

1301023 [2013] RRTA 464 (15 July 2013)

DECISION RECORD

RRT CASE NUMBER: 1301023

DIAC REFERENCE(S): CLF2012/200068

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Melissa Bray

DATE: 15 July 2013

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2012, the delegate refused to grant the visa [in] January 2013 and the applicant applied for review of that decision [in] January 2013. He appeared before the Tribunal [in] June 2013 to give evidence and present arguments, assisted by an interpreter in the Tamil and English languages, and his representative (who attended by telephone, with assurances of privacy). The representative made detailed written pre-hearing submissions, and, at the hearing's end, confirmed that she continued to rely on them. She did not propose further questions be asked of the applicant.
3. The evidence before me is contained on the Department's and Tribunal's files relating to the protection and review application respectively, comprising written statements and arguments to the Department by the applicant and representative; the delegate's decision (which describes the applicant's audio-recorded oral evidence to the Department); material provided in support of the application (cited below where relevant), and the applicant's oral evidence to the Tribunal (audio-recorded). The applicant provided the decision record to the Tribunal for the purpose of the review.

BACKGROUND AND PROTECTION CLAIMS

4. The issue before me is whether the applicant has a well-founded fear of being persecuted for reasons of race, political opinion or membership of a particular social group if he returns to Sri Lanka, or otherwise meets complementary protection requirements.
5. According to a detailed written statement to the Department, the applicant says he is a Tamil of Hindu religion, born in [year deleted] in [Village 1] in Puttalam District, North West province, Sri Lanka. He says tension and fear were high in Puttalam in August 2011 following a spate of grease devil (or greaseman) sightings and attacks, where the Tamil and Muslim public were targeted and perceived the authorities were enabling or protecting the assailants. In this context, he claims he witnessed the axe-murder of a policeman – in revenge for the police injuring some villagers with gunfire - during an incident over grease devils in August 2011, when he was a student living with his aunt in Puttalam.
6. The applicant wrote that he was a bystander watching everything going on when the police started hitting him in the back and he ran away. Anyone who had witnessed the incident was harassed by police – some people were detained and taken away. Two days later, he was at school when the police came looking for him at his aunt's house. They detained all Tamil and Muslim boys who had witnessed the incident and questioned them. When he returned, his aunt told him the police were looking for him so he went to stay at his parents' house. The police asked for him again, and the aunt gave his address under threat of her life, then warned the applicant by phone. He relocated to his uncle's house in [village deleted] and stayed in hiding there for 4 to 5 months – he heard other Tamil boys who had been taken for questioning after the incident had never returned. His family decided it was no longer safe for

him in Sri Lanka as the police continued to look for him, and if found, he would be detained, tortured and maybe killed by the police/SLA/CID. He could not relocate because the authorities have a very good communication network – wherever he registered they would track him down. He cannot return – because he fled, the authorities will say he has something to hide. Tamils who flee are taken straight from the airport when they arrive to be questioned and tortured. The authorities will know his name and find him and punish him in a cruel way because he tried to flee.

7. The applicant believes some Tamil boys (friends of his and neighbours of his aunt) were detained for their witnessing of the murder - they told his aunt they gave the applicant's name to police during questioning. His aunt says the authorities threatened her life to secure information about his location. The applicant says he fled his aunt's house and hid first with his parents, then his uncle, then grandfather over the period of months up to May 2012. CID came repeatedly to his parents' home looking for him (in August 2011, repeatedly in 2012, and April 2013), but he evaded the attention of the authorities, and left Sri Lanka unlawfully by boat, in fear for his life.
8. According to the representative's pre-hearing submissions, and the applicant's subsequent oral account at the hearing:
 - In or around April 2012, the applicant called home and was unable to reach his parents, so phoned his uncle. The applicant learned that in June 2012, the SLA visited the parents' home asking his whereabouts. His father said he did not know. The SLA said the father would need to attend police station when asked. In July 2012, the SLA phoned the father and asked him to attend for questioning – he did not do so as he feared he would be harmed. In Aug 2012, the SLA attended the parents' home, arrested applicant's father and took him to the station and beat him. In April 2013, the father attended hospital in relation to his injuries (a doctor's letter accompanied the submission). In May 2013 the applicant contacted the father by telephone, and he confirmed the above incident and said had not wanted to worry the applicant.
9. The applicant also claimed at the hearing – though he did not at all in his written statement to DIAC – that:
 - the authorities in Puttalam suspected he was an LTTE supporter, because he is Tamil, and they will have imputed pro-LTTE and/or anti-government views to him due to his resistance to questioning; and
 - he alone knows the identity of the perpetrators of the murder – who are Muslims - and that he fears if he is forced to name them – including in court - a local Puttalam MP and his Muslim supporters will seek revenge on him, and beat or possibly kill him. The applicant also believes the five in custody have 'pointed the finger' at him as the policeman's murderer.
10. The applicant now says he fears he will be harmed on return to Sri Lanka, either by:
 - the authorities (including the police, CID and the SLA) in his home area in Puttalam, who want to question him for his knowledge of the perpetrators, or otherwise detain him in relation to the murder. The authorities will already have imputed to him anti-government views and LTTE connections because he is Tamil and evaded contact with the police. His existing adverse interest profile – and the risks to him - will be

elevated by his illegal departure and Tamil race (and as his representative argues, his return as a failed Tamil asylum seeker). These factors will add to existing suspicions of LTTE connections. He fears this cumulative profile will lead to detention, beating/torture, cruel treatment and possibly death;

- Muslim supporters of a Puttalam-based MP, who is connected to six people who have been arrested by police in relation to the policeman's murder. They will seek retribution against the applicant – who is the only witness who can identify the murderer/s. If he names the person/people (who is/are aligned to the MP) in court, he will be beaten or otherwise seriously harmed.

FINDINGS AND REASONS

Assessment of Refugee Claims

11. I accept, based on copies of his Sri Lankan passport and other identity documents, that the applicant is a Sri Lankan national, and the protection claims are assessed in relation to Sri Lanka. There is no suggestion the applicant has a relevant right to enter and reside in any third country. I also accept the applicant is of Tamil ethnicity, having regard to the cumulative evidence and the applicant's reliance on a Tamil interpreter.
12. I accept generally that events relating to grease devils occurred in Puttalam – and elsewhere in Sri Lanka – around mid-2011, and that the events, public reaction and the killing of a policeman occurred in August 2011 - generally as described by the applicant in his written statement. I attach no weight to the untranslated news report provided by the applicant to DIAC regarding the events, as I cannot establish its contents. However, his description is generally consistent with news reports before me (below), as is the applicant's oral account at the hearing that six people were arrested in relation to the murder. According to RRT Country Advice LKA42125 (in relevant part regarding Grease Devils in Puttalam),

Sources reported 'grease devil' activity in August 2011 in the town of Puttalam [...]. On 29 August 2011, *BBC News* reported the claims of a Puttalam local that 12 incidents involving intruders thought to be 'grease devils' had occurred in the previous week. A Puttalam traffic police officer was reportedly killed by a mob in Puttalam who accused him of harbouring a 'devil'. According to *BBC News*, the 'devil' was apparently just a drunken fisherman who had been apprehended.¹ *Reuters* reported that "[a]nother officer and five other people were hurt in two separate incidents in the northwestern Sri Lanka town Puttalam, after residents gave chase to a suspected 'grease devil'".² According to *Global Tamil News*, 33 people were arrested by the Puttalam police for their alleged involvement in various 'grease devil' incidents, including the killing of the police officer and the assaults of other police officers.³

13. Based on education documents he provided, I give the benefit of the doubt that the applicant studied in Puttalam in the broad period to which these events – and his claims - relate. I therefore give the benefit of any doubt in accepting that the applicant was personally present and witnessed the policeman's killing as a bystander in a large crowd. I attach some weight to

¹ Haviland, C 2011, 'The mystery of Sri Lanka's 'grease devils'', *BBC News*, 29 August
<<http://www.bbc.co.uk/news/world-south-asia-14673586>>

² Sirilal, R and Aneez, S 2011, 'Police officer killed in Sri Lanka "Grease Devil" riot', *Reuters*, 21 August
<<http://www.reuters.com/article/2011/08/21/us-srilanka-devils-idUSTRE77K2BX20110821>>

³ 'Grease devils: 33 arrested in Puttalam' 2011, *Global Tamil News*, 24 August
<<http://www.globaltamilnews.net/GTMNEditorial/tabid/71/articleType/ArticleView/articleId/66096/language/en-US/Grease-devils-33-arrested-in-Puttalam.aspx>>

the letter of [name deleted], Attorney, Puttalam (dated July 2012, DF 21) as supporting the view the applicant witnessed a police officer being killed and “wishes to stay in Australia and continue his studies and fears if he returns that his free movements may be curtailed disturbing him in his studies”.

14. However, I discussed with applicant at the hearing some serious concerns as to the plausibility of his overall account of the ensuing police/CID or other claimed interest in him and his father – either as a witness or suspect. Having considered his comments at the hearing on these matters (in the points below), I do not accept the overall account for the following reasons.
15. First, the applicant agreed at the hearing that he witnessed the murder as a bystander in a crowd. In his written account to DIAC, there is no logical trigger for the police to identify him personally – as one of many observers/bystanders - as being of concern or having vital witness knowledge. Further, I find the claimed reasons for police/CID interest in the applicant – either as witness or perpetrator – implausible, given the applicant’s oral evidence at the hearing that six people were arrested in late 2011 in relation to the murder. As I told the applicant at the hearing, I question why the applicant’s ability to identify the perpetrator/s would be sought if the suspects were already identified to the extent of being arrested and in custody. Given these matters and findings elsewhere, I do not accept there is any real chance the applicant will be forced to identify the perpetrators to the police or in court or, therefore, face resultant retaliatory harm from the MP or his Muslim supporters in Puttalam.
16. Next, I find contradictory and therefore unreliable the applicant’s account that Tamil boys who were his aunt’s neighbours told her they gave police the applicant’s details, as the applicant has variously claimed these boys were detained and never heard of again (as per the written statement), and later, that they were released and spoke to the aunt (as told to DIAC, according to the decision record the applicant provided to the Tribunal). When this contradiction was put to the applicant at the hearing, he gave an incoherent explanation linked to the Puttalam MP’s supporters and/or those held in custody. I find this last explanation does not satisfactorily account for the inconsistency regarding the Tamil boys or how the applicant’s name came to be known to police. The inconsistency and evolution of his various explanations leads me not to accept that the applicant’s Tamil friends near his aunt’s house are detained, or that his name was given to the authorities by any party.
17. I find unreliable – and therefore do not accept - the account that the applicant was suspected of involvement in the murder after those in custody - supporters of a Puttalam MP – accused the applicant, or that he was suspected because he was Tamil and therefore imputed with LTTE connections, or that police alleged his involvement to protect those in custody for the murder (due to allegiance with the MP). These matters were not referred to at all in the written claims to DIAC, and could reasonably be expected to be raised given they now form core claims, and given the applicant was legally represented and gave a fairly detailed written sequential account of his claims. I do not accept the matters were not mentioned because he was not given the opportunity, or because - in detention - the applicant was told to keep his account short, or because he feared the claims would be communicated back to the Sri Lankan government. I have formed this view given the applicant’s account of his protection claims was made to a legal representative in the context where the applicant claimed to have fled in fear for his life and was seeking protection, and the claims were discussed in private. I had regard to the applicant’s argument that the authorities sometimes escalate charges against Tamils – but given the findings above that he is not a wanted witness or suspect, I do not accept that has been the case here.

18. Further, I find the CID patterns of visits/enquiries described by the applicant appear sporadic (in November 2011, February 2012 and July/August 2012 at his parents' house in [Village 1]) and misaligned to the authorities' claimed intense interest in the applicant as a key witness to murder or alternatively, a suspected perpetrator. This, taken with the cumulative findings above, leads me not to accept the enquiries occurred. It follows that I do not accept the applicant's argument that the authorities in Puttalam will impute LTTE support to the applicant because he avoided questioning.
19. As I foreshadowed at the hearing, I find it implausible that, if police threatened the applicant's aunt's life to obtain the applicant's address, that they could not use their resources to locate the applicant at or near the homes of respective family members: regardless of whether he hid and nobody else knew or reported his whereabouts; regardless of his whereabouts at the actual time of police enquiry (including fishing with his father or playing volleyball); particularly if they sought the applicant for specific witness evidence or as a suspect, and particularly given the applicant's account of the strong interconnectivity of the authorities throughout Sri Lanka. Given these findings, I am not willing to accept uncritically – and do not accept – that the aunt was questioned or threatened by police in relation to the applicant.
20. Further, I do not accept the applicant's account of police or SLA interest in, and mistreatment of, his father in mid-2012, given the late introduction of this evidence and given the multiple concerns (above) about the plausibility of police interest in the applicant. I find it implausible that the father, who the applicant told me knew he fled Sri Lanka in fear and was seeking protection in Australia, would delay from August 2012 to April 2013 before telling the applicant about being detained for two days and beaten by police. I have formed this view given the applicant's account that the father knew he (the applicant) had fled for his life and was seeking protection, and given the police interest in the father was claimed to be overtly connected to police interest in the applicant. In these circumstances, the father might reasonably be expected to appreciate the relevance and importance of telling the applicant - even if he did not wish to worry him, and even if the applicant cried during phone calls from Australia and was the only son of the family. As I foreshadowed to the applicant at the hearing, I accept the hospital document relating to the father supports the view the father was [treated] in April 2013. However, I attach very minor weight to it as supporting the account of the circumstances and causes of harm, which were self-reported by the father, around six months after the claimed police beating. I accept the father may have been [treated] at times in Kandy, but am not willing to accept uncritically (and do not accept) the applicant's assertions as to the causes.
21. For the cumulative reasons above, I do not accept the applicant has ever been sought by police (or SLA or CID) for questioning or is suspected of any role in relation to the policeman's murder in Puttalam in 2011. It follows I do not accept the applicant's father was summoned, questioned, threatened or beaten by the SLA (or police or CID) in 2012, given the applicant's oral evidence at the hearing was that the interest in the father was exclusively based on adverse interest in the applicant. Nor do I accept the applicant is known or of concern to supporters of the Puttalam MP or his Muslim supporters or those under arrest or in custody in relation to the murder.
22. Given the findings above, and noting the applicant's stable and ongoing family presence in the district, and his ongoing attendance at school in Puttalam for many years, I find it implausible that CID would impute LTTE connections to the applicant simply because he was Tamil. The cumulative accepted evidence and claims before me do not at all suggest the

applicant or his father have been suspected of LTTE connections in the past – and as I foreshadowed to the applicant at the hearing – I do not accept there is a real chance the applicant would be imputed LTTE connections, given his recent stable presence in Puttalam district as a school student, and his family’s stable presence in [Village 1]. (I consider below whether the applicant’s departure, asylum claim and Tamil ethnicity might give rise to harm if he returns.)

23. Having not accepted the account that the applicant is wanted by police in Puttalam and has evaded questioning, I find there is no logical remaining basis on which the authorities would impute anti-government views to the applicant in relation to his role as one of many witnesses to the policeman’s murder in 2011. There is nothing in the accepted evidence about the applicant’s situation in Puttalam, prior to his departure, which could logically position him as a vocal or political critic of the government.
24. At the hearing, the applicant said if I did not believe him I was free to make enquiries in Sri Lanka. As I told him, it is open to him to make his case and he has given detailed oral evidence and material in support of his claims. Given the opportunity to nominate witnesses to attend the hearing, neither the applicant nor representative did so. There is no enquiry I could make with the Puttalam MP or the authorities which would not breach the applicant’s privacy and/or give rise to potential *sur place* protection claims. The above findings are made on the evidence before me, based on matters of plausibility canvassed at the hearing.
25. Having regard to all the claims, evidence and arguments regarding the above matters, for the cumulative reasons above, I find the applicant had no adverse profile with – and was not of interest or concern – to the authorities in Puttalam (or the Puttalam MP or his supporters or those under arrest for the murder) prior to his departure from Sri Lanka in May 2012, for any of the reasons advanced by him.
26. At the hearing, the applicant said he had no fear of return in relation to grease men, other than the reasons considered above. It follows I find there is no sound basis in the accepted evidence for finding he faces a real chance of harm, now or in the reasonably foreseeable future, in Puttalam, for any reason associated with grease men or his witness role in 2011 – including as a member of any particular social group where his ethnicity, or the stated anti-Singhalese nature of the murder, or his residence in any particular road in Puttalam as a young Tamil male and/or witness is taken to be a characteristic factor, and including in relation to his stated fears from the Puttalam MP and/or his Muslim supporters.
27. Accordingly, I find the applicant’s stated fears of being detained, beaten, tortured, killed by Sri Lankan authorities in Puttalam - for any of the reasons advanced by him regarding the period prior to his departure - are not well-founded.

Treatment of Involuntary Returnees to Sri Lanka

28. I have considered whether the applicant faces harm if returned to Sri Lanka due (individually or together in any combination) to the reasons advanced relating to his Tamil race, his illegal departure and asylum claim in Australia.
29. As I foreshadowed to the applicant at the hearing, I find UNHCR 2012 Guidelines reliable and indicative that Tamil ethnicity alone is not necessarily predictive of vulnerability to harm for returnees to Sri Lanka. There is nothing in the accepted evidence in the applicant’s or family’s circumstances which is suggestive of past persecution on the basis of ethnicity alone.

On these bases, I find the applicant does not face a real chance of serious harm in Sri Lanka by reason of his ethnicity alone, or any imputed political opinion arising from his ethnicity alone, or his membership of any particular social group 'Tamils in Sri Lanka', now or in the reasonably foreseeable future.

30. I have nevertheless considered how his race might interact with the residual triggers which the applicant argues will give rise to harm – namely, the nature of his departure – which he argues will give rise to LTTE imputations - and his asylum claim here, which he says will interact with his past adverse profile in Puttalam to produce harm.
31. I accept the applicant, if returned, will face – as many do - detailed questioning by the Sri Lankan authorities (including CID) to establish his identity and place of residence, and assess any risk associated with his re-entry. The representative cited a BBC news report on failed asylum seekers returning to Sri Lanka from the UK in late 2012 as indicating those who left illegally were “each questioned by CID, who exchanged faxes with government officials to clear their entry”. However, as I foreshadowed to the applicant, even accepting that Tamils who depart unlawfully and are assumed to be failed asylum seekers are questioned, the questioning itself is not necessarily indicative of harm. I have considered the chances of harm to the applicant arising from administrative questioning – which he argues will flow from LTTE imputations arising from his illegal departure and/or his status as a returning Tamil failed asylum seeker.
32. I asked the applicant what made him think the authorities imputed LTTE connections to those who left Sri Lanka illegally. He said that after the war, there were not many LTTE whose whereabouts were not known, but some were overseas. He left illegally after the war, and people in the LTTE were Tamils, as he is. I have had regard to the representative’s arguments that UNHCR guidelines suggest particular vulnerability to risk for young Tamil men originating from the North and East due to their suspect affiliation with the LTTE. I accept – as argued (at DF folio 96) – that the Canadian Immigration and Refugee Board *refers* to information in a submission to the Board suggesting that the Sri Lankan authorities view “any Tamil who fled the country in an unauthorised way must be an LTTE sympathiser”. However, I do not accept the Board explicitly accepts or endorses that assertion, which is made in a submission to the Board. I do not find reports which quote the Sri Lankan High Commissioner to Australia as saying certain organisations are funding the travel of Tamil asylum seekers – is supportive, suggestive or determinative that the Sri Lankan authorities uniformly impute LTTE support to all who travel by boat to Australia. I accept the Freedom From Torture source cited by the representative suggests risks – including of detention and/or torture - to some returnee Tamils where they are imputed with LTTE connections. I have considered how these risks might extend to the applicant in his personal circumstances.
33. As I foreshadowed to the applicant, he has lived habitually in the North West and - even accepting the government authorities seek generally to identify returnees with LTTE connections, including through questioning at the airport - I find there is no more than a remote chance they would attribute such connections to the applicant personally due to his mode of departure, given his evidence that he possesses identity documents (including a passport in his name), has a family living stably in [Village 1], and has himself lived in Puttalam with stability, attending high school throughout the period of his residence there. On these bases, and given the findings elsewhere that neither the applicant nor his family were suspected of LTTE connections in the past in Puttalam, I find the applicant’s stated fears of imputed LTTE opinions to be not well-founded.

34. Asked why the government might otherwise be concerned and/or motivated to harm the applicant if it thought he sought asylum here, the applicant said it was because he did not attend police enquiries and left the country illegally (which he said – above - posed specific risks of LTTE imputations). Asked if he expected consequences besides those mentioned, he said “I think that it (the stated harm) will happen”, and in Sri Lanka – “they beat first then enquire” He said even if he was not harmed on return due to the asylum claim, he would be harmed in Puttalam (in relation to his other claims, for the reasons advanced).
35. I asked the applicant why he thought the government might be motivated to harm him as a failed asylum seeker if he returned - even accepting the arguments and information provided by the representative (such as from Amnesty International) indicating the Sri Lankan government lacks tolerance of political debate and criticism against it. He said in Sri Lanka, attacks on political figures (such as Ministers and MPs) were reported, but people “like us” were being harmed, it was not well known to the media. For example, his father had been beaten, but it was not reported. Asked how he thought that related to his case, he said if he was refused and returned, whatever happens to him will not be reported. He said even if he was not harmed on return as a failed asylum seeker, he would face harm in Puttalam because he was wanted by the authorities there.
36. I have considered the representative’s arguments and information regarding: the risks – including abduction and torture - to Tamil returnees due to their political activities or LTTE sympathies; signs of increased nationalism and anti-west rhetoric in Sri Lanka; a greater than justifiable military presence in Sri Lanka, and reports that people are disappearing, facing arbitrary detention and are arbitrarily abused from those in authorities. However, I am not willing to extrapolate a real chance of harm – including in the form of death, abduction, detention, torture or abuse – to the applicant, having regard to the collective reasons above, the accepted evidence and his personal circumstances as described.
37. Even accepting that not all cases of harm might be reported in the Sri Lankan media, and having regard to the applicant’s account elsewhere that the authorities “beat first and ask questions later”, I do not find the accepted evidence or the arguments advanced provide a sound basis for finding the applicant – due to his failed asylum claim, or his membership of any particular social group of ‘failed Tamil asylum seekers’ - would be regarded as a political critic or adversary, or that he would face any more than a very remote chance of serious harm – in the form of beating and/or torture - for real or imputed anti-government views, having regard to his accepted background as a young Tamil male student from Puttalam with no adverse personal or family history or profile with the authorities or others.
38. I accept there have been UK court injunctions to prevent the removal of Tamil asylum seekers from to UK to Sri Lanka, in association with some reports of detention and torture. I do not find the injunction determinative or predictive of outcomes, or as suggestive that detention and/or torture is systemic for Tamils without LTTE or other elevated adverse profiles. However, having found there to be no real chance of the applicant having such a profile on return, I am not willing to extrapolate risks to the applicant, having regard to his personal circumstances.
39. I have not accepted the Sri Lankan authorities suspected the applicant of LTTE connections prior to his departure from Sri Lanka, and have found (for reasons above) the chances remote that the authorities would impute such connections to him on return due to his mode of departure or his ethnicity. Given these findings, and the observations above, I do not find there is anything in the accepted evidence, the arguments or the information advanced by the

representative which offers a sound basis for finding the applicant – having regard to his and his family’s particular circumstances, faces any real chance of being imputed with LTTE connections because he is a Tamil failed asylum seeker returning from overseas/the West/Australia.

40. Asked if there was anything else he wished to raise, the applicant said there had been opportunities for him to go abroad before and he had not. He could have done an IELTS test and gone to any country – if not for the problems he had discussed, he would not have come here. The journey by sea was difficult. Even if he was not accepted, if he returns and faces severe harm his family could not bear it. I recognise the magnitude and difficulty of the applicant’s journey here - however, as I explained to him, I am assessing his protection claims with specific regard to his evidence and relevant Australian law.
41. For all reasons above, and having regard to the individual and cumulative claims and the accepted evidence, I find there is no real chance the applicant faces persecution now or in the reasonably foreseeable future if he returns to Sri Lanka, by any of the parties claimed, for any of the reasons advanced by him. It follows I find his stated fears of returning to Sri Lanka are not well-founded.
42. I am therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

Assessment of Complementary Protection

43. Given the findings above, I have proceeded to consider whether the complementary protection requirements of s. 36(2)(aa) are met, having regard to: the accepted evidence (see above); the specific definition of significant harm and the attendant definitions in s. 5 of the Act; the interpretation of ‘real risk’ in *MIAC v SZQRB* [2013] FCAFC 33, and any relevant country information cited.
44. I have found elsewhere above, on the accepted evidence, that the applicant faces no chance of being detained, killed, or tortured by government authorities (including the police, SLA or CID) or supporters of the MP in Puttalam if he returns to Sri Lanka, for any reason arising from his stated past circumstances in Sri Lanka. I have found there is no real chance the applicant faces harm arising from his Tamil ethnicity alone, or taken together with his stated fears regarding his witnessing of a murder, his illegal departure, or his asylum claim in Australia. Further, I have found the chances remote either that the applicant will face serious harm – including torture - arising from questioning, including at the airport, on return, for any reason advanced by him, or that he will face any other harm having regard to his accepted evidence. I have found there is no real chance the applicant would be forced to identify the perpetrators of the policeman’s murder to police or in court, and face resultant retaliatory harm from the Puttalam MP and/or his Muslim supporters.
45. The reasoning for these findings applies equally in the context of complementary protection, having regard to the specific requirements of s. 36(2)(aa). Accordingly, having regard to the individual and cumulative claims, I find there are no substantial grounds for believing the applicant faces a real risk of significant harm – in the form of arbitrary deprivation of life, torture, or humiliating or degrading treatment or punishment – at the hands of government authorities (including the police, SLA and CID) if he is returned to Sri Lanka.

46. Given the findings above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

Other matters

47. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

48. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

RELEVANT LAW

49. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
50. In accordance with Ministerial Direction No. 56 made under s. 499 of the Act, the Tribunal is required to take account of the Department of Immigration's guidelines regarding refugee and complementary protection contained in PAM3.

Refugee criterion

51. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
52. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
53. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
54. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
55. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

56. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
57. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
58. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
59. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
60. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

61. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
62. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

63. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.