



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA17/04000

Date and time of decision: 9 July 2018 10:00:00
A Harrison, Reviewer

Decision

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

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

Background to the review

Visa application

1. On 29 May 2017, the referred applicant (the applicant) applied for a Safe Haven Enterprise (subclass 790) Visa (SHEV). The applicant claimed to fear persecution from the Sri Lankan Army (SLA) and the Criminal Investigations Department (CID) for reasons of his Tamil ethnicity, an imputed political opinion such as pro-Liberation Tigers of Tamil Eelam (LTTE) and Tamil separatist, membership of a particular social group of Tamils with actual and perceived links to the LTTE, and as a failed returned asylum seeker.
2. On 28 November 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the applicant a SHEV because he found the applicant is not a person in respect of whom Australia has protection obligations.

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 19 December 2017, the IAA received a submission from the applicant. The majority of it addresses the delegate's decision and findings, as such, it is not new information, and I have had regard to those elements of it.
5. The applicant's submission also contained new claims, as follows:
 - a. his dad was taken and beaten by the army because his dad was supporting the LTTE;
 - b. LTTE members would cross the border from Sri Lanka to visit his father in the refugee camp and return to Sri Lanka; and
 - c. it was when he was beaten by the Sri Lankan police and questioned about his father that he fully appreciated that his father was an LTTE member and was supplying the LTTE with [supplies] while in India.
6. It was asserted that this information was not adequately explored in his interview with the department, and in relation to (a), that this was stated in the SHEV interview. However, the applicant did not state in the SHEV interview that his father was beaten by the army because he was supporting the movement. The applicant has consistently claimed the treatment his father experienced was based on allegations and suspicions of LTTE involvement. Neither in writing, the SHEV interview or post-interview submission did the applicant make these new claims about his father and the LTTE when he had the opportunity to do so.
7. With the new information the applicant is changing his claim from: not knowing about his father's involvement or membership of the LTTE, but having suspected he was involved because of the way he was treated before leaving Sri Lanka, and not mentioning anything about the LTTE visiting his father in India, to now, fully appreciating, in early 2013 when he was beaten and questioned by the Sri Lankan police on return to Sri Lanka, that his father was a member of the LTTE, and he was supplying the LTTE with [supplies] while in India, and that he was aware while he was living in India that LTTE members visited his father in the refugee camp. In giving the new information, the applicant explained that he was not aware of his father's actual interactions with the LTTE because he and his family did not speak about

it to protect him, so as not to encourage him to join the LTTE, and so he would not be aware if questioned. However, this explanation is at odds with the new claim that he knew his father was an LTTE member and helping the LTTE, and he knew this while in India and when he returned to Sri Lanka, all before coming to Australia. If, as he now claims, he already knew his father was a member of the LTTE and supplying the LTTE with [supplies] while in India, the applicant could have given this information before the decision was made. The fact that he did not casts doubt on the credibility of this new information. As noted above, the applicant stated this new information was not adequately explored in his interview with the department. However, I am satisfied the applicant had ample opportunity to present this new information in his arrival interview, his three written statements before the SHEV interview, the SHEV interview and in his post-SHEV interview submission, but he did not do so. I am not satisfied that the new information could not have been given before the decision was made. I am also unable to believe the applicant would not have made these claims earlier, if true. I am not satisfied that it is credible personal information which, had it been known, may have affected the consideration of the applicant's claims. I am not satisfied that s.473DD(b)(i) or (ii) is met.

8. For completeness, I have considered whether there are exceptional circumstances to justify considering the above new information and none is apparent to me.
9. Additionally, the applicant requested the IAA interview him if the IAA doubts his evidence about the influence of the agent and his connections throughout the airport. He states that without the agent who assisted him at the airport, he would not have been able to leave Sri Lanka unharmed, and that the delegate did not adequately consider this information. I am satisfied the applicant has already given information about his departure from Sri Lanka in April 2013 by plane using his passport obtained by an agent and passing through the airport with the assistance of the agent, when he travelled from Sri Lanka to [Country 2] and on to [Country 3]. The applicant has had ample opportunity to present his claims in writing and in an interview with the delegate. I am not satisfied that an interview is warranted.
10. I have decided to get new information. The new information is the DFAT country information report on Sri Lanka, dated 23 May 2018,¹ which was published about six months after the delegate made his decision. This report provides more recent information on the situation in Sri Lanka than DFAT's January 2017 report, which the delegate relied upon. I am satisfied that exceptional circumstances exist to justify considering the latest DFAT report.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He is a Sri Lankan Tamil from [District 1], Northern Province. He was brought up as a Hindu, but he and his family converted to Christianity [a number of] years ago. He is married and has [children].
 - When he was young his father had a lot of contact with the LTTE but he does not know if he was a member. They were trapped between the two factions of the SLA and the LTTE. In 1990, his father was taken a number of times by the SLA, and one time he was beaten and tortured because he believes the SLA suspected him of helping the LTTE. After this, his family moved to India.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

- In December 2012, he returned to Sri Lanka with his wife and [children] because he heard the situation was better. When they landed they were taken by three CID officers who asked him whether he knew anyone in the LTTE, and he said he did not.
- About a month after they arrived, the police came and asked him questions about where he had been, what he had done in India, and if he knew any people in the LTTE.
- About two to three months after they arrived, the military came in the middle of the night, dragged him from the house, and took him to an army camp. They asked him about his father and the LTTE. They beat him, stepped on him, and pointed a gun at his chest and put it in his mouth. They kept him there until the afternoon of the next day. His wife arranged payment for him to be released.
- He went to [District 1] to receive medical treatment for his injuries. About three weeks later, the military and CID went to his mother-in-law's house in [Town 1] where he had been staying and spoke to his mother-in-law. She told him they came in search of him, that he should not come back, and she arranged for him to travel to Australia.
- An agent was paid to obtain his passport and facilitate his flights. He believes the passport he travelled on to [Country 2] and [Country 3] was genuine.
- About five months after he left Sri Lanka, the military visited his mother-in-law again looking for him.
- In February 2014, information about him was leaked onto the department of immigration website, and it is possible the Sri Lankan authorities know he is in Australia. This is perhaps why the SLA has not been back to his mother-in-law's house to look for him.
- If returned to Sri Lanka he fears the SLA and the CID who would find him. The SLA still has a strong presence in [District 1]. When he arrives at the airport he will be identified by the authorities. The SLA and CID suspected him of having connections with the LTTE and supporting the LTTE when he left Sri Lanka in 2013. They will assume he left Sri Lanka because he did something wrong and was involved in the LTTE. They will take his leaving as confirmation that he supported the LTTE. He will be in more danger than he was before. He cannot relocate, they will find him anywhere in Sri Lanka. The state cannot protect him because he fears harm from the SLA and CID.

Factual findings

12. I accept the applicant is a Sri Lankan Tamil and that he was brought up as a Hindu, that he is married, and has [children], based on the identity documents provided. I find that Sri Lanka is the applicant's receiving country.
13. I accept the applicant and his family converted to Christianity about seven or eight years ago, while he was living in India. In the SHEV interview the applicant explained his conversion to Christianity as having occurred due to prayer when he was so weak, and he recovered. From that day onwards, he converted into that religion and his mother, father, and his children all converted to Christianity, Pentecost. The applicant did not claim to fear any harm on return to Sri Lanka based on his Pentecostal faith or having converted from Hinduism to Christianity.
14. I accept that when the applicant was young his father had a lot of contact with the LTTE, but he does not know if he was a member or involved in the LTTE. I also accept that in 1990, his father was taken a number of times by the SLA, and he recalls one time his father was physically mistreated, and came home bruised and could not walk. I accept the applicant

believes this happened because the SLA suspected him of helping the LTTE. During the SHEV interview the applicant said the problem was that his dad was taken and beaten by the army – “alleging” his dad had supported the movement and the movement also visited home, and the military also visited home, there was a problem and because of this problem they left. When asked by the delegate why the LTTE visited his home, the applicant said the LTTE would come home and ask whether the army was going on the road, and the army came home and asked whether the LTTE was moving around a lot – both suspected them, the LTTE suspected them and the army suspected them. The delegate said, they suspected that you worked for the other side, and the applicant said yes. The applicant said he did not know whether his father was involved in the LTTE, and he did not ask him. The applicant also claimed in writing that since he himself left Sri Lanka, his father had a [medical condition] and he is unable to ask him about what happened to him in Sri Lanka. I accept that while living in Sri Lanka the applicant’s family was trapped between the LTTE and the SLA. Country information indicates that everyone in the Northern Province had some level of involvement with the LTTE during the civil war, and the Sri Lankan authorities know this.² The applicant’s evidence does not indicate that his father was any different to many others living in the north of Sri Lanka during the conflict, caught between the LTTE and the SLA. I am not satisfied the applicant’s father was an LTTE member, or that he had a significant level of involvement or role in supporting the LTTE.

15. I accept the applicant and his family moved to India in 1990, where they lived in a refugee camp in Tamil Nadu, because the applicant has consistently made this claim, and country information indicates that more than 100,000 Sri Lankans travelled to southern India during the conflict to seek safety.³
16. I accept that in December 2012, the applicant returned to [District 1] in Sri Lanka with his wife and three children because he had heard the situation was better. The applicant convincingly made this claim and provided two supporting documents from the United National High Commissioner for Refugees (UNHCR) about his voluntary repatriation back to Sri Lanka from Tamil Nadu in India in December 2012, with his wife and three children. Country information also supports that the UNHCR assisted people to voluntarily return from India to Sri Lanka at this time.⁴ The applicant also stated at the SHEV interview, and I accept, that his mother, father and [siblings] remain in India. The applicant also claimed that one [sibling] is in Sri Lanka but he does not know [the] whereabouts.
17. I accept that when the applicant and his family arrived in Sri Lanka in December 2012 they were questioned by CID officers who asked him whether he knew anyone in the LTTE, and he said he did not. The applicant said his wife was sitting next to him during questioning and she was asked the same questions. Country information reports that it was standard practice for people returning to Sri Lanka, in these situations, to be questioned by Sri Lankan authorities, including the police.⁵ I find the questioning from authorities the applicant experienced was standard practice for returnees.
18. I accept that about a month after they arrived, the police came to where the applicant was living with his family at his mother-in-law’s house in [Town 1] and asked him questions about

² UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

³ UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, 3853; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8.

⁴ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8.

⁵ UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, 3853.

where he had been, what he did in India, and if he knew anyone in the LTTE. The applicant has consistently made this claim. In the SHEV interview, he stated the police investigated him, they took everything down, they asked him where he had been all that time, and what they did. He said the police stayed for one and a half, two hours. Country information from December 2012 about the treatment of Sri Lankan returnees, including those from Tamil Nadu in India, indicates that further questioning soon after arrival by Sri Lankan authorities, including the police, took place at that time. In 2012, the UNHCR reported that its post-return monitoring data (for voluntary returns) indicated that in 2011, upon arrival in the village of destination, 75% of the refugee returnees were contacted at their homes by either a military (38%) or police (43%) officer for further "registration" after arrival at the airport, and that 26% of these returnees were again visited at home for subsequent interviews, with a handful receiving a number of additional visits by the police or military.⁶ I find the applicant was questioned by the police about a month after returning to the Northern Province of Sri Lanka after more than 20 years living in a refugee camp in India, and that he was questioned about where he had been, what he did, and if he knew any LTTE members.

19. I accept that about two to three months after they arrived, the military came in the middle of the night, took him to an army camp, and questioned him about his father and the LTTE. In writing he claimed he was asked whether any members of the LTTE met with his father in India, whether his father supplied [items] to the LTTE, whether his father sent any message with him to give to anyone in Sri Lanka, and whether anyone known to his father was in Sri Lanka. In the SHEV interview, the applicant described being asked if he supported the movement, whether he gave [supplies] to the movement. The delegate asked whether he meant himself or his father, and the applicant said his father, and questions about his support. The delegate asked why they asked him about whether they supplied [items], if there was any particular reason. The applicant speculated that they would have obtained some information that his father had been helping the movement while in India. This answer is consistent with the applicant's response to a similar question about this claim when he arrived, and he answered that their questions were based on suspicions.
20. I accept the applicant was physically mistreated and threatened by the military during detention at the army camp. The applicant has consistently made this claim, and convincingly described what happened to him, and the injuries he suffered, which included that he had severe pains in his joints and damage to his shoulder and hip because of the beatings and being stepped on, and that he could not walk properly. The applicant has convincingly and consistently described the treatment he sought in Sri Lanka and soon after he arrived in Australia while in immigration detention. This claim is also supported by country information about the occurrence of post-arrival visits and questioning by authorities. I also accept the applicant was kept at the army camp until the afternoon of the next day, and that he was released because his wife arranged payment for him to be released. Country information supports that Sri Lankan officials, including members of security forces, have taken bribes to release persons from detention.⁷ Country information from 2012 also records cases where a small number of Sri Lankans returned to Sri Lanka after the war ended and were targeted for detention and torture due to a real or perceived association with the LTTE, or support for the LTTE while in the United Kingdom. Although the applicant returned from India and not the United Kingdom, the issue of concern appears to be what the person did abroad in the Tamil

⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka", 21 December 2012, UNB0183EA8; UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, 3853.

⁷ International Truth & Justice Project Sri Lanka (ITJP), "Silenced: survivors of torture and sexual violence in 2015", 7 January 2016, CIS38A801275; UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, 3853.

diaspora. It was also reported that military intelligence and other security personnel subjected documented and undocumented detainees in the north and east to interrogation, and frequently torture. These detainees were reportedly civilians suspected of LTTE connections.⁸ I find the applicant was detained for about a day at an army camp in [District 1], physically mistreated, questioned about his and his father's involvement with the LTTE during the war, including whether he had supplied the LTTE with [items], and he was released after his family paid a bribe.

21. I accept that when the applicant was in [District 1], where he went to receive medical treatment for his injuries, the military and CID spoke to his mother-in-law at her house, and she told him they had come to the house in search of him. She told him not to come back, and then she arranged for him to travel to Australia. The applicant consistently and convincingly made this claim. In the SHEV interview he said he was in [District 1] for about three weeks, but he was not sure. It was about a week or two after he went to [District 1] that his mother-in-law told him not to return because the military and CID had come looking for him. He said he stayed with a relative, and he did not return to [Town 1]. While discussing this period of time, the applicant mentioned that his mother-in-law told him that his father-in-law was shot. The delegate asked for details about when and who shot him, the applicant said it was while he was in India, but he did not provide any detail or make a claim based on this alleged shooting. Although the applicant had been detained once and released, the repeat visit by the military and CID is plausible given country information about multiple detentions within a short period and the payment of bribes to secure release.⁹ I am prepared to accept the military and CID came looking for the applicant a week or two after having released him. The applicant argued that based on country information there is a risk if returned that he will be interned in a rehabilitation camp given his perceived links to the LTTE, and that the UN Committee Against Torture has raised concerns regarding allegations of torture of persons in rehabilitation camps. However, he was not sent to a rehabilitation camp in early 2013, when the Sri Lankan authorities had the opportunity to take this action after questioning him about his and his father's involvement with and support for the former LTTE.
22. In the applicant's written statement, he claimed the passport he left Sri Lanka on was given to him by the agent and it was in his name, and he believes that the passport was genuine because he gave the agent all his certificates and identification and he arranged the passport to be issued. When he arrived in [Country 3], the agent took the passport back. In his SHEV application, the applicant answered at Part C, question 50, that he left his home country legally. During the SHEV interview, the applicant stated he escaped Sri Lanka illegally because he had a problem, and if he returns they will take him into questioning and definitely they will shoot him, and they are very clear and determined that he is an LTTE supporter. The delegate sought clarification about his departure from Sri Lanka, and stated it was a legal departure because the applicant had said he departed on his passport. The applicant said yes, while he was being investigated he left the country. The delegate said legally, not illegally. And the applicant said he did not know what the agent did, he did not know how he paid money, how he made the arrangement. In the written record of the arrival interview it is noted the applicant used a fraudulent passport to depart Sri Lanka. However, this is not what the applicant said during the interview, he said the people smuggler organised his passport, he did not know if it was fraudulent, it had his name on it, everything was his. The applicant's evidence about his departure from Sri Lanka in April 2013 has been consistent. I am satisfied the applicant paid an agent to obtain a passport in his name and that he used this passport to

⁸ UK Home Office, "Sri Lanka December 2012 - Bulletin: Treatment of Returns", 1 December 2012, 3853.

⁹ Freedom from Torture, "Sri Lankan Tamils tortured on return from the UK", 1 September 2012, CIS24086.

take a flight from Colombo, Sri Lanka, to [Country 2], and then on to [Country 3]. I accept the agent facilitated the applicant's departure through the airport at Colombo, however, I find the applicant departed Sri Lanka using a passport issued in his name. While I accept the applicant had been of interest to the military and CID for questioning in relation to the LTTE around the time of his departure, it would have been possible for the applicant to pass through the airport and depart the country, with or without any intervention by the agent, given there is no evidence before me to indicate he would have been on a 'stop' list, which contains the names of individuals that have an extant court order, arrest warrant or order to impound their Sri Lankan passport.¹⁰

23. I do not accept the military again went to his mother-in-law's house, about five months after he left Sri Lanka, to look for him. The applicant claimed that the fact his personal information was published on the department's website in February 2014, means it is possible the Sri Lankan authorities know he is in Australia, and this may be why the army has not been back to his mother-in-law's house to look for him. In the SHEV interview, the delegate asked the applicant if his family had suffered any harm following his departure from Sri Lanka, and he said after he came to Australia they went there looking for him once, and thereafter they did not visit home. The delegate asked who came to look for him, and the applicant said he did not know whether they were from military or Q branch. The delegate asked what his wife told them, and the applicant said when his wife told him that they came looking for him he asked her to stop that story, do not speak about it. The applicant agreed he did not know whether his wife told them he was in Australia. In the delegate's decision, he wrote that he considered the treatment the applicant had experienced in the army camp was part of the monitoring and harassment process faced by most Tamil civilians in north and east Sri Lanka under the Rajapaksa government, and for the same reason the authorities may have asked about his whereabouts a few months after the applicant departed Sri Lanka. While I agree with the delegate that this is a possibility, the applicant did not provide any real detail to support his claim. He did not know who it was who actually came looking for him, and he did not know what was said during this visit. I am not satisfied the military came looking for the applicant five months after he departed Sri Lanka.
24. I find that the applicant did not have any role in the LTTE nor provide any support to it, and I am not satisfied the applicant's father was an LTTE member, or that he had a significant level of involvement or role in supporting the LTTE, in Sri Lanka or India. I find that before the applicant departed Sri Lanka in April 2013 he was subjected to monitoring and physical mistreatment by Sri Lankan authorities between December 2012 and April 2013 in connection with his and his father's suspected support for the LTTE during the conflict while living in a refugee camp in India for over twenty years, and that he had to pay a bribe to be released after a day in detention at an army camp.
25. There is no information on file about the department having written to the applicant about the unauthorised publishing of his personal information on the department's website. However, I note the delegate accepted that the applicant was one of the people affected by this unauthorised disclosure of the applicant's personal information, which would have included his name, date of birth, nationality, gender, details about his detention (when and where), and if he had other family members in detention. It is possible that a person accessing such personal information could conclude that the person in question was seeking asylum in Australia, or at least consider it a possibility. While it is possible the Sri Lankan authorities accessed this information about the applicant, or accessed a re-published version

¹⁰ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OGG6E7028826.

of it, there is no evidence before me that they did. Furthermore, the personal information published did not include the applicant's claims for protection.

Refugee assessment

26. 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

27. 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.
28. The delegate put to the applicant in the SHEV interview that reports indicate there has been significant improvement in the situation for Tamils since he left the country, particularly after the 2015 elections, the LTTE no longer exists as an organised force, and there has been an overall decrease in monitoring and harassment of Tamils. That country information indicates that Sri Lankan authorities are not interested in previous involvement in the LTTE if a person did not have a significant role in the LTTE leadership or committed serious acts during the conflict, and that while the applicant may have been subjected to harassment on return from India to Sri Lanka, given his personal circumstances and changes in Sri Lanka, it appeared his fear of persecution was not well-founded. The applicant responded that he was not involved in any activities while living in India, but he still had problems on return to Sri Lanka. The applicant argued that the delegate should take account of the UK government's June 2017 report, and not just the DFAT report, because the UK report states that the Sri Lankan government's present objective is to identify Tamil activists in the Tamil diaspora, and that the situation is not sufficiently changed to justify a departure from a UK court decision from 2013. The applicant argued he would be of interest to the authorities because he fits that profile of having been outside of Sri Lanka for a long time, and authorities have already suspected him prior to his departure.

29. The UK Home Office's report from June 2017 noted that since the UK Upper Tribunal handed down its decision in 2013¹¹ (the court case the applicant referred to), there had been a number of positive developments since the election of the Sirisena government in January 2015, and that unlike in the past, returnees who have a previous connection with the LTTE are able to return to their communities without suffering ill-treatment, that civil society groups on the ground in Sri Lanka did not report recent issues of ill-treatment, that police interest, if any, is not in any previous involvement with the LTTE but on whether the person has committed any criminal act. Furthermore, the new government under President Sirisena has de-proscribed a number of Tamil groups/diaspora organisations, which it assessed indicates that involvement with such organisations is not of itself seen as a threat to the integrity of the state. The UK Home Office noted reports of arrest and detentions, however, it assessed that the scale and extent is difficult to quantify, that reliable information is not available due to a lack of published data, vagaries and/or exaggeration in numbers cited and the potential lack of neutrality in pro-Tamil reportage.¹²
30. In regards to evidence of persons being targeted for harm based on perceived involvement in post-conflict Tamil separatism or diaspora activities, I note information from the International Truth and Justice Project (ITJP), referred to in the UK Home Office June 2017 report. The summary assessment of the profile of persons abducted, including persons abducted after the 2015 elections, included persons having been interrogated by Sri Lankan security forces and falsely accused of working to restart the LTTE or bringing the country into disrepute by talking about what happened in the war and its aftermath. And that before being abducted many victims had been involved in a variety of peaceful protests or election activities demanding rights for Tamils.¹³
31. The applicant claimed to fear being sent to a rehabilitation centre on return based on perceived involvement with the LTTE. Information in the UK Home Office's June 2017 report and DFAT's May 2018 report indicates that the rehabilitation programme for former LTTE combatants will be coming to an end once the last of the ex-LTTE combatants have completed the one year programme. According to DFAT, only one centre with eight inmates remained open in Vavuniya in December 2017. However, DFAT information indicates that it is former LTTE members who have not yet been through the rehabilitation program, who the Sri Lankan authorities may still want to go through rehabilitation.¹⁴
32. The UK Home Office's June 2017 report has drawn on information and advice from a range of credible sources, highlighted a number of significant and ongoing human rights problems in Sri Lanka, which can disproportionately affect Tamils, particularly in relation to the continued application of the Prevention of Terrorism Act (PTA). However, the UK Home Office is of the opinion that a person being of Tamil ethnicity would not in itself warrant international protection. Neither, in general, would a person who evidences past membership or connection to the LTTE, unless they have or are perceived to have had a significant role in it, or they are, or are perceived to be, active in post-conflict separatism and thus a threat to the state.¹⁵

¹¹ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826, p.6.

¹² UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

¹³ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

¹⁴ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826; DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

¹⁵ UK Home Office, "Country Policy and Information Note Sri Lanka: Tamil separatism", 15 June 2017, OG6E7028826.

33. As at May 2018, DFAT assesses that, while monitoring of Tamils in day-to-day life has decreased significantly under the current government, surveillance of Tamils in the north and east continues, particularly of those associated with politically sensitive issues.¹⁶
34. I have found the applicant was questioned by Sri Lankan authorities about his and his father's involvement and support for the LTTE during the conflict. The applicant did not claim to have engaged in or been accused of post-conflict Tamil separatism or questioned about any diaspora activities while in India. There is no evidence before me that the applicant has engaged in any post-conflict Tamil separatism or any diaspora activities.
35. I found the applicant did not have any role in the LTTE or provide any support to it, and I am not satisfied the applicant's father was an LTTE member, or that he had a significant level of involvement or role in supporting the LTTE, in Sri Lanka or India. I found that before the applicant departed Sri Lanka in April 2013 he was subjected to monitoring and physical mistreatment by Sri Lankan authorities between December 2012 and April 2013 in connection with his and his father's suspected support for the LTTE during the conflict while living in a refugee camp in India for over twenty years, and that he had to pay a bribe to be released after a day in detention at an army camp. However, I find there is not a real chance the applicant will be targeted for any harm by Sri Lankan authorities for reasons of his Tamil ethnicity, nor for any real or perceived links to the LTTE, nor any real or perceived pro-LTTE and Tamil separatist activities based on his and/or his father's past.
36. DFAT reports that refugees and failed asylum seekers face practical challenges to successful return to Sri Lanka. There is limited reintegration assistance for failed asylum seekers. Many returnees have difficulty finding suitable employment and reliable housing on return. However, DFAT assesses that reintegration issues are not due to a failure to obtain asylum, but rather due to the employment and accommodation difficulties they may face on return.¹⁷
37. A UNHCR survey from 2015 reported that 49 per cent of refugee returnees in the north had received a visit at their homes for a purpose other than registration, with almost half of those visits from the police. And refugees and failed asylum seekers reported social stigma from their communities upon return. The UNHCR also interviewed refugee returnees in 2016, and only 0.3 per cent indicated they had any security concerns following their return. As at May 2018, DFAT states that while the government has reportedly decreased systematic surveillance of returnees, DFAT is aware of anecdotal evidence of regular visits and phone calls by the CID to failed asylum seekers in the north as recently as 2017.¹⁸
38. While it is possible the applicant may be monitored, and experience social stigma on return as a returning asylum seeker, I am not satisfied that it would amount to serious harm. I am not satisfied there is a real chance of serious harm for the applicant in connection with being a returned asylum seeker.
39. Country information about the airport arrival and entry procedures for returning Sri Lankans is that most Sri Lankan returnees, including those from Australia, are questioned (usually at the airport) upon return and where an illegal departure from Sri Lanka is suspected, they can be charged with an offence under the Immigrants and Emigrants Act (1949).¹⁹ I have found the applicant departed Sri Lanka legally in April 2013 on a passport issued in his name.

¹⁶ DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

¹⁷ DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

¹⁸ DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

¹⁹ DFAT, "DFAT Country Information Report: Sri Lanka", 23 May 2018, CIS7B839411064.

40. Country information also reports that Sri Lankan authorities maintain 'stop' and 'watch' lists on electronic databases, and that these are referenced by Sri Lankan immigration and law enforcement officials when a person returns to Sri Lanka. 'Stop' lists include the names of individuals who have an extant court order, arrest warrant or order to impound their Sri Lankan passport. 'Watch' lists include the names of individuals whom the Sri Lankan security services consider to be of interest, including for separatist or criminal activities. The UK Home office reported that the 'watch list' comprised minor offenders and former LTTE cadres. DFAT assesses that persons on a watch list are likely to be monitored. There is no evidence before me that there are any outstanding court matters, or arrest warrants for the applicant, and no evidence the applicant has engaged in separatist activities. I am not satisfied the applicant's name would appear on a 'stop' or 'watch' list on his return to Sri Lanka. I am satisfied the applicant may be questioned by immigration officials on return, however, given he did not depart Sri Lanka illegally, and I am not satisfied his name would appear on a 'stop' or 'watch' list, he would then be allowed to depart the airport.
41. If, in the remote chance, the Sri Lankan authorities accessed the applicant's personal information on the department's website as a result of its unauthorised disclosure of his personal information in February 2014, and on this basis they suspect the applicant sought asylum in Australia, I am satisfied it will not change the chance of harm. I have found there is
42. not a real chance the applicant will be targeted for any harm by Sri Lankan authorities for reasons of his Tamil ethnicity, nor for any real or perceived links to the LTTE, nor any real or perceived pro-LTTE and Tamil separatist activities based on his and/or his father's past. I am also not satisfied there is a real chance of serious harm for the applicant in connection with being a returned asylum seeker.
43. I find the applicant does not have a well-founded fear of persecution in Sri Lanka.

Refugee: conclusion

44. 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

45. 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

46. 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.
47. I have found there is not a real chance the applicant will be targeted for any harm by Sri Lankan authorities for reasons of his Tamil ethnicity, nor for any real or perceived links to the LTTE, nor any real or perceived pro-LTTE and Tamil separatist activities based on his and/or his father's past. I am similarly not satisfied there is a real risk of any harm on these bases.
48. While there is a possibility the applicant may face monitoring and social stigma for a period as a returned asylum seeker, I am not satisfied that such treatment would amount to significant harm as defined. I am not satisfied that it amounts to the death penalty, arbitrary deprivation of life or torture. I am also not satisfied that it amounts to pain or suffering that is cruel or inhuman in nature, severe pain or suffering, or extreme humiliation for the purposes of the definition of cruel or inhuman treatment or punishment or degrading treatment or punishment.
49. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka there is a real risk he will suffer significant harm.

Complementary protection: conclusion

50. 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

In this Act, unless the contrary intention appears:

...

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.