



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA17/03111

Date and time of decision: 5 December 2017 09:31:00
Matthew Currie, Reviewer

Decision

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

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

Background to the review

Visa application

1. The applicant is an ethnically Tamil adherent of the Hindu faith. He arrived in Australia in October 2012 and applied for a Safe Haven Enterprise Visa (SHEV) in March 2017. In July 2017 a delegate of the Minister for immigration and Border Protection refused the Visa on the grounds that Australia did not owe protection obligations to the applicant.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. A migration law firm, acting on behalf of the applicant made a submission to the IAA. The submission consisted of four pages of explanation and argument, four news articles, and a copy of the applicant's father's death certificate (with translation).
4. Three of the news articles included in the submission were published prior to the delegate making the primary visa decision. One of these articles (Not 'all is forgiven' for asylum seekers returned to Sri Lanka) was before the delegate at the time of the primary decision and is not new information. The two remaining articles were not before the delegate at the time of the primary decision and are new information. These articles are publically available and were published prior to the date of the primary decision. They concern Tamils and diaspora Tamils. The applicant submits that these articles reaffirm the current situation in Sri Lanka and his fear of return. Otherwise the applicant does not explain why the information is only being provided now, or why it may be considered credible personal information. I note that the applicant was represented before the Department of Immigration by the same representative who provided post interview submissions and country information. The applicant has not satisfied me that these articles could not have been provided to the Minister prior to the date the decision was made or that they are credible personal information which was not previously known and may have affected consideration of the applicant's claims. Having regard to the circumstances as a whole, I am also not satisfied that any exceptional circumstances exist for me to consider this information. As such I am prevented from considering them.
5. The fourth news article was published after the date of the primary decision ('Torture by Sri Lankan Police Routine, says human rights lawyer') and I accept that it could not have been provided to the delegate prior to the decision, and as such s.473DD(b) is met. This article may also be described as general country information. It outlines the findings of a visit to Sri Lanka by a UN Special Rapporteur. The article does not relate to the applicant specifically or otherwise contain personal information about him. Nor does the article present information that is substantially different from previously known public country information that is before me. Having considered all the circumstances regarding the submission of this article and noting that the claims made in it were previously known and were canvassed in the literature before the delegate, I am not satisfied that exceptional circumstances exist for me to consider this information.
6. The submission reports that [in] 2017 the applicant's father committed suicide. This is a new claim put forward by the applicant (he had previously reported his father's death to the delegate but not as a suicide or with the details now claimed). The applicant claims that his father's suicide was prompted by a combination of factors. Firstly that officers from the Sri

Lankan Police (SLP) Criminal Investigation Division (CID), in company with unknown masked persons, had often visited the applicant's father's home in the years since the applicant's departure from Sri Lanka. Recently the CID had visited his father's home [in] 2017 in search of the applicant and during this visit they abused the applicant's father and extorted money from him. They also threatened to kill the applicant if he returned to Sri Lanka. [Later in 2017] the CID visited the applicant's father again and reiterated their earlier threat to kill the applicant if he ever returned to Sri Lanka.

7. The applicant states that on the evening of [the day of the last incident], the applicant held a phone conversation with his father. During the conversation, the applicant's father recounted these events to the applicant, and informed him that he should never return to Sri Lanka due to the risk to his life. The applicant advised his father that he did not intend to return, but there was a possibility that his claim for a protection visa in Australian would be refused, and if so he would be returned to Sri Lanka against his will. The applicant claims that when he advised his father of this possibility, he became distressed and agitated and abruptly disconnected the phone call. The next day the applicant received a notification that his father had committed suicide.
8. As evidence of these claims the applicant has provided a copy of a Sri Lankan death certificate (and a certified English translation). The document records that the applicant's father died [the day after speaking with the applicant], and that the cause of death was suicide. The applicant has not previously provided any evidence that the circumstances of his father's death occurred for the reasons he describes in the submission. It is new information.
9. I note that the applicant's representative had informed the delegate of the death in a submission to the Department made in the afternoon of [the same day in] 2017 (prior to the primary decision), although it did not contain any information about the nature of death (suicide), or the reasons the applicant now says led to his death.
10. The applicant has claimed that the suicide was linked harassment relating to the applicant. The claim that the CID officers accompanied by other unknown persons visited the applicant's family home to talk to his father in Sri Lanka [in] 2017 and [later in] 2017 and did so often is a new claim and had not previously been articulated by the applicant. The claim that the CID officers had made threat against the applicant is also a new claim.
11. I am satisfied that although the father's death occurred before the delegate's decision, he may not have been in possession of the death certificate until later and that he could not have provided the document to the delegate. I am also satisfied that the information about the manner of the father's death (suicide) is credible. However, I find the applicant's claims about the newly disclosed visits unconvincing. The applicant did not mention these visits to Australian authorities at any time prior to his August 2017 submission to the IAA despite being given the opportunity to do so. The applicant has advised Australian authorities that he maintains regular contact with his family. I note that in his protection visa interview the applicant stated that his father had been subjected to some police monitoring around 2006 and 2007 but did not make any claims that this monitoring was ongoing and the claim was not discussed further by the applicant. Given that the applicant's submission claims that these visits by the CID happened often and that during the visits his father was abused and received threats I do not find it credible that the applicant would not have known about these visits prior to the date of his submission. I note that the two most recent visits claimed by the applicant occurred after the date of his protection visa [interview]. But given his claim that these visits were made often (i.e. not just on [the dates of the latest two incidents in 2017]), and that the applicant had the presence of mind to inform the delegate of his father's death on the same day he himself was

[notified], I am not satisfied that the applicant would have failed to relay information that he knew which was central to his fear of returning to Sri Lanka (that the CID were still interested in him).

12. The applicant has not satisfied me that these claims about ongoing CID interest in, and harassment of, his father, or that the threats he claims were made against him in 2017 are credible personal information or that they could not have been provided to the delegate before the decision was made. Consequently I am not satisfied that the information about these claimed visits being factors in his father's decision to commit suicide are credible. The applicants claim that the suicide was, in part, motivated by distress arising from the chance that the applicant might be returned to Sri Lanka as the applicant has claimed is also difficult to accept. I note that his father's suicide occurred prior to the date of the primary decision by the delegate. I am not satisfied there are exceptional circumstances for considering this new information.
13. The submission also states that the applicant is unwilling to inform his mother of the outcome of the primary decision, because he is scared that she will also commit suicide. However, whilst such an event would be extremely distressing for the applicant, I am not satisfied that the possibility his mother may commit suicide because of the outcome of the primary decision is, or may be, relevant to the assessment applicant's claims for protection in Australia.
14. Where the submission contains argument about the delegate's decision, I have considered it.

Applicant's claims for protection

15. The applicant's claims can be summarised as follows:
 - That he is an ethnically Tamil adherent of the Hindu faith who was born in Sri Lanka in [date]. He lived in the township of [Town 1], Battacaloe District, Eastern Province.
 - His father worked as a [Occupation 1] and [Occupation 2]. At times, when the LTTE was in control of the district, his father would be obliged by the LTTE to [support] the organisation. As a consequence he suffered occasional mistreatment from Sri Lankan security forces.
 - His family were supporters of the Tamil National Alliance (TNA) a pro-Tamil party and that during elections in 2010 and in 2012 the applicant provided support to the party during election campaigns.
 - During the 2012 campaign, and immediately following the election, the applicant was targeted and beaten by unknown persons for his support for the TNA.
 - During 2012 villages in his area were attacked by 'grease men' and he was involved in providing village security.
 - As an ethnically Tamil failed asylum seeker who departed Sri Lanka illegally he will be subject to discrimination and harassment if returned to Sri Lanka. There is a risk he might be tortured and killed.
 - If returned from Australia people would presume he was wealthy, and so he might be kidnapped or extorted if returned to Sri Lanka.

Refugee assessment

16. 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

17. 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.

18. Since his arrival in Australia the applicant has provided consistent claims about his identity and has provided a number of documents in support of his claims including a copy of his Sri Lankan birth certificate (with translation), his Sri Lankan drivers licence and several school certificates. These documents are consistent with the applicant’s claims. Having considered all of the information before me, including the applicant’s SHEV application, his narrative at interview and the documentation he has provided, I accept that the applicant is a Tamil who was born in [birth date] and who resided in [Town 1], Battacaloe District, Eastern Province prior to his departure for Australia. I find that for the purposes of this assessment the applicant is a Sri Lankan citizen and that Sri Lanka is his receiving country.

19. The applicant has stated that he departed Sri Lanka in October 2012 by boat. Since his arrival in Australia he has provided detailed information about the circumstances of his departure including details about the cost, departure location and other particulars of his travel. Having considered all of this information, I accept the applicant’s claims about his travel arrangements and I find that the applicant departed Sri Lanka in breach of the Sri Lankan *Immigrants and Emigrants Act*.

LTTE Connection, Tamil ethnicity, village security and support for the TNA

20. The applicant claims that his father had worked as a [Occupation 1]. During the period when the LTTE controlled the Battacaloe district, the applicant’s father had occasionally been forced to provide [supplies] to the [LTTE]. Later, when working as a [Occupation 2], the applicant’s father had occasionally been forced to [provide support] to the LTTE, or to perform [tasks] with the family [vehicle]. The applicant reports that father only performed these activities because

he was coerced by the LTTE. Due to this association with the LTTE, the applicant's father was a person of suspicion for the Sri Lankan authorities and from time to time during 2006/2007 the army or the police would visit the family home and question him. Occasionally his father was detained for several hours. This detention could last up to a day, or sometimes overnight. On some occasions his father was beaten during these periods of detention.

21. The applicant claims that he and his family were habitual supporters of the TNA. During the 2010 Parliamentary election, whilst he was still attending school the applicant handed out pro-TNA leaflets and wore a TNA hat to school.
22. During 2012 villages in the applicant's area faced difficulties arising from 'grease men'. According to the applicant 'grease men' were members of the Sri Lankan security forces who covered themselves in grease and would sneak into people's homes at night in order to assault women and terrorise the community. During this period, the applicant, his father and other males from the local area would stay up during the night to perform communal security duty, protecting local women from attack. At the time applicant was completing his school examinations and these responsibilities affected his ability to perform well. The applicant and his family approached a local TNA member of parliament and outlined their problems to him. He promised to assist them, but in return insisted that they support him in future elections, and also to support the election campaign of another TNA candidate who was running for the Provincial council.
23. As a consequence of this bargain, the applicant provided support to the TNA campaign during the 2012 Provincial Council elections in Eastern province. This support included [low] level electioneering tasks. [A number of] days prior to the election, a group of unknown armed persons who the applicant has described as security officials approached the family home and asked to speak to the applicant. As he was not home at the time, his mother went outside to talk to the men. They verbally abused her, and demanded that the applicant stop working on behalf of the TNA.
24. [A number of] days later, the men returned to the family home. This time the applicant was present, but his mother told him to hide. She went out and spoke to the men again. On this occasion, the applicant's mother was verbally abused for a second time and a threat was made against the applicant so that he would comply with their demand to stop working for the TNA. After this second incident his parents would not let him out of the family home to support the TNA election campaign.
25. After a day of being kept at home, friends of the applicant came by the house. They asked him why he was no longer assisting the TNA during the campaign. When the applicant advised his friends of the threats he had received, they informed him that several of them had also received similar threats, but despite the intimidation, his friends had continued to support the TNA campaign. The applicant returned to assisting with the election campaign. Later that day, as he and his friends were returning home after the day's activities, they were approached by [men]. These men were armed and beat the [applicant]. Speaking in broken Tamil (from which the applicant infers the men were Sinhalese), they told the applicant that he must not support the TNA any longer.
26. After the beating, the applicant felt scared and dizzy. He was [injured]. He went home and told his parents but did not report the incident to the police. His father drove him to his [relative]'s house where the applicant went into hiding. Whilst he was in hiding, his parents made arrangements for him to travel to Australia by boat. He stayed at his [relative]'s house until he departed for Australia.

27. After he had arrived in Australia, the applicant was advised by his mother that security officials were looking for him. The applicant does not know why they wanted him, as he did not have a criminal record and had never before been of interest to the Sri Lankan authorities, other than for his links to the TNA. The applicant speculates that his TNA link was why they were still interested in him.
28. Credible country information from the Department of Foreign Affairs and Trade (DFAT) confirms that in LTTE controlled areas, coercion was used to ensure support for LTTE activities and that Tamil civilians in these areas were required to interact regularly with the LTTE personal and official's¹. I accept that the applicant's father was coerced into providing limited support to the LTTE during the period of LTTE control of the Battacalooa district. I also accept, that upon Battacalooa returning to Government control the applicant's father would have been a person of suspicion to the Sri Lankan authorities based upon his Tamil ethnicity the support he had provided to the LTTE (even though coerced). I accept that during the 2006 to 2007 period the applicant's father was detained on multiple occasions by the Sri Lankan authorities and that on some of those occasions he received a beating. Despite my acceptance of these claims, I note that his father was never charged by the Sri Lankan authorities with any crime, nor was the applicant ever targeted by the Sri Lankan authorities as a result of his father's links to the LTTE. I also observe that these events occurred over ten years ago and the applicant has informed the delegate they had not continued. I am not satisfied that the applicant was, while in Sri Lanka, imputed to be a supporter of the LTTE or the wider Tamil separatist movement because of his father's earlier activities, or would be on return.
29. Evidence before me indicates that Sri Lankan elections have been marred by violence in the past². The Department of Foreign Affairs and Trade (DFAT) reports that elections in Sri Lanka have not always been described as entirely free and fair. Tamil candidates have been harassed and intimidated by security forces at previous elections in Sri Lanka and some TNA candidates were murdered during the period of conflict³.
30. However elections held in 2015 proceeded relatively smoothly: the Presidential election on 8 January 2015 was generally peaceful and orderly and the parliamentary election held on 17 August 2015 was described by the Commonwealth Observer Group as 'credible, met the key criteria for democratic elections, and the outcome reflected the will of the people'⁴. Other credible information before me indicates that the Sri Lankan Government elected in 2015 has taken steps to investigate of past instances of political violence⁵.
31. The TNA won 16 seats in the 2015 parliamentary election⁶. The TNA leader, Rajavarothingiam Sampanthan, was appointed as Opposition Leader⁷. At the most recent provincial elections the TNA performed well in the Eastern and Northern Provinces, and the current chief minister of

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.27.

² Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 1 October 2010, CIS19345.

³ US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p2-3.

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.23.

⁵ US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p2-3.

⁶ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 2.23.

⁷ US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p24.

the Northern Province is a TNA representative⁸. Whilst noting that the applicant resided in the eastern province, the evidence before me suggests that the TNA has a considerable base of support in the Northern and Eastern provinces of Sri Lanka and is not a fringe party. The evidence does not support that members or supporters of the TNA currently suffer from systemic discrimination or harassment. The most recent elections were conducted peacefully and there have been great improvements in the security situation in the north and east of Sri Lanka since the end of the conflict⁹.

32. I accept that the applicant supported the TNA election campaign in 2012 and engaged in low level electioneering [activities]. I note the applicant claims to have supported the TNA at the 2010 elections also and asserts his family were habitual supporters of the party. Nonetheless I also accept that his 2012 support for the TNA election campaign was prompted by his village problems with 'grease men'. The applicant's claims about receiving threats and suffering a beating after providing support to the TNA during 2012 are consistent with country information before me¹⁰. However, there are some inconsistencies in the information provided by the applicant. At times, such as during his 2013 Entry interview and his 2017 protection visa interview the applicant stated that the persons who had threatened him were unknown, or unidentified. At other times, he asserted that these persons were security officers, or police officers. Sometimes, he has claimed that both were present. Sometimes the applicant has claimed these men were armed whilst on other occasions this claim was not asserted. These inconsistencies reflect poorly on the applicant's overall credibility. Nonetheless, having considered all of the information before me including the country information and the applicant's claims I am willing to accept that the applicant was subjected to threats and a single beating as a result of his support for the TNA in 2012. I further accept that the applicant believed these actions to have been caused by or for agents of the Sri Lankan Government.
33. However, I do not consider the applicant's claims about ongoing interest in him from Sri Lankan authorities after his departure for Australia are credible. At the time of these events, the applicant's efforts on behalf of the TNA were limited to very basic campaign activities. Whilst I have accepted that attempts were made during the campaign to prevent him and others from supporting the TNA, I am not satisfied that his political profile in 2012 was of a level that would draw interest from Sri Lankan authorities after the election had finished. Furthermore, I am not satisfied that if returned to Sri Lanka the applicant's political profile is significant enough to warrant further attention from rival political parties, or from the Sri Lankan government based upon his support for the TNA in 2010 or 2012, noting also the country information about the changes in the political landscape since that time.
34. The applicant's claims about 'grease men' terrorising women are consistent with country information before me. In the past, Sri Lankan security forces were known to victimise Tamil communities¹¹. However, I note that the applicant has not made any claims that members of his family, or any person he knew were the victims of a 'grease men' attack. Nor has he claimed that his village was the subject of an attack. The applicant's claims are limited to an assertion that some villages in his area had been attacked and that in response the male members of his village organised evening patrols for a short period of time to deal with the threat. I accept that this activity occurred in response to communal fears, and that the applicant and other males in his village enacted a community security scheme. However given

⁸ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 2.25.

⁹ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 2.39.

¹⁰ US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320.

¹¹ US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p4-5

the applicant personally had no interactions with any 'grease men' or representatives of the Sri Lankan security forces as a result of these actions I am not satisfied that the actions of the applicant or members of his family in response to the 'grease devil' threat, would result in his being of interest significance the Sri Lankan government should he be returned to Sri Lanka. I also note that the applicant has not claimed that the 'grease devil' threat was ongoing, but rather, it happened for a short period of time around the time he completed his school examinations. I do not accept that if returned to Sri Lanka the applicant would face a real chance of harm from 'grease men'.

35. The applicant has claimed that if returned he would face harassment on the basis of his Tamil ethnicity. During the period of conflict, Tamils in Sri Lanka did face a range of discriminatory policy and significant government intrusion into various aspects of daily life¹². This might include routine harassment and discrimination by Sri Lankan authorities including being imputed as members of the LTTE due to their ethnicity¹³. Tamil is recognised as an official language in Sri Lanka but monolingual Tamil speakers can have difficulty communicating with the police, military and other government authorities¹⁴. Ethnicity, along with communal issues surrounding language and religion, are a source of division in Sri Lanka¹⁵. The Department of Foreign Affairs and Trade (DFAT) reporting confirms that members of the Tamil community in Sri Lanka do still face difficulties. There are credible reports that Tamils still face many day to day problems in Sri Lanka including high unemployment, debt and gender based violence in former areas of conflict¹⁶. Country information before me suggests that the Constitution of Sri Lanka prohibits discrimination on the grounds of race, religion, place of birth and Tamil has official recognition as a national language¹⁷.
36. DFAT's most recent assessment of the situation in Sri Lanka is that Sri Lankans of all backgrounds generally have a low risk of experiencing official discrimination¹⁸. Since 2015, genuine attempts have been made at reconciliation between the Sinhalese majority and the Tamil minority. Steps to promote harmony such as reaffirming the independence of the Sri Lankan Human Rights Commission and the appointment of a Tamil Chief Justice have been accompanied by a significant decrease in monitoring and harassment, and with many previous restrictions being relaxed, and the reduction in the number of military units in predominantly Tamil areas¹⁹. Overall there has been a positive shift in relations with the authorities in Sri Lanka²⁰.
37. Whilst some difficulties may arise for the applicant because he is Tamil and does not speak Sinhala, I am not satisfied that such difficulties would result in discrimination amounting to harm. The applicant stated at interview that he, like most of the men from his area, was a fisherman before he departed for Australia, and that he was able to earn a living doing this work supporting his family. He has not made any claim which might indicate that he would be unable to earn a living if returned to Sri Lanka or which would suggest he would face other

¹² US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320, p16.

¹³ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 3.8.

¹⁴ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.7

¹⁵ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.1.

¹⁶ UK Home Office, "Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 4.0", 31 March 2017, OG6E7028822, 7.1.1.

¹⁷ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 3.3.

¹⁸ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 3.4

¹⁹ UK Home Office, "Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 4.0", 31 March 2017, OG6E7028822, 6.6.1; DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 2.30.

²⁰ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 3.9.

difficulties on the basis of his ethnicity. I am not satisfied the applicant would face a real chance of harm arising from his Tamil ethnicity should he be returned to Sri Lanka.

38. Having considered all the information before me, I am not satisfied that the applicant faces a real chance of harm as a result of his Tamil ethnicity, his father's links to the LTTE, his previous activities in support for the TNA, his efforts to defend his village from 'grease men', or any combination of these claims if returned to Sri Lanka.

Failed asylum seeker, illegal departure, wealth.

39. The applicant has claimed that because of his perceived wealth, his status as a failed Tamil asylum seeker and his illegal departure from Sri Lanka he would face harm if returned to Sri Lanka.

40. The applicant has claimed that due to the period of time he has lived in Australia, people in Sri Lanka would assume he is wealthy. He argues that this (mistaken) perception of his wealth would result in an increased risk of him being kidnapped or extorted if he is returned to Sri Lanka. Evidence before me indicates that crime rates across Sri Lanka vary, but are highest in Colombo District and tend to be higher in the Western and Northern Province's and the rates of many serious crimes have remained steady or increased slightly since the in recent years²¹. However, I note that the security situation in eastern Sri Lanka has improved since the end of the conflict and the police maintain responsibility for civil affairs²². DFAT assesses that the SLP is a trained and active police force²³. Over 1500 asylum seekers have been returned to Sri Lanka from Australia since 2008²⁴. None of the country information before me indicates that returnees from Australia (or other countries) are perceived to be wealthier than other Sri Lankans or that they face a real chance of kidnapping or extortion arising from their period of residence here. Having considered all of the information before me including country information and volume of other returnees from Australia I am not satisfied that the applicant's fears that his perceived wealth would lead to kidnapping or extortion are well founded.

41. Evidence before me indicates that thousands of asylum seekers have returned to Sri Lanka since 2009, including from Australia, the US, Canada, the UK and other European countries, with relatively few allegations of torture or mistreatment²⁵. DFAT has reported that upon arrival in Sri Lanka, returnees will be met by Sri Lankan Government officials in order to undergo immigration processing. This processing is principally aimed at determining the identity of the returned person. These procedures can take several hours, primarily due to the administrative processes, interview lengths, and staffing constraints at the airport. Returnees are processed en masse, and individuals cannot exit the airport until all returnees have been processed²⁶. DFAT assesses that all returnees, regardless of their ethnicity or religion are treated according to these standard procedures, and that they are not subject to mistreatment during processing at the airport²⁷.

42. The applicant has in his possession copies of his Sri Lankan National Identity Card, his Sri Lankan birth certificate and his Sri Lankan drivers licence. I am not satisfied that the applicant

²¹ DFAT, "DFAT Country Information Report - Sri Lanka", 24 January 2017. CISED50AD105, 2.38.

²² Ibid, 3.9.

²³ Ibid, 5.5.

²⁴ Ibid, 5.27.

²⁵ Ibid, 4.22.

²⁶ Ibid, 5.19.

²⁷ Ibid, 5.20.

would face undue difficulties establishing his identity if returned to Sri Lanka. I am not satisfied that the applicant faces a real of harm arising from his perceived wealth or from his claim of asylum in Australia.

43. The movement of persons into, and out of Sri Lanka is governed by the *Immigrants and Emigrants Act*. Returnees, who are suspected of breaches of the Act, such as for departing without going through immigration, may be subjected to penalties and, when identified, will likely be arrested and charged. If charged, most returnees will have their fingerprints taken and be photographed. At the earliest available opportunity after investigations are completed, the individual would be transported by police to the closest Magistrate's Court, after which custody and responsibility for the individual shifts to the courts or prison services. The Magistrate then makes a determination as to the next steps for each individual. Those who have been arrested can remain in police custody at the Criminal Investigation Department's Airport Office for up to 24 hours after arrival. Should a magistrate not be available before this time—for example, because of a weekend or public holiday—those charged may be held at a nearby prison²⁸. Conditions in Sri Lankan prisons are reported to be overcrowded and unsanitary. DFAT considers that these conditions are the result of a lack of resources²⁹.
44. As he departed Sri Lanka by boat without going through normal immigration checks I accept that if returned to Sri Lanka the applicant would likely face charges arising from breaches of the *Immigrants and Emigrants Act*. According to the Sri Lankan Attorney-General's Department, which is responsible for the conduct of prosecutions, no returnee who was merely a passenger on a people smuggling venture had been given a custodial sentence for departing Sri Lanka illegally. However, fines had been issued to act as a deterrent towards departing illegally in the future. Fine amounts vary on a case-by-case basis and can be paid by instalment. If a person pleads guilty, they will be fined (which they can pay by instalment) and are then free to go³⁰. The evidence before me indicates that these processes are have a general application to all returnees and are not applied by the Sri Lankan authorities in a discriminatory way.
45. I am not satisfied that any questioning, brief detention or the imposition of a fine for breaches of Sri Lankan immigration law arising from his illegal departure amounts to serious harm or that the treatment amounts to persecution. Having considered all the evidence before me, I am not satisfied that the applicant will face a real chance of harm arising from his Tamil ethnicity, his family links to the LTTE, his and his family's TNA activities, his village security activities, his attempt to claim asylum in Australia, his perceived wealth or any combination of these claims if returned to Sri Lanka.

Refugee: conclusion

46. 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

47. 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

²⁸ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 5.20.

²⁹ Ibid, 4.25.

³⁰ Ibid, 5.22.

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

48. 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.

49. I have concluded that the applicant will not face a real chance of harm arising from his Tamil ethnicity, his family links to the LTTE or his previous support for the TNA, his involvement in a village security scheme, his being a failed Tamil asylum seeker, or his perceived wealth. As 'real risk', and 'real chance' have been found to consist of the same standard, I am also not satisfied that the applicant faces a real risk of significant harm from any of these circumstances.

50. I have accepted that upon return, the applicant will be questioned by the Sri Lankan authorities and is likely to be charged with offences in breach of Sri Lankan immigration law. Such charges will likely result in the imposition of a fine against the applicant, and it is possible the applicant may face a brief period of detention of up to a few days whilst these judicial processes occur. Any detention may be served in conditions that are crowded and unsanitary but I note that these conditions are the result of lack of resources and that all returnees are subjected to them. On the evidence before me, I am not satisfied that the application of these processes and penalties will result in the applicant facing the death penalty, the arbitrary deprivation of his life or torture. I am also not satisfied that there is an intention to inflict pain or suffering, severe pain or suffering or to cause extreme humiliation. I am not satisfied that these processes and penalties amount to cruel, or inhuman or degrading treatment or punishment. I am not satisfied that any questioning, detention or the imposition of a fine arising from the application of these judicial processes amounts to significant harm.

Complementary protection: conclusion

51. 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.