



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SRI LANKA
IAA reference: IAA21/09918

Date and time of decision: 22 November 2021 15:14:00
G Deal, 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 applicant (the applicant) claims to be a Tamil from Jaffna, Sri Lanka. [In] December 2012 he arrived by boat in Australia. On 26 May 2017 he lodged an application for a Safe Haven Enterprise Visa (visa application) with the Department of Immigration, now the Department of Home Affairs. On 21 July 2021 the applicant was interviewed by a delegate of the Minister for Immigration (the delegate) by telephone.
2. On 14 September 2021 the delegate refused to grant the visa. The delegate accepted the applicant was a Tamil of Roman Catholic faith, noting the applicant had said he had not experienced any problems in the past on account of his faith. The delegate also accepted the applicant had left Sri Lanka illegally. While the delegate accepted the applicant may have been harassed by Sri Lankan authorities in the past as a young Tamil male from the north, the delegate did not accept the applicant's uncle or father were involved with the Liberation Tigers of Tamil Eelam (LTTE), that the applicant transported LTTE cadres to India on a boat from 2009 to 2012, that he was questioned and detained in 2011 in connection with a trip to India or of ongoing adverse interest to authorities, finding these claims fabricated for several reasons including incongruent evidence, a lack of supporting information, the issuance of the applicant's Sri Lankan passport in 2011 and that the applicant did not leave Sri Lanka until 2012, despite claiming to have been detained and mistreated by authorities repeatedly since 2009. The delegate did not accept the applicant's family had been harmed or harassed by authorities after the applicant left Sri Lanka. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By email dated 3 October 2021, with the assistance of his lawyer, the applicant provided a submission to the IAA. On 15 November 2021 the applicant provided a full copy of a decision of the UK Upper Tribunal¹ referred to the submission after the IAA notified the applicant that while referenced, no copy was attached as required under the Practice Direction.² With the exception of the decision of the UK Upper Tribunal the submission only contains information that was before the delegate and arguments, which I have had to regard to, and is not new information.
5. The decision of the UK Upper Tribunal is new information. The UK Upper Tribunal decision was published months before the delegate's decision was made (and well before the visa interview). The applicant provided a large volume of country information to the Department at the primary stage as well as additional documents after the visa interview. Other than noting that the UK Upper Tribunal decision provides a critique of the country information reports including the DFAT report (on which the delegate placed reliance) including that the DFAT report was published before the Rajapaksa's return to power in Sri Lanka, the applicant has not explained why this information was not provided earlier. Nor is this apparent to me. I am not

¹ Upper Tribunal (Immigration and Asylum Chamber), 'KK RS (ANONYMITY DIRECTION MADE) AND SECRETARY OF STATE FOR THE HOME DEPARTMENT', 27 May 2021, 20210601113225.

² Practice Direction for Applicants, Representatives and Authorities Recipients, 1 May 2020.

satisfied that this information could not have been provided to the delegate before her decision was made. The UK Upper Tribunal decision looks at a number of country information reports on Sri Lanka, broadly relevant to the applicant's claims (many of which are already before me) in the context of considering the claims of two de-identified Tamil applicants. The applicant has not said these applicants are related to him and it does not appear that they are. Their claims differ in material ways from the applicant's claims. I also note that each case turns on its own facts. I am not satisfied it is credible personal information which had it been known may have affected consideration of the applicant's claims. As noted above, a number of the reports discussed in the decision of the UK Upper Tribunal are before me and overall, I have a variety of recent, independent, and detailed country information before me, including those published after the Rajapaksa's return to power in Sri Lanka. I am not satisfied as to the matters in s. 473DD(b). I am also not satisfied there are exceptional circumstance to justify considering the information.

Applicant's claims for protection

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

- He is a Tamil of Roman Catholic faith from Jaffna, in the Northern Province of Sri Lanka. His parents and siblings, who are now all adults, live in Jaffna. One of his [sisters] has since married and moved to [Country 1]. His father has worked as a fisherman and his mother has helped with his father's fisherman activities by drying the fish. He has worked in [industry 1] and as a fisherman in Sri Lanka and has worked as [an occupation 1] for [a specified] business in Australia.
- His education was disrupted due to the conflict. After school his father would take him fishing and teach him the trade. The authorities harassed them when they went out to fish and would not let them fish at night.
- His father was forced to join the LTTE in 2000 and remained with them until 2009. He would help transport items on his boat including weapons and would spy for them. In 2000 his [uncle], who mostly lived with them, joined the LTTE and quickly became a senior LTTE cadre. He was well known and feared in the village. He took young boys away for training. He frequently travelled by boat including between India and Jaffna.
- His father would take him out to sea and meet up with his uncle. His father and uncle would secretly discuss LTTE matters. While out at sea they were sometimes shot at by the navy and had to escape death many times.
- In 2001 his uncle was shot and killed by the army. He witnessed his uncle being shot near the front of their house. His father was questioned by authorities about the uncle's LTTE links.
- He completed his studies in [year] and started working as a fisherman with his father. In 2009 he started to work for an employer, he worked for six or seven hours a day and was paid well.
- Between 2009 (during the war) and 2012 he helped LTTE cadres escape from the authorities in Sri Lanka by transporting them in his boat to India.
- In 2009 the authorities started taking him to a camp and severely torturing and questioning him on suspicion of LTTE links. He has lost count of how many times this happened. It got worse and worse.

- He was running and hiding from the authorities in all different places including at his grandmother's house. He was trying to leave but he had no opportunity to do so. His identity documents showed he was from Jaffna and whenever he tried to leave this would cause problems.
- In August 2011 he travelled with his family from Sri Lanka to India for a pilgrimage and returned alone to Sri Lanka in September 2011. He was intending to run away and hide from the authorities on this journey. He was questioned at the airport for six hours on exiting Sri Lanka and when he returned, he was arrested and taken to [Police Station 1]. The authorities asked him about his uncle who was killed in 2001 and he was beaten and accused of transporting LTTE cadres and weapons on his boat. He was detained at the [Police Station 1] for two months and transferred to [Location 1] in November where he was detained for five or six hours, severely mistreated and questioned about his uncle. On release he had to report to the army camp monthly and whenever he did, they would harass and beat him and detained him again on several occasions. His father bribed the paramilitaries to protect him, although the authorities continued to visit their home in search of him and threatened him.
- In June 2012, due to hazardous weather conditions he returned home from fishing late and was unable to report to the army camp. The following day the army went to his home to interrogate him. They told him they had evidence of him having transported LTTE cadres and believed he had also transported weapons. His father bribed the paramilitaries to secure his release. After release he fled to Colombo and in September 2012, he illegally departed Sri Lanka by boat in fear of his life, ultimately bound for Australia.
- In about February 2013 the authorities went to his home looking for him. When they did not find him, they detained and severely mistreated his father instead. They returned a second time, and their mistreatment of his father caused his father to go blind. His mother begged the authorities to release him although they did not. Eventually she went to a human rights organisation. The authorities told the organisation that they were targeting the family because they were an LTTE family. Eventually the organisation was able to secure his father's release.
- In 2015 the authorities returned to his street and looked for him again, asking all the people in his street if they knew his whereabouts.
- In about 2017 one of his [sisters] moved to [Country 1] after getting married. Prior to this she spent several years trying to get a visa to travel to [Country 1], however the Sri Lankan authorities questioned her many times because she was from an LTTE family and would not let her leave.

Factual findings

7. By way of background the applicant was born in [year] and claims to have left Sri Lanka illegally by boat in September 2012. He arrived in Australia in December 2012. His arrival interview was conducted on 31 January 2013. Commencing in 2015 the Department sent him letters inviting him to apply for a protection visa and a final warning letter when no application was received. He was subsequently advised that his Status Resolution Services payments would be cut if he did not apply by the designated deadline. On 26 May 2017 with the assistance of his then migration agents he lodged his visa application with the Department. On 21 July 2021 he participated in a visa interview with the Department by telephone, after difficulties were experienced when trying to conduct the interview by video link.

8. The applicant has consistently claimed to be a citizen of Sri Lanka and based on his evidence, including his documentary evidence, I accept he is a citizen of Sri Lanka. He confirmed in his visa application that he was not a citizen or national of any other country and that he did not have a right to enter or reside in any other country. I consider Sri Lanka the receiving country.
9. While the applicant made no mention of any LTTE links in his arrival interview in his visa application lodged several years later he stated that he was from an LTTE family. He said that as he was asked to be brief in the arrival interview and because he feared revealing the full details of his LTTE links in the arrival interview he had not mentioned this previously. I accept this as plausible and draw no adverse inference from him not mentioning his claimed LTTE links in the arrival interview.
10. The applicant's visa application states that his father was a fisherman and that while at school his father would take him fishing. The applicant also helped his mother dry the fish after school. His schooling was sometimes disrupted due to the conflict. His father was forced to join the LTTE during the conflict and helped them by transporting food, clothing, and other necessities by boat. In 2000 his uncle joined the LTTE and was a senior and well-known cadre in the Sea Tigers. His uncle took young boys from the village and frequently travelled by boat between India and Jaffna and was well known and feared in the village. He reassured the applicant's parents that he would not take the applicant. When the applicant went fishing with his father on weekends his father and uncle would often meet up out at sea and discretely discuss LTTE matters. They often escaped being shot by the navy while out at sea during these outings. In 2001 his uncle was shot dead by unknown people in [District 1]. His father was questioned about the uncle's LTTE links, although his father convinced authorities he was not connected with the uncle. The applicant completed his studies in [year] and started working as a fisherman with his father. In about 2009 the applicant started working for another employer as a fisherman. His employer had a lot of boats and the applicant would fish by himself. He used to fish everyday for six or seven hours and earned good money. In August 2011 he went on a pilgrimage to India and on his return in September 2011 he was arrested at the airport and taken to [Police Station 1] where he was detained for two months and then transferred to [Location 1] in November where he was severely mistreated. The authorities linked him with his uncle who was killed in 2001 and accused the applicant of transporting LTTE cadres from Jaffna to India by boat. On release he had to report to the camp monthly and when he did, they harassed and assaulted him, and detained him again on several occasions. In June 2012 he returned home from fishing late and was not able to report at the army camp. The following day the authorities went to his home and accused him of transporting LTTE cadres and weapons for the LTTE. His father secured his release with the payment of a bribe and the applicant departed Sri Lanka illegally by boat in fear of his safety in September 2012, ultimately bound for Australia. The applicant's visa application contained a large volume of now dated publications in relation to Sri Lanka generally and the conditions there including for Tamils. The evidence in his visa application suggested that it was only in around 2011 that the applicant became of adverse interest to the authorities on suspicion of LTTE links.
11. In his visa interview the applicant said his father helped the LTTE from 2000 until 2009 and provided them with intelligence and helped transport weapons, which was in contrast with his evidence in his visa application where he said that his father only helped transport food and other necessities by boat for the LTTE. In the visa interview the applicant also said that his uncle was a Black Tiger (not a Sea Tiger as previously stated) and that he started with the LTTE 1999 and, in contrast to his visa application where he said his uncle was killed by unknown people, in the visa interview the applicant said his uncle was killed by the army in 2001. He said his uncle was involved in transporting items including weapons from India between [District 1] and [Town 1] by boat. The applicant also expanded on the night of his uncle's claimed death

and said he personally witnesses him being killed by the army. He said that one evening in 2001 his uncle asked him if he wanted to come with him to the movies. The applicant declined as he had to go to the shops to purchase some sugar. The applicant purchased the sugar and returned home and ate his supper. On his return home his uncle was confronted and attacked by several army officers. His uncle was screaming out [the applicant's mother's name]. He tried to fight the army off but could not and they [shot him] and several other times killing him. The applicant said he witnessed the entire incident as it was out the front of their home. He said that during the altercation with the army his uncle was clutching a round of ammunition from an AK-47. The applicant said that after his uncle was killed, he had to retrieve this round of ammunition from his uncle's hands.

12. While the applicant had only previously indicated he had been accused of transporting LTTE members, in the visa interview he said he wanted to be honest with the Australian government and that he actually transported LTTE cadres from Jaffna to India. He transported at least 50 people from 2009 to 2012. He had a boat and would ferry former LTTE cadres seeking refuge at this time across to India. He said he did this during the war and after it. The LTTE cadres he transported sometimes threw their weapons into the sea. He also indicated in the visa interview that he became of interest to the authorities much earlier than 2011, as previously claimed. He said that commencing in 2009 the authorities started taking him to a camp and severely mistreating him and questioning him. He lost count of how many times this happened. It was at least 20 times. It got worse and worse. After this he was on the run and in hiding at various places, including his grandmother's house. He tried to leave but could not. His evidence in relation to his travel to India in the visa interview also varied from that previously provided. He said that when he and his family left at the airport for a pilgrimage to India in August 2011 in addition to being questioned and detained on his return (as previously claimed) he also said he was questioned on his outbound journey and his family were very worried but that he was eventually released and allowed to travel to India with his family. He also indicated that when he left it was with the intention of escaping and hiding because of problems with the authorities in Sri Lanka but that he decided to return in the end as he did not want to abandon his family but that he returned alone so as not to place them at risk and that was when he was detained at the police station as the camp as he had previously claimed.
13. In his visa interview the applicant also claimed certain events had occurred since he had left Sri Lanka. He said that after he left Sri Lanka, as he had not signed in at the camp, the authorities came looking for him in 2013. As he was no longer in Sri Lanka, they took his father and detained and severely mistreated him instead. They arrested his father a second time and mistreated his father so severely his father lost his sight. His mother begged for the father's release and they said that if she drew water for them, they would release him. She worked for the army drawing water for them and was mistreated by the authorities, however they still did not release his father. This was when his mother went to a human rights organisation. The authorities admitted to the human rights organisation that they were targeting the applicant and his family because they were an LTTE family. The applicant also said that in 2015 the authorities went to his family's street and asked all the neighbours where he was and searched the street. He said his sister moved to [Country 1] in 2017 after getting married, however she had been attempting to move for several years prior to this but the authorities would not let her as she belonged to an LTTE family. Eventually when her husband complained to the [Country 1] Embassy, the Sri Lankan authorities allowed his sister to leave Sri Lanka.
14. As detailed below I consider there are several issues with the applicant's evidence in relation to his claimed LTTE links and targeting by authorities which raise concerns for me regarding the veracity of these claims.

15. Country information before me notes of the Sri Lankan government's anxiety about a potential re-emergence of the LTTE and the sophisticated intelligence they maintain on those of interest in this regard including a 'stop' and 'watch' list.³ In light of this I find it difficult to believe that the applicant would apply for and be granted a genuine passport by the Sri Lankan authorities in January 2011 (as reflected in the copy of his passport provided to the Department) if, as he claims, he was of significant ongoing interest on suspicion of LTTE links since 2009 and had to hide from them. I also note the country information before me which reports that the authorities sent thousands of people suspected of LTTE links to state run rehabilitation centres during the conflict and in its aftermath and yet the applicant was never sent to rehabilitation despite, claiming to have been of ongoing interest and detained and severely mistreated at least 20 times since 2009.⁴ I also note that the applicant claims his father was with the LTTE for nine years and yet his father was not detained and mistreated by authorities when the family travelled to India in 2011 and the applicant's father continues to live in Jaffna, Sri Lanka.
16. There have also been significant variations in the applicant's claims. In his visa interview the applicant said he belonged to an LTTE family and that he was too afraid to reveal the full extent of this previously but wanted to do so now. As noted above, I accept he may have feared revealing these claims in his arrival interview, however given he subsequently revealed significant details in this regard in his visa application which he lodged with the assistance of his then migration agent, I do not accept that at that stage he continued to fear revealing significant details which he only felt safe in revealing several years later in the visa interview. These significant variations have been set out in detail above, although as an example, in his visa application the applicant said that he worked as a fisherman and was accused by authorities of transporting LTTE cadres. In contrast, in his visa interview he said that between 2009 and 2012 he transported LTTE cadres by boat from Sri Lanka to India. In his visa application the applicant mentioned that his father was questioned by authorities in 2011, however he did not mention that his father was detained and mistreated by authorities in 2013 as claimed in the visa interview (and I note that the visa application was lodged years after these events were said to have occurred). In his visa application the applicant indicated that he was first detained by authorities on his trip to India in 2011, in contrast, in his visa interview he said these problems started in 2009. In his visa application the applicant claimed that in 2012 after failing to report to authorities he was detained and only released after his father paid a bribe and that he then fled Sri Lanka in fear of his safety. In contrast, and despite the delegate specifically asking him if anything happened to him in 2012 to make him want to leave Sri Lanka that year, the applicant did not mention this significant claim.
17. I have also often found aspects of the applicant's claims difficult to believe and/or at odds with the documentary evidence provided by him. For example, in his arrival interview the applicant claimed that the authorities detained and questioned him in 2011 in connection with his uncle's death. I find it difficult to believe that he would be detained and questioned in relation to his uncle's death some 10 years after the event and given that the applicant was just [age] years of age at the time of his uncle's death. The applicant has also provided three documents relating to his uncle's death however the place of death differs in these documents. They are also all only English translations of the claimed originals (claimed to have been translated in Sri Lanka). No copies of the claimed original documents have been provided. The typing is often irregular. I note the prevalence of document fraud in Sri Lanka.⁵ I do not accept these

³ Department of Foreign Affairs and Trade (DFAT), 'Sri Lanka - Country Information Report', 24 January 2017, CISEDB50AD105.

⁴ DFAT, 'DFAT Country Information Report Sri Lanka, 4 November 2019, 20191104135244.

⁵ Ibid.

documents as genuine and place no weight on them. I also note that during the visa interview when asked where he had obtained the death certificate the applicant did not provide this information only repeating generalised information already provided and that when the delegate noted [Town 2] (the place of the uncle's death listed in one of the documents) was hours from where the applicant lived (and where he claims his uncle died) the applicant was unable to adequately explain this discrepancy. In his visa application the applicant also claimed he stopped attending school and started working as a fisherman in 2003 (when he was [a young child]), worked with his father for a number of years and then worked by himself for a third party commencing in 2009 (when he was about [age]). I note that school records he provided, which are signed by a principal and appear on a proforma document and appear genuine, indicate he did not leave school until [later] after finishing [grade] studies. A copy of his fishing pass for Sri Lanka, which also looks genuine, lists the date of issue as 2011. Based on the applicant's evidence, including that he lived in Jaffna which is near the water and his school records and fishing pass, I accept the applicant is from a fishing family, that his father taught him to fish while at school and that after leaving school after finishing up [grade] in 2010 the applicant worked as a fisherman. He left school without completing [later years] and lived in an LTTE controlled area at that time and I accept that his education was disrupted by the conflict.⁶

18. In the visa interview the applicant also appeared to change his evidence in response to issues raised by the delegate. For example, in the visa interview the applicant claimed that he was detained, severely mistreated, and harassed by Sri Lankan authorities repetitively since 2009. He did not leave Sri Lanka and travel to Australia until September 2012. Some way into the interview and after discussing his claims in some detail including in relation to his travel to India in 2011, the delegate asked the applicant why he did not leave Sri Lanka earlier, given he had been experiencing issues with the authorities since 2009. The applicant said that when he left for India with the family in August 2011 on the pilgrimage, he was intending on running and hiding then but he decided not to because he did not want his family to be targeted on account of him. I am surprised the applicant did not point to this significant detail in his visa application when detailing his trip to India and the issues he encountered or when discussing this trip earlier in the visa interview. I also note 2011 was still some time after the applicant claims his issues with the Sri Lankan authorities first arose in 2009.
19. In addition to those documents already discussed, the applicant provided copies of various identity documents and other documents, including documents related to his uncle, a family photo, school records and a letter claimed to have been written by his father to the Human Rights Commission. This letter is dated in May 2013 (which was when the applicant was already in Australia). It is not signed by his father and is only a typed letter on plain paper claimed to be a translation (translated in Sri Lanka) of a letter written by his father. No copy of the original has been provided, despite him providing the originals of other documents including his translated birth certificate. I place no weight on this letter. When the delegate asked the applicant in the visa interview if he had any other documents to support his claimed arrests and other issues with authorities in Sri Lanka the applicant said that the only evidence he had, were the scars on his body. I do not accept he has scars as this late mentioned claim is unsupported for example by photos or medical records despite the applicant providing a number of other supporting documents at the primary stage with the assistance of his then representative. The applicant has also provided some untranslated material including articles written in Tamil. He claims some or one of these relate to his uncle's death. Without an English translation I am unable to ascertain what these documents state. In the visa interview the applicant told the delegate that as he was in lockdown and in a rural area, he was having difficulties having some of the documents translated. When the delegate noted the applicant

⁶ DFAT, 'DFAT Country Information Report Sri Lanka', 4 November 2019, 20191104135244.

had other documents translated the applicant explained that the other documents were translated in Sri Lanka. The delegate provided the applicant with some practical advice on how to obtain translations remotely and provided the applicant with seven days to provide any further documents or information he wished to provide. It has been some four months since the visa interview and the applicant has since provided submissions to the IAA, although to date no further translations have been provided.

20. While I am willing to accept that the applicant and his family experienced some harassment by the authorities during and after the conflict, as did many Tamils in the formerly LTTE controlled area⁷, on the evidence I do not accept the applicant's uncle was a former Sea Tiger or Black Tiger, or that he was killed by the army out the front of the applicant's home and that the applicant witnessed this. Nor do I accept that the applicant's father assisted the LTTE as claimed or that the applicant transported LTTE cadres from Sri Lanka to India, hid from authorities or that he was detained in connection with this or transporting weapons or in connection with his uncle and father and released with monthly reporting obligations or that he was detained in 2011 in connection with a trip to India or in 2012 after failing to report or that he or his family were of ongoing adverse interest or harmed by authorities or those working with them including when the applicant left Sri Lanka in 2012. It follows that I do not accept that the authorities or those working with them have looked for the applicant or harassed or harmed his family since he has been in Australia. As an aside I also note that records indicate that since being in Australia the applicant has sent money back to his family in Sri Lanka and in the visa interview, he said he did this to help them. While I accept this, I do not consider this relevant to his protection claims and I draw no adverse inferences from this.
21. The applicant has consistently claimed to have left Sri Lanka illegally in 2012 and in his arrival interview he went into some detail about this journey. I accept he left Sri Lanka illegally by boat in 2012.

Refugee assessment

22. 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

23. 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

⁷ DFAT, 'DFAT Country Information Report Sri Lanka, 4 November 2019, 20191104135244.

- 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.

24. I accept the applicant is [an age]-year-old Tamil and Roman Catholic from Jaffna in the Northern Province. I also accept his education was disrupted due the conflict and that he worked as fisherman after leaving school and his family experienced some harassment by authorities during and after the conflict, as did many Tamils at that time. The applicant has lived most of his life in Jaffna in the Northern Province where the Tamil population is concentrated and where he still has family and I consider that if he were to return it would very likely be to there.⁸

25. While the DFAT report was published before Gotabaya Rajapaksa's presidential win and his brother's appointment as Prime Minister, in considering the applicant's claims and the conditions in Sri Lanka I have had regard to several independent, detailed, and recent reports, including those published after the Rajapaksa's return to power.

26. The country information before me⁹ reports of improvements since the end of the conflict, and since the applicant left Sri Lanka, particularly since the election of the former Sirisena government in 2015 on a platform of good governance focusing on anti-corruption and ethnic reconciliation, among other things; there has been a significant improvement in the security situation in Sri Lanka; the incidence of homicide has fallen sharply in recent years; travel is no longer restricted to the north and east; security checkpoints on major roads were removed in 2015; military involvement in civilian life has reportedly decreased; the Office of Missing Persons and the Office for Reparations were established; there was an opening of civic space under Sirisena; in 2019 there were reportedly no disappearance cases registered with the police; and while remaining active, Tamil paramilitary groups aligned with the government during the conflict have reportedly disarmed and engaged in politics, among other things. However, issues remained under the former Sirisena government who were criticised for their slow progress toward promised reform. The military maintain a significant presence in the north and continue to hold some land considered economically valuable including for fishing and farming purposes; little progress was made in investigating human rights abuses during the conflict and its aftermath; and the *Prevention of Terrorism Act*, which disproportionately affected Tamils during the conflict, remains in force despite promises to replace it, among other things. In 2019 the Rajapaksa brothers, accused of involvement in past human rights abuses, returned to power in Sri Lanka signalling a possible reversal of positive commitments made under the former government. The Rajapaksa government has indicated it may take a more expedited administrative approach rather than investigating missing persons, causing distress and anxiety among victims. Among other things, it has signalled the undoing of constitutional checks and balances on the executive and measures to strengthen the independence of key institutions. Unlike the year prior the national anthem was not sung in Tamil at official Independence Day celebrations in 2020. There are more recent increased

⁸ DFAT, 'DFAT Country Information Report Sri Lanka, 4 November 2019, 20191104135244.

⁹ DFAT, 'DFAT Country Information Report Sri Lanka, 4 November 2019, 20191104135244; UK Home Office, 'Country Policy and Information Note Sri Lanka: Tamil Separatism ', May 2020, 20200527172009; OHCHR, 'Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka', 18 February 2020, 20200221140652; International Truth and Justice Project, Journalists for Democracy in Sri Lanka, 'SRI LANKA: AND THE CRACKDOWN BEGINS', January 2020, 20200114142534; US Department of State, 'Country Reports on Human Rights Practices for 2019 - Sri Lanka', 10 March 2020; INFORM Human Rights Documentation Centre, 'Repression of Dissent in Sri Lanka: 1 st - 31st May 2020', 29 June 2020, 20200702160949.

reports of harassment or surveillance of human rights defenders and victims of human rights violations and those opposed to the government. Military officers accused of involvement in human rights violations have been appointed to senior positions under the current government (the former government also appears to have done this). The current government has also banned the use of the term Eelam in certain circumstances. There has also been an increasing militarisation of civilian government functions. Minority groups fear repression under the new government. There has been some speculation about how certain groups who do not support the current government may be treated by the government. The COVID-19 Pandemic resulted in lengthy curfews and many arrests for violations of quarantine regulations such as breaching curfew and not wearing masks. Many temporary workers also lost their jobs and the cost of living increased.

27. The country information before me¹⁰ reports that members of the Tamil community have reported facing discrimination in employment, particularly in relation to government jobs, although it was assessed that this was due to language constraints and disrupted education as a result of the conflict rather than official discrimination. Surveillance of Tamils in the north and east reportedly continues, particularly of those associated with politically sensitive issues. DFAT assesses that while there are incidents of official and societal discrimination against Tamils, including in relation to their ability to access education, employment and housing, the incidence is reportedly insufficient to suggest a pattern of behaviour. The UK Home Office report on Tamil Separatism noted it was told by several sources that while Tamils may sometimes be subjected to discrimination, they are unlikely to face persecution based on their ethnicity alone.¹¹
28. DFAT and the more recent UK Home Office report¹² note that the LTTE were compressively defeated in 2009 and are a spent force. Security forces have arrested, and detained thousands suspected of being LTTE members and sent them to rehabilitation camps and prosecuted them during and after the war. However, the Sri Lankan government remains sensitive to the potential re-emergence of the LTTE. The government appreciates that all Tamils in LTTE controlled areas during the conflict had some level of involvement with the LTTE. The government is also reportedly unlikely to have an interest in a person purely because they were once a member of the LTTE. The government's focus is now those it suspects of playing a significant role in relation to post-conflict Tamil separatism and/or of having a criminal background. In this regard the government maintains sophisticated intelligence including a 'stop' and 'watch' list, comprising those with an extant court order, arrest warrant, order to impound their passport, and those of interest including for suspected separatist or criminal activities, minor offenders and former LTTE cadres. Reports by DFAT, the UK Home Office and the US Department of State¹³ all indicate that those detained by authorities reportedly face a real chance of severe mistreatment. Reports by DFAT and the UK Home Office on Tamil Separatism indicate that those involved in politically sensitive issues such as journalists and human rights activists may also come to the adverse attention of authorities. Those who fought for the LTTE or were part of its civil administration may be monitored or harassed, although the extent of this will depend on how senior they were within the LTTE and whether

¹⁰ UK Home Office, 'Country Policy and Information Note Sri Lanka: Tamil Separatism', May 2020, 20200527172009; DFAT, 'DFAT Country Information Report Sri Lanka', 4 November 2019, 20191104135244; US Department of State, 'Country Reports on Human Rights Practices for 2019 - Sri Lanka', 10 March 2020; INFORM Human Rights Documentation Centre, 'Repression of Dissent in Sri Lanka: 1 st - 31st May 2020', 29 June 2020, 20200702160949.

¹¹ UK Home Office, 'Country Policy and Information Note Sri Lanka: Tamil Separatism', May 2020, 20200527172009.

¹² DFAT, 'DFAT Country Information Report Sri Lanka', 4 November 2019, 20191104135244; UK Home Office, 'Country Policy and Information Note Sri Lanka: Tamil Separatism', May 2020, 20200527172009.

¹³ US Department of State, 'Country Reports on Human Rights Practices for 2019 - Sri Lanka', 10 March 2020; INFORM Human Rights Documentation Centre, 'Repression of Dissent in Sri Lanka: 1 st - 31st May 2020', 29 June 2020, 20200702160949.

are still perceived to have a significant role in Tamil separatism, for example through their involvement in diaspora groups that promote a separate Tamil state. Scarring would reportedly only be relevant where a person was detained for other reasons.

29. The country information above reports of significant improvement in the conditions in Sri Lanka including for Tamils since the applicant left Sri Lanka, particularly under the former Sirisena government. Since coming into power steps taken by the Rajapaksa government show a worrying trend, although it is a matter of speculation as to whether this will materially impact the Tamil community now or in the reasonably foreseeable future. While Tamils may sometimes be subjected to discrimination affecting their ability to access education, employment, and housing, they are reportedly unlikely to face persecution based on their ethnicity alone. The government's focus is on those actively engaged in Tamil separatism. In this regard those with an extant court order, arrest warrant or order to impound their passport, those suspected of separatist or criminal activities, minor offenders, former LTTE cadres and those actively involved in politically sensitive issues like human rights activists and journalists may be detained and/or attract the adverse attention of the authorities. I do not accept the applicant's claimed family LTTE links or that he was wanted by the authorities or those working for them when he left Sri Lanka in 2012. There is no credible evidence before me indicating he has an extant court order, arrest warrant, order to impound his passport or that he has a criminal or separatist background. In the visa interview the applicant said that he was not politically active in Sri Lanka or Australia. As already noted, I consider that if the applicant returned to Sri Lanka it would very likely be to Jaffna in the Northern Province where he has lived most of his life and still has family. The applicant studied up to [grade], is still young, and has worked in various capacities in the past including in [industry 1] and as [an occupation 1]. There is nothing before me to indicate he would be unable to work as he has done in Australia. Based on the country information above and the applicant's profile I am not satisfied he faces a real chance of harm on account of being a Tamil from Jaffna and the Northern Province or his and his family's past experiences in Sri Lanka.
30. I accept the applicant is a Roman Catholic. Country information before me¹⁴ reports that Christians comprise a minority in Sri Lanka and that most are Roman Catholic. While religious minorities have been targeted, including by Buddhist extremist groups (and there is little political will to confront these groups) the *Constitution* provides for freedom of religion and there are reportedly no laws or official policies that discriminate on the basis of religion. While Christians have faced incidents of official discrimination the incidence is insufficient to suggest a pattern of behaviour. In the visa interview the applicant said he did not experience any issues on account of his faith in Sri Lanka and said that faith was not the issue, it was his ethnicity that was the issue. Based on the applicant's profile and the country information above I am not satisfied he faces a real chance of harm on account of his faith.
31. I do not consider that the applicant has claimed to fear harm as a failed asylum seeker, although the delegate considered this and as such, I will also consider this. DFAT reports that returnees face various reintegration issues including difficulties finding suitable employment (exacerbated by limited job opportunities in the north and east) and housing and delays in obtaining necessary documentation. Some with suspected LTTE links returning to the north and east have been monitored by authorities on return, although most returnees, including failed asylum seekers, are reportedly not actively monitored on an ongoing basis. As noted above I do not accept the applicant has an adverse profile of interest to the Sri Lankan authorities and I consider that he would most likely return to the Northern Province where his family live. As noted above the applicant is also young and has worked in various capacities in

¹⁴ DFAT, 'DFAT Country Information Report Sri Lanka, 4 November 2019, 20191104135244.

the past and there is nothing to suggest he is unable to work as he has done in Australia. Based on the country information the applicant may face initial reintegration issues in terms of difficulties finding suitable employment and delays in obtaining necessary documentation, although I am not satisfied this would threaten his capacity to subsist or otherwise amount to serious harm.

32. I accept the applicant left Sri Lanka illegally. DFAT and the UK Home Office¹⁵ report that returnees are processed at the airport by various government agencies in groups which can take several hours. Those returning on temporary travel documents must undertake further identity checks with police to confirm their identity and ensure they are not trying to conceal or criminal or terrorist background or avoid court orders or arrest warrants. Those on a 'stop' list are likely to be detained at the airport, while those on a 'watch' list are likely to be able to leave the airport but may be monitored on return home, and later detained if considered to be a Tamil activist working to destabilise the unitary Sri Lankan state. Those who departed Sri Lanka irregularly by boat will be considered to have committed an offence of departure other than via an approved port, under the *Immigrants and Emigrants Act (1948)* (the I&E Act). They will be charged, photographed, fingerprinted and a statement will be taken from them. If a suspected former LTTE member they will be asked about their activities abroad. At the earliest available opportunity, they will be transported to the closest Magistrate's court where the next steps will be determined. Apprehended individuals can remain in police custody at the Criminal Investigation Department's (CID) Airport Office for up to 24 hours after arrival. Where a Magistrate is not immediately available (for example on a weekend or public holiday) they may be detained for up to two days in an airport holding cell. DFAT is not aware of mistreatment of returnees during this process. While facilitators and organisers of people smuggling ventures are usually refused bail and normally receive a prison sentence, mere fare-paying passengers are normally granted bail and fined, usually less than \$200 Australian. A guilty plea will attract a fine which can be paid in instalments and then they will be free to go. If not pleading guilty they will usually be granted bail on the basis of personal surety or guarantee by a family member and will need to wait for the family member to collect them. They will be required to appear in a court closest to where the offence occurred and may also be called as a witness. This will involve legal and transportation costs and the cumulative costs can be high. The process can also suffer from protracted delays. The UK Home Office report on Tamil Separatism refers to a source that reported that they did not believe there was a distinction between Tamil and Sinhalese returnees and while there may be isolated cases, there was no systematic policy of discrimination.
33. Based on the country information above I accept that as part of the standard procedures for returnees the applicant will be processed by several government agencies and is likely to undergo additional identity checks by police on account of his return on a temporary travel document (his passport has expired). I consider that he would very likely be charged under the I&E Act for departing illegally, charged, photographed, fingerprinted, and would have a statement taken and would then be transported to the closest Magistrate's court at the earliest available opportunity. He may be held at the CID's airport office for up to 24 hours after arrival and may be detained for up to two days in an airport holding cell if a Magistrate is not immediately available (for example, on a weekend or public holiday) although as discussed above I do not consider the applicant has an adverse profile of interest and I do not consider he would be otherwise detained by authorities. He has not said he was anything other than a passenger on a people smuggling boat. If he pleads guilty, he will likely be issued with a fine (which can be paid in instalments) and will then be free to go. If he pleads not guilty, he will

¹⁵ UK Home Office, 'Country Policy and Information Note Sri Lanka: Tamil Separatism', May 2020, 20200527172009; DFAT, 'DFAT Country Information Report Sri Lanka', 4 November 2019, 20191104135244.

likely be granted bail on the basis of personal surety or guarantee by a family member and would have to wait for a family member to pick him up. There is nothing to indicate a family member would be unable or unwilling to do this. He would subsequently be required to appear in court. The cumulative legal and transportation costs associated with this can be high, and the process can suffer from protracted delays, although based on his profile noted above, I am not satisfied this and the fine would threaten the applicant's capacity to subsist even taking into account the initial reintegration issues he may experience in terms of finding suitable employment on his return.

34. Overall, based on the country information above I accept that on account of his illegal departure that the applicant may be charged, photographed, fingerprinted, have a statement taken, be briefly detained, fined, have to appear in court and is likely to incur associated legal and transportation costs, although based on his noted profile and circumstances I am not satisfied that this would threaten the applicant's capacity to subsist or otherwise amount to serious harm. Furthermore, I am not satisfied that the relevant laws and procedures dealing with those who depart Sri Lanka illegally are discriminatory or intended to apply or are applied or enforced in a discriminatory manner.

35. I am not satisfied the applicant has a well-founded fear of persecution on account of the reason or reasons claimed.

Refugee: conclusion

36. 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

37. 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

38. 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.

39. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

40. For the reasons already discussed I accept the on account of his illegal departure that the applicant may be charged, photographed, fingerprinted, have a statement taken, be briefly detained, fined, have to appear in court and is likely to incur associated legal and transportation costs. However, I am not satisfied that these circumstances amount to 'significant harm' as defined for the purposes of s.36(2A). There is not a real risk the applicant would be arbitrarily deprived of his life or subject to the death penalty on his return or be subject to torture. Furthermore, the evidence before me does not support a conclusion that there is an intention to inflict severe pain or suffering, pain or suffering that could reasonably be regarded as cruel or inhuman in nature or to cause extreme humiliation.
41. As detailed above, I accept that as an asylum seeker returning to Sri Lanka the applicant may face initial reintegration issues in terms of difficulties finding suitable employment and delays in obtaining necessary documentation however, I am not satisfied that these circumstances amount to 'significant harm' within the meaning of s.36(2A) of the Act even when taking the abovementioned circumstances into account in relation to illegal departure.
42. In considering the applicant's refugee status I have otherwise concluded that there was no 'real chance' the applicant would suffer harm on his return to Sri Lanka for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm

Complementary protection: conclusion

43. 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.