for an interview and no explanation is given for what further information the applicant can or is able to provide which is not included in his statements. The applicant was interviewed for over three hours by the delegate and while I note his concerns and complaints regarding the conduct of his former representative, which relates to the final stage of his interview, he was given ample opportunity to elaborate on his claims and address the delegate's concerns. The applicant has also had two further opportunities to address the delegate's decision and raise his concerns regarding the conduct of his former migration agent to the IAA, which I will consider. The applicant has now clarified that continues to rely on the entirety of his SHEV statement and that the information provided in that statement is accurate and true. I will consider the applicant's evidence provided in his SHEV statement and during his lengthy SHEV interview with the delegate, and the documentary evidence provided in support of his claims. I am of the view that the applicant has had ample opportunity to present and clarify his claims. While there is discretion which I have considered, in the circumstances, I have decided to conduct the review without inviting the applicant to provide further information at an interview or otherwise.
9. I have obtained the 2021 DFAT report on Sri Lanka,¹ which is the most recent report prepared by DFAT on Sri Lanka and has been prepared specifically for the purposes of assisting in determination of protection status of applicants. I have also obtained United Kingdom (UK) Home Office reports on Sri Lanka,² and media reports published in 2022 by the International

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

² UK Home Office, "country Policy and Information Note Sri Lanka – Tamil Separatism", 17 June 2021, 20210624114752; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928.

Crisis Group,³ the Immigration and Refugee Board of Canada,⁴ and the Economist.⁵ The UK home office reports are updates of reports considered by the delegate and provides more up to date information about the situation for Tamils, including those with past LTTE connections and returned asylum seekers. The media reports provide more up to date information about the unfolding of the current economic and political situation affecting the general population in Sri Lanka. Given the extensive period of time has passed since the delegate's decision and the significance of most up to date independent country information in assessing the applicant's risk of harm in the foreseeable future, I am satisfied that there are exceptional circumstances to justify considering the obtained country information and media reports.

10. In his decision, the delegate considered the 2015 Department of Foreign Affairs and Trade (DFAT) report.⁶ As part of the previous review, the IAA obtained the 2017 DFAT report.⁷ As I have now obtained the most recent DFAT report on Sri Lanka, I am not satisfied that there are exceptional circumstances to justify considering the now outdated 2017 DFAT report.

Applicant's claims for protection

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

- The applicant was born in Kilinochchi in the northern province of Sri Lanka. The area was under the control of the Liberation Tigers of Tamil Eelam (LTTE) during the war.
- The applicant studied up to grade [number] and worked with his father on a casual basis to support the family. The applicant's family lived under difficult circumstances and moved from place to place to avoid the army and the LTTE.
- In about 2000, the applicant's parents went to [City 1] to escape the LTTE area. The LTTE did not allow the whole family to leave the area. The applicant's two brothers stayed with their grandmother in the Vanni and the applicant lived with his aunt in [location] in Kilinochchi.
- In about 2001, the applicant got permission from the LTTE to go to [City 1] to visit his family. The applicant found employment at a [Workplace 1] in [City 1]. The army was rounding up Tamils in [City 1] who were unregistered. The applicant was afraid of getting caught and returned to the Vanni, an LTTE controlled area, in 2003.
- From 2005 to 2009, the applicant worked as [an Occupation 1] for an LTTE [Workplace 2] in Kilinochchi. He was not trained nor carried weapons in performing this role. Towards the end of the war in May 2009, the army was attacking the area and the applicant was given a gun and told to fight for the LTTE. The applicant was injured during the fighting and has scars on his [body] from bomb blasts and bullets.

³ Alan Keenan, International Crisis Group (ICG), " 'Sri Lanka's Economic Meltdown Triggers Popular Uprising and Political Turmoil'", 18 April 2022, 20220420092443; International Crisis Group (ICG), "Sri Lanka's Uprising Forces Out a President but Leaves System in Crisis", 18 July 2022, 20220719124014.

⁴ Immigration and Refugee Board of Canada, "Sri Lanka: Political situation and Rajapaksa regime, including trends in political culture; situation of political opponents, including the All Ceylon Makkal Congress (ACMC), the People's Liberation Front (Janatha Vimukthi Peramuna, JVP), the Samagi Jana Balawegaya (SJB), Sri Lanka Freedom Party (SLFP), and the United National Party (UNP), and their treatment by the authorities and society; state protection (August 2019–May 2022), Response to research request LKA200987.E", 29 April 2022.

⁵ The Economist, "In with the old - Sri Lanka picks a new president to replace the one that fled", 21 July 2022, 20220722101909.

⁶ DFAT, "DFAT Country Information Report – Sri Lanka", 18 December 2015, CISEC96CF14143.

⁷ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD227.

- As the fighting intensified, the applicant and others were told to leave their weapons and surrender to the army. The applicant surrendered to the army [in] May 2009 and was taken to [Location] in [village 2] camp. He noticed people being interrogated and taken away. He was fearful that it would happen to him and escaped the camp in December 2009.
- The applicant travelled to his aunt's house in [Town 2] in Jaffna. On the way, he was stopped at a checkpoint by paramilitary and was asked for money. In his SHEV statement, the applicant states that he did not register with the Criminal Investigation Department (CID) because he was afraid. The local people informed the CID that he was there. The CID came and searched the house. They found a photo of the applicant with his cousin who was forced to join the LTTE and killed during the war. They suspected the applicant of LTTE involvement and took him to the army camp. He was released and told to report three times a day. He was tortured and accused of LTTE involvement each time he reported to the CID camp. People who reported to the CID started to disappear and the applicant stopped reporting and went into hiding for about 23 months until he departed the country in November 2011. At the SHEV interview, the applicant stated that he voluntarily registered with the CID and that when the house was searched, he was not there and that his aunt was told to inform him to report to the CID office. He was scared to report to the CID and went into hiding, staying with friends in the surrounding suburbs, until his departure from the country for [Country 1] in November 2011.
- The applicant travelled to [Country 1] using his own passport and on a work visa. He remained in [Country 1] working in a [Workplace 3] until August 2012 when he left for [Country 2] to commence his journey to Australia.
- The applicant's brother, "R", joined the LTTE as [an Occupation 2] when he was [Age] years old. He was later forced to fight for the LTTE and seriously hurt and lost a leg during the war. In the last months of the war, the applicant's other brother, "RS", was also taken by the LTTE when he was [Age] years of age. After the war, both R and RS were caught by the army and sent to rehabilitation centres. R was released [in] April 2010 and RS was released [in] September 2011.
- While in Australia, in 2013 the applicant's friends in [Country 3] sent him a link to a YouTube clip that contains a photograph of him with a gun. The applicant is concerned that the Sri Lankan authorities have this and would harm him. The applicant also attended a memorial service for LTTE martyrs, including his cousin, in Australia.
- The applicant fears that he will be harmed by the Sri Lankan authorities for reasons of his Tamil ethnicity, LTTE suspicion and for having sought asylum in Australia.

Refugee assessment

12. 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

13. 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.
14. The applicant has consistently claimed, and I accept, that he was born in the northern province of Sri Lanka and is a citizen of Sri Lanka. He provided the delegate with documents supporting his identity and nationality. I accept that Sri Lanka is the receiving country for the purposes of this review.
15. The applicant has consistently claimed, and I accept, that he is of Tamil ethnicity. I also accept that he is of the Hindu religion but has not made any claims based on his religion.
16. The applicant's evidence is that he resided in Kilinochchi from birth until 2001. He attended school to grade [number] and worked with his father on a casual basis to support the family. The applicant's family lived under difficult circumstances and moved from place to place to avoid the army and the LTTE. In 2000, the applicant's parents went to [City 1] to escape the LTTE area. The LTTE did not allow the whole family to leave the area. The applicant's two brothers stayed with their grandmother in the Vanni and the applicant lived with his aunt in Kilinochchi. In about 2001, the applicant got permission from the LTTE to go to [City 1] to visit his family. The applicant found employment at a [Workplace 1] in [City 1]. The army was rounding up Tamils in [City 1] who were unregistered. The applicant was afraid of getting caught and returned to the Vanni, an LTTE controlled area in 2003. I accept the applicant's evidence in this regard.
17. The applicant claims that in 2005 he secured a job as [an Occupation 1] with [Employer], an LTTE [Workplace 2] in Kilinochchi, and remained working there until the end of the civil war in 2009. In his SHEV statement, the applicant states that he worked as a civilian for the LTTE [Workplace 2] and that like many civilians, he was given weapons and taken to fight the army at the final stage of the war in May 2009. He claims that as fighting intensified, they were ordered to leave their guns and surrender, which he did. He states that due to the fighting at the time he sustained injuries. He was hit by a bullet [and] there is shrapnel in his [body] from a bomb blast. At the SHEV Interview, the applicant explained that as [an Occupation 1] he was not trained in using weapons and did not carry weapons to perform his job. He stated that when the area was shelled, the [Workplace 2] moved from Kilinochchi and while in [Village 1], shortly before the end of the war when the LTTE were being defeated, they were ordered to save gold and valuable ornaments and were given weapons to fight. When the situation was not under control, they were told to surrender to the security forces. He

explained that they put their weapons down, removed their clothing, and joined the civilians moving towards the army-controlled area. The applicant described the area and what happened once they were in the army-controlled area and showed the delegate his scars that he sustained due to injuries as a result of fighting and bomb blasts at the time. He claims that after surrendering [in] May 2009, while he noticed others being questioned and taken away, he was taken to [Location] in [village 2]. At the SHEV interview, the applicant explained that they were taken to the camp by government vehicles.

18. Regarding his brothers who lived in the Vanni with his grandmother during the war, the applicant claims that his brother, "R", joined the LTTE as [an Occupation 2] when he was [Age] years old. He was later forced to fight for the LTTE and seriously hurt and lost a leg during the war. In the last months of the war, the applicant's other brother, "RS", was also taken by the LTTE when he was [Age] years of age. The applicant claims that after the war, both R and RS were caught by the army and sent to rehabilitation centres. At the SHEV interview, the applicant stated that his brother R was identified as a combatant by the authorities and separated from the rest of the civilians. Regarding R's whereabouts, the applicant stated that he did not have contact with him but is aware that he was released from the camp and lives in Sri Lanka with his family. Regarding his brother RS, the applicant also stated that he had no contact with him but is aware that he was also released from detention and lives in Sri Lanka. The applicant has provided letters, which he claims was sent to him by his aunt, indicating that R was released from the "[Temporary Accommodation Centre 1]" [in] April 2010 and RS was released from "[Temporary Accommodation and Rehabilitation Centre 2]" [in] September 2011. The applicant's evidence is that his younger brother is missing, and he has had no contact with him. He has not provided any further details regarding this brother.
19. Country information⁸ indicates that at its peak in 2004, the LTTE had an armed force of approximately 18, 000 combatants and maintained an intelligence wing and a political wing, supported by an extensive administrative structure based in its de-facto capital in Kilinochchi in Sri Lanka's north. The mostly Tamil civilian populations of the areas controlled by the LTTE were required to interact with the LTTE's military and civil administration as a matter of course and the LTTE supported its administration through forced and voluntary recruitment of Tamils. Towards the end of the war, a large number of LTTE members were arrested and detained by government security forces following their surrender or capture, with majority of those arrested sent to government run rehabilitation centres. Immediately after the end of the war in May 2009, the majority of the population in the Vanni were taken to IDP camps (most to [Location]) in [City 1]. While a significant number of IDPs were detained in special rehabilitation camps, either because they surrendered or because they were suspected of involvement with the LTTE, most had been released from rehabilitation camps by April 2012 and had returned to their localities in the Vanni or Jaffna.
20. Considering the applicant's consistent evidence during the SHEV application process and his place of residence in Kilinochchi, an area where the LTTE were based and had control over, I accept that the applicant worked as [an Occupation 1] for the LTTE [Workplace 2] in the area. I accept his evidence that he only worked as a civilian member and was not trained nor engaged in any fighting with the LTTE during his employment. I accept that during the last stage of the conflict, the applicant was ordered to take up weapons and guard LTTE property and that in the process he sustained some injuries and has scars on his [body] which were shown to the delegate at the SHEV interview. I accept that once it was evident that the LTTE

⁸ DFAT, "DFAT Country Information Report – Sri Lanka", 18 December 2015, CISEC96CF14143; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 1 October 2010, CIS19345.

were being defeated, the applicant and others were forced to take up arms at the time, were told to put down their weapons and surrender, which the applicant claims he did [in] May 2009. I accept that the applicant was processed with other civilians who also went to the army controlled area and surrendered as claimed and that he was placed at an IDP camp where most civilians were detained. Given his brother's presence in the Vanni and the country information indicating that most Tamils, by force or voluntary, interacted and supported the LTTE during the war, I accept that the applicant's brothers, R and RS, were recruited and were forced to fight for the LTTE towards the end of the war and were captured by the security forces after the war and kept in rehabilitation camps. As evidenced by the documentary evidence provided, both brothers were released in 2010 and 2011 and on the applicant's evidence, appear to have returned to their places of residence. This accords with country information that most detainees were rehabilitated and released by April 2012 and allowed to return to their localities in the Vanni or Jaffna. I accept that the applicant's younger brother is missing and that the family is unaware of his whereabouts.

21. In his SHEV statement, the applicant states that he noticed people being taken away from the camp and not returning. He claims that he was worried that this would happen to him and while at the camp he found an agent to help him obtain his passport. The applicant claims that in December 2009, he escaped from the camp into the thick jungle and went to [City 1]. He claims that he wanted to go to the Vanni but was caught at the checkpoint by who he believed were paramilitary groups. He states that he paid them money to get away and went to his aunt's house in [Town 2] in Jaffna. At the SHEV interview, the applicant was asked about how he escaped from the camp. He stated that the area was bushy and when he and others went to have a shower they planned to escape. He stated that he went to [City 1] by bus, he had an identity card from [City 1] and stayed there for about a week and then went to Jaffna by bus. He claimed that on his way to Jaffna, there was a checkpoint at [Town 3], where he got off the bus, showed his identity card to the Sri Lankan authorities. After being asked about his LTTE involvement, he was released as his identity card said that he was from [City 1]. When asked about what happened next the applicant stated that he continued his journey to his aunt's house in Jaffna. The delegate referred to the applicant's evidence in his SHEV statement that it was paramilitary groups at the checkpoint who he had to pay to and that now he was claiming that all he had to do was to show his identity card to the Sri Lankan authorities and he was free to continue his journey. The applicant then claimed that the incident with the paramilitaries was at the second checkpoint which was in Kilinochchi.
22. I accept that while residing at the IDP camp the applicant witnessed others being interrogated, taken away and that some did not return, but his evidence does not indicate that he was approached, interrogated, or suspected of having any LTTE connections or that he was in any way linked with his brother's LTTE involvement. While he claims that the authorities found out about his and his brother's LTTE involvement which caused him concern and fear, it is not apparent how the authorities found out about this given that he claims he continually denied having any involvement with the LTTE and his evidence also does not indicate that he was in any way linked to his brothers or was suspected of having been in the LTTE. His reasons for escaping the camp appear to be solely based on his subjective fear that he would also be taken away. I found the applicant's evidence about escaping from the IDP camp, which was under surveillance of the Sri Lankan authorities, to be unconvincing and lacking in plausibility. While I accept that the applicant travelled from the IDP camp to [City 1] and then made his way to Jaffna to reside with his aunt, there were not immaterial differences in his evidence which in my view were not adequately explained in his responses to the concerns raised by the delegate at the interview. In addition to the differences in the applicant's evidence, I find it implausible that if the applicant was of any interest to the authorities, was in any way suspected of having LTTE involvement or linked

with his brothers held at rehabilitation camps, or that he escaped the IDP camp as claimed, that he would have been able to pass checkpoints operated by the Sri Lankan authorities by simply presenting his identity card or offering bribes. While I acknowledge that bribes at checkpoints may have been sought from people, given the applicant's claim that he was of interest and escaped the IDP camp, I am not convinced that he could have passed the checkpoints in the manner that he claims, particularly given the country information⁹ which indicates that there were several army operated checkpoints between [City 1] and Jaffna and that in the aftermath of the civil war and that military presence and security at army operated checkpoints was extremely high. In addition, the applicant claims that while he was at the IDP camp he was given a temporary identity card in September. The identity card notes the applicant's address as Jaffna. The applicant was also able to obtain his Sri Lankan passport while residing at the IDP camp. These indicate that the applicant was not of any adverse interest to the authorities.

23. On the evidence before me, I am not satisfied that the applicant was of any adverse interest or was suspected of having any LTTE involvement while residing at the IDP camp. I am not satisfied that he escaped the camp as claimed but rather find that he was released and allowed to return to Jaffna. While he may have been interrogated and questioned about any LTTE involvement by the Sri Lankan authorities while passing checkpoints during his journey, I am not satisfied that he was personally known or was of any adverse interest to the authorities. He was able to continue his journey and reach Jaffna.
24. In his SHEV statement, the applicant claims that after arriving at his aunt's house he did not register with the Sri Lankan authorities because he was afraid. He states that his cousin V was forced to join the LTTE when he was [Age] and was killed at the age of [Age]. The applicant claims that the local people informed the CID about his cousin and that the applicant was there. The CID came and searched the house, asked the applicant where he was from and found a photo of the applicant with his cousin and suspected the applicant of being with the LTTE. They took him away to the CID office but released him and told him to report the following day. The following day the applicant claims that he had to report three times, once in the morning when he was held for a few hours and had to pay money to be released, then again in the afternoon and then at night. After that day he was required to report and register with the CID every week. He claims that he was tortured, accused of being with the LTTE which he denied, and threatened not to report the treatment to the senior CID. He claims that at the time people who reported to the CID started to disappear and that he stopped reporting and went into hiding. He claims that he spent 23 months going from place to place at various addresses and found a Sri Lankan who helped him get his passport and made arrangements for him to leave Sri Lanka for [Country 1] through Colombo airport [in] November 2011. He stated that the agent took him to the airport and stayed with him until he boarded the plane.
25. At the SHEV interview, the applicant gave a significantly different version of key parts of the account of events that occurred after his arrival at his aunt's house in Jaffna. He stated that because he had come from a different area he went and registered at the CID office. They opened a new file and told him to report three times a day during which he was beaten. When asked how long between the time he arrived and the time he registered, the applicant stated as soon as he moved there. He claimed that although he was hesitant and fearful to register, others told him that if he didn't register and was rounded up by the authorities he

⁹ Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 1 October 2010, CIS19345; Centre for Policy Alternatives, "Land in the Northern Province: Post-War politics, policy and practices", 1 December 2011, CIS22259.

would be killed. He confirmed that he went to register with the CID voluntarily. The applicant also confirmed that he was told to report three times a day, during which he was beaten and accused of being with the LTTE which he denied. When asked about the CID's search of his house, the applicant stated that they came and searched the house, messed up everything, found a photo of the applicant with his cousin and decided that the photo confirmed that he was with the LTTE and said that he should report to their office. When asked if he was at home during the search, the applicant responded in the negative. He also confirmed that while in hiding, which his SHEV statement indicates was for a period of 23 months, he hid at his friends' houses in the surrounding suburbs and was not detained.

26. The delegate observed that his evidence about his registration with the CID and whether he was present during the CID search of him was presented differently in his SHEV application and asked for an explanation. The applicant stated that "maybe he had written that" but what he was saying at the interview was the truth and that maybe the statement contained some mistakes or misspellings. When asked why he thought his statement had mistakes, the applicant stated that his statement was prepared with the help of a Tamil person who is not an interpreter (Mr FB) and that he wrote whatever the applicant told him at the time. The delegate sought clarification from the applicant's then representative, who stated that her clients could not afford interpreters and that there was a well-known Tamil in the community who assisted her clients. She indicated that a similar incident had occurred before and that the matter was of serious concern to her. At the conclusion of the interview, after a break to discuss the delegate's concerns with his representative, the applicant reiterated that what he had told the delegate during the interview was the truth. When the applicant's former representative was asked for any further comments, she stated that she had hoped her client would have said this, but they need to withdraw paragraphs 50 and 51 of the applicant's SHEV statement and that she had serious concerns about the integrity of the applicant's SHEV statement. While making her submissions that it was open to the delegate to accept the applicant's evidence about his and his family's LTTE involvement, the representative noticed that the information was not being interpreted for the applicant and expressly requested that the information that Paragraphs 50 and 51 of the applicant's statement was withdrawn and not true be interpreted for the applicant, which occurred.
27. The applicant's former representative further stated that her client had indicated that he was influenced by the person and that she had concerns about the integrity of the document as a whole. At that point the delegate expressed that his understanding was that the applicant was attributing the differences in his evidence to interpreting issues between him and Mr FB and asked the applicant for clarification. The applicant stated that there are contradictions, but what he said today was the truth. When asked for the reasons for the contradictions, the applicant stated that he (Mr FB) may have added some things or exaggerated some things. When asked if that was without his knowledge, the applicant said that he was not accusing Mr FB of anything and that Mr FB helped him. He also stated that many things happened, and he could not articulate exactly what happened and that the problems were with him as he could not recall incidents. The delegate explained the significance of assessing the credibility of his claims and that if there were any reasons that he could provide for the inconsistencies in his evidence was important to consider. The applicant on several occasions stated that what he told the delegate during the interview was the truth and correct information. At the conclusion of the SHEV interview, the applicant's former representative again expressed concerns and declared that she believed she had a conflict of interest in this matter and could not continue representing the applicant. This was interpreted to the applicant with the representative confirming that after the interview she would forward the delegate with information that was presented at the interview and would formally withdraw from the case.

28. The applicant did not provide the delegate with any further information or submissions about what had occurred during the SHEV interview or otherwise. In his decision, the delegate in referring to the inconsistencies in the applicant's evidence regarding what had occurred after his arrival at his aunt's house in Jaffna, concluded that paragraphs 50 and 51 of his SHEV statement were withdrawn and as paragraphs 52, 53, 54, and 55 which describe the applicant's arrest, reporting requirements, torture and beatings by the CID, were casually linked to paragraphs 50 and 51, he disregarded all these paragraphs for the purposes of the assessment.
29. In 2017, in response to the delegate's decision, the applicant and Mr FB provided statements. Although it appears from the interview audio that the information regarding the withdrawal of paragraphs 50 and 51 by the former representative, the former representative declaration of a conflict of interest and withdrawal from representing the applicant was interpreted for the applicant, the applicant's statement indicates that he did not know what was going on between the delegate and his representative at the time. The statements explain the applicant's referral to his former representative by Mr FB, Mr FB assisting the applicant in preparation of his SHEV statement, and their dissatisfaction with the applicant's former representative's conduct at the interview and her dealing with her clients. The applicant and Mr FB's statutory declarations also indicate that the applicant did not withdraw paragraphs 50 and 51 and that the information in his statement was not fabricated. The statements say that the applicant was not advised to fabricate claims and that the information was translated in English as told by the applicant. I note that in his 2017 statutory declaration, contrary to his evidence at the earlier SHEV interview that he voluntarily registered with the CID and that the information provided at the interview was accurate, the applicant states that *he did not* register with the CID because he was afraid. In a further statement in 2022, the applicant again indicates that he was not advised by his former representative that paragraphs 50 and 51 were being withdrawn and that what was said between the delegate and his representative was not properly interpreted to him. He further claims that when his representative referred to paragraphs 50 and 51, neither she nor the delegate explained what was contained in those paragraphs. The applicant indicates that he did not provide false information in his SHEV statement or at the SHEV interview.
30. On the evidence before me, it is clear that the applicant has provided two different versions of his registration with the authorities on arrival in Jaffna and the events during the claimed search of his house. While I accept that during the interview, the applicant may not have been fully made aware of the contents of paragraph 50 and 51 of his SHEV statement or the full discussion between the delegate and his former representative, he was made aware of the differences in his evidence by the delegate, given several opportunities to provide an explanation and asked numerous questions as to what exactly happened during the period between his arrival in Jaffna in 2009 and departure in November 2011. At the SHEV interview, the applicant acknowledged the inconsistencies/contradictions in his evidence and provided some explanations around misinterpretation, mistakes, and his inability to articulate incidents. He was made aware of the delegate's concerns and indicated that what he told the delegate at the SHEV interview was the truth and accurate. While I am willing to accept that the information in his SHEV statement was written as told by the applicant and that he was not advised nor influenced to fabricate claims, the reality is that the information presented in his SHEV statement, which he maintains is correct, is different to what he told the delegate at the interview, which is again different to what is provided in his 2017 and 2022 statements. At the SHEV interview, being made aware of the differences in his evidence, the applicant reiterated on several occasions that what he told the delegate that day was accurate. However, in his 2017 statement he indicates that he did not register with the CID because he was afraid and in his 2022 statement the applicant states his evidence in his SHEV statement

and at the SHEV interview is correct. I found the applicant's evidence about what had occurred after his arrival at his aunt's house problematic and do not consider the conduct of the applicant's former representative at the SHEV interview or the withdrawal of her representation following the interview explains these problems or inconsistencies in the applicant's evidence.

31. While I am willing to accept that the applicant was afraid of registering with the authorities on his arrival in Jaffna, given the applicant's evidence at the SHEV interview that what he was recalling about his registration with the authorities was accurate, I consider it highly likely that he registered with the authorities soon after arriving in Jaffna. I accept that he was aware of the requirement to register and was advised by others to do so to avoid problems with the authorities and that he registered voluntarily.
32. Country information¹⁰ indicates that many Tamils, particularly in the north and east, reported being monitored, harassed, arrested and detained by the security forces during and in the aftermath of the civil war. As LTTE supporters and members were almost all Tamils, the security forces imputed LTTE support based on ethnicity. The authorities possessed extensive powers to arbitrarily detain and arrest people under the emergency regulations and Prevention of Terrorism Act (PTA) and more Tamils were detained than other ethnic groups. I accept that the applicant's house may have been searched and that the CID found a photo of the applicant with his cousin who he claims was forced to fight with the LTTE and killed. It is not apparent how the authorities knew of the applicant's cousin's involvement with the LTTE but having found a photo of the applicant with his cousin, I consider it plausible that they may have had some suspicion and asked the applicant to report to their office and questioned him about the matter. I accept that he was told to report to the CID office and initially was required to do this on a regular basis and it is plausible that during the reporting period he was questioned about involvement with the LTTE and suffered some mistreatment. The applicant's evidence does not indicate that he was asked about his brothers or in any way linked to his brothers' LTTE involvement. He claimed that he denied having had any interactions with the LTTE and there is no indication that the authorities were aware that he worked for the LTTE during the war.
33. The applicant's evidence is that he went into hiding for 23 months after he stopped reporting and that he stayed at friends' houses in the surrounding suburbs. I find it highly implausible that if the applicant was of any adverse interest or that the authorities had any information that he was involved with the LTTE, that they would not have pursued, located him, or arrested him while he remained in the area. The applicant confirmed that while in hiding he was not detained and there is no evidence to indicate that the CID went to his aunt's house asking about his whereabouts. I consider it implausible that if the applicant suddenly decided not to comply with his reporting requirements that the CID would not have inquired about him.
34. In his SHEV statement, the applicant states that while in hiding, he found a Sri Lankan man to obtain his passport and make arrangements for his departure from Colombo airport. He claims that the agent took him to the airport and stayed with him until he boarded the plane. At the SHEV interview the applicant was asked about his journey from Jaffna to Colombo. He stated that he travelled by bus, avoided checkpoints and that he went to Colombo to get his passport, then travelled back to [City 1] waiting for his visa and then went back to Colombo

¹⁰ DFAT, "DFAT Country Information Report – Sri Lanka", 18 December 2015, CISEC96CF14143; DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; UK Home Office, "country Policy and Information Note Sri Lanka – Tamil Separatism", 17 June 2021, 20210624114752.

to depart the country. I note that the biodata of the applicant's passport indicates that it was issued in [2009] (with expiry of [2019]) which is in accordance with his evidence in his SHEV statement that he obtained his passport while residing at the IDP camp between May and December 2009. I found the applicant's evidence at the SHEV interview that he obtained his passport in 2011 contrary to what is indicated on his passport and found his evidence that he was able to travel to Colombo on two occasions avoiding checkpoints, during a period which he claims he was in hiding and stopped reporting to the authorities, implausible. While I accept that he may have engaged an agent to obtain a visa to work in [Country 1], I do not accept that the agent accompanied him to the airport and stayed with him until he boarded the plane or that the applicant he was of any adverse interest or wanted by the authorities when he departed the country in November 2011.

35. I accept that the applicant travelled to [Country 1] on a work visa using his own passport. There is no credible evidence that he had any issues or was questioned by the authorities at the airport. I accept that he worked in [Country 1] in a [Workplace 3] until he made arrangement for his journey to Australia in 2012. The applicant has not indicated that during his time in [Country 1], the authorities inquired about him or his whereabouts or that he was involved in any activities that would have been of concern to the Sri Lankan authorities.
36. At the SHEV interview, the applicant showed the delegate a You Tube clip claiming that it was sent to him by his friend in [Country 3] in 2013. It is claimed that the clip has captured a photo of the applicant holding a weapon and that he fears the authorities will be able to identify him. After the interview, the delegate was provided with a link to the You Tube clip. The clip is no longer accessible and indicates that the You Tube account associated with the video has been closed. The delegate was also provided with the photo from the video clip claiming to be the applicant. I note that the delegate's decision indicates that having viewed the clip, the delegate was not satisfied that the person in the photo bear any significant resemblance to the applicant and even if the clip did depict the applicant it was extremely unlikely that he would be recognised. I note that the photo provided to the delegate does not identify the applicant or others in the photo. The applicant has not disputed the delegate's finding nor provided any further evidence suggesting that the authorities have become aware of the clip, which is claimed to have been produced in 2009, identified him or inquired about it while the applicant was in Sri Lanka or during the 12 years that he has been absence from the country. On the evidence before me I consider the chances of the applicant attracting adverse attention due to this clip to be no more than remote.
37. At the SHEV interview, the delegate was also shown some photographs claimed to have been taken at a Martyrs commemoration ceremony in Melbourne. He indicated that this occurred (at that time) recently, [in] November 2016, and that he gave a photo of his cousin, V, to the organisers and they created the memorial card with his cousin's photo for the event. The delegate was provided with the photographs after the interview. The photographs submitted include a photo of the applicant standing next to an LTTE flag. The applicant is not identified by name, and he has not claimed that these photographs or his attendance at this event have come to the attention of the authorities in Sri Lanka. The applicant also has not indicated that he has attended any other events while in Australia or that he has an interest in attending such events if returned to Sri Lanka. I consider the chances of the applicant facing any repercussions for reasons of his attendance at this event, which occurred sometime ago, to be no more than remote.

38. Country information¹¹ before me indicates that the security and situation for Tamils in Sri Lanka has improved significantly since the end of civil war in May 2009 and the applicant's departure from Sri Lanka in 2011. After the 2015 election, the then President Sirisena promised a new era of "clean" government and embarked upon a path of reconciliation with the Tamil minority. The government committed to implementing a range of truth, justice and reconciliation measures under the UN Human Rights Council resolution. Many initiatives markedly improved the lives of Tamils in Sri Lanka, which included the recognition of both Sinhala and Tamil as the official languages of the country; the lifting of restrictions on travel to the north and east of the country; the freeing of civilian land from military control; the release of some individuals detained under the PTA and the government's public commitment to reducing military involvement in civilian activities. Such measures resulted in a decrease in the number of Tamils held in detention, reduced incidents of extrajudicial killing, disappearances, abductions, extortion and kidnapping for ransom.
39. Regarding travel to the northern and eastern provinces of Sri Lanka, the 2021 DFAT report¹² indicates that the government no longer restricts travel to these areas. The previous government removed security checkpoints on major roads in 2015. Security checkpoints established in response to Easter 2019 bombings have also been removed with roadblocks re-established in 2020-21 in response to COVID-19 and drug trafficking. It is also reported that military involvement in civilian life has decreased overall since the end of the war, although some military involvement in some civilian activities, particularly the economy, continues in the north. the 2021 DFAT report also indicates that the risk of torture perpetrated by either military, intelligence or police forces has decreased since the end of the war and that Sri Lankans face a low risk of torture overall, with those detained facing a moderate risk of torture. While the information indicates that those detained face a moderate risk of torture, given my findings, I am not satisfied that the applicant is at a real risk of detention or torture.
40. Regarding developments in the country's political landscape in the recent yeras, DFAT¹³ reported that the Sirisena government faced a constitutional crisis when the President briefly appointed Mahinda Rajapaksa as his Prime Minister in a move that was not approved by the parliament. As Mahinda Rajapaksa's prior 10-year presidency, between 2005 and 2015, was marked by accusations of corruption and human rights violations including war crimes against Tamils, both Tamils and non-Tamils expressed concerns that human rights improvements achieved since 2015 would be reversed if Rajapaksa came into power. The election held in November 2019, saw his brother, Gotabaya Rajapaksa become the new President. The 2020 parliamentary election, reported to be mostly credible, resulted in a two-third majority in the Sri Lankan parliament led by Prime Minister Mahinda Rajapaksa. It is reported that following the election of the Rajapaksas, the progress made under the Sirisena government was seen to have reversed in direction with threats of return to the patterns of discrimination and widespread violation of human rights experienced in the past decade. Local sources expressed concern about the militarisation of the civilian government under the Rajapaksa government and increasing use of the PTA to silence critics of the government. International organisations have expressed concerns about the Sri Lankan government seeking to stifle and suppress critics with knowledge of historical abuses during the war.

¹¹ DFAT, "DFAT Country Information Report – Sri Lanka", 18 December 2015, CISEC96CF14143; DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928; UK Home Office, "country Policy and Information Note Sri Lanka – Tamil Separatism", 17 June 2021, 20210624114752.

¹²DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

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

41. It is reported that in 2020, the World Bank classified Sri Lanka as a lower middle-income country, downgrading it from upper middle-income status. Since the global pandemic, in 2021, Sri Lanka's economy has been further troubled by the country's low foreign-exchange reserves and high and rising government debts. It is also reported that according to the World Bank, over 500,000 people may have fallen below poverty line since the beginning of the pandemic with widespread losses of jobs. The economic conditions have impacted on food security, employment, lack of access to basic commodities and essentials and the overall living standards of Sri Lankans. This resulted in widespread protests and national wide uprising against the Rajapaksa government, which is blamed for causing the economic crises by introducing tax cuts that reduced government revenue and garnered lower credit ratings that eliminated its ability to borrow on the international market. It is reported that the broad-based movement against the current government is for many Sri Lankans a welcome change in a country traditionally divided on ethnic and religious grounds. The continued protests and public backlash resulted in resignation of government ministers.¹⁴
42. Following ongoing protest, in May 2022, Prime Minister Mahinda Rajapaksa tendered his resignation. Recent reports¹⁵ indicate that demonstrators then directed anger at the newly appointed Prime Minister's (Ranil Wickremesinghe who replaced Mahinda Rajapaksa in May 2022) failure to deliver on his promise of political stability and efficient economic management and that on 13 July 2022, President Gotabaya Rajapaksa and his wife fled Sri Lanka for Singapore from where he resigned. On 15 July 2022, Ranil Wickremesinghe was sworn in as acting President and was officially elected by a clear majority on 20 July 2022. He is expected to serve out the remainder of Mr Rajapaksa's term, which ends in 2024. It is reported that the new President has tried to sound conciliatory and has acknowledged that the country is in deep trouble and that the young people were demanding "systemic change". Before his election, the President had begun to curtail some of the powers of the Sri Lanka's mighty executive presidency, and it is reported that he is likely to stick to a programme of economic reform which he had begun to implement as the Prime Minister.
43. Country information indicates that Tamils are the second largest ethnic group in Sri Lanka.¹⁶ The 2021 DFAT report indicates that Tamil political parties are active, with the largest coalition of parties operating under the umbrella of the TNA. In the 2020 parliamentary election the TNA won 10 seats and that there were two Tamil parties in the government. While some members of the Tamil community report discrimination in employment, particularly in government jobs, other sources suggest that this is because Tamils speak neither Sinhala or English and DFAT assesses that there is no official discrimination on the basis of ethnicity in public sector employment. It is reported that members of the Tamil community and NGOs report that the authorities monitored public gatherings and protests in the north and east, and that security forces were more likely to monitor people associated with politically sensitive issues, including relating to the war or missing persons. While DFAT

¹⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; Alan Keenan, International Crisis Group (ICG), "Sri Lanka's Economic Meltdown Triggers Popular Uprising and Political Turmoil", 18 April 2022, 20220420092443; Immigration and Refugee Board of Canada, "Sri Lanka: Political situation and Rajapaksa regime, including trends in political culture; situation of political opponents, including the All Ceylon Makkal Congress (ACMC), the People's Liberation Front (Janatha Vimukthi Peramuna, JVP), the Samagi Jana Balawegaya (SJB), Sri Lanka Freedom Party (SLFP), and the United National Party (UNP), and their treatment by the authorities and society; state protection (August 2019–May 2022), Response to research request LKA200987.E", 29 April 2022.

¹⁵ International Crisis Group (ICG), "Sri Lanka's Uprising Forces Out a President but Leaves System in Crisis", 18 July 2022, 20220719124014; The Economist, "In with the old - Sri Lanka picks a new president to replace the one that fled", 21 July 2022, 20220722101909.

¹⁶ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818; DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143; UK Home Office, "country Policy and Information Note Sri Lanka - Tamil Separatism", 17 June 2021, 20210624114752.

assessed that surveillance of Tamils in the north and east continued, with particular surveillance of those associated with politically sensitive issues, it concluded that physical violence against those being monitored was not common, and that ordinary Tamils living in the north and east of the country were at a low risk of official harassment. While the LTTE was comprehensively defeated in May 2009, Sri Lankan authorities remain concerned over its potential re-emergence, and to separatist tendencies in general. It is reported that Tamils with former links with the LTTE, and those who are not politically active, have generally been able to lead their lives without concern for the security as a result of their past association with the LTTE, with the government focusing on Tamil activities in the diaspora who are working for Tamil separatism to destabilise the government and that monitoring of Tamil diaspora returning to Sri Lanka depends on their security risk profile. The information before me does not indicate that the situation for Tamils, including those with past LTTE links and residing in LTTE controlled areas, have changed due to the ongoing economic and political crises that has unfolded in the recent months.

44. In light of the above, I accept that the return of the Rajapaksa government in 2019 resulted in many Tamils feeling anxious about the possible reversion of policies around human rights and reconciliation and that media has reported that certain groups such as journalists, political activist and those considered to be involved in regrouping of the LTTE have encountered harassment, arrest and detention. The information regarding the situation for Tamils under the current government or due to current political crises does not indicate that these events marked the return of an anti-Tamil agenda or that the current government has an intention to re-introduce restrictions on Tamils' daily lives. I am not satisfied that the applicant was of any adverse interest to the authorities while in Sri Lanka and he does not fit the profile of groups of people who have encountered harassment and monitoring in the recent years. Further the applicant has not claimed that any of his family members in Sri Lanka have reported incidents of harassment or monitoring in the recent years.
45. I also accept that Sri Lanka is facing a challenging economic and political situation which is still unfolding. The reports before me indicate that the recent protests in response to the current economic situation in Sri Lanka and resentment towards the government's management of the situation is projected by all Sri Lankans uniting the whole of the population and there is no indication that the government response to widespread protests, aimed at the government, have targeted Tamils, or that allocation of resources are applied in a disproportionate or discriminatory manner towards any ethnicity or religious group, or that people of the applicant and her family members profile have been targeted. The information indicates that despite the change of Presidency, the government is planning to continue to work towards resolution and addressing the current very difficult economic and political situation and acknowledges the people's demand for systematic change.
46. The information before me does not support that there is a real chance that people of the applicant's profile or ordinary Tamils with past connections or familial connection with the LTTE are targeted, harassed or monitored. The information also does not support that persons of Tamil ethnicity, those residing in a former LTTE controlled areas or having family members who had been killed during the war, rehabilitated and reintegrated by the authorities after the war or those who merely have missing family members but not engaged in any politically sensitive issues, are of concern to the Sri Lankan authorities or face harm. The applicant's evidence does not indicate that he has engaged in any Tamil Diaspora groups while in [Country 1] and I am not satisfied that he has engaged in activities in Australia that would be of concern to the authorities if returned to Sri Lanka.

47. The applicant departed Sri Lanka legally using his own passport. He claims, and I accept, that he is not in possession of a valid Sri Lanka passport. He claims that he will be harmed for having sought asylum in Australia.
48. DFAT¹⁷ indicates that Sri Lankans without passports can re-enter the country on temporary travel documents, also known as an Emergency Passport or a Non-Machine-Readable Passport, issued by diplomatic and consular missions and valid for re-entry to Sri Lanka. Given that the applicant is no longer in possession of his passport he may well be returning to Sri Lanka on temporary travel documents. For returnees travelling on temporary travel documents, police undertake an investigative process to confirm identity, which would identify someone trying to conceal a criminal or terrorist background or trying to avoid court orders or arrest warrants. DFAT is not aware of detainees being subjected to mistreatment during processing at the airport. The 2020 UK Home Office report¹⁸ indicates that claiming asylum abroad is not an offence and as such when someone returns to Sri Lanka who has been absent for a number of years, they would not be questioned on this and that there are no media reports on returnees interrogated on this ground. The report also indicates that there is no distinction in treatment of returnees based on ethnicity and only those with outstanding criminal offences are of interest to the authorities.
49. I accept that the applicant has some visible scarring due to injuries sustained during the final stage of the war in 2009. The applicant has not claimed that he fears any harm for this reason or that he had encountered any issues with the authorities while at the IDP camp or in Jaffna because of his scars. The 2020 UK Home Office report¹⁹ indicates that a CID officer at the airport confirmed that returnees were not checked for scarring at the airport. On the information before me and in considering the applicant's profile, relationships, and his experiences during and after the end of the civil war in Sri Lanka, I am not satisfied there is a real chance that the applicant's scarring would be of concern to the authorities if returned to Sri Lanka.
50. While I accept that the applicant will be questioned at the airport to establish his identity, I have not accepted that he was of adverse interest to the CID, had ongoing reporting requirements when he left the country or stopped complying with his reporting requirements. He has not claimed that he had any outstanding criminal record in Sri Lanka, and I am not satisfied that he has engaged in activities abroad that would be of concern to the authorities. I consider the chance of the applicant facing any harm on return at the airport to be no more than remote.
51. In relation to the applicant facing any harm for reasons of having sought asylum in Australia, DFAT²⁰ notes that between 2010-11 and 2018-19, 3,716 Sri Lankan nationals returned from Australian community. It is reported that refugees and failed asylum seekers face practical challenges to successful return to Sri Lanka. DFAT understands that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis or are treated in such a way that endangers their safety or security. DFAT²¹ reported that returnees faced financial difficulties reintegrating into their communities' potential challenges in securing employment or reliable housing on return. Those with skills in high demand in the labour market were best placed to find well-paid employment and eligible returnees have been provided with livelihood assistance and regular welfare checks. The information before me do not indicate

¹⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

¹⁸ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928.

¹⁹ UK Home Office, "Report of a Home Office fact-finding mission to Sri Lanka", 20 January 2020, 20200123162928.

²⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

²¹ DFAT, "DFAT Country Information Report - Sri Lanka", 23 December 2021, 20211223094818.

that there has been a shift in the treatment of returnees due to the current political and economic situation or that persons of the applicants' profile would be at a greater risk of mistreatment or harassment for having sought asylum or due to their extended absence from the country.

52. Societal discrimination is not considered a major concern and DFAT assesses that returnees face a low risk of societal discrimination on return to their communities, which may be the case for the applicant. It is reported that some Tamils who have failed to secure asylum in Australia and since returned to the northern province told DFAT that they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits, but DFAT could not determine if this was the case for all returnees. Given the applicant's profile, including his ethnicity, having lived in a LTTE controlled area, LTTE employment and his brothers and cousin's LTTE involvement, his interactions with the CID and limited reporting requirement while in Jaffna, his visible scarring and attending at an event in Australia, I consider the chance of him being of any ongoing interest to the authorities to be no more than remote. The applicant has family and relatives residing in Sri Lanka. He can speak, read and write in Tamil and has worked in Sri Lanka and [Country 1]. While I acknowledge that Sri Lanka is in the midst of a severe economic crisis which has impacted the whole of the population, considering the applicant's background and circumstances, I am not satisfied that there is a real chance the applicant would face any systematic or discriminatory conduct amounting to persecution and consider any societal discrimination that the applicants may face does not amount to serious harm.
53. Having regard to all the evidence before me and considering the applicant's overall profile and the totality of his circumstances in the context of the country information, I am not satisfied that the applicant faces a real chance of persecution in the foreseeable future if returned to Sri Lanka. I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5(J) of the Act.

Refugee: conclusion

54. 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

55. 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

56. 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.
57. 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.
58. I accept that on return to Sri Lanka the applicant will very likely be subjected to an investigation process on arrival to establish his identity and background. I am not satisfied that there is a real risk that he would be identified as a person of interest or otherwise be harmed during this process. I do not consider that the treatment or challenges that the applicant may face during the arrival process or as a returned asylum seeker amounts to a level of pain, suffering or humiliation required by the definition of torture in s.5(1) of the Act, nor cruel or inhuman or degrading treatment or punishment, or arbitrarily deprivation of their lives or be subject to the death penalty or tortured such as to amount to significant harm as defined in s.36(2A) of the Act.
59. Considering the country information about the difficulties that persons returning to Sri Lanka may face on return, I accept that the applicant may face some challenges in establishing himself. I also accept that current economic situation in Sri Lanka may have some further adverse impact on the applicant’s ability to re-establish himself. As noted above, the current economic and political situation in Sri Lanka has caused difficulties and shortages of essentials that impact the population as a whole and is not an issue that the applicant would face personally. On the evidence before me, I am not satisfied that any difficulties that the applicant may experience due to these conditions would amount to significant harm as defined. I am not satisfied that, there is an intention to inflict pain or suffering that can reasonably be regarded as cruel and inhuman in nature, severe pain or suffering or an intention to cause extreme humiliation such as to meet the definitions of torture or cruel or inhumane treatment or punishment or degrading treatment or punishment. I am also not satisfied that the applicant will face a real risk of being arbitrarily deprived of his life or be subject to the death penalty or tortured.
60. I have found above that there is otherwise no real chance of the applicant facing any harm. The Federal Court²² has held that ‘real risk’ imposes the same standards as the ‘real chance’ test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.
61. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Sri Lanka.

Complementary protection: conclusion

62. 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.

²² *MIAC v SZQRB (2013) 210 FCR 505.*

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.