



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA16/01516

Date and time of decision: 22 September 2017 14:27:00
Mark Oakman, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Tamil of the Hindu faith from the Northern Province, Sri Lanka. He arrived in Australia [in] October 2012 and lodged an application for a Safe Haven Enterprise visa (SHEV) (XE-790) [in] February 2016. [In] November 2016 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 23 December 2016 the IAA received submissions and further information from the applicant's representative. To the extent the submissions discuss evidence, including country information, which was before the delegate and responds to the delegate's decision based on that material, I consider this does not constitute new information. The further information consists of a statement from the applicant dated [in] December 2016. In the statement he provides details in relation to the killing of one of his brothers in 2007 (2007 death); the abduction of another of his brothers in 2009 (2009 abduction); his arrest by the Sri Lankan Army (SLA) in 2009 (2009 arrest); and his fears that he will be targeted by the Sri Lankan authorities because he bears a strong physical resemblance to [a certain] brother (resemblance issue).
4. He previously raised the 2007 death in his arrival interview, SHEV application and at the SHEV interview and at different times mentioned that he lived in a Government controlled area and that the SLA was targeting LTTE members and their families at the time. As such the 2007 death information is not new information. Although he did not mention his 2009 arrest in his SHEV application or SHEV interview, he did refer to it in his arrival interview. Therefore, the 2009 arrest information is not new information. He previously raised the 2009 abduction in his arrival interview, SHEV application and SHEV interview but has provided some additional information in his statement that was not previously raised, including that the kidnappers spoke Sinhalese, that another brother was also present with his sisters at the time of the abduction, his abducted brother was kidnapped shortly after the end of the war, and on the same day the SLA rounded up people including his family in [a] village at the time and placed them in a refugee camp. This additional information was not before the delegate and is new information. He has not previously raised the resemblance issue and it is new information.
5. The applicant submitted that the 2009 abduction new information could not be provided prior to the delegate's decision because the delegate's concerns about the applicant's claim were not put to the applicant at the SHEV interview in such a way that he was able to respond to them. He submitted that he had not previously raised the resemblance issue because he was feeling nervous and anxious on the day of the SHEV interview and so failed to mention the fact. All the new information the applicant now seeks to raise pre-date the delegate's decision. At the SHEV interview the delegate explained to the applicant that if he did not give the Department all relevant information and his application is refused he may not have another chance to provide further information. At the SHEV interview the applicant and the delegate discussed, among other things, the circumstances of the 2009 abduction and his protection claims relating to [a certain] brother. Towards the end of the SHEV interview there was a break to allow the applicant to speak to his agent about whether he had covered everything he

needed to and after the break the applicant provided some information that he said he had forgotten. The delegate informed the applicant at the end of the interview that if he provided further information prior to a decision being made it would be considered. The applicant was represented when preparing his SHEV application and throughout the SHEV interview. I note that the delegate in his decision accepted that the applicant's brother was abducted in 2009 but was not satisfied that, as the applicant believes, the SLA was responsible for the abduction. The applicant's explanation that he was nervous and anxious so forgot to mention the resemblance issue at the SHEV interview does not explain why he also failed to mention it at the arrival interview or in his SHEV application. Additionally, although the new information is personal information, the applicant has not satisfied me that it is credible information. At the SHEV interview the applicant stated the 2009 abduction occurred in May 2009 just before the end of the war but now, without explanation, has changed his evidence and said it occurred shortly after the end of the war. I also do not consider the resemblance issue to be credible given the [age] difference between the applicant and [this] brother. I am not satisfied that there are exceptional circumstances to justify considering the new information on the 2009 abduction or the resemblance issue.

6. In accordance with s.473DC(1) of the Act I obtained new information in the form of country information regarding conditions in Sri Lanka from the most recent Department of Foreign Affairs and Trade (DFAT) country report¹ for Sri Lanka. This report is dated 24 January 2017 (DFAT 2017 report) and was not available at the date of the delegate's decision. The delegate relied on information contained in DFAT reports for Sri Lanka dated up to 18 December 2015 which the latest report has updated. Given that I consider DFAT an authoritative source of country information, the DFAT information relied on by the delegate is now more than 18 months old and the DFAT 2017 report is DFAT's most recent assessment regarding the situation in Sri Lanka and was prepared for the specific purpose of protection status determination, I am satisfied that there are exceptional circumstances to justify considering this new information.
7. On 29 March 2017 the IAA invited the applicant to comment by 12 April 2017 on the new information contained in that report in relation to the political environment in Sri Lanka, the security situation in Sri Lanka, reductions in the incidents of extra-judicial killing, disappearances, abduction for ransom and torture, and prison conditions. Extracts from the DFAT 2017 report of the relevant paragraphs were attached to the invitation.
8. On 11 April 2017 the applicant provided submissions and further information in response to the IAA's invitation. The further information consists of country information in the form of references and extracts from a number of reports and articles. Some of the country information was before the delegate and is not new information. None of the other information was before the delegate and it is new information. Given that the new information was provided in response to the IAA's request for comments and appears related to that request I am satisfied that the information could not have been provided to the delegate and there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - If returned to Sri Lanka he fears he will be subject to serious harm including being kidnapped, detained, tortured or killed. He is afraid of this harm from the SLA. He has

¹ DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105.

already experienced harassment, detention and the death of family members at the hands of the SLA. He fears he will be harmed for the following reasons:

- Race (Tamil);
- Imputed pro-Liberation Tigers of Tamil Eelam (LTTE) political opinion. This will be imputed to him because of: his family's involvement in the LTTE specifically the fact that [a certain] brother, "K1", was a leader of the [unit] of the LTTE, as well as a [role] at a LTTE school, and his sister, "K2", [worked] at a LTTE school; his Tamil ethnicity; the fact that he lived in Jaffna, an area previously controlled by the LTTE; and the fact that he sought asylum in Australia;
- Membership of a particular social group, which can be characterised as Tamils with family links to persons who were in the LTTE;
- Membership of a particular social group, which can be characterised as Tamils from the north of Sri Lanka; and
- Membership of a particular social group, which can be characterised as returned Tamil asylum seekers.

Factual findings

Receiving country

10. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Sri Lanka from Jaffna, Northern Province. I find that the applicant's receiving country is Sri Lanka. The applicant has consistently claimed, and I accept, he is Tamil and Hindu.

Problems in Sri Lanka

11. The applicant states that he was born in Jaffna District in [year] and lived at [location] throughout his life in Sri Lanka. He is not married and had [number] [siblings]. He attended school up to [a certain level] in [year], attended a [certain] course in [year] and attended a [further] course in [years]. He worked for [number] months as a [occupation] in [town] in 2010. His parents still live at [location] along with [number] of his sisters and his [number] surviving brothers live elsewhere in Sri Lanka. His other [number] sisters live in [Country 1] and Australia respectively. Prior to his leaving Sri Lanka in February 2012 he had only travelled outside of Sri Lanka to [Country 1] in 2009 and 2010 for his sisters' weddings and stayed about a month each time.
12. The applicant claims his brother K1 left their home for university in Jaffna when he was very young. After graduation his brother didn't come home and his parents went to the university to enquire and were told K1 had joined the LTTE. He's not sure of the exact time K1 joined but believes it was around the mid 1990's. K1 was killed in a shell attack [in] April 2009. He believes K1 held the rank of a LTTE [rank] when he died. K1 also worked as a [role] in the LTTE school while he was with the LTTE. His sister K2 [worked] at a LTTE [school] in the Vanni during the war. K2 is one of his sisters who still lives in Sri Lanka.
13. The applicant states that on many occasions the SLA would terrorise the village where he lived by coming to houses and attempting to take the young children of the village. This started occurring in around 2000. Around 2000 the SLA came to the applicant's house on a weekend

and tried to take [one] brother away. His mother had to step in and take his brother back to prevent the SLA from taking his brother. In 2003 K1 was able to return home due to a break in the fighting between the SLA and the LTTE. He believes in that time many people in their area came to know that K1 was involved in the LTTE. The applicant was never approached by the LTTE to join them and never helped the LTTE directly, but was associated with them because of his brother.

14. The applicant states that whenever the fighting intensified the SLA would come to their village and find ways to force the young men of the village to go to their camps. At least five or six times his school identity card was taken by the SLA and he had to go to the [name] SLA camp to retrieve it. On one occasion when his school ID was taken in approximately 2005, the officer would not release him after he went inside the camp. He spent one day in the camp, during which time he was not questioned but he was beaten, before his mother was able to negotiate his release.
15. The applicant claims that in 2007 his father found one of his [brothers], "V1", [dead] in their house. His family believes that it was made to look like a suicide, but that he was actually targeted and killed by the SLA because of K1's involvement with the LTTE. V1 was studying [at] the time, was around [age] and it occurred in March, April or May 2007. He was aware that the SLA were actively seeking out members of the LTTE and their family members in his village around that time because they had been warned by other villagers not to open their door because the SLA may come in and hurt you or take you away. The applicant's family usually locked the doors and wouldn't answer if anyone knocked during the night. However, on that night V1 had been studying on their verandah and opened the door to let in some air when he was last seen. The applicant didn't hear anything unusual that night, but said there was a lot of noise from the wind and the usual night time noises. His father informed the village headman of V1's death, who suggested the family not publicise what happened to avoid further harm.
16. The applicant claims that in 2009 another one of his brothers, "K3", was kidnapped and taken away by the SLA. This occurred in May 2009 just before the war ended. His sisters were present and were assaulted when they tried to stop K3 being taken away. He believes K3 was kidnapped because of K1's involvement in the LTTE, which was well known in the village at that time. His family still do not know K3's whereabouts. Also in 2009 the applicant was arrested, beaten and returned home by the SLA.
17. The applicant claims that in 2010 the SLA came to his house and ordered him to go with them to the [name] SLA camp. At the camp they threatened him and asked him to admit he was involved with the LTTE and when he did not they hit him on the back before letting him go. His sisters were concerned for his safety in Sri Lanka as the SLA were regularly coming to their house to enquire about him and take him to the [name] SLA camp, so they arranged for him to go to [Country 2]. He left Sri Lanka for [Country 2] in February 2012 and stayed there until he went to [another country] in August 2012. While he was living in [Country 2] with his sister, his father told him that the SLA continued to visit their house to specifically enquire after his whereabouts. He believes they only enquire about him because they know of his brother's LTTE involvement and he was the only the only boy living in the house since his brother was found dead in the house in 2009.
18. DFAT reports² that incidents of extra-judicial killings, disappearances and kidnapping occurred frequently in Sri Lanka during the war, particularly in the north and east. The UN High Commissioner for Refugees (UNHCR) confirms that post-war, arbitrary detentions were widely

² Ibid 4.12.

reported, as well as reports of detainees being interrogated, with the detainees usually civilians suspected of LTTE links, particularly in the north and east.³ DFAT assesses⁴ that there are credible reports of torture carried out by Sri Lankan security forces both during the war and in its immediate aftermath. Many Tamils, in the north and east in particular, reported being monitored, harassed, arrested and/or detained by security forces under the Rajapaksa government.⁵

19. Based on his generally consistent evidence and the country information, I accept the applicant's claims except as discussed below.
20. I accept that the applicant's father found his brother, V1, dead [in] his room in around March, April or May 2007. Although the applicant and his family believe the SLA was responsible, there is no direct evidence to support the family's belief that the SLA was involved as no one saw what actually happened. Additionally, if the SLA had entered the house that night and killed V1 because of K1's involvement with the LTTE, I do not consider it plausible that the SLA would simply ignore the rest of the family, particularly the applicant who was another young Tamil male in the house. Country information refers to reports of the Sri Lankan authorities claiming suspicious deaths in custody were due to suicide,⁶ but V1 was not in custody and the country information does not suggest that the Sri Lankan authorities engaged in faking suicides in peoples' homes. I am not satisfied on the evidence that V1's death is linked to the SLA, whether because of K1's involvement with the LTTE or otherwise.
21. I accept the applicant's claim that his brother K3 was abducted in May 2009 just before the end of the war and remains missing. He said at the SHEV interview that he only knew what his sisters told him about the abduction and that his sisters believed it was the SLA who abducted K3 because K3 was taken when there were many informants in the village who told the SLA that their entire family was LTTE. There is no suggestion in the applicant's evidence that his sisters] reported that the abductors were in SLA uniforms or otherwise announced their identity and the sisters' belief that it was the SLA who abducted K3 is speculation. Country information confirms that in the final phases of the war both the Sri Lanka authorities and the LTTE carried out abductions and that some were criminally motivated.⁷ I am not satisfied on the evidence that the SLA was responsible for the abduction of K3.
22. I accept that while the applicant was living in [Country 2] with his sister, his father informed him that the SLA continues to visit his father and his [number] sisters at their house to enquire after the applicant's whereabouts. The applicant has not claimed that the SLA or other Sri Lankan authorities made any further enquiries about him or his whereabouts beyond the time he was living in [Country 2]. In the absence of any evidence to the contrary, I am satisfied that there have been no enquiries by the SLA or other Sri Lankan authorities as to the applicant's whereabouts since he left [Country 2] in August 2012.

³ UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, pp17 and 18.

⁴ DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105, 4.12 and 4.13.

⁵ Ibid 3.8.

⁶ UK Home Office (UKHO), "Country Information and Guidance, Sri Lanka: Tamil separatism (version 3.0)", 1 August 2016, OGD7C848D77, 6.6.2

⁷ Danish Immigration Service "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345, p51; Swiss Refugee Council, "Sri Lanka: Current situation update", 1 November 2012, CIS25579, 4.2; DFAT, "DFAT Country Information Report - Sri Lanka", 18 December 2015, CISEC96CF14143, 4.1; and UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, p40.

23. In the response of 11 April 2017 the applicant's representative mentioned that the lack of mental health services in Sri Lanka is a serious problem for those who – like the applicant – have been psychologically affected by the conflict in Sri Lanka. The applicant made has not detailed any mental health issues or treatment he was or is receiving and provided no medical evidence in relation to any mental health issues or treatment. I am not satisfied on the evidence before me that the applicant is suffering from a mental health disorder, illness or condition that requires current or future treatment.

Asylum Seeker

24. The applicant claims to have left Sri Lanka [in] February 2012, leaving legally by air to travel to [Country 2] using his passport. He then travelled to [another country] [in] August 2012. In October 2012 he travelled to Australia as a passenger in a boat organised by a smuggler. He left his passport with his sister in [Country 2] and it was subsequently lost. I find that, if he were to return to Sri Lanka, he will be considered a failed asylum seeker by the Sri Lankan authorities.

Refugee assessment

25. 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

26. 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.

Tamil male from the north, LTTE links and imputed political opinion

27. Country information indicates that Tamils were subject to longstanding, systematic discrimination in university education, government employment and other matters controlled

by the government.⁸ Following the end of the war there were continuing criticisms that, particularly in the north of Sri Lanka, the military's involvement in civilian governance and the local economy led to the shrinkage of civil society and Tamils felt that they were effectively a subjugated community because of limits on freedom of assembly and freedom of speech.⁹ As recently as 2015, country information suggests that security forces regularly carried out surveillance and harassment against the Tamil community, especially young and middle-aged Tamil men.¹⁰

28. However, there have been a number of significant changes in the more than five years since the applicant left Sri Lanka and particularly since the election of the Sirisena government in 2015. The new government quickly abolished surveillance and censorship of media and civil society groups, embarked on constitutional reforms to restrict executive powers, and took steps to restore the independence of the judiciary. In contrast to the approach of the Rajapaksa government, it also initiated a new, more open dialogue with the international community, including human rights organisations.¹¹
29. The Sirisena government implemented a number of confidence-building measures to address the Tamil community's long-standing grievances including truth and accountability for events towards the end of the war.¹² It is reported to have engaged more with the UN and prioritised reconciliation and human rights and established the Office of National Unity and Reconciliation with a focus on promoting social integration to build an inclusive society, securing language rights for all citizens, supporting a process of healing within war-affected communities, and providing coordinated development planning for war-affected regions.¹³ The Tamil National Alliance leader, R Sampanthan, was appointed the leader of the opposition and is the first ethnic minority opposition leader since 1983.¹⁴ The United Nations High Commissioner for Human Rights observed in February 2016 that one of the most important long-term achievements over the past year had been the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission (HRC).¹⁵
30. The rate of progress by the Sirisena government in a number of reconciliation and reform areas, including in relation to accountability for crimes committed in the war, ongoing human rights issues, security sector reform, repeal of the *Prevention of Terrorism Act 1979* (Sri Lanka) (PTA), witness protection and land seizures, is not without criticism but, on the whole the country information suggests there have been improvements in Sri Lanka since the change of government, although the sources may not all agree on the areas of improvement or the scope of such improvements.¹⁶ Overall, as it was prepared specifically and solely for the purpose of

⁸ US Department of State (USDOS), "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p33.

⁹ "Civil activities and freedoms curbed, five years after Sri Lanka's civil war", Radio Australia (ABC), 25 June 2014, CX1B9ECAB6048.

¹⁰ USDOS, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p33.

¹¹ UK Home Office (UKHO), "Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0", 1 August 2016, OGD7C848D77, 6.1.4.

¹² USDOS, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p34.

¹³ Ibid pp6, 27, 28 and 34.

¹⁴ UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0", 1 August 2016, OGD7C848D77, 5.1.5.

¹⁵ Ibid 6.1.1

¹⁶ Including "Pledge to End Police Abuse Not Met", Human Rights Watch (HRW), 20 February 2017, CXC9040662172; "Torture Is 'Common Practice' in Sri Lanka, U.N. Panel Finds", The New York Times, 7 December 2016, CX6A26A6E16926; Australian Tamil Congress, "Sri Lanka Still Unsafe For Tamil Asylum Seekers To Return", 17 February 2017, <http://www.australiantamilcongress.com/en/index.php/newsletter-footer/338-sri-lanka-still-unsafe-for-tamil-asylum-seekers-to-return>; UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0", 1 August 2016, OGD7C848D77; International Truth and Justice Project (ITJP), "Putting the Wolf to Guard the Sheep: Sri Lanka's Witness

protection status determination in Australia, and provides a general country overview from DFAT's on-the-ground knowledge and discussions with a range of sources, I consider the DFAT 2017 report an authoritative source of information on conditions in Sri Lanka and attach greater weight to that report.

31. DFAT assessed in 2017 that Sri Lankans of all backgrounds generally have a low risk of experiencing official discrimination as there are no current laws or policies that discriminate on the basis of ethnicity including in relation to access to education, employment or access to housing. DFAT states that Tamil inclusion in the political dialogue in Sri Lanka has increased under the Sirisena government and they have a substantial level of political influence.¹⁷
32. During the war, more Tamils were detained under emergency regulations and the PTA than any other ethnic group. This was primarily due to LTTE members and supporters being almost entirely Tamil, but DFAT notes that there were also likely instances of discrimination in the application of these laws, with LTTE support at times imputed on the basis of ethnicity. Since 2015 the Sirisena government has reviewed and released some PTA detainees, including Tamils, and DFAT assesses that there are currently fewer individuals detained under the PTA than during the war.¹⁸
33. DFAT assesses¹⁹ that monitoring and harassment of Tamils has decreased significantly under the Sirisena government; the police are now responsible for civil affairs across Sri Lanka; although there is still a sizable military presence in the north and east, it is largely idle and generally restricted to their barracks; and members of the Tamil community have described a positive shift in the nature of interactions with the authorities and they feel able to question the motives of, or object to, monitoring or observation activities. DFAT assesses that some societal discrimination on the basis of ethnicity can occur but does not identify any such specific issues in relation to Tamils. DFAT notes that monolingual Tamil speakers can have difficulties communicating with the police, military and other government officials but assesses that these practical difficulties are as a result of a lack of qualified language teachers, the disruption of civilian life caused by the war and historical discriminatory language policies rather than official discrimination.²⁰ The applicant does not claim he suffered any incidents of societal discrimination while in Sri Lanka. The monitoring and harassment of Tamils in the north and east has significantly decreased, there have been significant positive developments for Tamils in the country's politics and the situation has generally improved.
34. The UN High Commissioner for Refugees' (UNHCR) 2012 Eligibility Guidelines for Sri Lanka²¹ noted that a person's real or perceived links with the LTTE may give rise to a need for international refugee protection. However, originating from an area that was previously

Protection Authority", 13 February 2017, CISED50AD3915; Kithsiri Wijesinghe, 'Sri Lanka Urged to Sack Three from Witness Protection Body', Journalists for Democracy in Sri Lanka, 13 February 2017, <http://www.jdslanka.org/index.php/news-features/human-rights/667-sri-lanka-urged-to-sack-three-from-witness-protection-body>; USDOS, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320; UCA News, 'Rights Groups Protest Sri Lanka Military Land Grabs', 13 February 2017, <http://www.ucanews.com/news/rights-groups-protest-sri-lanka-military-land-grabs/78353>; TamilNet, 'Tamil Land Officials, Uprooted Villagers Urge Action from Eastern Tamil Politicians', 21 January 2017, <https://www.tamilnet.com/art.html?catid=13&artid=38558>; and UN Human Rights Council, "Report of the Special Rapporteur on minority issues on her mission to Sri Lanka A/HRC/34/53/Add.3", 31 January 2017, CISED50AD346.

¹⁷ DFAT "Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.4 and 3.6.

¹⁸ Ibid 3.8.

¹⁹ Ibid 3.9.

²⁰ Ibid 3.4 and 3.7.

²¹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, pp26 and 27.

controlled by the LTTE does not in itself do so. Although the nature of these links can vary, this may include:

- Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
 - Former LTTE combatants or “cadres”;
 - Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
 - Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
 - LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE; or
 - Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.
35. DFAT refers to the UNHCR’s guidelines and notes²² that accurately identifying people according to those categories may be difficult and the UNHCR recognises that cases depend on individual circumstances.²³ DFAT also confirms²⁴ that the Sri Lankan authorities remain sensitive to the potential re-emergence of the LTTE and collect and maintain sophisticated intelligence, including electronic stop and watch databases, on former members and supporters of the LTTE.
36. DFAT assesses²⁵ the number of incidents of extra-judicial killings, disappearances and kidnappings for ransom, including incidents of violence involving former LTTE members, as significantly reduced since the end of the war. There are credible reports of torture carried out by the security forces during the war and its immediate aftermath although DFAT states that Tamils faced a higher risk of torture during the war.²⁶ DFAT is aware of reports of torture carried out by the police including from the UN Special Rapporteur and the HRC of Sri Lanka but assesses that torture in Sri Lanka, whether perpetrated by the military, intelligence or police forces, is not presently systemic or state sponsored and that the risk of torture from military and intelligence forces has decreased since the end of the war.²⁷ DFAT also assesses²⁸ that cases where the police are alleged to have tortured or mistreated an individual generally reflect low capacity, lack of training and due process in arrest and detention procedures, together with poor policing methods that focus on extracting confessions rather than conducting a thorough investigation. DFAT states that as few reports of torture are proved or disproved it is difficult to determine the prevalence of torture. However, it considers²⁹ that Sri Lankans face a low risk of mistreatment that can amount to torture, mostly perpetrated by the police, irrespective of their religion, ethnicity, geographical location or other identity; that the

²² DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105, 3.32 and 3.33.

²³ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, p25.

²⁴ DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105, 3.29.

²⁵ Ibid 4.1.

²⁶ Ibid 4.12- 4.14.

²⁷ Ibid 4.15, 4.16 and 4.18.

²⁸ Ibid 4.19.

²⁹ Ibid 4.20.

incidence of torture has reduced in recent years; and that the allegations of torture pertain to a relatively small number of cases compared to the total population.

37. The UK Home Office (UKHO) 2016 report discusses protection claims as based on a person's actual or perceived political opinion of support for or involvement in the LTTE or other Tamil separatist groups, including membership of, or participation with, such groups overseas. The report notes that in the UKHO's view simply being a Tamil does not give rise to protection claims.³⁰ The UKHO notes there have been positive developments in Sri Lanka since President Sirisena came to power in January 2015. White van abductions are now seldom reported, and the number of torture complaints has reduced, although new cases of Tamil victims continue to emerge, both of torture and occasional white van abductions.³¹ The authorities continue to monitor people, particularly in the north and east and persons perceived to sympathise with the LTTE continue to be intimidated, harassed, arrested, detained and tortured.³² UKHO notes that, despite improvements, there continue to be reports, but at much lower numbers, of abductions, torture complaints and police use of excessive force against Tamils perceived to support the LTTE.³³
38. The US Department of State (USDOS) 2016 report notes there were no substantiated reports of extra-judicial killings in 2015 in Sri Lanka but the use of force against civilians, though rare, remains a problem.³⁴ There are credible reports that the military and security forces have abducted, tortured, raped and sexually abused citizens and in the north and east security forces are responsible for detaining those accused of LTTE connections, with observers reporting that interrogations sometimes included mistreatment and torture.³⁵
39. I accept that the applicant and members of his family lived and worked in areas controlled at times by the LTTE during the war. I accept that the applicant's brother K1 joined the LTTE sometime in the 1990's, was [in] [a unit], worked for a time as a [role] at the LTTE school, openly returned to the family home for a time during the ceasefire period from 2003, and was killed during shelling [in] April 2009. I accept that his sister K2 [worked] at a LTTE [school] in the Vanni during the war. I accept that the SLA tried to take away one of his brothers in around 2000 but his mother intervened and prevented the SLA from taking his brother. I accept that the applicant had his school ID taken from him at least five or six times by the SLA, he had to go to the SLA camp to retrieve his ID and on one occasion in around 2005 when he went to get his ID he was detained for a day and beaten before his mother negotiated his release. I accept that in 2009 he was arrested, beaten and returned home by the SLA. I accept that in 2010 the SLA came to his house and took the applicant to their camp where he was threatened and told to admit he was in the LTTE, and when he denied it, he was beaten, before he was eventually released. I accept that from 2010 the SLA regularly visited his family's house to take him to their camp and asked after his whereabouts. I also accept that the SLA visited his family's house and asked after the applicant's whereabouts while he was living in [Country 2] from February to August 2012.
40. Having regard to the UNHCR guidelines and the other information before me, I do not consider the applicant to be at risk of harm for reason of any links to the LTTE, or any imputed political opinion, now or in the reasonably foreseeable future, for a number of reasons.

³⁰ UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0", 1 August 2016, OGD7C848D77, 1.1.1 and 2.3.1.

³¹ Ibid 2.3.6, 2.3.7, 6.6.2, 6.6.6, 6.6.7 and 6.6.11.

³² Ibid 2.3.8.

³³ Ibid 2.3.10.

³⁴ USDOS, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p2.

³⁵ Ibid pp7-9.

41. First, on the evidence, residing in LTTE controlled areas does not itself give rise to a need for protection and the applicant himself was not involved with the LTTE. Secondly, although his brother K1 was a member of the LTTE, and [in] [a unit] and a [role], the applicant was not sent to prison or rehabilitation as an identified or suspected LTTE supporter. Thirdly, although the applicant and his family were harassed, questioned and/or mistreated on various occasions neither he nor his family members were ever charged, including K2 who [worked] in a LTTE [school] and still lives in Sri Lanka. Whenever the applicant had to attend the SLA camp including on those occasions when he was beaten and/or questioned about LTTE involvement, he was always released. Furthermore, despite the Sri Lankan authorities collecting and maintaining sophisticated intelligence including electronic stop and watch lists, he was able to depart legally, using his own passport, through the airport when he left for [Country 2] in February 2012. Although he was arrested in 2009 and the SLA regularly enquired after his whereabouts and asked him to attend their camp from 2010, and continued to enquire after his whereabouts while he was in [Country 2] from February to August 2012, country information suggests that such harassment and monitoring of Tamils in the north was routine at the time. Additionally, the Sri Lanka authorities have made no further enquiries about, or shown any interest in, the applicant since August 2012. The applicant does not have a profile that country information suggests he is at risk of harm from the Sri Lanka authorities, now or in the foreseeable future, for any links to the LTTE or for any imputed political views. I do not consider that the Sri Lankan authorities would have had any adverse interest in the applicant other than as part of the former Rajapaksa government's then general monitoring of Tamils in the north had he remained in Sri Lanka or, given that such harassment and monitoring has significantly decreased under the Sirisena government, that he would be of any adverse interest to the Sri Lankan authorities on return.
42. The applicant submitted, among other things, that torture and incidents of extra-judicial killings, disappearances and abductions are still occurring despite the change of government in Sri Lanka. The applicant provided references and extracts from country information, including a Committee Against Torture (CAT) report.³⁶ I note that the CAT report, which was published a few days after the DFAT 2017 report, refers to the report by the Special Rapporteur on torture that was also considered by DFAT. I am satisfied the submissions and country information referred to by the applicant are broadly consistent with the DFAT 2017 report which does not suggest that such incidents do not occur at all, but overall assesses the situation in relation to such incidents, as well as the general political and security situation in Sri Lanka, as improved as discussed above. The UKHO 2016 report also suggests that while such incidents still occur they are not occurring to the same extent as they were and there has been an improvement since the change of government. To the extent that the country information relied on by the applicant draws some different conclusions to the DFAT 2017 report, for the reasons discussed above, I attach greater weight to the DFAT report.
43. I am satisfied that the applicant will not face a real chance of persecution from the Sri Lankan authorities due to any real or perceived links to the LTTE, for any imputed political opinion and/or as a Tamil male from the north, if returned to Sri Lanka, now or in the reasonably foreseeable future.

Returning asylum seeker

44. I accept that, on his return to Sri Lanka, the applicant would be considered by the authorities to be a failed asylum seeker.

³⁶ United Nations, "Concluding observations on the fifth periodic report of Sri Lanka CAT/C/LKA/CO/5", 27 January 2017, CISED50AD413.

45. Entry and exit from Sri Lanka is governed by the *Immigrants and Emigrants Act 1949* (Sri Lanka) (IE Act). Under the IE Act it is an offence to depart other than from an approved port of departure. The applicant departed Sri Lanka legally by air to [Country 2], using his passport, and I am not satisfied that he is at risk of prosecution under the IE Act.
46. Advice from DFAT is that upon arrival in Sri Lanka, involuntary returnees are processed by the Department of Immigration and Emigration, the State Intelligence Service and a unit of the Criminal Investigation Department based at the airport who check returnees' travel documents and identity information against immigration databases, intelligence databases and the records of outstanding criminal matters. Returnees are processed en masse and processing can take several hours.³⁷
47. For returnees travelling on temporary travel documents, police undertake an investigation to confirm the person's identity, to see whether someone was trying to conceal their identity due to a criminal or terrorist background or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger and contacting their claimed home suburb or town. DFAT assesses that returnees are treated according to these standard procedures, regardless of their ethnicity and religion, and are not subject to mistreatment during their processing at the airport.³⁸
48. I accept that the applicant will be identified as an asylum seeker on his return. DFAT assesses the risk of mistreatment or torture for the majority of returnees is low and continues to reduce.³⁹ Country information containing reports of some returnees being tortured was before the delegate and the IAA.⁴⁰ DFAT does not suggest that there is no risk and those other reports provide some examples of incidents of mistreatment. I accept that an asylum seeker with actual or perceived links to the LTTE may be at risk of harm when processed at the airport. However, as discussed above, despite matters such as K1's involvement in the LTTE including [in] [a unit] and him and his family living and working for periods in LTTE controlled areas, the applicant was never charged, imprisoned or sent to rehabilitation in relation to suspected LTTE involvement and his questioning and mistreatment, together with the enquiries after his whereabouts, by the Sri Lankan authorities were part of the Rajapaksa government's routine harassment and monitoring of Tamils in the north at the time. I am satisfied that the applicant's profile is such that he will not be of interest to the Sri Lankan authorities if returned to Sri Lanka. Taking into account those findings and the country information, I do not accept that the applicant will be at risk of adverse attention from the Sri Lankan authorities when scrutinised on arrival in Sri Lanka.
49. The applicant submitted that he will be imputed with pro-Tamil diaspora political involvement as he has spent a considerable amount of time in Australia. However, the UKHO 2016 report indicates that although the Sri Lankan authorities will routinely question returnees about their

³⁷ DFAT, "Sri Lanka - Country Information Report", 24 January 2017, CISED50AD105, 5.19.

³⁸ Ibid 5.20.

³⁹ Ibid 4.21 and 4.22.

⁴⁰ Including UKHO, "Sri Lanka - Bulletin: Treatment of Returns", 1 December 2012, CIS28615; HRW "United Kingdom Halt deportation flight to Sri Lanka", 15 September 2012, CX311600 ; Freedom From Torture (FFT) "Sri Lankan Tamils tortured on return from the UK", 1 September 2012, CIS24086; ITJP, "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; Tamils Against Genocide, "Returnees at Risk: Detention and Torture in Sri Lanka", 1 September 2012, CIS24826; FFT, "Sri Lanka - Update on torture since 2009", 6 May 2016, CIS38A8012881; "TID arrests another Tamil man on return from abroad – VIDEO", Ceylon News, 19 May 2016, CX6A26A6E4702; "Another Tamil returnee arrested", Sri Lanka Mirror, 1 July 2015, CXBD6A0DE16698; "SL military continues to arrest Tamils from East returning from Middle-East", Tamil net, 31 May 2015, CXBD6A0DE7540; "16 Batticaloa Tamils arrested within last 100 days at Colombo airport", Tamil net, 3 May 2015, CXBD6A0DE6027; and "10 Tamils arriving in Lanka arrested", Sri Lanka Mirror, 4 March 2015, CXBD6A0DE6065.

activities abroad, they are only interested in significant involvement in pro-Tamil separatist diaspora activities and that attending demonstrations overseas is not in itself evidence that a person will attract interest from the Sri Lankan authorities.⁴¹ The applicant does not claim he has taken part in any pro-Tamil diaspora activities in Australia. I am not satisfied that the applicant's profile, which as discussed above is not one that places him at risk of harm, will be increased by the fact that the applicant has spent almost five years in Australia as an asylum seeker.

50. I am not satisfied that there is a real chance that the applicant would face harm on his return to Sri Lanka as a failed Tamil asylum seeker, now or in the reasonably foreseeable future.
51. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Sri Lanka I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

52. 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

53. 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

54. 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.
55. I have found that there is not a real chance of harm to the applicant, now or in the reasonably foreseeable future, for any LTTE links, for any imputed political opinion, as a Tamil male from the north, as a returned Tamil asylum seeker or a combination of these. As 'real chance' and 'real risk' involve the same standard,⁴² it follows that I am also satisfied that there is no real risk of significant harm if he is returned to Sri Lanka.

⁴¹ UKHO, "Country Information and Guidance. Sri Lanka: Tamil separatism. Version 3.0", 1 August 2016, OGD7C848D77, 2.3.3, 2.3.4, 2.3.5, 3.1.3, 3.1.4, 6.5.7, 6.6.8 and 6.10.3.

⁴² *MIAC v SZQRB* (2013) 210 FCR 505.

56. As discussed above, the applicant faces processing at the airport on his return as a failed asylum seeker. DFAT states that processing occurs en masse and may take several hours, returnees are treated according to standard procedures and the risk of mistreatment is low. I am not satisfied, on the evidence, that there is an intention to inflict pain or suffering, severe pain or suffering or extreme humiliation in any processing of returnees at the airport. These circumstances do not amount to the death penalty, an arbitrary deprivation of life or torture. I am not satisfied that the airport processing constitutes significant harm as defined under s.36(2A) of the Act. For these reasons, I am not satisfied the applicant will face a real risk of significant harm during any processing at the airport.
57. There is no suggestion that the applicant faces the death penalty for any reason. I do not accept that there is a real risk that the applicant would face being arbitrarily deprived of life or tortured for any reason as a returned Tamil asylum seeker, for any links to the LTTE, for any imputed political opinion, as a Tamil male from the north, or any combination of these. Nor do I accept that there is a real risk that he would be subjected to pain or suffering, severe pain or suffering or extreme humiliation intentionally inflicted, or caused. I am not satisfied that there is a real risk that the applicant will suffer significant harm.
58. Having considered the applicant's circumstances individually and cumulatively, I am not satisfied that he faces a real risk of significant harm.

Complementary protection: conclusion

59. 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.

...