

**0804646 [2008] RRTA 432 (22 October 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0804646  
**COUNTRY OF REFERENCE:** Sri Lanka  
**TRIBUNAL MEMBER:** Nicole Burns  
**DATE DECISION SIGNED:** 22 October 2008  
**PLACE OF DECISION:** Melbourne

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

## **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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: 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.
14. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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 persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. 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.

17. 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.
18. Whether an applicant is a person to 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.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to his visa application the applicant was born in City A, Sri Lanka. He can speak, read and write Sinhalese and English. His ethnic group is Sinhalese. His religion is Buddhist. His parent and sibling live in City A, another sibling is overseas and his other parent is abroad most of the time.
21. The applicant came to Australia on another type of visa. [Information deleted in accordance with section 431 of the *Migration Act 1958* as it may identify the applicant]. His visa was cancelled in [year specified]. The Tribunal (differently constituted) affirmed the delegate's decision to cancel his visa on review, in [date specified]
22. The applicant claims that he will be the target of a bomb blast or a suicide attack if he returns to Sri Lanka. He claims that many people have been killed during 25 years of war, and the Tamil Tigers' have started to kill civilians in City A through "roadside bombs, claymore bombs, suicide attacks etc". He claims that "Sinhalese Buddhist people" living in City A are the main targets of the Tamil Tigers. He claims that the government will not protect him because they are at war with the Tigers, and it is difficult to identify a suicide attacker or "terrorist". He claims also that the crime rate and inflation has increased, and "people rob and kill people for money".
23. A number of news and analytical articles about the protracted conflict are on the departmental file.
24. The delegate refused the applicant a protection visa because she found that the applicant does not have a genuine fear of harm at the hands of the Tamil Tigers on the basis of his religion or ethnicity, nor that his fear is well-founded.

## **The Tribunal hearing**

25. The applicant appeared before the Tribunal to give evidence and present arguments.
26. The applicant said that he was born and raised in City A, Sri Lanka. He came to Australia in [date specified]. His parents are divorced. His parent lives in City A and runs a business. His parent and sibling live in City A, another sibling is overseas and his other parent is abroad most of the time.
27. [Information deleted: s.431].

The applicant said that his parent's business has been affected by the war.

28. The applicant said that his parent's business was affected by the war. [Information deleted: s.431]
29. The applicant said his parent has told him not to return to Sri Lanka because life is too unstable, especially for Sinhalese.
30. The Tribunal asked the applicant why he is afraid to return to Sri Lanka. He replied that he is afraid of suicide attacks and bomb blasts. He said last week there was a bomb blast in the fort area where one of his family friends was killed, along with several others. The applicant did not know the name of his family friend when asked. Instead he explained that it was someone that his parent knows.
31. The Tribunal asked if he thought the situation in City A had worsened since he arrived in Australia. He said that life is pretty unstable: you do not know what is going to happen next. He said he was worried about his safety when living in City A.
32. The Tribunal asked why he applied for a protection visa in [date specified], a significant period of time after the Tribunal affirmed the delegate's decision to cancel his other visa. [Information deleted: s.431].
33. The Tribunal noted country information that although there has been an increase in bombings and attacks in City A in recent years, the violence has been indiscriminate and therefore not specifically targeted at 'Sinhalese Buddhists'. The applicant replied that the LTTE always kill as many Sinhalese as they can. He showed numerous photographs on his laptop, purportedly of Sinhalese victims. When asked when and where these attacks occurred, the applicant replied "sometime in [year specified]" and "somewhere in the east". The applicant said he downloaded the slideshow from the Ministry of Defence's website several months ago: it has now been removed.
34. The applicant showed more graphic photographs saved on his laptop, claiming that they were of a massacre of Sinhalese farmers by the LTTE in Village B (which he said was somewhere in the northeast), sometime in [year specified]. He said the victims were ordinary farmers, who were not involved in the war.
35. The Tribunal noted country information that the largest percentage of victims of abductions and disappearances in Sri Lanka over recent years are Tamils. Whilst some Sinhalese (and Muslims) have been abducted, this has been rare. The applicant said most of the non government organisations in Sri Lanka support the LTTE (especially the Norwegians) through donations of cash and equipment. The LTTE want a separate country, which is why they are killing Sinhalese. Tamil politicians who support the government and Tamil civilians who do not support the war are also targeted by the LTTE. Recently an Indian fisherman who had been captured by the LTTE five years ago was released. He reported that most of the prisoners in his gaol were Sinhalese. He said nobody knows the truth.
36. The Tribunal asked the applicant if his parent and sibling were able to move around City A reasonably freely. He said his parent travels for work – within City A and outside the capital city – only when necessary. They have not visited the north east for several months. He/she still run their business, moves around the city and goes about

daily life, but because of the unstable security situation they have limited their activities. They hope to send his sibling away because of the unstable situation.

37. The applicant said his other parent was injured by the LTTE several years ago.
38. The Tribunal asked the applicant if he (or his family) had received threats from any persons or groups of persons in the past for any reason. He replied that his family used to receive threats from some of his parent's family members, over business matters. Often this was because his parent had to pay large amounts of money to the LTTE in order to operate their business. When they stopped paying the LTTE – that's when they took some of their assets. The Tribunal asked why his parent stopped paying the LTTE at this time. He replied that he did not know, his parent would not tell him.
39. The applicant submitted a number of news articles detailing recent bomb blasts in City A downloaded from 'Lankatruth' and Sri Lanka's Ministry of Defence website
40. The applicant asked for additional time (of one week) to provide written comments in response to country information discussed at the hearing, as well as more details about how his parent's lifestyle has become increasingly unstable in City A. To date this information has not been provided.

### **Country Information**

41. In assessing the applicant's claims against the Convention grounds, the Tribunal considered information from a range of external sources regarding the human rights situation in Sri Lanka in general, and the situation for Sinhalese Buddhists in City A in particular.

#### *The human rights situation*

42. Various sources indicate a significant deterioration in the human rights situation in Sri Lanka, due in part to an escalation of the armed conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE), and their proxies. A violent counter-insurgency campaign by the government has worsened the situation, resulting in abductions, disappearances, arbitrary arrests and extra-judicial killings. Strengthened emergency regulations have further weakened democratic institutions and contributed to an increased culture of impunity. Non-state actors, such as the LTTE, continue to abuse human rights. The US State Department's 2007 Report on Human Rights Practices in Sri Lanka relevantly reports that:

The government's respect for human rights continued to decline due in part to the escalation of the armed conflict. While ethnic Tamils composed approximately 16 percent of the overall population, the overwhelming majority of victims of human rights violations, such as killings and disappearances, were young male Tamils. Credible reports cited unlawful killings by government agents, assassinations by unknown perpetrators, politically motivated killings and child soldier recruitment by paramilitary forces associated with the government, disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of religious freedom, infringement of freedom of movement, and discrimination against minorities. There were numerous reports that the army, police, and progovernment paramilitary groups participated in armed attacks against civilians and practiced torture, kidnapping, hostage-taking, and extortion with impunity. The situation deteriorated particularly in the government-controlled

Jaffna peninsula. By year's end extrajudicial killings occurred in Jaffna nearly on a daily basis and allegedly perpetrated by military intelligence units or associated paramilitaries. There were few arrests and no prosecutions as a result of these abuses, although a number of older cases continued to make slow progress through the judicial system. Government security forces used the broad 2005 emergency regulations to detain civilians arbitrarily, including journalists and members of civil society.

The LTTE, which maintained control of large sections of the north, continued to attack civilians and engage in torture and arbitrary arrest and detention; denied fair, public trials; arbitrarily interfered with privacy; denied freedoms of speech, press, and assembly and association; and forced recruitment, including of children. The LTTE was also active in areas it did not control and during the year carried out at least one politically motivated killing in Trincomalee, a politically motivated suicide attack in Colombo, a suicide attack against a government army base near Batticaloa, a bombing of civilian shoppers in a suburb of Colombo, and bombings of civilian buses in the south.

43. Disappearances are also relatively frequent, and are rarely investigated. The same report goes on to say that:

The Sri Lanka Human Rights Commission (SLHRC), reportedly acting on instructions from senior government officials, did not provide statistics on the number of disappearances in the current year, but it reported 345 instances countrywide of politically motivated disappearances in 2006 by the state security forces, progovernment paramilitary groups, or the LTTE. According to NGOs, the number of disappearances sharply increased during the year. For example, the Foundation for Coexistence reported 880 disappearances.

...There was no progress on disappearances from 2006, including the May disappearance of eight Tamil men from a Hindu Temple in Jaffna District while security personnel were seen at the temple. There were no indictments, investigations, or prosecutions of security force personnel for past disappearances. The government disbanded the 2004 Presidential CoI dealing with 16,305 past cases of disappearance.

During the year the LTTE continued to detain civilians, often requiring individuals to fight government security forces against their will. Credible sources also alleged that the LTTE required individuals to purchase the right to leave LTTE-controlled territory.

In addition to politically motivated abductions, there were dozens of kidnappings-for-ransom, with payment demands ranging from \$20,000 (2.25 million rupees) to \$750,000 (60.6 million rupees). Although initially the problem appeared limited to the Tamil business community, in June and July dozens of Muslim businessmen were kidnapped for ransom, the vast majority of whom were released after ransom was paid. However, less than half of Tamil businessmen kidnapped for ransom were released after the ransom was paid. (US Department of State Country Report on Human Rights Practices 2007 (released March 2008), Sri Lanka)

44. Amnesty International's report on Sri Lanka for 2007 concurs that the human rights situation in Sri Lanka is dire as follows:

2007 was characterized by impunity for violations of international human rights and humanitarian law. Soaring human rights abuses included hundreds of enforced disappearances, unlawful killings of humanitarian workers, arbitrary arrests and torture. Lack of protection for civilians was a key concern as heavy fighting resumed between government forces and the Liberation Tigers of Tamil Eelam (LTTE). (Amnesty International Report 2008, Sri Lanka)

45. The International Crisis Group document “Sri Lanka’s Human Rights Crisis”, noted that:

The resumption of war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) has been accompanied by widespread human rights abuses by both sides. While the LTTE has continued its deliberately provocative attacks on the military and Sinhalese civilians as well as its violent repression of Tamil dissenters and forced recruitment of both adults and children, the government is using extra-judicial killings and enforced disappearances as part of a brutal counter-insurgency campaign. (International Crisis Group, ‘Sri Lanka’s Human Rights Crisis, Asia Report N°135’, 14 June 2007, Executive Summary)

46. Human Rights Watch World Report released in 2008 also highlights the growing culture of impunity in Sri Lanka. It states that:

Government security forces are implicated in extrajudicial killings, enforced disappearances, forcibly returning internally displaced persons (IDPs) to unsafe areas, restricting media freedoms, apparent complicity with the abusive Karuna group, and widespread impunity for serious human rights violations. Hundreds of people have been detained under newly strengthened Emergency Regulations that give the government broad powers of arrest and detention without charge. The regulations have been used to conduct mass arbitrary arrests of ethnic Tamils in the capital Colombo, as well as to detain political opponents, journalists, and civil society activists.

..The Sri Lankan government fails to hold members of the security forces and non-state armed groups accountable for abuses. Key parts of the criminal justice system, such as the police and the Attorney General’s Office, have not effectively investigated human rights violations or brought perpetrators to justice. Victims of abuses by security forces and non-state armed groups are apprehensive about complaining to the authorities for fear of retaliation, especially in the absence of functioning victim and witness protection mechanisms. A draft witness protection bill is still pending. (Human Rights Watch, World Report 2008 (released January 2008))

47. [Information deleted: s.431]

48. Amnesty International’s 2007 report on Sri Lanka highlights the elevated risks of violent and indiscriminate attacks:

At least two women and a 12 year old child died today when unidentified gunmen fired at a bus. Another person also died in the ambush. Around 26 others were injured in the attack, which took place in Buttala, south east of the capital, Colombo.

...

"These indiscriminate attacks are brutal. The victims are overwhelmingly people who are trying to go about their everyday lives, living in fear of attacks at any time, with the added untold suffering this brings to their relatives. The total disregard for the safety of civilians is completely indefensible," said Amnesty International.

(Amnesty International 2008, *Sri Lanka: Civilians continue to face deadly daily threat*, 11 July. <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-civilians-continue-face-deadly-daily-threat-20080711>)

49. Whilst the violence in City A is indiscriminate, the statistics indicate that Sinhalese are at far lesser risk of disappearances:



According to a finding by Law & Society, in collaboration with four local partners, including the Civil Monitoring Commission and the Free Media Movement, 540 persons disappeared across Sri Lanka from January to August 2007. Again, Tamils suffered disproportionately from disappearances – 78.89%, compared with 1.85% Sinhalese and 3.52% Muslims. Jaffna district was worst affected by disappearances (50.19%) followed by Colombo with 14.44%. (Asian Centre for Human Rights 2008, ‘South Asia Human Rights Index 2008’, ‘Sri Lanka’ 2008, ACHR website, 1 August <http://www.achrweb.org/reports/SAARC-2008.pdf>)

50. This information is corroborated by the following Human Rights Watch report in which it is stated:

Who is being targeted?

No matter who is responsible for the “disappearances,” the vast majority of the victims are ethnic Tamils, although Muslims and Sinhalese have also been targeted.

(‘Human Rights Watch 2008, ‘Recurring nightmare: State responsibility for ‘disappearances’ and abductions in Sri Lanka’, HRW website <http://hrw.org/reports/2008/srilanka0308>)

### *State power under the Emergency Regulations*

51. The extraordinary powers given to the security apparatus under the Emergency Regulations in place since 2005 has been discussed in a number of reports. The US State Department’s human rights practice report on Sri Lanka relevantly states that:

Following the 2005 presidential election, the government eliminated the Ministry of Internal Security and placed control of the 65,000-member police force, including the 5,850-strong paramilitary Special Task Force, under the Ministry of Defense. Senior officials in the police force handled complaints against the police. Few police officers serving in Tamil majority areas were Tamil and generally did not speak Tamil or English. Impunity, particularly for cases of police torture and disappearances of civilians within Hazes, was a severe problem. Several NGOs claimed that corruption was also a problem in the police force. An October assessment by the AHRC revealed the government’s tolerance of the pervasive corruption and incompetence of the police force as a major reason for the institution’s incapacity to investigate and prosecute cases effectively.

52. The “State of the World’s Minorities 2007 (Events of 2006)”, published by Minority Rights Group International in March 2007, Sri Lanka Flash Point, (dated November 2006) reported that “The Sinhalese Buddhists, who make up 70 per cent of Sri Lanka’s population, control the state machinery – the military as well as the government.”

### **FINDINGS AND REASONS**

53. Based on a copy of his passport on file, the Tribunal finds that the applicant is a Sri Lankan citizen.
54. The applicant, who is a Sinhalese Buddhist male from City A, fears that he will be harmed – possibly even killed – on return to Sri Lanka by the LTTE, by means of bombings or suicide attacks.
55. The Tribunal accepts that the applicant is a Buddhist of Sinhalese ethnicity from Sri Lanka. The Tribunal finds that the Convention ground of religion (Buddhist) and race (Sinhalese) are the significant and essential reason for the harm the applicant purportedly fears. The Tribunal accepts that the applicant is upset and worried about

the unstable situation in Sri Lanka. The Tribunal accepts that his parent is concerned for their children's safety and is keen to ensure they have future opportunities. The Tribunal does not, however, find that the applicant faces a real chance of persecution by the LTTE or any other actor due to the essential and significant reason of his religion or ethnicity or any other Convention reason if he returns to Sri Lanka now or in the reasonably foreseeable future. The reasons for this finding are outlined below.

56. At the hearing the applicant told the Tribunal of the problems his parent's business has suffered, largely due to the war. He claimed some of their assets have been destroyed: some by targeted bomb blasts, and others were forcibly taken by the LTTE. The applicant said that the LTTE took some of their assets because his parent had refused to pay the requisite 'tax' to operate their business.
57. Whilst the Tribunal accepts that the applicant's parent runs a business which has been affected to some extent by the conflict, it does not accept that these events occurred as claimed for the following reasons. The applicant submitted these claims for the first time at the hearing. He was general and vague about when the incidences occurred and where. Although country information indicates that the security situation has deteriorated and is particularly precarious in the north and east, the Tribunal finds it implausible that the applicant's parent's assets were targeted twice in exactly the same circumstances. The Tribunal also finds it implausible that additional assets were forcibly taken by the LTTE as claimed. That said, the Tribunal recognises that the reasons for extortion can be multifaceted and the mere fact that conduct can be characterised as extortion does not mean that it cannot come within the Convention definition of persecution. However, even if the Tribunal accepts that these two incidences occurred as claimed, the Tribunal finds, based on the applicant's oral evidence at the hearing, that the reason his parent's business was targeted was because they had stopped paying their dues to the LTTE, not for an essential and significant Convention reason.
58. The applicant claims, as a Sinhalese Buddhist, to fear harm by the LTTE if he returns to Sri Lanka because of a general deterioration in the security situation and a commensurate increase in attacks by the LTTE against civilians in City A. This is supported by independent country information which indicates that the overall human rights situation in Sri Lanka is dire, and that as the Sri Lankan government ramp up their offensive operations in the north, there has been an increase in attacks by the LTTE in the south, including City A, through bomb blasts (often using suicide attackers or claymore mines). Country information indicates that civilians are often caught up in these attacks.
59. Country information also indicates that LTTE attacks in City A are indiscriminate: civilians are not specifically targeted based on their religion or ethnicity. The applicant argued at hearing that although these attacks appear indiscriminate, the LTTE always aims to kill as many Sinhalese as possible: because they want a separate Tamil homeland. The applicant displayed photographs of numerous massacres of Sinhalese civilians over the course of the conflict to support his argument, as well as submitted various newspaper and internet articles (many directly downloaded from the Ministry of Defence's homepage) to support his claims. The Tribunal notes that the applicant was vague about the location and dates of the abuses depicted in the photographs, and unable to adequately explain why they were relevant to his specific claims. The Tribunal therefore gives the photographs little weight. Whilst the Tribunal

acknowledges a history of grave human rights abuses during the course of the Sri Lankan conflict, with victims from all ethnicities, the Tribunal, based on country information referred to earlier, does not accept that all Sinhalese Buddhists living in City A are targeted by the LTTE.

60. Additionally, there is nothing in the applicant's evidence to suggest that he – as a Sinhalese Buddhist – would be specifically targeted for harm if he returned to Sri Lanka (City A) by the LTTE. At the hearing the applicant spoke of a recent bomb blast in the fort area in City A claiming that a friend was killed but did not know his friend's name. Therefore the Tribunal does not accept that his friend was killed as claimed.
61. In terms of the chance of being abducted, the Tribunal notes country information suggests that Tamils are the victims in the majority of abduction cases, not Sinhalese. The applicant's comments in response - that nobody knows the truth – are not sufficient to convince the Tribunal otherwise. The Tribunal finds, given country information, that there is not a real chance of the applicant being abducted.
62. The applicant also claims to fear for his life if he returns to Sri Lanka due to an increase in crime and inflation. The Tribunal finds that this fear is not for an essential and significant reason related to the Convention.
63. The Tribunal has considered the applicant's claim that his parent was injured by the LTTE several years ago. Given that the incident so long ago, during the course of the applicant's parent's job, the Tribunal does not accept that the essential and significant reason for the harm was related to a Convention reason.
64. In relation to the applicant's claims that the authorities cannot protect him because they are at war with the LTTE and it is difficult to identify a suicide attacker, the Tribunal accepts that the government is at war with the LTTE, and that it is sometimes difficult to identify suicide attackers. However, country information indicates that security measures have increased in City A since the breakdown of the ceasefire agreement between the government and the LTTE and the introduction of the Emergency Regulations, which give more power to the security apparatus.
65. There is no country information that indicates that the applicant would be denied state protection for any Convention reason – i.e. who he is (a Sinhalese Buddhist) to such an extent to amount to persecution. Country information actually suggests that the majority of the state's security apparatus are of the same ethnicity as the applicant (Sinhalese). Therefore the Tribunal does not accept that the applicant would face a real chance of being systematically denied protection by Sri Lankan authorities as a result of his ethnicity or religion or any other Convention reason if he returned to Sri Lanka now or in the reasonably foreseeable future.
66. Accordingly, the Tribunal is of the view that the chance that the applicant would suffer serious harm at the hands of the LTTE if he returned to Sri Lanka because he is a Sinhalese Buddhist is remote and insubstantial. That said, the Tribunal accepts that the situation in the entire country is unstable and the future for many Sri Lankans uncertain. The Tribunal accepts that the applicant is likely to experience some restrictions on his freedom of movement and some level of inconvenience if he returns to Sri Lanka. However, the Tribunal finds that such restrictions on his freedom applies to the general

population and does not amount to persecution within the meaning of the Convention if he were to return to Sri Lanka now or in the reasonably foreseeable future.

## **CONCLUSIONS**

67. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958,

Sealing Officer's ID: ntreva