



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA16/01473

Date and time of decision: 6 July 2017 14:57:00  
Michael Brereton, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Tamil Hindu from the Trincomalee district in the Eastern Province of Sri Lanka. He departed Sri Lanka illegally [in] August 2012 and arrived on the Cocos Islands [in] August 2012. He made an invalid application for a protection visa [in] July 2013 and [in] June 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; a real and imputed association with the Liberation Tigers of Tamil Eelam (LTTE); being a Tamil from the East and being a returned asylum seeker who fled Sri Lanka illegally and while subject to reporting requirements.
3. The delegate did not accept that the applicant had been arrested, detained and tortured in 2006 as he claimed. The delegate also found that the applicant had contrived an alleged detention incident in 2012 and rejected the claim that the authorities had shot at him while he was fleeing and were still searching for him and visiting his home. The delegate did not accept that the applicant faces a real chance of serious harm in relation to his claims and considering the changed circumstances in Sri Lanka since 2015, the applicant was not a person in respect of whom Australia had 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. The delegate considered the Department of Foreign Affairs and Trade (DFAT) country information report dated 18 December 2015.<sup>1</sup> On 24 January 2017, DFAT released an updated version of the country information report.<sup>2</sup> This was not before the delegate at the time of the decision and is new information. I consider DFAT to be an authoritative source of country information and as its January 2017 report supplements the December 2015 report I am satisfied that there are exceptional circumstances to justify considering this new information.
6. I have considered s.473DE which provides that the IAA must give the applicant particulars of any new information if that new information would be the reason, or part of the reason, for affirming the decision. However, this requirement does not apply to information that is not about the applicant specifically and is just about a class of persons of which the applicant is a member. From the 2017 report I have obtained new information regarding Sri Lankan citizens who are returning as returned asylum seekers and/or those who departed Sri Lanka illegally. This information is not specifically about the applicant and is just about a class of persons of which the applicant is, or looking forward should he return to Sri Lanka, will be, a member. I also note that the information relating to the treatment of returned asylum seekers in the 2017 report is substantially the same as the information that was in the 2015 report.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143.

<sup>2</sup> DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105.

## **Applicant's claims for protection**

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

- He is a Tamil Hindu who was born in [year] in the Trincomalee district, in the Eastern Province of Sri Lanka. He is married with [number of] children and his wife and children reside with his mother in [Town 1]. His father died from natural causes in 2000.
- One of his brothers, [Mr A], died in 1990 at the hands of the Sri Lankan Army (SLA). He had been detained with a group of young men and about a week later, their [bodies] were found in a paddy field.
- In March 2001, his brother [Mr B] was killed in crossfire between the SLA and LTTE. The applicant and his mother were arrested and detained for a few hours. They were forced to sign a paper saying that [Mr B] had been in the LTTE, before the authorities would release his body.
- About a week later, the SLA and Criminal Investigation Division (CID) came to the family home. The applicant and his mother were arrested and taken to [Town 1]. His mother was released but the applicant was accused of helping the LTTE. He was held for [number of] days and tortured but was released when his mother paid a bribe. However, at the interview with the delegate [in] September 2016 (the interview), the applicant and his agent clarified that this detention and torture actually occurred in 2006, not 2001. The applicant said that his family bribed a CID officer who took the applicant to a location and released him.
- He and his family moved to the Northern Province and as the fighting escalated, the family was displaced to various locations. In April 2009, the applicant and his family were placed in an Internally Displaced Persons (IDP) camp. While they were there, the applicant was taken, interrogated and beaten by the CID on a number of occasions.
- In around April 2010 the family was released and returned to [Town 1]. The applicant was required to report weekly to the CID base in [Town 1]. He was not beaten or harmed but he had to give the CID "gifts" and occasionally do cleaning jobs there.
- In June 2012, the applicant reported to the base and a CID man recognised him from the 2006 detention. The applicant was immediately arrested, detained for [number] weeks and tortured until his mother paid another bribe. The applicant went into hiding after he escaped and began making arrangements to flee Sri Lanka.
- He arranged to meet his wife on the day he fled Sri Lanka. They met in a coconut plantation but during the meeting, the applicant heard noises in the jungle. He heard a gunshot as he ran away. He claims that the CID had come to the plantation to capture him.
- Since he left Sri Lanka, his wife has received many visits from the CID which is looking for him. The CID has verbally abused, intimidated, pushed and interrogated his wife. He fears returning to Sri Lanka because the CID suspects he is a member of the LTTE and because of the deaths of his brothers. He also fears harm due to being a Tamil and because he departed Sri Lanka illegally, while subject to reporting requirements.

## **Refugee assessment**

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8. 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**

9. 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.
10. The applicant claims to be Tamil Hindu from the Eastern 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 Hindu who has resided in this part of Sri Lanka.
11. The applicant’s claims as set out in the initial entry interview [in] January 2013 (the initial interview), the invalid PV application in 2013, the statement of claim in the SHEV application and at the interview are confusing and in some areas they are inconsistent or contradictory. I have therefore approached the applicant’s history and claims chronologically.

### *Death of [Mr A]*

12. The applicant claims that his brother [Mr A] died in 1990. In the initial interview he stated that [Mr A] had been taken by the SLA and the family presumed he had been shot. He said a death certificate was issued three or four years ago. The referred materials contain a copy and translation of a death certificate issued in 2007. This certificate is in [Mr A]’s name and states that he died in August 1990. Under the cause of death the certificate states “Believe that he is dead on the fact that more than one year has passed since his missing.” Although the applicant did not mention [Mr A] in his invalid PV application, his SHEV statement claims that the SLA had taken [Mr A] and other young men away. About a week later, [number] bodies were found in a paddy field. His father went there and identified [Mr A]. At the interview the delegate noted that the death certificate listed [Mr A] as missing. The applicant said that the government will not give the true reason for deaths. He also said that he thinks [Mr A] had been helping the LTTE but he (the applicant) was only small at the time.
13. I take into account that while the applicant may believe that [Mr A] was taken and murdered by the SLA for being involved with the LTTE, there is no other evidence other than a certificate that states [Mr A] is missing. I also note that the applicant has not claimed at any time that he or any other member of his family has ever been questioned, harassed or

subject to any suspicion because of [Mr A]. On the basis of the evidence and information before me, I accept that [Mr A] disappeared in 1990 and I am prepared to accept that his [body] was found sometime later. However, as there is no evidence that the family was subject to any suspicion or questioning in relation to [Mr A] or this incident, I do not accept that [Mr A] was suspected of being a member of the LTTE or that his death was a result of any such suspicion. I do not accept that the applicant had or continues to have any adverse security profile with the authorities arising from the death of [Mr A].

#### *Death of [Mr B] and detention*

14. The applicant claims that his brother [Mr B] was killed in a crossfire between the SLA and the LTTE. His PV and SHEV statements are contradictory, putting this event occurring in 2001 or 2006. He has however provided a copy and translation of a death certificate that states that [Mr B] died in March 2001, as a result of [gunshot injuries]. I accept this certificate and find that [Mr B] died in 2001. I have considered the remainder of the applicant's evidence and claims against that date. I am also satisfied that the different dates given by the applicant are the result of genuine confusion and I do not draw any adverse inferences in relation to these different dates.
15. The applicant claims that [Mr B] was not a member of the LTTE and was caught in crossfire. However, after [Mr B] was killed, the applicant and his mother were arrested and detained by the authorities. The applicant's evidence about duration is again confused and inconsistent but I am prepared to accept the clarification given by the agent at the interview, that the applicant was held for a few hours. He and his mother were forced to sign a document stating that [Mr B] was part of the LTTE before the authorities would release [Mr B]'s body. The applicant said that he was not harmed during this period of detention.
16. The applicant claims that he was arrested by the CID in 2006 and held in detention for [number of] days. He claims that he was asked about [Mr B]'s role with the LTTE and then accused of being LTTE himself. He denied any knowledge of [Mr B]'s involvement and denied having any role with the LTTE but the CID did not believe him. He was interrogated, beaten and tortured severely throughout this period. Eventually, his mother was able to secure his release by paying a bribe to a CID officer. After the bribe was paid, either one (the invalid PV statement) or two (the SHEV statement) CID officers put the applicant into a van, drove him to a place in the jungle and released him. They told him that he should leave [Town 1].
17. The applicant has not explained why the authorities would suddenly take an interest in [Mr B] five years after his death. However, I take into account that in 2006 the LTTE was conducting increasing military operations that led to the ceasefire breaking down and an escalation in the conflict.<sup>3</sup> It is plausible that in that environment the applicant, as a Tamil male in that area at that time, was detained and questioned about his involvement with the LTTE. I am prepared to accept that he was detained for a period of time and subjected to harm and mistreatment. I am also prepared to accept that his family paid a bribe to secure his release.

#### *IDP Camp*

18. The applicant claims that after his release in 2006, he and his family left [Town 1] and went to the Northern Province. Between 2006 and 2009 they relocated within the Northern Province on a number of occasions. The applicant claims that as this was a LTTE-controlled area, he

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<sup>3</sup> Human Rights Watch (HRW), "We Live in Constant Fear": Lack of Accountability for Police Abuse in Sri Lanka", 23 October 2015, CISEC96CF13673, at p 10.

was sometimes forced to do labouring and building work for the LTTE but he did not undertake any training or other activities.

19. In April 2009, the applicant and his family were captured by the SLA and taken to [an IDP camp] in the Vavuniya district. Although the family was kept together in this camp and the applicant was not arrested, he claims that he was called to the CID routinely for interrogation, during which he was asked questions about the LTTE and any LTTE members that he knew. He said that he was abused, beaten and tortured during this questioning. The family was released from the camp in April 2010 and returned to [Town 1], where the applicant resumed work as a [occupation]. He claims that he was required to report to the CID on a weekly basis and had to give the officers "gifts" of money, cigarettes, alcohol or fish.
20. I have considered information in the referred materials<sup>4</sup> and the applicant's claim that he was called in for questioning by the CID on a number of occasions whilst in the IDP camp. 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 IDP 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.
21. 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 while others simply disappeared from the camps, usually at night, and were never seen again. The IDP 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 services were required outside the camp, such as medical personnel. Other families were able to leave after paying bribes, but the applicant has not claimed that his family did so. Families returning to home areas that remained militarised reported that they often faced surveillance, threats and harassment.
22. I accept that the applicant was called in for interrogation a number of times. However, I note that he was not arrested or required to report on a daily or other regular basis. I also 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. I have also considered my finding above that he was questioned about LTTE involvement in 2006 and although I have accepted that his family paid a bribe to arrange his release, I take into account that at no time during his 12 months in the IDP was he asked about the 2006 detention or his escape, or subject to any other interest arising from these events.
23. It is implausible that if the CID had any level of historic or ongoing suspicion of the applicant, it would have allowed the applicant to remain with his family in the IDP camp and then later leave the IDP camp without further investigation or follow-up. The information cited above indicates that even if the authorities did not have any evidence against someone, anyone

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<sup>4</sup> 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.

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, including any interest arising from his detention in 2006, he would have been subject to more surveillance, monitoring and questioning after his release, rather than simply a weekly reporting regime. I am not satisfied that the applicant was of any ongoing interest to the CID when he left the IDP camp and I find that he was not at that time imputed with any support for or personal association with the LTTE (including for the reasons of residing in LTTE-controlled areas and being forced to undertake labour), or because of his brothers. I also find that he was of no interest to the CID arising from the 2006 incident.

24. I am prepared to accept that the applicant was required to report weekly after his release and that he was asked to give the authorities money or goods during these visits. I note that he was not asked any questions or subject to any harm other than the requests for ["gifts"] and occasionally being asked to do some cleaning jobs. The applicant has not claimed that the imposition of the gifts and cleaning tasks caused any hardship to him or to his family. While I accept that the impositions were no doubt annoying and frustrating, I am satisfied that the conduct did not amount to serious harm. On the basis of the country information cited above, I find that this reporting and harassment was applied to many released IDP and was not indicative that a person had an adverse security profile with the authorities. I find that the applicant did not have an adverse security profile at the time of his release from the IDP camp.
25. I have also considered whether the applicant may face similar reporting and impositions if he returns to Sri Lanka. The referred materials indicate that, as the delegate put to the applicant at the interview, there has been a decrease in monitoring and military involvement, although some individuals in the North and East still report being questioned or monitored. As noted below, the country information indicates that the government is particularly concerned about LTTE resurgence, anti-government and pro-Tamil activities and it is plausible that persons with such profiles, including persons released from rehabilitation and detention centres, may be subject to ongoing monitoring. There is nothing in the material that indicates that former IDP remain subject to monitoring or reporting, although I do note reports that in the neighbouring district of Batticaloa, there has been a fresh round of registrations. Persons who were in the Vanni area (which includes Vavuniya) during the conflict have reported being questioned again about their presence there and any involvement with the LTTE.<sup>5</sup> While these reports do not refer to any ongoing reporting regimes, it is plausible that persons who are under particular suspicion may be required to do so. However, I have found above that the applicant did not have an adverse security profile at the time of his release and while he has since departed Sri Lanka while subject to reporting requirements, I am satisfied that this would not of itself give rise to an adverse security or criminal profile. I am not satisfied that he will be subject to regular reporting to the authorities should he return to his home village.

#### *2012 detention and departure*

26. Apart from the weekly reporting referred to above, the applicant does not claim to have suffered any harm, harassment or problems for two years after his release from the IDP camp. He claims that his problems began in [June] 2012 when he attended the CID office as part of his weekly reporting. A CID officer who had interrogated him in 2006 recognised him.

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<sup>5</sup> United Kingdom Home Office (UKHO), "Country Information and Guidance. Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77, at p 21.

In his invalid PV application, the applicant claims that he was immediately arrested and his CID file was brought out. The officer asked him how he had escaped in 2006, accused him of being LTTE. He was kept in detention for [weeks] and tortured in the same manner as in 2006, until his mother was able to pay a bribe for his release. After she paid the bribe, the applicant was taken to an unknown place in the jungle, dropped off and told to leave Sri Lanka.

27. In his SHEV statement, the applicant said that after the CID officer recognised him, the officer asked how he had escaped and where he had been. The applicant told him that he had been in an IDP camp but the officer did not believe him. The officer allowed him to leave but later that month he was detained again, taken “somewhere”, held for [weeks] and beaten until his mother paid a bribe. He was taken to a location close to home, dropped off and told to leave Sri Lanka.
28. I have not drawn any adverse inferences from the minor inconsistencies between the applicant’s claims. However, I have found above that although the applicant was subject to screening and regular questioning in the IDP camp, his previous detention in 2006 and escape was never identified or mentioned. I take into account the applicant’s claim that at this interrogation, the CID produced and showed him a file relating to him. It is implausible that if the applicant had any sort of CID profile or file relating to suspected LTTE involvement, and/or as an escapee from CID custody, he would not have been identified during the IDP screening process. Furthermore, it is not plausible that a CID officer would recognise and remember him six years after the detention in 2006, given that the applicant had no particular profile and the large numbers (in the hundreds of thousands) of Tamils who would have been processed during that time.<sup>6</sup> In addition, the applicant’s claims of detention, torture and release after payment of a bribe are strikingly similar to the events he described in 2006.
29. While I am prepared to accept that the applicant may have been asked questions at various times during his reporting requirements in 2010-2012, I do not accept that he was identified, detained and tortured as he has claimed. I do not accept that he was only released after payment of a bribe. I find that the applicant has fabricated the claims in relation to the 2012 detention and that he was of no interest to the authorities and did not, and does not now have an adverse security or criminal profile. As I have found that the applicant did not have an adverse security or criminal profile, it follows that I do not accept the claims that the CID came to the coconut grove on the day he was fleeing Sri Lanka or that shots were fired.
30. I am prepared to accept that in the days immediately following his departure from Sri Lanka, the authorities may have noted that he had not reported to the CID office. I am prepared to accept that officers may have visited his family home on one or two occasions in 2012 to enquire about his whereabouts, and may have intimidated his wife during these visits. However, I note that no other member of his family has been visited or questioned about him and as I have found that the applicant does not have any adverse security or criminal profile, I do not accept the applicant’s claims that the authorities continue to search for him or that they visit his home or harass his wife.
31. I also take into account that the applicant has not claimed, and there is no evidence before me that he or his family has been involved in any other political, separatist, LTTE-resurgence, anti-government or similar activities, either in Sri Lanka or in Australia.

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<sup>6</sup> UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77, at p 17.



32. Overall, I find that the applicant is not a person of interest to the Sri Lankan authorities as a result of any real or imputed LTTE association, including any family association, or for any other political association, involvement or belief. I find that he does not have an adverse security or criminal profile because of his past detentions or his departure while subject to reporting requirements and that he does not face a real chance of serious harm for any of these reasons, should he return to Sri Lanka.
33. I have also considered whether the applicant faces a real chance of serious harm on the basis of being a Tamil male from the Eastern Province. I accept that as a Tamil male, the applicant has experienced harassment, violence and mistreatment in the past. I accept that the applicant has a subjective fear of arrest, detention, disappearance and mistreatment at the hands of the Sri Lankan authorities. However, I also take into account country information that indicates that the situation in Sri Lanka has changed since the applicant left in 2012.
34. On 8 January 2015, Maithripala Sirisena was elected President, ousting Mahinda Rajapaksa who had served as the president since 2005. Sirisena was elected by a broad based opposition that included Tamils and the TNA backed Sirisena in the election. The presidential elections were followed by parliamentary elections in August 2015 that saw Sirisena form a coalition government. The TNA heads the opposition parties and the president of the TNA has been appointed as the opposition leader. This is the first time a Tamil has held this position since 1983.<sup>7</sup>
35. The United States Department of State, reporting on events in 2015, noted that the elections were the most peaceful and efficiently conducted elections in the country's recent history. It also reported the closure of the Omanthai military checkpoint, which previously divided government-held territory from former LTTE controlled territory. It also recognised the Sri Lankan government adopting the constitution's 19th amendment, which limits the powers of the presidency and begins a process of restoring the independence of government commissions; co-sponsoring a resolution on human rights at the UN Human Rights Council; welcoming visits by the UN special rapporteur on transitional justice, the UN Working Group on Enforced and Involuntary Disappearances, and the UN Office of the High Commissioner for Human Rights (OHCHR) Office of Legal Affairs team; and establishing the Office of National Unity and Reconciliation and the Ministry of National Dialogue, to further advance reconciliation. Other advances have been made in assisting families to access government benefits in the absence of death certificates and the signing of the International Convention for the Protection of All Persons from Enforced Disappearances. The government also removed the ban on eight Tamil diaspora organizations and 267 individuals on the previous government's watch list.<sup>8</sup>
36. The US State Department continued to report human rights abuses in 2015 and noted cases of harassment, arbitrary arrest, detention and torture of civil society activists, journalists, and LTTE sympathisers; however, overall the reports of harm relate to people with LTTE connections or who are otherwise Tamil separatist activists. The same report notes that President Sirisena has sworn in a Tamil as the first Tamil chief justice of the Supreme Court in two decades. The president is also allowing some limited commemoration gatherings in the Northern and Eastern Provinces, changed "Victory Day" to "Remembrance Day" and permitted the singing of the national anthem in Tamil as well as Sinhala. Other information in the referred materials notes that many people who were detained under the *Prevention of*

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<sup>7</sup> UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77, at pp 13-15.

<sup>8</sup> United States (US) Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320.

*Terrorism Act* (PTA) have been released and that investigations into civilian deaths have begun.<sup>9</sup> At the same time, Tamils have been given increasing positions and representation in politics, the civil defence forces and the police.<sup>10</sup>

37. Also in 2016, the United Kingdom Home Office (UKHO) reported that the new government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the Sri Lankan state. Its focus is on preventing (a) the resurgence of the LTTE or any similar organisations and (b) the revival of the civil war within Sri Lanka. Referring to UK Upper Tribunal case law, the UKHO noted that that Tribunal has identified four categories of persons at risk of persecution or serious harm. These are:

- Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka.;
- Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government;
- Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes; and
- A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

38. The UKHO assessed that a person being of Tamil ethnicity would not in itself warrant international protection. Neither would being a person who evidences past membership or connection to the LTTE unless they have or are perceived to have a significant role in relation to post-conflict Tamil separatism or appear on a 'stop' list at the airport. As noted above, the 'stop' list comprises those against whom there is an extant court order or arrest warrant.<sup>11</sup> There are no claims, and there is no evidence before me that the applicant has engaged in any activities either in Sri Lanka or elsewhere that may bring him to the adverse attention of the Sri Lankan authorities for any reason, including those noted above. There is no evidence and I am satisfied that he is not subject to any court orders or arrest warrants, and that he will not appear on a 'stop' list at the airport.

39. I have considered the information referred to by the applicant's agent at the interview.<sup>12</sup> The applicant points to this as evidence that Tamils remain at risk of arrest, detention,

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<sup>9</sup> "Truths of Civil War Key to Harmony in Sri Lanka", New Indian Express, The, 21 May 2015, CXBD6A0DE6817.

<sup>10</sup> South Asia Terrorism Portal, "Sri Lanka Timeline - Year 2015", 19 October 2015, CISEC96CF13618; "Five Tamils in Lankan Council of Ministers", New Indian Express, The, 9 September 2015, CXBD6A0DE13426; "Sri Lanka police to recruit 1,500 Tamil youths as PCs", Colombo Page, 8 October 2015, CXBD6A0DE14426.

<sup>11</sup> UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism (version 3.0)", 01 August 2016, OGD7C848D77, at pp 5-6, 9-10.

<sup>12</sup> UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism (version 3.0)", 01 August 2016, OGD7C848D77; HRW, "We Live in Constant Fear": Lack of Accountability for Police Abuse in Sri Lanka", 23 October 2015, CISEC96CF13673; International Truth and Justice Project (ITJP), "ITJP Submission to the Committee Against Torture", 17 October 2016, CISED50AD496; Freedom from Torture (FFT), "Freedom from torture submission on Sri Lanka", 11 October 2016, CIS38A80123515; United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

mistreatment and torture. The cited information notes reports of arbitrary arrests and detention of Tamils suspected of links to the LTTE, as well as persons who are human rights defenders, family members of the disappeared, involved in Tamil separatism or LTTE resurgence, critics of the government and other activists. There were also reports of harassment and threats made against people calling for accountability for human rights violations and those who were making or have made reports or complaints to the UN.

40. I have found above that the applicant will not be imputed with any adverse political profile either personally or as a result of this family association. I have also noted that there are no claims, and there is no evidence before me that the applicant has or intends to engage in any protests, truth-seeking or commemoration activities in relation to any family members. There are no claims, and there is no evidence before me that the applicant has or intends to be involved in any other activities that may bring him to the adverse attention of the authorities.
41. I am satisfied that the situation for Tamils in Sri Lanka has improved significantly and continues to do so. There is nothing in the referred information that indicates the situation is stagnating or getting worse for Tamils in any area of Sri Lanka. I am satisfied that the new government is taking steps to address past discrimination and violence and that Tamils do not face a real chance of serious harm on the basis of ethnicity alone. I also take into account that the referred materials do not indicate that Tamil males face a real chance of serious harm on the basis of age, ethnicity and geographic location alone.
42. The applicant has not claimed, and there is no evidence before me that he or any member of his family has suffered any harassment, discrimination or violence because of being Hindus. At the interview, the delegate specifically asked if there were any claims arising from religion and the applicant's agent said that there were not. Nevertheless, I have considered the country information in the referred materials and can find no information that indicates that Tamil Hindus face a real chance of serious harm merely because of their religion. I am satisfied that the applicant has not suffered serious harm as a result of his religion in the past and there is no evidence before me to suggest that he faces a real chance of serious harm for this reason should he return to Sri Lanka.
43. Considering all of the evidence and information before me, I am satisfied that the applicant does not face a real chance of serious harm on the basis of being a Tamil male from the East, a former resident of the North or a Hindu.

*Illegal departure and returned asylum seeker*

44. I am satisfied that the applicant departed Sri Lanka illegally and am prepared to accept that he did so while subject to reporting requirements. 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).<sup>13</sup>
45. 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

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punishment, "Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez", 7 May 2016, CIS38A8012799.

<sup>13</sup> DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 29.

and/or neighbours. They would also check criminal and court records. I take into account that the applicant has never been charged or convicted of any offence and although he did leave Sri Lanka while subject to reporting requirements, there is no evidence before me that indicates he will be at any increased risk of arrest or detention because of this. 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.<sup>14</sup> I am therefore satisfied that the applicant would not be at risk on return on the basis of any adverse security or criminal profile and I find that there is not a real chance he would be subjected to harm because he is a returning asylum seeker.

46. 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 on return.
47. Persons who departed in breach of the I&E Act may be arrested and charged. A person who departed illegally may, on return, be remanded in custody for a short period (24 hours) while waiting to be brought before a magistrate, but this period 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. 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.<sup>15</sup>
48. 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. I am satisfied that he will not be treated differently to any other returnee. If the applicant were to plead not guilty, I find it highly likely that he will be bailed on personal surety. 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. I am therefore satisfied that 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. Accordingly, I find that any fine imposed, or the requirement for any bail, surety or guarantee, would not constitute serious harm.
49. 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. 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

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<sup>14</sup> DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 29.

<sup>15</sup> DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105, at p 33-34.

an evaluation of the nature and gravity of that loss of liberty.<sup>16</sup> 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. 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.

50. 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.
51. Overall, I am not satisfied that the applicant will face a real chance of serious harm on the basis of: any real or imputed political opinion; any real or imputed membership of or support for the LTTE, including from any family association; as a Tamil male from the East, a former resident of the North or a Hindu; having left Sri Lanka while subject to reporting requirements and being a returned asylum seeker who departed Sri Lanka illegally.
52. As I am satisfied that the applicant does not have an adverse profile with the authorities, or that he will face a real chance of serious harm on the basis of any political opinion or for any other reason, I am also satisfied that, considered cumulatively, the applicant does not face a real chance of serious harm for any reason.

#### **Refugee: conclusion**

53. 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**

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54. 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**

55. 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

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<sup>16</sup> *MIBP v WZAPN; WZARV v MIBP* (2015) 254 CLR 610.

- the person will be subjected to degrading treatment or punishment.

56. I have found that the applicant does not face a real chance of serious harm on the basis of: any real or imputed political opinion; any real or imputed membership of or support for the LTTE, including from any family association; as a Tamil male from the East, a former resident of the North or a Hindu; having left Sri Lanka while subject to reporting requirements 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 threshold<sup>17</sup> I find that the applicant does not face a real risk of significant harm for any of these reasons.

57. I accept that the applicant may be identified as a returned asylum seeker on return to Sri Lanka. However I am not satisfied that the applicant is currently of any interest to the authorities. In light of this and in accordance with relevant country information, I am not satisfied the applicant faces a real risk of any harm for this reason for the purpose of s.36(2)(aa).

58. I have accepted that the applicant will be identified on arrival at the airport in Sri Lanka as having departed illegally and 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.<sup>18</sup>

59. 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 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 any bail or fine, during any questioning or his time in detention or prison while awaiting his magistrates court hearing.

60. 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**

61. 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).

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<sup>17</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

<sup>18</sup> DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017, CISED50AD105 at p 33-34.

## **Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### ***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.

...