



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA17/03831

Date and time of decision: 19 June 2018 16:30:00
J Maclean, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Tamil Hindu born in the Vavuniya District of the Northern Province of Sri Lanka. He arrived in Australia as an unauthorised maritime arrival on 25 April 2013. On 30 March 2017 he lodged an application for a Class XE, Subclass 790, Safe Haven Enterprise Visa (SHEV). On 26 October 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 21 November 2017 the IAA received a submission on behalf of the applicant. For the most part the submission reiterates the applicant's claims and takes issue with the findings of the delegate, and to that extent it is not new information and I have had regard to it. The submission also refers to country information that was not before the delegate which is new information.
4. I note the applicant was assisted by a Migration Agent to prepare his SHEV application, who also represented him at the SHEV interview. At the start of the SHEV interview the delegate advised the applicant of his responsibility to raise all of his claims for protection and provide evidence in support of those claims, and that if his application was refused he may not have another opportunity to provide further information. The applicant's representative made oral submissions at the end of the SHEV interview, and provided a written submission after the interview.
5. The submission refers to a number of additional country information reports which were not before the delegate and are new information. With the exception of one report, which will be dealt with separately below, the reports pre-date the delegate's decision. The documents do not contain information that could be described as personal information. The submission claims the information could not have been provided prior to the delegate's decision 'as some of it relates to issues raised during the interview', and that the documents provide an updated assessment of the security situation in Sri Lanka. The additional country information provides general information regarding the risk of harm as a result of being a family member of a person suspected of having links to the Liberation Tigers of Tamil Eelam (LTTE), on the basis of Tamil ethnicity and for being a failed Tamil asylum seeker. These claims were raised by the applicant in his statement of claims and considered by the delegate in her decision. As noted above, the applicant's representative was present at the SHEV interview, made an oral submission at the conclusion of the interview, and provided a written submission after the SHEV interview. I consider the applicant had ample opportunity to provide additional information regarding any issues raised during the SHEV interview, or to provide any relevant information regarding the security situation in Sri Lanka. I am not satisfied there are exceptional circumstances to justify consideration of the new information. The applicant has not also not satisfied me either of the matters in s.473DD(b) are met with regard to those documents.
6. The submission also refers to a Human Rights Watch country information report dated 15 November 2017 that post-dates the delegate's decision. The report refers to the address of

the United Nations High Commissioner for Human Rights to the Human Rights Council on 11 September 2017, in which he is critical of the Sri Lankan government's reform actions in relation to human rights, and in particular regarding the failure to repeal the Prevention of Terrorism Act (PTA). The report does not contain any specific reference to the applicant, and although it provides a broad high level commentary on the Sri Lankan government's human rights reforms and accountability measures, these issues are addressed in other materials from similar sources that are before me, which are similarly critical of the progress made in relation to the transitional justice mechanisms to address abuses related to the civil conflict. I accept the document could not have been provided prior to the delegate's decision, however, I am not satisfied there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

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

- He is a citizen of Sri Lanka, of Tamil ethnicity and Hindu religion, who was born in the Vavuniya District of the Northern Province of Sri Lanka.
- He lived in the Vavuniya District until he was [age] years old in [year], when fighting broke out between the LTTE and the Sri Lankan Army (SLA) and he was sent to live with his [relative] in Trincomalee in the Eastern Province.
- Problems started in the Trincomalee community in 2005, and the SLA killed five of his classmates, and it became very unstable and unsafe in Trincomalee.
- He left Sri Lanka in 2006 and travelled to [Country 1] to escape the war. He travelled on a Sri Lankan passport and had a three month visa, however he stayed for approximately three years, until he was arrested in 2009, detained in immigration detention, and deported to Sri Lanka.
- He returned to Trincomalee and approximately five days after arrival there he was approached by two members of the Karuna Group and asked to attend their offices. When he attended later that day they questioned him about any previous association with the LTTE and allowed to leave. He realised he was probably not safe in Trincomalee and decided to move to Vavuniya. However, the situation in Vavuniya was worse and the civil war between the LTTE and the SLA was at its peak, so he returned to Trincomalee.
- In Trincomalee he came into contact with some members of the Tamil Makkal Viduthalai Pulikal (TMVP) party. He felt safe with them and decided to join the party. He worked as a driver for party members, and helped with other party duties, including cleaning the party office and sometimes performing watchman duties. During the Provincial Council elections he distributed information to the public and put up posters.
- He supported the party for his own safety and in extraordinary circumstances, but he was perceived to be a person who supported the Sri Lankan Tamils aspiration for self-determination, and his views were known to all.
- He was very scared of being caught by the SLA and sent for rehabilitation, or of being detained under the Prevention of Terrorism Act (PTA) because of his views about self-determination of Tamils. Armed members of the TMVP were being asked by the government to either join the police or military service, or attend rehabilitation camps operated by the SLA, and there were frequent reports of torture in the camps, and mysterious deaths after returning from rehabilitation.

- The Sri Lankan government distrusts returning Tamil asylum seekers because they believe the LTTE is waiting for an opportunity to rise up again.
- His brother fled to [Country 2] approximately 10 years ago because he was an active combatant in the LTTE, and his father was involved with the LTTE before he married his mother.
- He will be arrested, tortured and killed by the SLA and the CID because of his Tamil ethnicity, his Hindu religion, and for being a member of the TMVP party and escaping the military run rehabilitation camp. There is nowhere in Sri Lanka where he could escape the threat of harm by the authorities, as it is the authorities who are the perpetrators.

Refugee assessment

8. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

9. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
10. The applicant claims to be a Tamil Hindu who was born in the Vavuniya District of the Northern Province of Sri Lanka. A number of documents were provided to support the applicant’s identity, including a Sri Lankan birth certificate and National Identity Card, and English translations. There is no issue regarding the applicant’s identity, and I am satisfied that he is a Tamil Hindu, and a national of Sri Lanka. I find Sri Lanka is the receiving country for the purposes of the Act.
11. The applicant provided consistent evidence regarding living in Vavuniya District, where his family had a farm and [business], until he was about [age] years old, and then moving to live with his [relative] in Trincomalee. The applicant also gave a consistent description of five of his classmates being killed by the SLA in Trincomalee in 2006. In his statement of claims, and

at the SHEV interview, the applicant described travelling to [Country 1] in 2006. At the SHEV interview he noted the incident involving his classmates to be the main reason he travelled to [Country 1], however in his statement of claims he referred more generally to escaping the war.

12. The applicant did not disclose at the Arrival interview that he left Sri Lanka for [Country 1] in 2006, but rather indicated he remained in Trincomalee until 2012 when he left for [Country 3]. In his statement of claims the applicant noted that during the Arrival interview, which was conducted on 25 June 2013, he did not disclose that he went to [Country 1] in 2006, nor did he mention his brother or father's involvement with the LTTE, his involvement with the TMVP, or that his older brother now lives in [Country 2]. He claims there was more he wanted to say at the Arrival interview, but he was very afraid of how Australian authorities would react, and that the interviewer told him not to give too many details and he would have a chance to explain properly at a later time. In addition, the interpreter used during the interview was [a Country 1] Tamil and did not understand him properly. At the SHEV interview the delegate asked the applicant why he did not disclose his involvement with the TMVP previously, and he said that if he told about that they will think it is an armed group and it would influence his claim. With regard to why he did not declare information about his brother during the previous interviews the applicant said he was scared it would impact his protection visa application. I am prepared to accept the applicant may have been hesitant to provide information shortly after his arrival in Australia.
13. The applicant claims his father and brother were LTTE members. In his statement of claims he described his brother as an active combatant in the LTTE, and that he left Sri Lanka for [Country 2] approximately ten years ago. In regard to his father's involvement with the LTTE he said it occurred before he his mother and father were married. When asked about his brother at the SHEV interview the applicant said his older brother has been living in [Country 2] for over fifteen years, and that he is a prohibited person in Sri Lanka. The applicant said he does not have much contact with his brother, and he is not sure if his brother applied for protection in [Country 2], however he knows he is a citizen there, and thinks he is married to a [Country 2] citizen. The applicant was unable to provide any information about his brother's role with the LTTE, how long he was with them, or when he went abroad. He said that from 1992 he was in Trincomalee, and his brother was in Vavuniya, and his mother told him the LTTE took his brother, but he has doubts about whether he went to join the LTTE or they took him. Similarly, the applicant was unable to provide any information about his father's role with the LTTE. He said his mother told him, and that his father was scared to move from Vavuniya, and he had many injuries that he believes were from when he was with the LTTE. I note the applicant described an incident where 'a parcel was sent to [Country 4] containing one of the LTTE leader's [belongings]'. He said there was an investigation and his brother and father were connected to the incident and his brother had problems. The applicant was not specific regarding when this incident occurred, about how he came to hear about the incident, nor about the type of problems his brother had as a result. I find the applicant's evidence on this issue was extremely vague and unconvincing, and I do not accept the applicant or his father were involved in such an incident, or suspected of being involved.
14. DFAT reports that at its peak in 2004, the LTTE had an armed force of approximately 18,000 combatants. The LTTE had an intelligence wing, a political wing and an extensive administrative structure based in its de-facto capital in Kilinochchi in north-east Sri Lanka. The majority-Tamil civilian populations of the areas controlled by the LTTE were required to interact with the LTTE as a matter of course, and the LTTE was supported by foreign funding

and both voluntary and forced recruitment of Tamils.¹ Taking into account the country information regarding contact with the LTTE in the Northern Province, and their recruitment practices, I am prepared to accept the applicant's brother and father were associated with the LTTE. There is no credible information before me to support that either held any high rank in the LTTE, or that at its highest they were other than low-profile LTTE members. I also note the involvement occurred over 15 years ago for his brother, and over 34 years ago for his father (assuming he married prior to the birth of his first child in [year]). In addition, I note the applicant's father passed away in 2015.

15. In the Arrival interview the applicant said that wherever he went the army asked him questions and stopped him for no reason, and that in 2007 he and his father were detained for two days by the SLA after an explosion near the family home in Vavuniya. During the detention he was beaten very badly. At the SHEV interview the applicant said the above incident actually happened in December 2005 prior to his departure for [Country 1]. I make no adverse inference regarding the discrepancy with the date of the incident. At the SHEV interview when asked if he had ever been arrested or in trouble with Sri Lankan authorities the applicant said 'they threatened me, arrested me, questioned me, and released me. In our village during the roundup they take people, maybe once a month. During 2005 and 2006 it was very bad, during 2009 once army took me and kept me for three to four hours'. Country information reports that monitoring, harassment arrest and/or detention of Tamils was common during the war.² Taking the country information, and the applicant's generally consistent reporting regarding being questioned, arrested and detained, I am prepared to accept the applicant was detained and beaten in 2005 after the incident involving an explosion, and that the applicant was detained and/or arrested, questioned and threatened on a number of occasions during round ups, including in 2005, 2006, and 2009. I consider the monitoring, harassment and questioning the applicant described is consistent with the troubling but routine treatment of Tamils at that time described in the country information, rather than resulting from any specific security threat posed by the applicant.
16. The delegate referred to information provided by the applicant during the Enhanced Screening interview, conducted on 1 May 2013. According to the delegate the applicant described an incident [in] November 2012, when some people tried to abduct him in a white van, and that is the reason he left Sri Lanka. He also referred to being questioned by authorities on three occasions. At the SHEV interview the delegate asked the applicant whether [this] incident occurred, and the applicant said it did, however the year was wrong. He said he thought it happened in 2005 when he was in Trincomalee, and that he gave a different year because he was hiding about the TMVP. The applicant did not mention the 2005 [incident] during the Arrival interview, or in his statement of claims. In addition, he did not refer to the incident during the SHEV interview until being specifically questioned by the delegate. The applicant's failure to refer to the incident in his statement of claims, or prior to prompting from the delegate, leads me to believe the event did not occur. I do not accept there was an attempted abduction of the applicant, however, as noted above, I have accepted the applicant was questioned by authorities on a number of occasions.
17. In his statement of claims, and at the SHEV interview the applicant described travelling to [Country 1] by air, in 2006, using a Sri Lankan Passport and with a three month [visa]. He did not claim to have experienced any difficulties obtaining a passport, or departing from the airport, however towards the end of the SHEV interview he said he paid money for help at the airport to depart. In [Country 1] he did some casual work until 2009 when he was taken

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

² DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

to immigration detention and returned forcibly to Sri Lanka. When questioned by the delegate as to what happened at the airport on return to Sri Lanka the applicant said he had talked to his uncle in Colombo and his uncle organised something so that when he arrived at the airport he went out straightaway. The applicant's evidence regarding the payment of bribes, to facilitate his exit and re-entry to Sri Lanka, was vague and unconvincing, and I do not accept such payments were made. I consider the applicant's trouble-free exit and re-entry is indicative of not having a profile of interest to Sri Lankan authorities at that time.

18. In his statement of claims the applicant said that after returning to Sri Lanka from [Country 1], in 2009, he returned to Trincomalee, and was soon after questioned by members of the Karuna Group about any association with the LTTE. At the SHEV interview the applicant said they approached him because he was a new person in the place, and because they wanted him to join with them. The applicant was consistent in his statement of claims and during the SHEV interview regarding being questioned by the Karuna group, and I accept it is plausible that as a new person in the area that he was questioned as claimed. Despite suggesting, both in his statement of claims, and at the SHEV interview, that the Karuna group might have known about his father and brother's association with the LTTE, the applicant did not specifically refer to being questioned about their involvement with the LTTE. I consider the suggestion that the Karuna group might have known about his father and brother's LTTE involvement is purely speculative, and I do not accept that. After being questioned the applicant went to Vavuniya, however because of the civil war the situation was worse there, so he went back to Trincomalee where he came into contact with TMVP members and joined the party. At the SHEV interview the applicant said he was based in the main office in Trincomalee for three years, during which time he performed a variety of roles, including driving for party members, performing watchman duties for the party office, assisting to keep the office clean, distributing catalogues to the public, and sticking up posters. The applicant gave an inconsistent account regarding joining the TMVP. In his statement of claims he said he decided to join the party, however during the SHEV interview he said he was threatened and forced to join, and that he also joined for his safety. When questioned by the delegate about his knowledge of the TMVP the applicant said the TMVP initially was an armed group that separated from the LTTE, and later become a political party.
19. Country information reports that the TMVP is the political wing of the paramilitary group formerly known as the Karuna Group, formed by breakaway LTTE leader Colonel Karuna who led a split in the LTTE in 2004. During late 2006 and early 2007 the Karuna group fought together with the SLA forces against the LTTE in the Eastern Province. Karuna joined the ruling Sri Lanka Freedom Party (SLFP) in March 2009 and was sworn into a non-cabinet ministerial portfolio, and in April 2009 he became the vice-president of the SLFP. In theory, the TMVP no longer operates as a paramilitary group, having conducted a handing in of their weapons in Batticaloa in March 2009, supervised by local police. However, it remains questionable if the TMVP's arsenal was surrendered in its entirety.³
20. Although the applicant provided some details that accord with the country information, such as Karuna and Pilliayan starting the party, and Karuna later joining with Rajapaksa's party, his knowledge of the party appeared rudimentary, and does not accord with a person who purports to have been a member for three years, based in the main office. The applicant appeared to focus on the party functioning as a paramilitary group in Sri Lanka, and said the party did all the work for the army in Tamil areas. However, he did not indicate he was ever involved in paramilitary activities, nor did he suggest he had ever been a candidate for the party, or to have held any senior position within the party. In fact, at the SHEV interview he

³ UK Home Office, "Sri Lanka March 2012", 07 March 2012, 3523

said that generally he does not like politics. Taking into account the inconsistency regarding whether he was forced to join the party or joined voluntarily, and his limited knowledge of the TMVP, I do not accept the applicant was a TMVP member, however I am prepared to accept that he worked with the TMVP political party from 2009 until his departure from Sri Lanka in 2012, undertaking such jobs as driving, office security and distributing materials. The applicant has not claimed, and I accept, he was not involved with any paramilitary activities, and I consider the activities he was engaged are consistent with a person being a low level supporter of the organisation.

21. The applicant claims he left Sri Lanka because he feared being caught by the SLA and sent for rehabilitation as a result of his involvement with the TMVP. In his statement of claims he noted that in June 2009 members of the Karuna and Pillayan factions were applying to join the SLA, and that 'the government expressed willingness to take members of the group into police or military service', and 'those who did not want to join were asked to go to rehabilitation camps. At the SHEV interview he said the 'main person' from the TMVP office in Trincomalee told him TMVP members could either join the army or do rehabilitation before re-entering the community, and because he didn't want to do either of those things he left the country. Country information indicates that the Sri Lankan government managed a large-scale rehabilitation process for former LTTE members.⁴ The applicant has not claimed he was ever an LTTE member, or even that he was questioned by Sri Lankan authorities about his familial links to the LTTE, such that he would have been imputed to be an LTTE member and sent to a rehabilitation centre. As noted above, the paramilitary wing of the TMVP, the Karuna group, was aligned with the Sri Lankan government, fighting alongside the SLA. Given that alignment, I accept that members of the paramilitary group may have joined the SLA or police force. However, there is nothing in the information before me to suggest that members of the Karuna group, or low-profile TMVP party supporters, such as the applicant, were at risk of being sent to a rehabilitation centre, including in 2012 when the applicant left Sri Lanka. I do not accept the applicant was at risk of being sent to rehabilitation, and accordingly, I do not accept the applicant left Sri Lanka for the reason claimed.
22. Although his Arrival interview and SHEV application indicate the applicant travelled illegally by to [Country 3] in November 2012 at the SHEV interview the applicant said he left Sri Lanka legally using a Sri Lankan passport and that he had a [visa]. He claims the passport was taken by the agent who assisted him to organise the travel, whilst he was in [Country 3]. The delegate questioned the applicant about the manner of his departure from Sri Lanka to [Country 3] in 2012, and the applicant said he flew to [Country 3] using his Sri Lankan passport, and that it was very dangerous to travel, so he had to pay money to people to help him 'pass the counter' at the airport, and also 'at boarding'. The delegate also suggested that if he were a person of interest to Sri Lankan authorities he would have been arrested and not allowed to leave. The applicant said that the events of interest happened in the Eastern Province, and at that time technology was not very developed, and that it all depends on paying money. I find the applicant's evidence on the issue of paying bribes at the airport was vague, and entirely implausible. Given the applicant's description that it was dangerous to travel, I consider a person who considered themselves at risk of harm from Sri Lankan authorities would not have attempted to depart the country via the airport, even if they paid bribes to do so. I am prepared to accept the evidence given at the SHEV interview that he departed Sri Lanka legally via the airport to [Country 3], however, I consider the applicant has fabricated the claims regarding paying bribes at airport, to enhance his claims for protection. I also find it plausible, and I accept, that the applicant's passport was taken,

⁴ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

whilst he was in [Country 3] and prior to travelling to Australia, by the agent who assisted him with his travel arrangements. I find the applicant was able to depart Sri Lanka legally, using his passport without incident, because he was not of interest to Sri Lankan authorities.

23. I am satisfied the applicant was not of any interest to Sri Lankan authorities at the time he departed, in relation to his family links to the LTTE, or his involvement with the TMVP. While I accept the applicant was harassed on a number of occasions by Sri Lankan authorities during the war, I consider this was a result of his profile as a Tamil male at that time rather than resulting from interest in him because of any specific security risk he posed.
24. Although the applicant claims he fears harm as a result of his Hindu religion, he provided no evidence that he ever suffered any harassment, discrimination or violence as a result of his religion. DFAT assesses that most members of religious groups in Sri Lanka are able to practise their faith freely. However, the risk of harassment or violence increases where practitioners attempt to proselytise/convert others.⁵ There is no information before me to indicate the applicant has ever engaged in activities such as proselytization or attempted any religious conversions, or that he intends to do so if returned to Sri Lanka. Taking into account the country information and the applicant's evidence, I do not accept there is a real chance the applicant will suffer harm as a result of his Hindu religion on return to Sri Lanka.
25. The applicant fears harm on return to Sri Lanka, including assault, torture, rape and murder, as a result of his Tamil ethnicity, his family association with the LTTE, his association with the TMVP political party, and because he did not attend a rehabilitation camp.
26. Although virtually everyone agrees there has been progress towards alleviating the climate of fear in Sri Lanka, opinions differ markedly about the extent of that progress.⁶ The UN Special Rapporteur on Torture, in his December 2016 report on Sri Lanka, noted the fragility of the reform process and that the country is at a critical moment in its history in terms of setting up the necessary mechanisms to remedy its past large-scale human rights violations and prevent their recurrence.⁷ The applicant's representative was critical of the human rights situation in Sri Lanka, suggesting the applicant remains at risk of mistreatment by the SLA or police, which occurs particularly against Tamils, and those perceived to be linked to the LTTE. DFAT reports that incidents of extra-judicial killings, disappearances and kidnappings for ransom occurred frequently in Sri Lanka during the civil conflict, particularly in the north and east, and were largely attributed to Sri Lankan security forces, the LTTE and paramilitary groups. However, those incidents of violence involving former LTTE members have significantly reduced since the end of the conflict. Further, DFAT assesses that torture in Sri Lanka, perpetrated by either military, intelligence or police forces, is not presently systemic or state-sponsored, and that the risk of torture from military and intelligence forces has also decreased since the end of the civil conflict. I am satisfied the DFAT report is an authoritative and credible document providing current and cogent information on the general situation in Sri Lanka at the current time.⁸
27. DFAT assesses that monitoring and harassment of Tamils in day-to-day life has decreased significantly under the Sirisena Government. The Sri Lankan police are now responsible for civil affairs across Sri Lanka. While a sizeable (and largely idle) military presence remains in

⁵ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

⁶ UK Home Office, "Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 4.0", 31 March 2017, OG6E7028822

⁷ United Nations, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka A/HRC/34/54/Add.2", 22 December 2016, CIS38A80123313

⁸ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

the north and east, armed forces personnel are generally restricted to their barracks. While some cases of monitoring continue to be reported, such as the military or police observing public gatherings or NGO forums, the overall prevalence of monitoring has greatly reduced. Members of the Tamil community have also described a positive shift in the nature of interactions with authorities; they feel able to question the motives of, or object to, monitoring or observation activities. DFAT further assesses that Sri Lankans of all backgrounds generally have a low risk of experiencing official discrimination as there are currently no official laws or policies that discriminate on the basis of ethnicity, including in relation to access to education, employment or access to housing. The Siresena Government has prioritised human rights and reconciliation, and has made significant progress, including replacing military governors in the Northern and Eastern Provinces with civilians, returning some of the land held by the military since the conflict-era back to its former owners, releasing some individuals detained under the Prevention of Terrorism Act (PTA), including Tamils, and committing to reform the PTA, and engaging constructively with the United Nations.⁹

28. In relation to the fear of harm resulting from any links to the LTTE, the UNHCR, in its 2012 Guidelines, discusses international refugee protection resulting from real or perceived links with the LTTE. At the time of publication, it assessed that a person's real or perceived links with the LTTE may have given rise to international protection, including former LTTE combatants or cadre, and persons with family links or who are dependent on or otherwise closely related to persons with that profile.¹⁰ I note the UNHCR Guidelines are now over five years old, and there is more recent country information before me. I also note that the applicant's links to the LTTE through his family were not a cause of concern for him while he was in Sri Lanka.
29. Credible country information notes the LTTE in Sri Lanka is a spent force, and that there have been no terrorist instances since the end of the civil war.¹¹ DFAT also assesses that the LTTE no longer exists as an organised force in Sri Lanka, and that any former LTTE members within Sri Lanka would have only minimal capacity to exert influence on Sri Lankans.¹² The March 2017 UK Home Office report indicates that the focus of the Sri Lankan government has changed, and it is now not so much on identifying anyone with past LTTE links. The government's present objective is to identify those who pose a threat to the government or a unified Sri Lanka, through involvement with Tamil separatist activists in the country or through links to the Tamil Diaspora. Those former LTTE members that are most at risk are persons perceived to have a significant role, such as the LTTE's former leadership (either combat or civilian) and former members suspected of committing serious criminal acts during the conflict. The UNHCR, the UK Home Office and DFAT are of the opinion that simply being of Tamil ethnicity, or a Tamil from an area formerly under LTTE control, no longer gives rise to a need for international protection, the rationale being that almost every Tamil who resided in those areas during the conflict had some sort of connection with the LTTE. Those country information reports no longer support a finding that Tamil ethnicity of itself imputes LTTE membership or a pro LTTE opinion, even when combined with other factors such as gender, age or place of origin, nor do they suggest that such characteristics combined with

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

¹⁰ 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

¹¹ UK Home Office, "Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 4.0", 31 March 2017, OG6E7028822

¹² DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

having family members with low-level involvement with the LTTE give rise to a real chance of any adverse concern from the Sri Lankan authorities.¹³

30. The applicant claims he is at risk of detention because the PTA remains in force. Country information reports that since the end of the armed conflict in April 2009, former LTTE combatants and LTTE members and many others suspected of having links with the LTTE have been demobilized and have gone through a “rehabilitation” programme. Under the Prevention of Terrorism Act (PTA) suspects can be held without charge for three-month periods, not exceeding a total of 18 months. DFAT reported that, at the time of publication, only one rehabilitation centre remained in operation, and that it housed approximately 50 ex-LTTE combatants.¹⁴ I consider the small number of detainees, who are ex-LTTE combatants, reflects that there is no longer a systemic practice of detaining those suspected of any involvement with the LTTE, and that only those with significant links to the LTTE are now at risk of detention under the PTA. I do not accept the applicant is at risk of being detained under the PTA or sent to a rehabilitation centre, on return to Sri Lanka.
31. There is no evidence before me that low-level TMVP supporters, such as the applicant, or TMVP members, are currently at real risk of serious harm in Sri Lanka. Since the applicant departed Sri Lanka in 2012 there have been significant changes in the political landscape in Sri Lanka. Presidential and parliamentary elections were held in 2015 and were generally considered free and fair. DFAT reports that Tamils have a substantial level of political influence and their inclusion in political dialogue has increased since Siresena came to power in 2015. President Sirisena presides over a diverse coalition, consisting of more than a dozen political parties, including Tami parties. DFAT also reports that there are currently no banned political parties in Sri Lanka and all parties operate freely, subject to general legal restrictions. This freedom applies to high-profile elected representatives and office holders and low-profile party members, supporters and volunteers. Furthermore, there are no official laws and policies that discriminate on the basis of political opinion nor is there systemic political discrimination against any particular group.¹⁵ In his statement of claims the applicant said he supported the party in extraordinary circumstances for his own safety. There is no information before me to suggest the applicant has been politically active whilst in Australia, or that he would be involved with political activities on return to Sri Lanka. I note that the applicant’s low level support of the TMVP ceased over 5 years ago when he left Sri Lanka, taking into account the country information and the applicant’s evidence, I do not accept he would be of adverse interest to authorities, or any other group, because of that involvement on return to Sri Lanka.
32. I am satisfied the situation for Tamils in Sri Lanka has significantly improved since the first applicant departed in 2012, and continues to improve. I am satisfied the Siresena government is taking steps to address past discrimination and violence against Tamils, and that the security situation in the Northern and Eastern Provinces is greatly improved. I accept Sri Lankan authorities remain sensitive to the potential re-emergence of the LTTE, and that former members may be at risk of arrest, detention, prosecution, rehabilitation and/or monitoring by authorities, however, I have found the applicant’s profile in relation to any LTTE links to be historical and very low profile, and I do not consider there is a real chance he will be subjected to harm on return to Sri Lanka based as a result of his family

¹³ 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; UK Home Office, "Country Policy and Information Note. Sri Lanka: Tamil separatism. Version 4.0", 31 March 2017, OGG6E7028822; DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

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

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

links to the LTTE, his ethnicity, his links to the Northern and Eastern provinces, or his involvement with the TMVP.

33. The delegate considered the chance of the applicant suffering harm on his arrival at Colombo airport or afterwards on account of him being a Tamil who has lived for periods abroad and returning as a failed asylum seeker who departed the country illegally. I have accepted the applicant left Sri Lanka legally using a valid Sri Lankan Passport.
34. Information from DFAT indicates all involuntary returnees undergo checks on arrival in Sri Lanka, including by the State Intelligence Service and the CID. For those travelling on a temporary travel document, as would be the case for the applicant, investigation is undertaken to confirm identity, which often includes an interview, contacting authorities in their home area, and neighbours and family, and checking criminal or court records, a process that can take several hours. According to DFAT all returnees are treated according to standard procedures irrespective of ethnicity, and are not subject to mistreatment during processing at the airport. DFAT acknowledges they are aware of a small number of allegations of torture or mistreatment raised by asylum seekers who have returned to Sri Lanka, however the reports cannot be verified as many of the allegations were made anonymously, often to third parties, and sometimes long after the torture is alleged to have occurred. Since 2009 thousands of asylum seekers have been returned to Sri Lanka, from countries including Australia, and there have been relatively few allegations of torture or mistreatment. Therefore, DFAT assesses the risk of torture or mistreatment for the majority of returnees is low, and continues to reduce.¹⁶ The country information in the referred material indicates those returnees who are mistreated are predominantly people suspected of having substantial links to the LTTE, or to separatist activities such as criticising the government, rather than relating to being a failed Tamil asylum seeker.¹⁷
35. I accept the Sri Lankan authorities may infer the applicant sought asylum in Australia due to the manner of his return. I accept some asylum seekers with actual or perceived links to the LTTE may be at risk of harm during arrival processing. I have found the applicant would not be of adverse interests to authorities on his return to Sri Lanka, and I do not consider the applicant faces a real chance of harm for being a Tamil who sought asylum in Australia, or because he spent a period of time in Australia.

Refugee: conclusion

36. I am not satisfied there is a real chance the applicant will suffer any harm, now or in the reasonably foreseeable future, as a result of his ethnicity as a Tamil, for originating from the Northern Province or residing in the Eastern Province, due to any imputed connection to the LTTE, because of any association with the TMVP, or because he claimed asylum in Australia, or any combination of these factors.
37. 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).

¹⁶ DFAT, "DFAT Country Information Report Sri Lanka", 24 January 2017, CISED50AD105

¹⁷ Freedom From Torture, "Sri Lanka – Update on torture since 2009", 6 May 2016, CIS38A8012881; International Truth and Justice Project, "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275

Complementary protection assessment

38. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

39. 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.
40. I have found the applicant does not face a real chance of any harm now or in the reasonably foreseeable future because of his status as a Tamil who originated from the Northern Province and resided in the Eastern Province, because of any real or imputed political opinion related to association with the LTTE or the TMVP, or for seeking asylum in Australia. As a 'real chance' equates to a 'real risk', I am also not satisfied there is a real risk of any harm, including significant harm for these reasons.

Complementary protection: conclusion

41. 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.