



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SRI LANKA  
IAA reference: IAA17/03827

Date and time of decision: 8 August 2018 15:03:00  
S MacKenzie, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Tamil from [District 1], Sri Lanka. The applicant arrived in Australia [in] August 2012 as an unauthorised maritime arrival. On 27 March 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 25 October 2017, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Sri Lanka.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 20 November 2017, the IAA received a written submission from the applicant (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the referred material. I have had regard to these aspects of the submission.
5. In the IAA submission, the applicant also refers to country information and claims not before the delegate that both pre-date and post-date the delegate's decision. It is new information.
6. In respect of the country information<sup>1</sup> that pre-dates the delegate's decision, the applicant does not provide reasons as to why this information was not and could not have been provided to the delegate or why it may be considered credible personal information. In the circumstances, I am not satisfied that this information could not have been provided to the Minister before the delegate made his decision. I am also not satisfied that the information represents credible personal information. The TamilNet article is about three Tamil prisoners who are due to have their cases heard in the Sri Lankan High Court. The applicant has not indicated the relevance of this information to his particular circumstances or claims, nor has he pointed to any exceptional circumstances that may justify considering this information, and none are evident to me. I am also not satisfied that there are exceptional circumstances to justify consideration of this information.
7. The claims not before the delegate, that relate to events that pre-date the delegate's decision, are as follows:
  - a. The applicant's father was tortured by the Sri Lankan authorities due to his LTTE (Liberation Tigers of Tamil Eelam) involvement and due to the applicant's [Relative A's] LTTE involvement;
  - b. The applicant fled Sri Lanka after the authorities tortured him;
  - c. The Sri Lankan authorities told the applicant's father and brother that he (the applicant) had been involved in transporting ex-LTTE cadres to Colombo to escape arrest;

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<sup>1</sup> TamilNet, "SL Attorney General's Dept., TID continue to conspire against Tamil political prisoners", 7 September 2017

- d. One of the applicant's brothers was tortured and questioned about the applicant's whereabouts. He fled to [another country].
8. The IAA submission does not explain why this information could not have been provided to the delegate or why it may be considered credible personal information. I consider that if this information were true, the applicant would have mentioned it at some point throughout the SHEV application process. I also note that several of the new claims contradict information previously provided. For example, in an interview with a Department officer on 24 August 2017 (SHEV interview), the applicant stated that his father had never been a member of the LTTE and nor had he ever done any business with the LTTE. The applicant also claimed in his statutory declaration dated 14 August 2013 (SHEV statement) and in the SHEV interview that his father came to the adverse attention of the Sri Lankan authorities due to his prior travel in and out of areas controlled by the LTTE, which lead to suspicion of LTTE activity. The applicant made no mention in his SHEV statement or at the SHEV interview of ever being physically harmed by the Sri Lankan authorities. He was asked several times in the SHEV interview whether there were claims that he needed to raise that had not previously been talked about. I further note that in the SHEV interview the applicant expressed his fear in terms of events that had occurred involving his father, not him. The applicant mentioned in the SHEV interview that after he left Sri Lanka some people had been looking for him. He made no mention of his brother being tortured or that he fled to [another country]. In the context of the applicant's overall claims I do not find these claims credible and I am not satisfied that there are exceptional circumstances to justify consideration of this information.
  9. In respect of the country information<sup>2</sup> that post-dates the delegate's decision, while I accept it could not have been provided to the Minister, the applicant has not explained how this information relates to his claims or circumstances, and its bearing on his claims is not apparent to me. The TamilNet article dated 2 November 2017 reports that Special Task Force commandos have not been arrested or detained following the shooting of two Tamil fishermen in October 2017. The article also refers to an incident in October 2016 where two Tamil students were shot by policeman for failing to stop at a police barricade. The TamilNet article dated 11 November 2017 reports that the Sri Lankan police have failed to act in relation to a land ownership dispute in eastern Sri Lanka. The TamilNet article dated 12 November 2017 reports that although three political prisoners have served their terms, they have not been released. I am not satisfied that these articles represent credible personal information or that there are exceptional circumstances to justify consideration of this information.
  10. In the IAA submission, the applicant states that in "October 2017" he received the following information:
    - a. Two youths who the applicant travelled with were arrested at the airport when they returned to Sri Lanka (date unspecified);
    - b. The parents of the youths asked the applicant's father to provide evidence to the authorities to enable their release;
    - c. When the applicant's father approached the authorities he was arrested, detained for two weeks, and tortured. During the torture, he advised the authorities that his son (the applicant) was in Australia and that his other son had fled to [another country];

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<sup>2</sup> TamilNet, "Colombo fails to arrest STF commandos who shot and killed Tamil youth in Jaffna", 2 November 2017; TamilNet, "SL Police reluctant to act against SLFP goons in Batticaloa", 11 November 2017; TamilNet, "Colombo refuses to release 3 political prisoners who have completed serving prison terms: MP", 12 November 2017

- d. The applicant's father was told by the authorities that the applicant was been accused of transporting [specified products] from [District 1] to Vanni. He was also accused of transporting [specified products] to LTTE bunkers in [a named district] delivered from LTTE cadres [from overseas];
  - e. When the applicant's father was released, an order was given that the applicant and his brother must be handed over if they arrive back in Sri Lanka by illegal boat;
  - f. The authorities threatened to kill the applicant's family;
  - g. The authorities have not released the detained youths. The youths have confessed that the applicant was involved in the LTTE and the authorities are awaiting the applicant's return to Sri Lanka so that he can be imprisoned;
  - h. A week ago, the authorities visited the applicant's father looking for the applicant and his brother. His father was beaten.
11. In the IAA submission, the applicant states that the above information was not provided to the Minister as he was only notified "after the [SHEV] interview". Specifically, he claims that he received the above information "in October 2017". As noted above, the SHEV interview was conducted on 24 August 2017 and the delegate's decision made on 25 October 2017. It is therefore not clear when in October 2017 the applicant purports to have been notified of this information or whether he could have provided it to the Minister prior to the delegate's decision. I also have significant concerns as to the veracity of the new claims. In particular, the applicant's claim that he is a person of concern to the Sri Lankan authorities for the international smuggling or transportation of [specified products] is inconsistent with his previous evidence that he authorities wanted to ask him some questions in connection with him ferrying an LTTE suspect from [District 1] to Colombo in his [vehicle] in 2012. I have also considered the applicant's previous evidence that indicates that his father was a person of long-standing adverse interest to the Terrorist Investigation Division (TID). In these circumstances, I find it unlikely that, on a date unspecified, the applicant's father would have voluntarily presented as a witness to assist in the release of two youths arrested on their return to Sri Lanka. I also find the new claims to be vague. It is not clear when these events are said to have occurred, or why the applicant's father was called as a witness in connection with the arrest of youths returned to Sri Lanka. Having had regard to all of the information before me, including the applicant's evidence in respect of the events that he claimed transpired prior to his departure from Sri Lanka (discussed in further detail below), I am not satisfied that these new claims represent credible personal information. The applicant has not pointed to any exceptional circumstances that may justify considering this information, and none are evident to me. In the circumstances, I am not satisfied that there are exceptional circumstances to justify consideration of this information.
12. I have obtained new information, specifically information on the treatment of Sri Lankans of Tamil ethnicity, of Christian faith, and citizens who have departed Sri Lanka illegally and sought asylum abroad from the most recent Department of Foreign Affairs and Trade (DFAT) country report for Sri Lanka which was published on 23 May 2018.<sup>3</sup> The delegate relied primarily on the 24 January 2017 DFAT report for Sri Lanka which the 23 May 2018 report updates. I am satisfied that there are exceptional circumstances to justify considering this new information.

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<sup>3</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064

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

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

- The applicant is a Tamil Christian male from [District 1], Sri Lanka;
- In March 1999, the applicant's family moved from an area controlled by the LTTE to an area controlled by the Sri Lankan Army;
- The applicant's [Relative A] was forcibly recruited by the LTTE as a fighter;
- In March 2008, the applicant was arrested and detained for four days by the Sri Lankan authorities on suspicion of being a LTTE member or sympathiser. He was interrogated about his alleged LTTE connection and released following the payment of a bribe and a court appearance;
- In around November 2008, the applicant was arrested and imprisoned for three days for allegedly being a LTTE member or supporter. He was released following the payment of a bribe and a court appearance;
- In January 2009, the applicant's [Relative A] was killed in battle;
- Due to the [Relative A's] membership of the LTTE, the applicant and his family's profile "increased" in the eyes of the Sri Lankan government;
- [In] August 2010, the applicant's father was taken by armed men in a white van. He was held in detention for 13 months by the TID and accused of having LTTE links. While in detention he was severely tortured and has been unable to work since;
- The applicant started to work as a driver and suffered regular harassment at roadblocks and checkpoints due to his Tamil ethnicity;
- In April 2012, persons from the CID (Criminal Investigation Department) went to the applicant's house while he was away and requested that he report to the CID office to answer some questions. The CID had information that the applicant had transported "a known suspect" in his vehicle;
- Following this, the applicant hid in Jaffna for one month and then moved to Colombo to stay with a distant relative. He became frightened because he had no control of who travelled in his [vehicle] and he was concerned he would be killed or harmed if the CID accused him of helping a suspected LTTE member;
- The applicant travelled to Australia by boat to seek protection;
- If returned to Sri Lanka, the applicant fears he will be harmed or killed due to:
  - his Tamil ethnicity
  - his Christian religion
  - his perceived LTTE links
  - his imputed profile as a person opposed to the Sri Lankan government or as a person wanting a separate Tamil state.

## **Refugee assessment**

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14. 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**

15. 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.

### *Identity*

16. Since his arrival in Australia, the applicant has consistently claimed to be a Tamil Christian from [District 1]. In an interview he had with the Department on 17 January 2013 (entry interview), the applicant stated that [District 1] was located in the Eastern Province. He provided the same information on his SHEV application form and in his SHEV statement. However, country information before me indicates that [District 1] is located in the Northern Province of Sri Lanka.<sup>4</sup>

17. The applicant has provided some evidence of his identity, including a copy of his 2011 issued Sri Lankan passport. On the basis of his evidence, I accept that he is a Tamil Christian male from this part of Sri Lanka.

### *Events in Sri Lanka*

18. I accept the applicant’s consistent evidence that he had a [Relative A] who was a fighter in the LTTE, and that she died towards the end of the conflict in 2009.

19. I also accept the applicant’s consistent evidence that he was detained for two brief periods in 2008 on suspicion of being a LTTE member or supporter/sympathiser. I note the applicant’s evidence in the entry interview that it was normal for a Tamil living in a Sinhalese area to be taken away “on suspicion” and that this was why he was arrested in 2008. Country information documents the mistreatment of ordinary Tamils during the civil war, noting that LTTE support was at times imputed on the basis of Tamil ethnicity. Many Tamils, particularly in the north and east, reported being harassed and/or detained by security forces at this time.<sup>5</sup> I accept that the

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<sup>4</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 2.39; Danish Immigration Service, “Human Rights and Security Issues concerning Tamils in Sri Lanka”, 71, 1 October 2010, CIS19345, p.62

<sup>5</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 3.8

applicant's and his family's profile was elevated due to the [Relative A's] prior LTTE involvement.

20. I further accept the applicant's broadly consistent evidence that his father had an adverse profile with the Sri Lankan authorities. In the entry interview, the applicant claimed that his father's interest in the authorities stemmed from the fact that he had previously lived in an area controlled by the LTTE. He claimed that after the war had ended, people started "pointing us out" and it was for this reason his father was taken in 2010 and held in custody for one year and nine months. He also claimed that his father was often harassed and questioned by the CID. In his SHEV statement, the applicant claimed that his father was in TID detention for a period of 13 months and severely tortured. He indicated that his father was singled out by the authorities because of his previous and regular travel through government and LTTE checkpoints during the conflict. He indicated that his father paid "taxes" when passing through LTTE checkpoints and that those records were later uncovered by the government resulting in his father being harassed and pursued. In the SHEV interview, the applicant confirmed that his father was not a LTTE member, and although he was a [businessman] he did not do business with the LTTE. Consistent with his evidence in his SHEV statement, the applicant stated that the authorities were suspicious of his father because he had travelled frequently in and out of the Vanni in 2006. He later claimed that his father was pursued by the authorities because someone, possibly a business rival, reported him to the authorities falsely claiming that he had worked with the LTTE in [his] business. Country information before me documents the detention and torture of civilians with suspected LTTE connections in the north and east by the TID following the conflict.<sup>6</sup> Having regard to all of the information before me, I accept that the applicant's father was detained by the TID in August 2010 due to suspected links with the LTTE, that he was detained for around 13 months, and that he was mistreated during this period.
21. The applicant's claim that as a [vehicle] driver (from 2011) he experienced harassment at roadblocks and checkpoints on account of his ethnicity is supported by country information.<sup>7</sup> I accept this claim.
22. I find the applicant's evidence in relation to the claimed events of 2012 unconvincing.
23. In his SHEV statement, the applicant claimed that the CID came to his house while he was not at home and requested that he report to the CID office to answer some questions. He also claimed that the CID persons said that they had information that he had transported "a known suspect" in his [vehicle]. He claimed that he became frightened when he learned of this and thought he may be killed or severely harmed. He stated that he moved to Jaffna and remained there for one month, and then went to Colombo and stayed with a distant relative before leaving Sri Lanka. He stated that his family made the arrangements because he was scared the Sri Lankan government would find him and kill/harm him.
24. In the SHEV interview, the applicant claimed that he transported [number] people from [District 1] to Colombo and that in that group there were two or three persons who were "suspects". He claimed that because he transported these people "one-way" to Colombo the TID would think he was involved with them and it was for that reason they came looking for him in around April 2012. He said that he went into hiding in Jaffna and also in Colombo. He

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<sup>6</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8, p.18; Danish Immigration Service, "Human Rights and Security Issues concerning Tamils in Sri Lanka", 71, 1 October 2010, CIS19345, p.7-8

<sup>7</sup> Home Office UK Border Agency, "Sri Lanka: Country of Origin Information (COI) Report", 7 March 2012, CIS29709, p.126, 296

also indicated that since he had departed Sri Lanka the same persons had come searching for him a few times.

25. In the entry interview, the applicant made no mention of the TID, the CID, or any other arm of the Sri Lankan authorities pursuing him in 2012. When asked why he left Sri Lanka, he first talked about a lack of rights in terms of employment. He also talked about the times he was detained in 2008. When asked specifically what made him leave Sri Lanka in 2012, he talked about his father's issues with the authorities in 2010 and said that his family wanted him to be safe because Tamils can be taken away at any time on suspicion. Later in the entry interview the applicant was asked if the police and security or intelligence organisations impacted his day to day life. In response, he talked about the harassment his father faced from the CID and made no mention of being personally pursued by the authorities or being forced to go into hiding. When asked about the last address that he lived at prior to commencing his journey to Australia, the applicant said that from around 2000 up until [the date in] August 2012 he resided at the same address in [District 1]. He made no mention of living in Jaffna or Colombo between April and August 2012. I also note the applicant's evidence that he continued working as a [vehicle] driver up until the "week before" he came to Australia.
26. In his SHEV statement, the applicant stated that at the entry interview he was told to provide "rough dates" and to "give a short account" of why he left Sri Lanka. He stated that it was for this reason a lot of detail was omitted at that time. He also stated that he may have made honest mistakes both in his SHEV statement and at the entry interview due to a "faulty recollection of traumatic events".
27. When considered cumulatively, the above evidence leads me to conclude that the applicant was not recalling a genuine personal experience in relation to the events of 2012 in Sri Lanka. As noted above, there were inconsistencies in the applicant's evidence between his SHEV statement and at the SHEV interview as to the reasons why he was being pursued by the authorities and which arm of the authorities was pursuing him. I also find it difficult to accept that in circumstances where the CID or TID were seeking to question or apprehend the applicant for transporting LTTE suspects, that those authorities would provide that information to persons at his house in his absence thereby alerting him that he was a person of adverse interest. I also expect that if the applicant had genuinely come to the adverse attention of the CID or TID prior to his departure from Sri Lanka, to the point that he was forced to go into hiding for several months, that he would have mentioned these significant events in the entry interview when he was asked why he left Sri Lanka – particularly in circumstances where he now claims is the primary reason that motivated him to leave Sri Lanka. I have considered the applicant's explanation in his SHEV statement as to why certain information may have been omitted at the entry interview; however, I am not persuaded that those reasons adequately account for the discrepancies noted. In particular, the applicant was quite specific that he had resided in [District 1] until [a date in] August 2012. I also find it difficult to accept that being pursued by the CID or TID and being forced into hiding only months earlier was not at the forefront of his mind at the entry interview. For these reasons, I am not satisfied that the CID or TID came in search of the applicant in 2012 as claimed. I conclude that the applicant fabricated this claim to enhance his application for protection. It follows that I reject the applicant's associated claim, first raised in the SHEV interview, that the authorities have continued to search for him following his departure from Sri Lanka.
28. I have accepted that the applicant had a [Relative A] in the LTTE until 2009 and that his and his family's profile was elevated on this basis. I have also accepted that the applicant was detained on two occasions in 2008 on suspicion of being a LTTE member or supporter/sympathiser, and that he faced some harassment at roadblocks when he commenced as a [vehicle] driver in

2011. I have further accepted that the applicant's father had an adverse profile with the Sri Lankan authorities and that he was detained for around 13 months in August 2010 due to suspected links with the LTTE. However, I am not satisfied that the applicant faces a real chance of harm on return to Sri Lanka on account of imputed LTTE links, or that he will be imputed as a person opposed to the Sri Lankan government or as a person wanting a separate Tamil state. The evidence before me indicates that in October 2011, post conflict, the applicant was issued a Sri Lankan passport in Colombo. I consider that the applicant was able to obtain a passport at this time indicative that he was not a person whom the authorities were seeking to prevent from travelling outside of Sri Lanka due to past events, including his [Relative A's] LTTE involvement, his past detention in 2008, or on account of his father's profile. I have also considered country information from the UK Home Office that assesses that international protection is not warranted in cases where a person evidences past membership or connection with the LTTE, unless they had a significant role in it (i.e. LTTE's former leadership (combat or civilian) and/or former members who were suspected to have committed terrorist or serious criminal acts during the conflict, or who have provided weapons or explosives to the LTTE), or if they are, or perceived to be, active in post-conflict Tamil separatism.<sup>8</sup> Similarly, DFAT assessed in 2017 that high-profile individuals with links to the LTTE would continue to be of interest to the Sri Lankan authorities, and indicate that aside from the LTTE leadership former members who have committed terrorist or serious criminal acts during the conflict, or who provided weapons or explosives to the LTTE, may be considered high-profile.<sup>9</sup> In the applicant's circumstances, I am not satisfied that he is a person of current interest to the Sri Lankan authorities due to any actual or imputed LTTE membership or links, including familial links.

29. In his SHEV statement, the applicant stated that he believed that the Sri Lankan government is systematically targeting and persecuting young Tamil men. He stated that Tamils are discriminated against and that it is difficult for a Tamil person to get a government job or access higher education such as university. He also stated that young Tamil men face a higher risk of being detained at government roadblocks and checkpoints. In the SHEV interview, the applicant claimed that the Sinhalese in Sri Lanka receive preferential treatment and that Tamils do not have "proper rights".
30. Country information indicates that the overall situation for Tamils in Sri Lanka has improved considerably since the end of the civil conflict in 2009. There are numerous Tamil political parties in Sri Lanka, with the largest alliance of parties operating under the umbrella of the Tamil National Alliance (TNA).<sup>10</sup> The TNA currently has 16 members of parliament and holds the majority of seats in the Northern Provincial Council. The TNA leader Sampanthan is leader of the Opposition.<sup>11</sup> DFAT assess that all Sri Lankans face a low risk of official or societal discrimination based on ethnicity, including in relation to access to education, employment, and housing.<sup>12</sup> While there is no official discrimination on the basis of ethnicity in public sector employment, DFAT assess that some Tamils report discrimination in employment, particularly in relation to government jobs. DFAT further assess that the limited Tamil appointments are a consequence of factors such as disrupted education due to conflict and language constraints.<sup>13</sup> The applicant has not claimed to have experienced ethnic based societal discrimination in the past, and nor has he claimed to have sought or been denied employment in the public sector. In 2017, DFAT reported that university entrance in Sri Lanka is awarded according to merit and

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<sup>8</sup> UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism Version 4.0", March 2017, CISED50AD3779, p.13

<sup>9</sup> DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105, 3.31, 3.38

<sup>10</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.5

<sup>11</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 2.18, 2.20

<sup>12</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.3

<sup>13</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.6-3.7

that demand far outstripped supply for university places.<sup>14</sup> The applicant has not claimed to have sought or been denied access to higher education in Sri Lanka. I note he ceased schooling at the end of [level], was supported by his family for a number of years, before commencing work as a labourer. While I accept that the applicant may be at some risk of encountering a degree of societal discrimination solely on the basis of ethnicity, on the evidence before me, I am not satisfied that this would constitute serious harm.

31. In 2017, DFAT assessed that the harassment of Tamils had decreased significantly under the Sirisena government, noting that members of the Tamil community have described a positive shift in the nature of their interactions with the authorities, and feel able to question the motives of, or object to, monitoring or observation activities.<sup>15</sup> DFAT also reported that military checkpoints on major roads leading to the north and east were removed in 2015 and that there were no restrictions on travelling to these areas.<sup>16</sup>
32. In 2017, the UK Home Office reported that being of Tamil ethnicity does not in itself warrant international protection.<sup>17</sup> Recent reports do not mention that Tamils are at risk of harm based on their prior place of residence.<sup>18</sup> I have also considered the country information from DFAT and other sources which indicate that Tamils are not being systematically targeted and subjected to serious harm because of their race.
33. In his SHEV statement, the applicant stated he was of the Christian faith and that he feared persecution on return to Sri Lanka due to his religious beliefs. He claimed that Buddhists, who are mostly Sinhalese, are persecuting non-Buddhists. In the SHEV interview, the applicant advised that Buddhists were speaking out against Hindus, and that he himself had not experienced any problems on account of his religion. Later in the interview, the applicant stated that Buddhists in Sri Lanka have declared the country as a “Buddhist country” and that it is government policy that preference is given to Buddhists. He claimed that there is religious discrimination in Sri Lanka and that this was a reason why he could not return to Sri Lanka.
34. The Constitution (Sri Lanka) provides for freedom of religion, while giving Buddhism a ‘foremost place’. Attacks on places of worship or religious objects, and insults to religion, are subject to criminal penalties.<sup>19</sup> Christianity is one of the four major religions in Sri Lanka and there are four Ministers, each of the appropriate religion, with responsibility for the four major religions. Prominent Buddhist, Hindu, Muslim and Christian leaders are invited to all national functions, although only Buddhist rituals are performed at most events. Government dignitaries host and attend important events for different religions and Sri Lanka recognises religious holidays for all four religions.<sup>20</sup> DFAT assesses that there is little official discrimination on the basis of religion and no official laws that discriminate on the basis of religion. Most members of religious groups are able to practise their faith freely.<sup>21</sup>

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<sup>14</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 2.17

<sup>15</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 3.9

<sup>16</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 2.39

<sup>17</sup> UK Home Office, “Country Policy and Information Note Sri Lanka: Tamil separatism Version 4.0”, March 2017, CISED50AD3779, p.13

<sup>18</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 23 May 2018, CIS7B839411064; UK Home Office, “Country Policy and Information Note Sri Lanka: Tamil separatism Version 4.0”, March 2017, CISED50AD3779; US Department of State, “Sri Lanka - Country Report on Human Rights Practices 2015”, 13 April 2016, OGD95BE926320

<sup>19</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 3.11

<sup>20</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 3.12; DFAT, “DFAT Country Information Report Sri Lanka”, 23 May 2018, CIS7B839411064, 3.15

<sup>21</sup> DFAT, “DFAT Country Information Report Sri Lanka”, 24 January 2017, CISED50AD105, 3.13-3.14; DFAT, “DFAT Country Information Report Sri Lanka”, 23 May 2018, CIS7B839411064, 3.17

35. In 2018, DFAT reported that there were reports of local authorities seeking to close places of worship in 2017, questioning the status of religious registration, and inconsistently applying the law against perpetrators of discrimination and religious violence. Although students can study Christian religious classes in most public and private schools, DFAT also referred to reports of children being denied admission to schools because of their religious background, and of children being forced to observe Buddhist rituals in state schools.<sup>22</sup> In the applicant's case, I note he completed high school to [level] at [a local Christian] Boys College. He has not claimed to have been denied education or faced other difficulty in Sri Lanka on the basis of his Christian faith. The information before me does not indicate that Christians like the applicant are being targeted or otherwise face harm in Sri Lanka. While I accept that the applicant may be at some risk of encountering a degree of societal discrimination solely on the basis of religion, on the evidence before me, I am not satisfied that this would constitute serious harm.
36. Having regard to the above, I am not satisfied that the applicant faces a real chance of harm from the CID, the TID, or any other arm of the Sri Lankan government, due to his Tamil ethnicity, due to his age, due to his religion, due to his former residence in the north of Sri Lanka, due to an imputed profile as a person opposed to the Sri Lankan government or as a person wanting a separate Tamil state, or due to an actual or imputed LTTE profile (including familial LTTE links), upon his return to Sri Lanka now, or in the foreseeable future.

*Illegal departure / Returning asylum seeker*

37. Although not specifically raised as a claim for protection, the delegate considered, and I accept, that if the applicant returned to Sri Lanka he would do so as a failed asylum seeker returned from Australia. I also accept that he would be identified by the Sri Lankan authorities as someone who departed Sri Lanka illegally.
38. Having regard to the country information before me, I am not satisfied there is a real chance the applicant would be harmed by the Sri Lankan authorities by virtue of him being a Tamil asylum seeker. DFAT assess that all returnees are subject to the same standard procedures on return, regardless of ethnicity, and are not subject to mistreatment during processing at the airport.<sup>23</sup>
39. DFAT indicate that returnees will be processed by the Department of Immigration and Emigration, the State Intelligence Service, the CID and, at times, the TID who check travel documents and identity information of returnees against the immigration and intelligence databases, as well as determining whether a returnee has any outstanding criminal matters.<sup>24</sup> DFAT note that all returnees travelling on a temporary travel document are subject to a standard procedure to confirm their identity which often includes interviewing the returnee, contacting the police in their home area, contacting family and neighbours, and checking criminal and court records.<sup>25</sup> I accept the applicant may return to Sri Lanka on a temporary travel document. Processing arrivals at the airport can take several hours, primarily due to the administrative processes and staffing constraints at the airport. DFAT also note that returnees are processed in groups and cannot leave the airport until the group has been processed.<sup>26</sup> I am satisfied on the information before me that the applicant has no identification concerns and I am not satisfied that he is a person with a criminal or security record that would raise the concern of these authorities. Further, I am not satisfied that any processing delays or

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<sup>22</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 3.15-3.16

<sup>23</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.29

<sup>24</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.28

<sup>25</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.29

<sup>26</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.28

investigative processes to which the applicant may be subject to would constitute serious harm as defined by the Act.

40. DFAT report that while the Sri Lankan government has reportedly decreased surveillance of returnees, anecdotal evidence indicates that the CID regularly visited and/or telephoned returnees in the north of Sri Lanka in 2017.<sup>27</sup> DFAT assess that surveillance of returnees contributed to a sense of mistrust of returnees within their community.<sup>28</sup> DFAT also report that some returnees reported social stigma from within their communities on return, and that in some communities people resent the financial support returnees are provided.<sup>29</sup> DFAT further assess that societal discrimination can affect a returnee's ability to secure housing and employment.<sup>30</sup> A small percentage (0.3%) of returnees interviewed by the UNHCR in 2016 indicated that they had security concerns following their return to Sri Lanka.<sup>31</sup> While I accept the applicant may be visited by the authorities following his return to Sri Lanka, and that he may face social stigma or societal discrimination within his local community due to his profile as a returnee asylum seeker, I am not satisfied that he would face treatment that would constitute serious harm as defined by the Act. I am also mindful that the applicant's family continue to reside in Sri Lanka and would be able to assist him to reintegrate into the community and life in Sri Lanka.
41. For these reasons, and considering the applicant's individual circumstances, I am not satisfied he faces a real chance of harm due to his asylum application in Australia, or due to being a failed asylum seeker from Australia now, or in the reasonably foreseeable future, if he returns to Sri Lanka.
42. As noted in the delegate's decision, there are penalties under the Immigrants and Emigrants Act (IAEA) for departing Sri Lanka illegally.
43. DFAT report as part of this process, most returnees will provide a statement, be fingerprinted and photographed, and transported to the nearest Magistrates Court at the first available opportunity once investigations are completed, after which custody and responsibility for the individual shifts to the courts or prison services. The Court then makes a determination as to the next steps for each returnee. Returnees who are arrested can remain in police custody at the CID 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 – returnees who are charged may be held in an airport cell for up to two days.<sup>32</sup> The US Department of State reports that prison conditions in Sri Lanka are poor due to lack of resources, overcrowding, and shortage of sanitary and other basic facilities.<sup>33</sup>
44. I accept that as the applicant departed Sri Lanka irregularly by boat, he will be considered to have committed an offence under the IAEA.<sup>34</sup> Country information indicates that persons who have departed Sri Lanka illegally may face penalties that can include up to five years imprisonment and a fine. A fine varies from LKR 3,000 (approximately AUD 25) for a first

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<sup>27</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.40

<sup>28</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.42

<sup>29</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.40

<sup>30</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.42

<sup>31</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.41

<sup>32</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.30

<sup>33</sup> US Department of State, "Sri Lanka - Country Report on Human Rights Practices 2015", 13 April 2016, OGD95BE926320

<sup>34</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.27

offence, and up to LKR 200,000 (approximately AUD 1,670); in practice, penalties are applied to such persons on a discretionary basis and usually in the form of a fine.<sup>35</sup>

45. On return to Sri Lanka, I find the applicant would be charged and fined under the IAEA and then released. In the less likely event that the applicant elected to plead not guilty to the offence under the IAEA, he would either be granted bail on a personal surety or have a family member act as guarantor.<sup>36</sup> There is no suggestion the applicant was anything other than an ordinary illegal departee from Sri Lanka. In that context, I find that he would not face any chance of imprisonment, but it is highly likely that he will be fined. As noted above, DFAT report that returnees are not subject to mistreatment during processing at the airport. While the applicant may be subjected to poor prison conditions during a short period of detention, I am not satisfied that the prison conditions to which the applicant may be subject of themselves constitute serious harm as defined by the Act. Further, I am not satisfied the applicant will face a real chance of harm during any brief time spent in detention. On the evidence before me, I find the imposition of any fine (which can be paid in instalments<sup>37</sup>), surety or guarantee would not of itself constitute serious harm. I have considered the possibility of a custodial sentence, but there is no country information before me that indicates that custodial sentences are being levelled against illegal departees with a profile such as the applicant. In the context of a significant number of Sri Lankan nationals being returned to Sri Lanka, and the absence of any profile that would elevate the penalty the applicant would face, I find there is not a real chance that the applicant would face imprisonment.
46. I am also satisfied that the provisions and penalties of the IAEA are laws of general application that apply to all Sri Lankans equally. The law is not discriminatory on its terms, nor is there country information before me that indicates that the law is applied in a discriminatory manner or that it is selectively enforced. I am further satisfied that the process and penalties that the applicant may face due to his illegal departure do not amount to serious harm. Accordingly, I am satisfied that any process or penalty the applicant may face on return to Sri Lanka because of his illegal departure would not constitute persecution for the purpose of the Act. In light of this I find that the applicant does not face a real chance of harm from the Sri Lankan authorities due to his illegal departure, travel to Australia or for any other reason.
47. After having regard to the applicant's claims individually and cumulatively, I find that he does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

48. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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49. 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.

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<sup>35</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

<sup>36</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

<sup>37</sup> DFAT, "DFAT Country Information Report Sri Lanka", 23 May 2018, CIS7B839411064, 5.32

## Real risk of significant harm

50. 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.

51. I have concluded that the applicant is not of interest to the CID, the TID, or any other arm of the Sri Lankan government, on account of any actual or imputed LTTE links (including familial links) and does not face a real chance of harm on this basis. I have also concluded that the applicant does not face a real chance of harm for any other reason including his ethnicity, his age, his religion, his former place of residence, due to an imputed profile as a person opposed to the Sri Lankan government or as a person wanting a separate Tamil state, or for being a returning asylum seeker. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm on return to Sri Lanka.

52. I have accepted that the applicant may face some level of societal discrimination as a Tamil, as a Christian, or as a returnee asylum seeker. The country information confirms that the trend of monitoring Tamil civilians in day-to-day life has eased since 2009. Having considered the applicant's own circumstances, and evidence discussed above, I am not satisfied that any monitoring or societal discrimination the applicant may face amounts to significant harm as defined in the Act. I am not otherwise satisfied he faces a real risk of significant harm as a Christian or Tamil from the north.

53. I have accepted that the applicant will be identified on arrival at the airport in Sri Lanka as having departed illegally, that he will be subjected to a number of administrative procedures, and that he may be detained for several hours at the airport and potentially detained in a holding cell for a number of days. On the country information, I am not satisfied there is a real risk that the applicant will face significant harm during the investigation process or while being held at the airport. While I accept that the applicant may be subjected to poor prison conditions during any period of detention, country information confirms this is due to overcrowding, poor sanitation and lack of resources. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, there is no intention to inflict pain or suffering, severe pain or suffering, or extreme humiliation. In these circumstances, the poor prison conditions to which the applicant may be subject do not of themselves constitute significant harm as defined by the Act. For these reasons, I am not satisfied the applicant will face a real risk of significant harm during any brief time spent in detention.

54. While I accept the applicant may be subjected to questioning and may be required to pay a fine or provide a surety on return to Sri Lanka, I am not satisfied that this amounts to significant harm. I find that the questioning, imposition of a fine and the potential of being held in detention, individually or cumulatively not to amount to the death penalty, arbitrary deprivation of life, torture or that there is an intention to inflict pain or suffering, severe pain or suffering or cause extreme humiliation. I am not satisfied this amounts to significant harm as defined by the Act.

55. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

**Complementary protection: conclusion**

56. 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**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

## 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

## 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### 5L Membership of a particular social group other than family

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

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

#### 5LA Effective protection measures

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

...

#### 36 Protection visas – criteria provided for by this Act

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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