



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA

IAA reference: IAA16/01292

Date and time of decision: 3 July 2017 14:38:00

Michael Brereton, 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 an referred applicant, or their relative or other dependant

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Tamil Christian from the Northern Province of Sri Lanka. He departed Sri Lanka illegally [in] September 2012 and arrived on [Australian territory] [in] October 2012. [In] March 2016, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] November 2016.
2. The applicant claims to fear harm because of: an imputed support for the Liberation Tigers of Tamil Eelam (LTTE); having a familial association with members of the LTTE; being a Tamil and being a returned asylum seeker who fled Sri Lanka illegally. He also claims to fear harm because he was intercepted by the authorities on his first attempt to leave Sri Lanka and then left while on bail for that offence.
3. The delegate found that the applicant's claims lacked credibility and did not accept that the applicant had any association with the LTTE (including familial), that he had been tortured or that he was being pursued by the authorities. The delegate did not accept that the applicant was on bail for a previous attempt to leave Sri Lanka. The delegate found that, considering the changed circumstances in Sri Lanka, the applicant did not face a real chance of serious harm or a real risk of significant harm and was not a person in respect of whom Australia has protection obligations.

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 30 November 2016, the applicant's lawyer provided the IAA with a written submission and attachments. To the extent that the submission refers to and discusses the issues and country information before the delegate and the findings made by the delegate, I am satisfied that it is not new information.
6. The submission attaches a copy of a purported police report with an English translation and a document titled 'CSR Information Sri Lanka 7Sept2016'. All of this information has been provided to the delegate previously and I am satisfied that it is not new information.
7. The submission also attaches the Report of The Human Rights Commission to the Committee Against Torture, dated October 2016. This report post-dates the interview and was publicly released two days before the decision. I am satisfied that it is new information. I am also satisfied that as it relates to current conditions in Sri Lanka, and given its proximity to the decision date I am satisfied that it could not have been provided to the Minister before the delegate made the decision. I am also satisfied that there are exceptional circumstances to justify considering this information.
8. Since the date of the delegate's decision there have been two pieces of country information published that refer to current conditions in Sri Lanka and the rehabilitation of former LTTE cadre.¹ This information was not before the delegate at the time of the decision and is new

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105; United Kingdom Home Office (UKHO), "Report of a Home Office Fact-Finding Mission Sri Lanka: treatment

information. I consider the Australian Department of Foreign Affairs and Trade (DFAT) to be an authoritative source of country information and as its January 2017 report supplements the December 2015 report that was before the delegate, I am satisfied that there are exceptional circumstances to justify considering this new information. I also consider the United Kingdom Home Office (UKHO) to be an authoritative source of information. I am satisfied that there are exceptional circumstances to justify considering this new information.

9. On 8 June 2017, the IAA invited the applicant to comment on, and provide information in respect of the new information. On 22 June 2017, the applicant's representative provided a response. I am satisfied that it is new information. I am satisfied that the information contained within the representative's response was not before the Minister and could not have been provided before the delegate's decision. The information relates to reports issued after the delegate's decision and which the IAA invited comment on. I am satisfied that there are exceptional circumstances for considering it.

Applicant's claims for protection

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

- He is a Tamil Christian who was born and lived in the Killinochchi district in the Northern Province of Sri Lanka. His mother and siblings remain in this part of Sri Lanka.
- His biological father was killed in a crossfire between government forces and the LTTE in [1988]. His mother told him later (in about 2000) that although his biological father was not in the LTTE, he had friends who were and he moved around with them.
- His mother remarried and his stepfather was involved with the LTTE for more than 10 years. His stepfather [did certain work] and later served with [a senior LTTE commander]. His stepfather was taken by the Sri Lankan Army (SLA) in 2009 and has not been seen since then.
- The applicant's church arranged for him to do a [Occupation 1] course and from 2006 – 2009 he worked as a [Occupation 1]. He never did any work directly for the LTTE but his employer did do some work for it. He did whatever work his employer asked him to do.
- In 2009, his family was taken to a Displaced Persons (DP) camp. He was called to the camp office of the Criminal Investigation Division (CID) and questioned about his association with the LTTE. This happened many times but on three occasions he was detained and beaten. He was badly injured [and] still has trouble standing for long periods.
- In 2010, he and his family were released and returned to their home village in Killinochchi. He went to resume his [Occupation 1] work but his employer had fled Sri Lanka. However, his employer's brother took over the company and gave the applicant work.
- In 2011, he applied for and was issued a passport but he has never travelled on this document.
- In around August 2012, people came to his house while he was at work. They asked his mother where he was and for the address of his workplace but she did not give them

of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam (LTTE)", 31 March 2017, CISED850AD3780.

this address. His mother called him at work to tell him what had happened. He was scared, so he did not go home but stayed in a room at the back of the workshop for two weeks.

- After two weeks, no one had come looking for him so he went home and met some friends to play [sport]. While they were playing, two plain clothes men came up and took him to the police station. They said that his [Occupation 1] course had been paid for by the LTTE and he worked for the LTTE. He told them that the course was arranged by the church. A soldier slapped and assaulted him. Later, his mother and his local priest came to the police station and the priest told them that the church had arranged the course. The applicant was released.
- The priest told that applicant that he needed to get away because he would not be safe. He went into hiding that night and then went to Jaffna to get on a boat.
- His boat was stopped by the Sri Lankan Navy (SLN) and he was taken to court. He was remanded in prison over the weekend before his mother and [Relative 1] bailed him out. His agent arranged for another boat and he escaped Sri Lanka [in] September 2012.
- His mother has sent him a letter that he says is from the CID. It is dated [date] July 2015 and instructed him to appear at the CID office in Colombo on [date] July 2015.

Refugee assessment

11. 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

12. 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.
13. The applicant claims to be Tamil Christian from the Northern Province of Sri Lanka. He has provided documentary evidence of identity and residence. On the basis of his evidence I

accept that the applicant is a Tamil Christian from this part of Sri Lanka and that he does not have a right of residency in any other country.

Familial association with the LTTE

14. The applicant claims that his mother told him that his biological father was not a member of the LTTE but had friends who were. His father used to move around with these friends. His father was killed in crossfire in [1988], but the applicant does not claim that his father was fighting or otherwise involved in the conflict. He does claim that his stepfather was active in the LTTE and had been involved for more than 10 years. His stepfather began in [details deleted]. Later, his stepfather was recruited into service by a senior LTTE [commander]. The applicant claims that his stepfather has not been seen since he was taken away by the SLA in 2009.
15. At the interview with the delegate [in] August 2016 (the interview), the delegate referred the applicant to the initial entry interview he gave [in] January 2013 (the entry interview). The delegate put to the applicant that he had not mentioned at any time that either his father or his stepfather had any involvement with the LTTE. The delegate also noted that the applicant had answered “no” to the questions dealing with his or his family’s involvement or association with any political groups, activities or protests against the government. The applicant said that he was scared at the time of the interview and it was his mistake that he did not mention it. He also said that the entry interview asked him about “his” problems, so he did not think he had to mention his family.
16. While I am prepared to accept that there are circumstances in which applicants are scared or otherwise unable to provide some information at their entry interviews, I am not satisfied that this applies to the applicant here. The delegate put to the applicant that the interview was conducted three months after the applicant had arrived in Australia and the applicant had had time to understand the conditions here and know that he was safe. I agree with that comment. I also note that at the interview with the delegate, the applicant stated that he was interrogated and tortured in 2009 partly because his stepfather was in the LTTE. I do not accept that if the applicant was subject to interrogation and mistreatment for that reason, he would not consider it relevant to his personal claims when he made his statements at the entry interview. I take into account that the information was not about the applicant’s personal activities or association with the LTTE (and indeed, he does not claim to have any) and on that basis, there is no reason that the applicant would fear adverse interest from the Australian security authorities were he to mention the information about his father and stepfather. I do not accept the applicant’s explanation for why he did not mention this familial association with the LTTE.
17. The applicant has not claimed, and there is no evidence before me that his mother or his siblings have ever been questioned, harassed, harmed or had any other form of contact with any police, military, security or paramilitary organisation in relation to the father or the stepfather. Although I accept that his siblings are younger I do not accept that, if the stepfather had the type of profile now claimed by the applicant, the authorities would not have taken some interest in the remainder of the family including questioning them, searching the family home and/or other forms of harassment.
18. I am not satisfied that the applicant has provided a credible account for the development of this familial association claim. I do not accept that the applicant’s biological father or stepfather was involved with the LTTE as the applicant now claims. While I am prepared to accept that his stepfather may be missing, I do not accept that this has led to the applicant

being imputed with any association with the LTTE. I find that the applicant has embellished or fabricated these claims in order to strengthen his refugee application.

Interrogation claims

19. The applicant claims that his family was sent to a DP camp in 2009. He told the delegate that one day the CID called him to come to the office, where he was then interrogated. The CID accused him of being in the LTTE and said that if he showed them others who were LTTE, they would let him go. He refused to do so and he was taken to a room and beaten. The CID then told him that they knew he was LTTE, his stepfather was LTTE and his family was a LTTE family. He denied any involvement with the LTTE and was release but he was called to the office on many further occasions. He was questioned and beaten on three of those occasions. The delegate asked why he was released each time and the applicant said that the CID did not have enough evidence to keep him. He also said that because he was registered as being in the camp, the CID could not make him disappear. He said that on one occasion when he was beaten, [he was injured]. He was not taken to a hospital but the camp clinic gave him some medication. He later said that he still suffers pain from this injury today.
20. The applicant and his family were released in 2010 and allowed to return to their village. The delegate asked why the CID would let him go if he was suspected of being LTTE and the applicant said that if the CID could not confirm someone's LTTE status in the camps, it was easier to send them back to their village and confirm it there. The applicant returned to his village and continued working as a [Occupation 1]. He claims that the authorities did not come looking for him until 21 months later.
21. I have considered information in the referred materials² and the applicant's claim that he was called in for questioning by the CID on a number of occasions whilst in the DP camps. I note from the referred material that the Sri Lankan authorities, including the SLA and the CID, undertook a comprehensive and multi-stage screening process to identify members of the LTTE both prior to and whilst persons were in the DP camps. This included using former LTTE members as informers to identify persons. Former LTTE and military intelligence personnel often walked through DP camps and pointed out persons who were then taken for further interrogation. During the interrogations, the authorities commonly used inducements, threats and physical violence. Detainees were often questioned on many occasions. The applicant's general claims in this regard are consistent with the referred information and are plausible. I accept that the applicant was called in for interrogation a number of times and suffered violence and injury on those occasions. I also accept that he was pressured to identify persons who may have been linked to the LTTE. However, I take into account that persons who were suspected of any involvement or association with the LTTE, including those with only a civilian or familial association, were separated from their families and taken to detention centres and on that basis, I do not accept that the applicant was questioned about his stepfather or that his family was perceived as being a LTTE family.
22. The information cited above also indicates that detainees of more than general interest to the authorities were required to report daily to the security offices daily while others simply disappeared from the camps, usually at night. The DP camps continued to operate with significant restrictions on detainees' movements, contacts and personal liberty, until the end of 2009/beginning of 2010, when the release process began. This process was also highly regulated and began with the elderly and other vulnerable groups, as well as persons whose

² Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2)", 16 September 2015, CISEC96CF13358, at pp 202-218.

services were required outside the camp, such as medical personnel. Other families were able to leave after paying bribes. Families returning to home areas that remained militarised reported that they often faced surveillance, threats and harassment.

23. The applicant claims that he and his family had remained together in the same DP camps and were all released to return home at the same time. He has not claimed that he was required to report on a daily or other regular basis, or that the family paid bribes in order to leave the DP camp. The applicant and his family returned to their home village and the applicant has not claimed they were subject to any harassment by the authorities at this time. The applicant also obtained employment and remained in the same job from December 2010 until August 2012, during which time he was not subject to any reporting, monitoring or harassment. The authorities did not visit his house or his workplace at this time and his evidence is that the authorities took no further interest in him for nearly two years. The delegate put to him that this was at the time when the authorities were actively targeting and arresting LTTE suspects and sending them for rehabilitation, yet nothing happened to the applicant, which suggested he was not of interest to the authorities at all. The applicant then said that sometimes things did happen during this period. He was asked to explain what these things were and he said that when he came home from work at night, the SLA would tell him not to shine a light, but no one ever accused him of being LTTE. The applicant has also submitted to the IAA that release from the DP camp does not mean that he was cleared and beyond suspicion as "he would have been released for various tactical reasons and for want of evidence. It does not also necessarily follow that he is free from suspicion for all times." The applicant further submits that the Sri Lankan authorities are known to "willingly act belatedly for various reasons".
24. It is implausible that if the CID had any level of ongoing suspicion of the applicant, it would have allowed the applicant to remain with his family in the DP camp and then later leave the DP camp without further investigation or follow-up. The information cited above indicates that even if the authorities did not have "firm evidence" against someone, anyone with any suspected link to the LTTE or similar profile was separated, taken to a detention camp or simply disappeared. I am also satisfied on the basis of the information cited above that if the authorities had any interest in the applicant whatsoever, he would have been subject to some form of surveillance, reporting or other contact with the authorities when he returned to his home village. I do not accept the applicant's claims that the CID released him because it had no firm evidence against him, for other tactical reasons, or that the CID continued to suspect him after his release. While it is plausible that a person's release does not mean they were cleared and beyond suspicion, there is no evidence that indicates that the applicant was subject to any suspicion at the time of his release or in the 21 months following it. I am not satisfied that the applicant was of any ongoing interest to the CID when he left the DP camp and I find that he was not at that time imputed with any support for or association with the LTTE.
25. The applicant claims that in August 2012, people came to his home looking for him. He was at work so they asked his mother for the address of his workplace. She did not give them the address and they went away. His mother called him at work and he was too scared to come home so he stayed in a room behind the workshop for the next two weeks. No one came looking for him in that time so he went home. He went outside to play [sport] with some friends and two people in civilian clothes came up and spoke to him in broken Tamil. They asked for his identity card and then took him to their camp. They said that his education and [Occupation 1] course had been arranged by the LTTE and they knew he was LTTE. They said that if he confessed, he would be sent for rehabilitation but if he did not, he would disappear. There was a SLA soldier in the room with them and this man assaulted and slapped the applicant. Eventually, the applicant's mother came to the camp with their priest and the priest

showed the CID a letter confirming that the church had arranged the [Occupation 1] training. The CID released the applicant but told him he had to stay in the village and report whenever called for. Later, the priest told him that he was not safe and he needed to leave Sri Lanka.

26. There are aspects of the above claim that I consider to be unconvincing. I find it surprising that if the applicant was of interest to the CID, the officers would ask his mother for his workplace address but then simply leave when she said she did not know. There are no claims that the authorities searched his house, watched it, took other steps to locate him or asked any of his siblings, friends or neighbours about him. However, the applicant claims that as soon as he returned, some two weeks later, the authorities were able to immediately locate him playing [sport]. Considering the above, together with my finding that the applicant was not imputed with any association to the LTTE, I do not accept that the authorities were actively seeking the applicant or that they came and took him from a [sport] game. However, I am prepared to accept that the applicant was called in for questioning by the authorities on one occasion and that this questioning was in relation to his [Occupation 1] course.
27. The applicant's evidence is that his local priest provided documentary proof that the LTTE did not arrange the [Occupation 1] course and the applicant was then released. He has not claimed that the CID or any other military, paramilitary or security organisation has attempted to locate him, visit his home, call him in for further questioning or shown any interest in him in relation to purported LTTE links since that time, including since he has been in Australia (apart from a purported letter from the CID which I deal with below). I am satisfied that whatever interest the authorities may have had in relation to the applicant's [Occupation 1] course and education ceased in or around 2012.
28. The applicant has also claimed that his former employer (during the period 2006-2009) had links with the LTTE and conducted work for it. The applicant said that he himself did not do any direct work for the LTTE but he did whatever his employer asked him to do. He claims that this former employer fled Sri Lanka to avoid arrest but the employer's brother took over the business and continues to operate it. The applicant has not explained how he knows about the LTTE involvement or the circumstances of the employer's departure. The applicant has not claimed, and there is no evidence that he has ever been questioned in relation to this employer or this employer's links to the LTTE. The applicant has not claimed that the employer's brother has ever been questioned, or that the authorities have ever attended the business premises, asked questions of other employees or conducted any other form of investigation into the business' links to the LTTE. While I am prepared to accept that the applicant may believe that his former employer was involved with the LTTE and fled Sri Lanka as a result, and that he himself may be imputed with a LTTE profile because of his association with the employer, I find that this is speculative and not well-founded. There is no other evidence to indicate that the applicant himself has any adverse profile arising from his association with this employer.
29. I have considered the applicant's claim that he was intercepted by the authorities when he first attempted to depart Sri Lanka in September 2012. He claims that on this occasion, the SLN intercepted the boat and brought it back to Sri Lanka, where he was remanded in prison over the weekend. His mother and [Relative 1] then came to the court and he was bailed on the surety of his [Relative 1]. He has not claimed, and there is no evidence before me that he was required to report to police stations, reside in particular areas or subject to any movement restrictions. Apart from the letter that I consider below, he has not claimed that the authorities have made any enquiries or tried to locate him in the more than four years since this incident.

30. The applicant claims that [in] July 2015, (three years after his arrival in Australia), his mother received a letter from the CID instructing him to appear at the CID Colombo office on [date] July 2015 and to bring his bank statements. The delegate did not give any weight to this letter, based on a number of significant anomalies in the document. Although the letter does not indicate a reason or case details, in his IAA submission the applicant states that this letter relates to his earlier attempt to leave Sri Lanka. While I share the delegate's concerns about certain aspects of the letter, for the reasons I give below in relation to illegal departure and immigration entry procedures, I am prepared to accept that the applicant departed Sri Lanka whilst on bail for a previous attempt to depart Sri Lanka. I accept that he has an extant legal matter relating to this attempt and I am prepared to accept that he may have been called in to the authorities for that reason.
31. However, I have found above that the applicant did not have any adverse security profile relating to his own, his family's or his employer's real or imputed links to the LTTE. Given the country information that I have considered below in relation to persons who departed Sri Lanka illegally, I am prepared to accept that the applicant was detained over the weekend as he has claimed. However, on the basis of the same information I am satisfied that if the applicant was of the level of interest to the authorities that he has claimed, he would have been identified and held in custody for further investigation. I am satisfied that in those circumstances, he would not have been released as he has claimed. I am also satisfied that his release and the fact that the authorities did not make any further contact with him or his family for at least three years, indicates that the authorities are only interested in the illegal departure issue and have no ongoing adverse security interest in him whatsoever.
32. I accept that as a Tamil and a young Tamil male, the applicant has experienced harassment and some violence in the past. I accept that he has a subjective fear of arrest, detention, disappearance and mistreatment at the hands of the Sri Lankan authorities. I have considered the applicant's response to the IAA and the information that is referred to therein, and have also taken into account country information that indicates that the situation in Sri Lanka has changed since the applicant left in 2012.
33. In January 2017, DFAT released its most recent country information report. This reports that following the democratic elections of President Sirisena in January 2015 and the new parliamentary coalition in August 2015, the Sri Lankan government is now focused on post-conflict reconciliation, transitional justice, and governance and economic reform. The monitoring and harassment of Tamils in day-to-day life has decreased significantly under the new government. Military checkpoints have been closed and although there is a sizeable military presence still in the North and East, members of the Tamil community have described a positive shift in the nature of interactions with the authorities. Tamils have a substantial level of political influence and their inclusion in political dialogue has increased since Sirisena came to power in 2015, while the leader of the Tamil National Alliance is also the leader of the National Opposition. DFAT also notes that the new government has changed the name of Victory Day to War Heroes Remembrance Day and has given official approval for memorial events in the North and the East, including singing the national anthem in both Sinhalese and Tamil.³ I take into account the applicant's response to the IAA that this change is largely cosmetic and that the term 'war heroes' is used by some nationalist groups to denote government military personnel including those who may have committed war crimes and crimes against humanity; however, there is no information before me that indicates that the government restricts the term to SLA or associated/allied personnel. While I note the criticism, I am satisfied that in the context of the improved political dialogue, reconciliation and good

³ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at pp 4, 8, 10, 12.

governance, the name change, memorial events and bilingual national anthem are indicators of positive change.

34. The country information before me indicates that the Sri Lankan government is sensitive to the re-emergence of the LTTE, pro-Tamil/anti-government activities, human rights advocacy and activities that may bring the country/government into disrepute, but there is no information that indicates young Tamil males face a particular risk merely because of their age, ethnicity or geographic origins alone. The applicant's response to the IAA submits that the improved country circumstances only relate to Tamils in general and not to Tamils with an LTTE profile. The applicant asserts, and I accept that the country information needs to be considered in the context of DFAT's assessment about the potential re-emergence of the LTTE and the fact that the Sri Lanka authorities maintain a sophisticated intelligence on former LTTE members and supporters. The response then refers to other information relating to the risks faced by persons with such a profile, including the risks such persons face when under investigation and detention; in particular, those who may be subject to the *Prevention of Terrorism Act* (PTA).
35. I have found above that the applicant did not have any familial association with the LTTE and that while the authorities may have had some interest in him at one time, any such interest ceased in 2012. There is no information or evidence before me that indicates that the applicant has been or will be involved in any activities that might be, or be perceived to be linked to the re-emergence of the LTTE. There is no information or evidence before me that indicates that the applicant is subject to any adverse intelligence maintained by the Sri Lankan authorities and I am satisfied that he will not face a real chance of being interrogated, detained, arrested or subject to any other action in relation to an adverse security profile and/or under the PTA. I am satisfied on the basis of the applicant's evidence and the country information before me that he will not be attributed with any profile other than being a young Tamil male from the North. As noted above, there is nothing in the country information or other materials before me that indicates that young Tamil males face a real chance of serious harm on the basis of age, ethnicity and geographic location alone. I am satisfied that the applicant will not face a real chance of serious harm only on the basis of being a young Tamil male, or a Tamil from the North.
36. I have also considered the applicant's religion. DFAT notes that the Sri Lankan Constitution and other laws guarantee freedom of religion and belief, although according Buddhism the "foremost place". Attacking places of worship or religious objects is punishable with fines or imprisonment. Sri Lanka recognises religious holidays for all four main religions (including Hindu) and representatives of each religion are invited to national functions. There are Ministers with portfolio responsibilities for each religion and students are allowed to study their choice of faith. DFAT assesses that most members of religious groups are able to practice their faith freely. The risk of violence and harassment increases where practitioners attempt to proselytise or convert others.⁴ I note that the applicant has not made specific claims or referred to any information that suggests Tamil Christians face a real chance of serious harm, that he or his family have suffered any harassment or harm on the basis of being Christians, or that he has or intends to engage in any actions that would constitute proselytising or conversion. To the extent that he has referred to his religion, it has been in the context of his priest coming to the police station to arrange his release. On the basis of the information and claims before me, I am satisfied that the applicant does not face a real chance of serious harm on the basis of his being a Christian.

⁴ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at pp 12-13.

37. Considering all of the claims and information, I find that the applicant will not be imputed with any support for or association to the LTTE arising from his family, employer, education, his first attempt to depart Sri Lanka, his second attempt to depart Sri Lanka or for any other reasons or association. I find that he is of no interest to the authorities for any reason relating to the LTTE and that he will not face a real chance of serious harm for this reason should he return to Sri Lanka. I find that the applicant does not face a real chance of serious harm on the basis of being a young Tamil male, a Tamil from the North or a Christian.

Illegal departure and returned asylum seeker

38. I am satisfied that the applicant departed Sri Lanka illegally. I accept that given the information before me, including the way he departed the country, there is a possibility he would be assessed by the Sri Lankan authorities as having sought asylum in Australia. DFAT has assessed the risk of torture or mistreatment for the majority of returning Tamils is low, including for those suspected of offences under the Immigrants and Emigrants Act (the I&E Act).⁵

39. The applicant claims that he has already been remanded on immigration offences and has absconded on bail. As noted above, I am prepared to accept that the applicant attempted to leave Sri Lanka and was intercepted by the authorities. Given the country information I refer to below, I am prepared to accept that he was held on remand over the weekend and then taken before a court. While he claims that he was released after his [Relative 1] paid a surety, there is no information in the referred materials apart from the letter instructing him to report, that supports this claim or indicates what, if any, bail conditions were imposed. DFAT has advised that there are rarely any conditions in relation to bail and if there are, they are imposed on a discretionary basis. An accused will only need to return to court when the case against them is being heard or they are summonsed as a witness, and there is no general requirement to report to police or police stations between hearings.⁶

40. Although there is no evidence before me to corroborate that the applicant is on bail, I am prepared to accept this claim. I have also accepted the applicant's submission that the letter from the CID relates to his illegal departure and that he has been called to report to the authorities. I am prepared to accept that the applicant was released on the surety of his [Relative 1] as claimed. I am also prepared to accept the claim that the applicant has been called on to report to the authorities but I take into account that apart from the 2015 letter, he has not claimed that the authorities have otherwise contacted or visited his family (including this [Relative 1]) in the more than four years since he was released on bail, either to ascertain his whereabouts or to advise him that his case has been called back to court. The applicant has not claimed that he, his family or his [Relative 1] has been contacted by the authorities in relation to his subsequent departure or his failure to attend in 2015. Having considered all of this information and evidence, as well as my findings in relation to his lack of any imputed LTTE profile, I am not satisfied that his previous attempt to depart Sri Lanka would give him an adverse profile with the authorities.

41. On the basis of the evidence before me, I accept that the applicant may be questioned on return as part of the airport screening process. The country information before me indicates that this could involve an interview, contact with the police in his home area, his family and/or neighbours. They would also check criminal and court records and I accept that it is likely that the applicant will be identified as having left Sri Lanka whilst on bail for a previous immigration

⁵ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 29.

⁶ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 34.

offence. I take into account that the applicant was released on bail and has not been followed up by the authorities for over four years. I also take into account that he has never claimed to have been anything other than a passenger. I am satisfied that his first illegal departure offence is a minor offence and would not give rise to any more than a low-level interest. I am therefore satisfied that leaving Sri Lanka whilst on bail for this offence would not give rise to any more than low-level interest and that his repeat offence would not give rise to an adverse security or criminal profile. The country information before me indicates that returned asylum seekers and those with an otherwise low profile are not generally at risk of harm on return to Sri Lanka.⁷ There is no evidence before me that indicates that the applicant will be at any increased risk of arrest or detention because of his previous attempt to depart. I am satisfied that the applicant would not be at risk on return on the basis of any adverse security or criminal profile, including for having departed whilst on bail for a previous attempt, and I find that notwithstanding his personal profile, there is not a real chance he would be subjected to harm because he is a returning asylum seeker.

42. According to DFAT a Sri Lankan national who departs Sri Lanka other than via an official port will be in breach of the I&E Act and may be subject to penalties which can include imprisonment for up to five years and a fine of up to Rs.200000 (approximately AUD \$2000). In terms of the likelihood of a custodial sentence, DFAT advises that those who are not actively involved in a people smuggling venture are not given custodial sentences for departing Sri Lanka illegally. DFAT also assesses that ordinary passengers are generally viewed as victims.
43. Persons who departed in breach of the I&E Act may be arrested and charged. A person may be remanded in custody for a short period (24 hours) while waiting to be brought before a magistrate, but this may be longer if a person is returned just before a weekend. Where a person pleads guilty, they will be fined and discharged. In most cases, when a returnee pleads not guilty, they are immediately granted bail on personal surety, though they may be required to have a family member act as guarantor, in which case they may also need to wait until a family member comes to court to collect them. As noted above DFAT reports that bail conditions are rarely imposed on illegal departees and there is no general requirement on such persons to report to police or police stations between hearings.⁸
44. As the applicant left Sri Lanka in breach of the I&E Act, I find that there is a real chance he would be charged and fined under that law. I have found that the applicant does not have an adverse profile or is otherwise of interest to the authorities, although I accept that his previous attempt to depart Sri Lanka and bail status may become known. If the applicant were to plead not guilty, I accept that the court would take into account that he has previously left Sri Lanka whilst on bail. However, there is no information before me that indicates that the applicant was involved in organising or facilitating people smuggling and as noted above, ordinary passengers are generally viewed as victims. There is no information before me that indicates that persons who have breached immigration-related bail are refused further bail, although I accept that a court may impose more stringent bail conditions on the applicant (such as reporting requirements). I also take into account that the applicant's [Relative 1] provided surety for him before and he has not claimed that he would not be able to access a guarantor again should it be required. Having regard to all of these circumstances, I am not satisfied that the imposition of more stringent bail conditions, if imposed at all, would be conduct that amounts to serious harm.

⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 29.

⁸ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 33-34.

45. I have also considered that although the applicant has attempted to depart Sri Lanka once before, he has not been convicted in relation to that offence. The evidence before me is that the applicant has only been a passenger on both occasions and there is no evidence or information that indicates persons who were only passengers, including those who have previous failed attempts, are sentenced to custodial punishment. I am therefore satisfied that if convicted, the applicant is likely to receive a fine rather than a custodial sentence. I accept the applicant may be fined, but based on the country information before me, any fine may be paid by instalment and I do not accept this would cause him economic hardship or otherwise threaten his capacity to subsist. I also take into account that he has received financial assistance from his family in relation to his previous bail. Accordingly, I find that any fine imposed, or the requirement for any bail, surety or guarantee, would not constitute serious harm.
46. Although I am satisfied the applicant would not be given any custodial sentence, the country information indicates there is also a possibility he may be detained for several days while awaiting an opportunity to appear before a magistrate. While I find that a period of detention of more than a few days is remote, I accept that such detention may occur in a Sri Lankan prison. The country information before me indicates that any such detention would only continue until the applicant was given an opportunity to appear before a magistrate, and would likely be very brief. I have considered whether such a period of detention would constitute serious harm. Under Australian law, the question of whether a loss of liberty amounts to serious harm is a qualitative judgment, involving the assessment of matters of fact and degree. This includes an evaluation of the nature and gravity of that loss of liberty.⁹ The country information before me indicates that any such detention would only continue until the applicant was given an opportunity to appear before a magistrate, and would likely be very brief. I am not satisfied on the evidence before me that the applicant has any vulnerabilities or health concerns that preclude the possibility of a brief detention. I also take into account that he was held on remand for a two day period in 2012 and has not claimed that he was beaten or subject to any other mistreatment during that period. In all the circumstances, I find that any questioning and detention the applicant may experience would be relatively brief and would not constitute serious harm as non-exhaustively defined in the Act.
47. In the alternative, I am also satisfied that the provisions and penalties of the I&E Act are laws of general application. The country information before me does not suggest the I&E Act is discriminatory on its terms, that the law is applied in a discriminatory manner or that it is selectively enforced. To the extent that the applicant may be fined, detained or questioned under the I&E Act, I am satisfied this would not constitute serious harm and would be the exercise of laws of general application that apply to all Sri Lankans equally.
48. Overall, I am not satisfied that the applicant will face a real chance of serious harm on the basis of: any real or imputed association with the LTTE; being a young Tamil male from the North; being a Christian; having left Sri Lanka while on bail for a previous attempt to depart; and being a returned asylum seeker who departed Sri Lanka illegally.
49. I have also considered the applicant's claims cumulatively. As I have found that the applicant does not have any adverse security or criminal profile with the authorities for any reason, I am satisfied that when his claims are considered cumulatively, together with his previous attempted illegal departure and bail status, the applicant does not face a real chance of serious harm.

⁹ *MIBP v WZAPN; WZARV v MIBP* (2015) 254 CLR 610.

Refugee: conclusion

50. 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

51. 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

52. 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.

53. I have found that the applicant does not face a real chance of serious harm on the basis of: any real or imputed association with the LTTE; being a young Tamil male from the North; being a Christian; having left Sri Lanka while on bail for a previous attempt to depart; and being a returned asylum seeker who departed Sri Lanka illegally. As 'real chance' and 'real risk' have been found to equate to the same threshold¹⁰ I find that the applicant does not face a real risk of significant harm for any of these reasons.

54. I have accepted that the applicant will be identified on arrival at the airport in Sri Lanka as having departed illegally whilst on bail and that he will likely be subject to prosecution on account of breaching the I&E Act. In relation to detention at the airport, the applicant may be questioned and detained there for up to 24 hours depending on the length of individual investigation and the availability of a magistrate. DFAT advises that the risk of harm for the majority of returnees, including those suspected of offences under the I&E Act is low and there is no indication before me that the applicant faces a real risk of significant harm during the investigation, questioning or while held in airport detention, including taking into account his breach of bail.¹¹

55. While I have found above that the applicant will not receive a custodial sentence, I have considered the conditions the applicant may face if he is held in a nearby prison while waiting to come before the magistrate. There is no evidence that any prisoners subject to short periods of detention awaiting prosecution under the I&E Act have been subject to the death penalty or have been otherwise arbitrarily deprived of their life, nor that they have been tortured. There is also no indication that authorities or others, through any act or omission

¹⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

¹¹ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105 at p 33-34.

intentionally inflict pain or suffering such as to meet the definition of cruel or inhuman treatment or punishment, nor any intention to cause extreme humiliation. I am also not satisfied that the questioning, or the imposition of a fine, separately or in combination with the brief period of detention to which the applicant may be subject constitute significant harm, as defined under s.36(2A) and s.5 of the Act. Accordingly, I am not satisfied that the applicant will face a real risk of significant harm arising from the imposition of any bail, any additional bail conditions or fine, during any questioning or his time in detention or prison while awaiting his magistrates court hearing.

56. In summary, having regard to the circumstances and profile of the applicant, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm.

Complementary protection: conclusion

57. 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

...

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...