

1311465 [2015] RRTA 143 (13 April 2015)

DECISION RECORD

RRT CASE NUMBER: 1311465
COUNTRY OF REFERENCE: Sri Lanka
TRIBUNAL MEMBER: Shahyar Roushan
DATE: 13 April 2015
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 13 April 2015 at 3:38pm

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 dependant.

STATEMENT OF DECISION AND REASONS

BACKGROUND

1. The applicant is [age] years old. He is a national of Sri Lanka, a Hindu and of Tamil ethnicity. He arrived in Australia by boat [in] June 2012. He applied to the Department of Immigration (the department) for a Protection (Class XA) visa (protection visa) [in] November 2012
2. The applicant essentially claims that he is a supporter of the Tamil National Alliance (TNA) and assisted a candidate during the 2010 elections. Consequently, he was harassed and assaulted by members of the Tamil Makkal Viduthalai Pulikal (TMVP), a paramilitary group also known as the Karuna Group (Karuna). They asked him to stop his activities and threatened him with death. The applicant moved to Colombo and then travelled to Australia. He fears harm by Karuna.
3. The issues in this case are whether the applicant has a well-founded fear of persecution for one or more of the five reasons set out in the Refugees Convention in Sri Lanka and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm.

CONSIDERATION OF CLAIMS AND EVIDENCE

Evidence to the Department

Entry Interview

4. Following his arrival by boat, the applicant was interviewed (entry interview) by the department [in] July 2012. The information the applicant provided in connection with the interview is contained in a form (the entry form) signed by the applicant (see folios 78 to 88 of the departmental file). The interview was conducted with the assistance of an interpreter.

Application for a Protection visa

5. In a statement of claims (the statement) attached to his application for a protection visa the applicant claimed that his family supported The Liberation Tigers of Tamil Eelam (the LTTE), but they were not involved in 'fighting' for them. His [relative], who now lives in [Australia], occasionally gave them money. He was working at [a university] at the time and he would give the LTTE some of his salary, which was 'compulsory'.
6. A person by the name of [Mr A] was in charge of the Karuna camp in his village, [Village 1]. He operated with impunity and could do whatever he wanted. [Mr A] and his men carry arms and have killed many people. In 2006 the group was building a camp in the village and they asked the applicant to help them with [work]. Although he was sick, he was beaten and forced to go. He was never paid for this work. He was forced to do this type of work on five different occasions over about two years until the construction of the camp was completed. Even after the camp was built he had to sometimes go back to [do] things.
7. The applicant's family used to support the TNA. His father supported a candidate called [Mr B]. [Mr B] ran as a candidate in elections before the end of the war. The applicant's father put

up posters, attended meetings and accompanied [Mr B] to people's houses to convince them to vote for the TNA.

8. In the 2010 parliamentary elections the applicant was canvassing for a candidate called [Mr C]. He put up posters, organised meetings, decorated the meeting venues and promoted the party by visiting people's houses.
9. In March 2010 he was putting up TNA posters with three others when [Mr A] and his friends came and harassed him. The applicant and his colleagues were beaten with wooden sticks and they were told they had to stop working for the TNA. He managed to escape from [Mr A]. The applicant was advised by [Mr C] that there was no point in reporting the matter to the police.
10. In April 2010 [Mr C] won the elections and three days after the results were announced [Mr A] visited the applicant's house looking for him. The applicant was not home at the time. He told the applicant's mother that if he saw the applicant supporting the TNA again he would shoot him.
11. In May 2010 the applicant was playing cricket when [Mr A] came and slapped him on his face. [Mr A] then pulled out a pistol and pointed it towards him. There were many people around and they begged him not to shoot the applicant. After that the applicant stayed with [Mr C] or other friends. About two or three weeks later, the applicant moved to Colombo after his [relative], who resides in Australia, arranged a job for him in Colombo.
12. About a year after the applicant moved to Colombo, he started receiving threatening phone calls from [Mr A] on his mobile phone. He had no idea how [Mr A] had got hold of his phone number. [Mr A] told him that he knew where he worked and lived. He told him that he could 'take [him] down' in Colombo or whenever he returned to his village. At first [Mr A] called him every day and then it was 'less often'. The applicant visited his village three times between 2010 and 2012. On each occasion he stayed only for a couple of days and did not leave the house much.
13. The applicant fears being killed by [Mr A] if he were to return to Sri Lanka. He cannot live anywhere else because even in Colombo he was tracked by [Mr A] and he could be found by Karuna again.

Protection Visa Interview

14. The applicant was interviewed by a delegate of the Minister [in] April 2013. Where relevant the applicant's oral evidence to the delegate is discussed below.

Submissions and additional documents

15. In a submission, dated 17 April 2013, the applicant's representatives provided a summary of the applicant's claims and responded to a number of issues raised by the delegate at the interview.
16. It was submitted that the applicant is at risk of persecution even if he relocated to Colombo. He did not feel safe in Colombo, as he received threatening phone calls from [Mr A]. The submission referred to a 2011 report by the Immigration and Refugee Board of Canada stating that, while there is no legal requirement that outsiders in Colombo should register with the local police, police still do inquire into registration from Tamils and subject them to

extra scrutiny if they do not have documents with them. The report also stated that reporting instances of abductions to the police was particularly difficult for Tamils. The submission also referred to the 2012 UNHCR Eligibility Guidelines, stating that young Tamil men from the north and east of the country may encounter closer scrutiny during the police registration process.

17. It was further submitted that the applicant is at risk of harm as a failed Tamil asylum seeker. The submission referred to a 2012 Human Rights Watch (HRW) report relating to thirteen cases whereby failed Tamil asylum seekers had been subjected to arbitrary arrest and ill-treatment, including torture and sexual assault on their return to Sri Lanka. In several cases returnees were detained at the airport by CID officials. The submission also referred to the 2012 UNHCR Guidelines referring to, in turn, to HRW, Freedom from Torture and the Asian Human Rights Commission reporting 'recent' cases of Sri Lankan asylum seekers who were detained and ill-treated or tortured after being forcibly returned Sri Lanka from the UK, and the case of two brothers who were reportedly tortured in 2009 after being deported from Australia. It was submitted that the 2012 UK Operational Guidance Note for Sri Lanka, citing an English case, identifies Tamil ethnicity, previous record as a suspected or actual LTTE member or supporter and having made an asylum claim abroad as factors that would increase a person's chance of being detained at the airport. The submission also referred to a May 2010 Edmund Rice Centre report, a September 2010 Amnesty International report and a July 2011 group submission by Law and Society Trust referring to the detention and mistreatment of asylum seekers forcibly returned to Sri Lanka.
18. The following additional documents were provided with the submission:
 - Copy of the applicant's Certificate of Birth
 - Copies of the applicant's vocational and educational qualifications
 - Copy of a passport issued in the applicant's name [in] 2005
 - Copy of the applicant's Sri Lanka Driving Licence
 - Copy of a letter from [the applicant's employer, in] February 2012, stating that the applicant has been working with the organisation as a [occupation] since March 2010.
 - Copy of a letter from [Mr C in] July 2012, stating that the applicant is a supporter of the TNA and 'due to his active participation in order to canvass' for the TNA, he was subject to 'untold harassment life threats by unknown persons as he has felt that it is life risky to stay in Sri Lanka he has left to Australia' (sic).
 - Details of four persons, including names, dates of birth and boat ID numbers, who were allegedly forced to return to Sri Lanka and were persecuted in detention upon returning.

The Delegate's Decision

19. The delegate refused to grant the visa [in] August 2013. The delegate did not accept that the applicant faces a real chance of persecution for the reason of his race or religion. The delegate accepted that the applicant was a low-level supporter of the TNA. However, she did not accept that the applicant was a person of ongoing interest to Karuna or the Sri Lankan authorities, or that there is a real chance that he would face serious harm for the reason of his real or perceived political opinion. Nor did she accept that there is a real chance of the applicant being persecuted for the reason of his membership of a particular social group, including returned failed asylum seekers of Tamil ethnicity. The delegate accepted, however, that the applicant's family may have a profile which makes them vulnerable to criminal extortion and that there is a real chance of the applicant suffering persecution in [Village 1]

for reason of his membership of the particular social group of 'wealthy Tamils in eastern Sri Lanka'. Nevertheless she concluded that it would be reasonable for the applicant to relocate to Colombo or elsewhere within Sri Lanka.

Evidence before the Tribunal

20. The applicant was represented in relation to the review by his registered migration agent.

Pre-Hearing Submissions

21. On 8 January 2015, the applicant's representative provided the Tribunal with a detailed submission in relation to the facts of the case and the applicable law (see folios 49-80 of the Tribunal file).
22. The applicant's representative referred to reports from the Bar Human Rights Committee (March 2014), the Immigration and Refugee Board of Canada (February 2013) and Swissinfo and submitted that the applicant would face a 'real risk of persecutory harm' on return to Sri Lanka. The applicant's representative also referred to country information provided in the submission of 17 April 2013 and submitted that the applicant would face ethnic discrimination in Colombo and lacks familial networks. It was further submitted that he would be identified as a Tamil from eastern Sri Lanka, placing him at an elevated risk of suspicion and harm.
23. In a statutory declaration, declared on 8 January 2015 and submitted in support of the application for review, the applicant addressed the delegate's concerns in relation to the credibility of aspects of his claims. He also stated that he has been informed by his mother that the political situation in his area remains poor, and other sources have advised him of election related violence in [Village 1]. Karuna continues to operate with impunity in the area and they have demanded that everyone vote for the 'current regime of President Rajapaksa'. His father has been canvassing support for [Mr C] and has been involved in door knocking and attending meetings. He fears that the political situation in his home area and throughout Sri Lanka is unsafe and could deteriorate. Concerning relocation, the applicant stated that he received threatening calls from [Mr A] throughout 2011 and started to look for other places to go in order to escape 'these troubles'. He began an application for employment in [Country 2] and this is why he did not relocate elsewhere in Sri Lanka. He would find it difficult to relocate elsewhere in Sri Lanka, as a Tamil, due to discrimination, and it is difficult to live in other areas of the country without family support. He stated that he no longer remains in contact with his [relative] in Australia.

The Hearing

24. The applicant appeared before the Tribunal on 15 January 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil (Sri Lankan) and English languages. Where relevant the applicant's oral evidence to the Tribunal is discussed below.

Post-Hearing Submissions

25. In a submission, dated 30 January 2015, the applicant's representative submitted that, if returned to Sri Lanka, there is real chance that the applicant will suffer serious harm and significant harm in the form of being detained, tortured and killed. He fears this harm for the

reason of his Tamil ethnicity, his religion as a Hindu, his political opinion as a supporter of the TNA, his imputed and actual support for the LTTE and membership of a particular social group as a family member of wealthy Tamils in eastern Sri Lanka. It was submitted that his risk of harm and exposure is exacerbated by his profile as a Tamil failed asylum seeker. It was submitted that the applicant fears harm from Karuna, and particularly its local commander, [Mr A]. He also fears harm throughout Sri Lanka at the hands of the Sri Lanka military and its authorities.

26. The submission addressed the concerns raised with the applicant at the hearing and stressed that the applicant is aware of friends from his own village in Sri Lanka who have gone back to Sri Lanka and have been subjected to arrest, beatings and detention. There is a difference between what is reported and what actually occurs at the 'grassroots level'.
27. It was submitted that there are a number of reports of failed Tamil asylum seekers who have been subject to detention and torture by the Sri Lankan authorities. It was submitted that Tamil returnees are frequently imputed with pro-LTTE opinion and the authorities are highly suspicious of Tamils returning from abroad. It was submitted that, contrary to advice from DFAT, it is not safe for Tamils to return as failed asylum seekers. The submission referred to a 2014 report by the Bar Human Rights Committee of England and Wales; a February 2013 research response from Immigration and Refugee Board of Canada; a report by Freedom from Torture; UK Home Office's March 2012 COI report in relation to Sri Lanka and news reports sourced from the internet.
28. The submission also addressed the issue of internal relocation.
29. On 4 March 2015, the applicant provided to the Tribunal a news article dated [June] 2007, indicating the [Mr A] operates as the leader of the Karuna's faction in [Village 1] and that he had been assigned to kill the chairman of a local council in the east.

The Relevant Law

30. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.
31. 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).
32. 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.

33. 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').
34. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration. The Tribunal has had regard to DFAT's *Country Information Report – Sri Lanka* (3 October 2014); *Country Information Report – Sri Lanka* (16 February 2014) and *Thematic Report, People with Links to the Liberation Tigers of Tamil Eelam* (3 October 2014).

Analysis, Reasons and Findings

35. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Karuna

36. The Tribunal accepts that in 2006 the applicant was beaten and forced to work without pay on a number of occasions at a Karuna construction site. These experiences lasted until the completion of the construction of the camp was completed in 2008. The Tribunal further accepts that the applicant was a TNA supporter and that, in 2010, he was involved in the campaign to elect a TNA candidate, [Mr C]. The Tribunal further accepts that in March 2010 the applicant and his friends were putting up TNA posters when a person by the name of [Mr A], who was in charge of the Karuna camp in his village, beat them and asked them to stop working for the TNA. The Tribunal accepts that a month later, after [Mr C]'s victory in the elections, [Mr A] visited the applicant's house in the applicant's absence and told his mother that if he saw the applicant supporting the TNA gain he would shoot him. The Tribunal accepts that, in May 2010, the applicant was playing cricket when [Mr A] came, slapped him on the face and threatened to shoot him with a gun. The Tribunal accepts that after these incidents, the applicant stayed with friends for a short period of time before moving to Colombo.
37. The country information before the Tribunal indicates that, in recent years, there have been a number of reports of TNA candidates, as well as ordinary supporters and persons perceived to be supporters, being intimidated during election campaigns by persons working for the governing United Peoples Freedom Alliance (UPFA), as well as pro-government paramilitary

groups.¹ Whilst the applicant stated at the departmental interview that neither his father nor his brother, who had also carried out activities in support of the TNA had ever been harmed, the Tribunal is prepared to accept that the applicant's activities in support of the TNA had motivated [Mr A] to assault and threaten the applicant in March and April 2010. Concerning the incident in May 2010, at his entry interview, the applicant had stated that he and his friends were playing cricket when Karuna group came to the field and demanded to participate in the match. The applicant and his friends refused, resulting in the group becoming angry and assaulting the applicant. In his statutory declaration of 8 January 2015, the applicant stated that [Mr A] and his associates would regularly visit their cricket games and harass and intimidate those who were playing cricket. However, following the election, [Mr A] and members of the Karuna group visited the cricket grounds in May 2010 looking for the applicant. At the hearing, the applicant stated that [Mr A] came to the cricket field to play cricket on a regular basis over a number of years. In May 2010, when he saw the applicant on the cricket field, he got off his bike, slapped the applicant and threatened to shoot him. He also told the applicant not to support the TNA. When the applicant's evidence at the entry interview was put to him, he stated that when it came to playing cricket, no one liked to play with [Mr A]. This made [Mr A] angry and he blamed the applicant and two of his friends, who were all TNA supporters, for the reluctance of the others to include him in the game. The Tribunal finds the applicant's evidence in this regard unpersuasive. The Tribunal is of the view that, in slapping and threatening the applicant in May 2010, [Mr A] was motivated by his anger arising from being excluded from a game of cricket. Nevertheless, the Tribunal is prepared to accept that [Mr A]'s past encounters with the applicant in connection with the latter's support for the TNA would have played an essential part of [Mr A]'s motivation to harm him on the cricket field.

38. The applicant's evidence suggests that he was a low level support of the TNA and that he had ceased his activities after the 2010 elections. He did not claim that he had any intention of pursuing political activities at any level in the future. When it was put to him at the hearing that many Tamils in his home area support the TNA and he was asked why he was singled out by [Mr A], he stated that his father was also involved with the TNA and he had put up posters near [Mr A]'s office when others were reluctant to do so. While the Tribunal accepts these claims, it is difficult to accept that the applicant would be subjected to harm by [Mr A] or anyone else for the reason of his support his political opinion. Nevertheless, the Tribunal is prepared to accept that the combination of the applicant's past political support for the TNA, his activities during the 2010 elections and his personal disputes with [Mr A] on the cricket field may continue to put at risk of harm by [Mr A] and his associates.
39. On the basis of the evidence before it, the Tribunal finds that if the applicant were to return to his village, there is a real chance that he would be subjected to serious harm at the hands of [Mr A] and his associates.

¹ See, for example, 'Blue Brigade Have Asked For The Polling Cards Of Voters – Sampanthan Wrote To President Rajapakse', *Colombo Telegraph*, 6 September 2012, <http://www.colombotelegraph.com/index.php/blue-brigade-have-asked-for-the-polling-cards-of-voters-sampanthan-wrote-to-president-rajapakse/>;

'Attack carried out against TNA candidate in Batticaloa', *Lankasri News*, 22 August 2012, <http://www.lankasrinews.com/view.php?22AOld0acp5YOd4e2IMM202cAmB3ddeZBmK302eMAA2e4UY5naca2lOK42>; and US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 1.b.

Relocation to Colombo

40. The Tribunal has considered whether it would be reasonable for the applicant to relocate to an area of Sri Lanka, such as Colombo to avoid the harm he fears in his village.

TNA, LTTE and Political Opinion

41. The applicant moved to Colombo in May or June 2010. The Tribunal has doubts in relation to the applicant's claim that, about a year after the applicant moved to Colombo, he started receiving threatening phone calls from [Mr A] on his mobile phone. When asked at the hearing why [Mr A] would pursue him in this manner, he stated that ordinary supporters of TNA like him stand out more. Senior people are not heavily involved in external activities and people like him are under more visible surveillance. When pressed, he stated he was a bit bolder, which made [Mr A] angry. [Mr A] was not educated and did not think rationally. It was all about physical conflict for him, and guys like him (the applicant) attracted his attention. The Tribunal does not find these explanations satisfactory. The applicant was a low level supporter of the TNA. He put up posters, canvassed for the TNA and assisted with setting up the stage in gatherings attended by [Mr C]. He carried out these activities during the 2010 parliamentary election. He had no other involvement with the TNA and did not claim to have pursued any TNA related activities after 2010. The Tribunal finds it difficult to believe that a year after his departure from the village, [Mr A] had decided to track him down in Colombo and threaten him by phone because of his support for the TNA during the 2010 elections.

42. Even if the Tribunal were to accept that the applicant had, in fact, received threatening phone calls from [Mr A], his evidence suggests that the frequency of the calls had decreased from a call every two days to a call once month. He also claimed that [Mr A] had told him that he knew where he lived in Colombo and that he could 'take [him] down' in Colombo or whenever he returned to his village. The applicant did not claim that he had ever encountered [Mr A] during the two years that he was in Colombo or during the short trips that he had made back to his village, including the three weeks that he had stayed with his parents in [Village 1] immediately before his departure from Sri Lanka. The applicant claimed, however, that he began an application for employment in [Country 2] to escape his troubles. He claimed that this is why he did not relocate elsewhere in Sri Lanka. The tribunal finds this explanation unpersuasive. It is not at all clear why his intention to travel to [Country 2] has barred him from relocating within Colombo if he was concerned about [Mr A] and his threats. The Tribunal is not satisfied that the applicant seriously felt threatened by the phone calls, or that those making the calls seriously intended to act upon the threats. The Tribunal, therefore, finds that the threats in this case do not fall within s.91R(1)(b) and do not give rise to any real chance of persecution in the reasonably foreseeable future. As already noted, the applicant remained in Colombo until shortly before his departure from Sri Lanka in June 2012. During this time he continued to reside at the same address and work for the same employer. If [Mr A] or anyone else had any serious intention to harm him in any way, they had ample opportunity to do so between May/June 2010 and June 2012. However, nothing happened to the applicant. The Tribunal is not satisfied that there is a real chance that the applicant will be subjected to serious harm by Karuna generally or [Mr A] in particular if he were to relocate to Colombo.

43. As noted above, the applicant had no involvement with the TNA after he moved to Colombo. Nor did he claim that he has any intention of becoming involved, or pursue activities, in support of the TNA at the same level as he had in the past if he were to return to Sri Lanka.

There is no information before the Tribunal to suggest Tamil supporters of TNA in Colombo have been subjected to harm. The Tribunal is not satisfied that, if the applicant were to return to Sri Lanka and relocate to Colombo, there is a real chance that he would be subjected to serious harm by the Sri Lankan Army (SLA), the Sri Lankan authorities or anyone else for the reason of his past support for the TNA.

44. In her submission of 30 January 2015, the applicant's representative submitted that the applicant is at risk of harm due to his imputed and actual support for the LTTE. At no point did the applicant claim that he personally supported the LTTE. In his written claims to the department he stated that his family supported the LTTE, but they were not involved in 'fighting' for them. This support appears to have manifested itself in his [relative] occasionally giving some of his salary to the LTTE, which was 'compulsory'. His [relative] is now in Australia. The applicant did not claim that his family had supported the LTTE in any other way, and did not pursue this claim in any meaningful way at any other point throughout the process. More importantly, the applicant did not claim that he, or any other member of his immediate family, had ever come to the attention of the authorities, or had been harmed in any way due to their actual or imputed support for the LTTE.
45. The UNHCR Guidelines suggest that persons with certain profiles, other than prior residency within an area controlled by the LTTE, continue to require protection. Those at risk appear to be persons who have a certain level of LTTE links.² DFAT also refers to the Guidelines in emphasising that a person's real or perceived links with the LTTE may give rise to protection. However, whether a person is at risk of harm depends on the nature of the links.³ The decision of United Kingdom's Upper Tribunal on Immigration and Asylum in *GJ and Others (post-civil war: returnees)* Sri Lanka CG [2013] UKUT 00319 (IAC) refers to similar categories of persons at real risk of persecution or serious harm on return to Sri Lanka.⁴
46. The Tribunal is not satisfied that the applicant has a profile that would put him at risk of serious harm for the reason of his actual or imputed pro-LTTE political opinion. The Tribunal is not satisfied that he will be perceived to hold anti-government views or pro-LTTE links of a nature that would put him at a risk of serious harm. The Tribunal is not satisfied that there is a real chance that the applicant will be seriously harmed by the SLA, the Sri Lankan authorities or anyone else for the reason of his actual or imputed political opinion if he were to relocate to Colombo.

Being Tamil

47. The applicant has repeatedly claimed that he fears harm in Sri Lanka for the reason of his ethnicity. The Tribunal accepts that historically Tamils have faced discrimination in Sri

² UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December 2012, HCR/EG/LKA/12/04, <http://www.refworld.org/docid/50d1a08e2.html>.

³ DFAT, *Thematic Report, People with Links to the Liberation Tigers of Tamil Eelam* (3 October 2014). Those persons include persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka; former LTTE combatants or cadres; former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE; LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE; and persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.

⁴ Upper Tribunal (Immigration and Asylum Chamber) United Kingdom Country Guidance Decision in *GJ v Secretary of State for the Home Department (post-civil war: returnees)* Sri Lanka CG [2013] UKUT 319 (IAC).

Lanka, including barriers to education and employment. The sense of discrimination among the Tamil community was a primary driver of the civil conflict that gripped the country for many years.⁵ According to DFAT's most recent country information report, partly as a result of the conflict, successive Sri Lankan governments have made some efforts to address these ethnic and linguistic tensions through constitutional, legal and policy changes. There are no official laws or policies in Sri Lanka that discriminate against Tamils on the basis of their race, including in relation to education, employment and access to housing. There is also no government-sanctioned discrimination in the implementation of laws and policies in Sri Lanka. While Tamils can sometimes have difficulty communicating with the police, military and other Government authorities, DFAT has assessed that these practical difficulties are not due to official discrimination as such, but are the result of a lack of qualified language teachers, the disruption to civilian life caused by the conflict and the legacy of previous discriminatory language policies.⁶ The Tribunal accepts that Tamils continue to face a level of societal discrimination in Sri Lanka. The Tribunal also accepts that if a Tamil falls within the risk profiles referred to earlier, he or she is likely to be more vulnerable to 'arbitrary detention, abductions and forced disappearances'.⁷ However, the December 2012 UNHCR Guidelines stated that in light of the improved human rights and security situation in Sri Lanka 'there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country'.⁸ The applicant did not claim to have faced racially motivated harm in Sri Lanka, generally, or Colombo specifically.

48. In their submission of 17 April 2013 the applicant's representatives submitted that, according to an August 2011 TamilNet report, the Sri Lankan authorities had been engaged in registering Tamil youths in Colombo. They referred to the UNHCR Guidelines, which note that young Tamil men from the north and the east of the country may encounter closer scrutiny during the police registration process. At the hearing, the applicant also stated that his identity card would identify him as being from Batticaloa, raising questions as to where he is from and why he is Colombo. This could give rise to complications, such as people asking what a Tamil person is doing in Colombo. The Tribunal accepts that this might be the case and such a situation may arise. The Tribunal, however, does not accept that being subjected to scrutiny amounts to serious harm. For the reasons already outlined, the Tribunal does not accept that the applicant has a profile that would put him at risk of serious harm for the reason of his actual or imputed political opinion or any other reasons if he was subjected to scrutiny.
49. The Tribunal is not satisfied that, as his representative has submitted, the applicant faces a real chance of being seriously harmed by the Sri Lankan authorities or anyone else on account of his race as a Tamil if he returns to Sri Lanka and relocates to Colombo.

Being Hindu

50. The applicant has also claimed to fear harm for the reason of his Hindu religion. The applicant, however, did not claim to have suffered any harm in the past for that reason and he did not pursue this claim in his oral evidence to the Tribunal. There is no information before the Tribunal to suggest that Hindus or Tamil Hindus in Colombo experience harm for the

⁵ DFAT, *Country Information Report – Sri Lanka* (16 February 2015).

⁶ *Ibid.*

⁷ UNHCR, n2, above.

⁸ *Ibid.*

reason of their religion. The Tribunal is not satisfied that the applicant faces a real chance of being seriously harmed by the Sri Lankan authorities or anyone else on account of his religion if he returns to Sri Lanka and relocates to Colombo.

Wealthy Tamils

51. The Tribunal accepts that the applicant, due to his family's circumstances, may be perceived to be wealthy. The Tribunal further accepts that 'wealthy Tamils in eastern Sri Lanka' and 'wealthy Tamil landowners who are targeted for extortion' are particular social groups for the purposes of the Convention. While in their submission of 17 April 2013 the applicant's representatives stated that the applicant did not feel safe in Colombo due to the fact that there were abductions of wealthy Tamils occurring in Colombo, no further specific information was provided in this regard and the applicant did not meaningfully pursue this claim elsewhere in the process. The applicant did not claim to have experienced any harm for the reason of his membership of the named particular social groups in Colombo or in Sri Lanka generally.
52. The Tribunal has already dealt with the threats he claims were directed towards him by [Mr A] when he was residing in Colombo. There is no persuasive evidence before the Tribunal to suggest that there is a real chance that the applicant would be subjected to serious harm in Colombo at the hands of Karuna, the Sri Lankan authorities or anyone else for the reason of his membership of the particular social groups named, or any of their subsets, if he were to return to Sri Lanka and relocate to Colombo.
53. The Tribunal is not satisfied that there is a real chance that the applicant will be seriously harmed for the reason of his race, religion, actual or imputed political opinion or membership of the particular social groups of 'wealthy Tamils in eastern Sri Lanka' or 'wealthy Tamil landowners who are targeted for extortion' if he returned to Sri Lanka and relocated to Colombo.

Failed Asylum Seeker and Illegal Departure

54. The Tribunal accepts that the applicant has departed Sri Lanka illegally and that he will be returning to Sri Lanka as a failed asylum seeker. The Tribunal further accepts that, as noted in the applicant's representatives' submission of 17 April 2013, there have been reports that some Sri Lankan Tamils who have returned to Sri Lanka from UK and other countries have suffered abuse. The Tribunal has also considered the October 2011 Amnesty International report relating to the case of two brothers who were arrested, imprisoned and mistreated after being deported to Sri Lanka from Australia in 2009. However, there is no information before the Tribunal to suggest that the two brothers were Tamil and it is not clear why exactly they were subjected to the treatment reported. In her submission of 30 January 2015, the applicant's representative referred to more recent reports of abuse and mistreatment of returnees, including a report by the 2014 report by the Bar Human Rights Committee.
55. While some sources suggest 'a period of residence in the UK or other Western country may itself constitute a risk factor' for torture,⁹ other sources, including more recent sources such as DFAT, suggest that the principal focus of the authorities has been 'persons considered to

⁹ See, for example, Immigration and Refugee Board of Canada, *Sri Lanka: Treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; information on specific asylum cases, including the Tamil asylum-seeker boat that stopped in Togo, the return of Sri Lankan asylum seekers from Australia in 2012, and any cases of voluntary repatriation* (August 2011-January 2013), 12 February 2013.

be LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms'.¹⁰ Similarly, Freedom from Torture reported in 2012 that it was a combination of residence in the UK and an actual or perceived association with the LTTE which placed individuals at risk of torture and inhumane and degrading treatment. It stated that those at particular risk included Tamils with an actual or perceived association with the LTTE, including those returning from abroad.¹¹ The UK Upper Tribunal also found certain categories of persons to be at real risk of persecution or serious harm on return to Sri Lanka.¹² The Tribunal has found that the applicant did not have a profile as an LTTE supporter or member and that he will not attract any adverse interest from the authorities or paramilitary groups in Colombo.

56. According to DFAT Tamils arriving in Sri Lanka are subject to the same entry procedures as any other citizen. Returnees, regardless of ethnicity, may be questioned by both the police and the State Intelligence Service and checked against intelligence databases.¹³ In August 2011, the Immigration and Refugee Board of Canada (IRBC) reported on the treatment of Tamils returning to Sri Lanka, including failed asylum seekers. The report cited information provided by the Canadian High Commission in Colombo, which noted that '[t]he screening process is the same for all persons returning to Sri Lanka – whether voluntary or by escort. The process is not impacted by ethnicity'.¹⁴

57. In its Eligibility Guidelines, the UNHCR has also referred to questioning of returnees by Immigration officials and the State Intelligence Service. The UNHCR indicated that returnees may receive further contact from the authorities after arriving in their village of destination:

UNHCR post-return monitoring data indicate that in 2011, upon arrival in the village of destination, 75% of the refugee returnees were contacted at their homes by either a military (38%) or police (43%) officer for further "registration". 26% of these

¹⁰ UK Home Office, *Country Policy Bulletin – Sri Lanka*, October 2012.

¹¹ Freedom from Torture 2012, *Sri Lankan Tamils tortured on return from the UK*, 13 September, pp.1-2, http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf.

¹² Upper Tribunal, n4, above. The Upper Tribunal identified the following categories: (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka; (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government; (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses; and (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

¹³ DFAT, *Report 1446 – RRT Information Request: LKA40999*, 22 October 2012; and DFAT, *Country Information Report No. 12/67*, 29 November 2012, CX299951. See also UK Home Office, *Sri Lanka - Country of Origin Information (COI) Report*, 7 March 2012, paragraphs 25.29-25.35, 25.37-25.39, 25.42-25.44; UK Home Office, *Sri Lanka - Bulletin: Treatment of Returns*, December 2012, paragraphs 3.03-3.04, 3.08-3.25, 3.32-3.42.

¹⁴ Immigration and Refugee Board of Canada, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August 2011 CIS29896.

returnees were again visited at home for subsequent interviews, with a handful receiving a number of additional visits by the police or military.¹⁵

58. In its October 2014 and February 2015 reports, DFAT continued to indicate that Sri Lankan returnees are treated according to standard procedures regardless of their ethnicity.¹⁶ In November 2012 DFAT advised that it had not received any evidence to support allegations of mistreatment of returning Tamils to Sri Lanka. DFAT stated that it had spoken to NGOs involved in facilitating the voluntary return of former asylum seekers/refugees and that NGOs had told DFAT that they had not witnessed or received any allegations of mistreatment from any of the Tamil Sri Lankans they had facilitated. DFAT referred to advice from the British High Commission in Colombo to the effect that they had received no substantiated cases of mistreatment on return for their returnees.¹⁷ DFAT has also stated that NGOs had not raised specific issues regarding the treatment of Tamils returning to the north and east. It stated that NGOs had not raised with them issues concerning the treatment of Tamils who had lived in other countries where the LTTE was active for extended periods.¹⁸
59. DFAT has stated:
- 5.32 Between October 2012 and November 2013, over 1,100 Sri Lankan Irregular Maritime Arrivals were returned from Australia to Sri Lanka. This is in addition to the many Sri Lankan asylum seekers who have been involuntarily returned from other countries, including the US, Canada, the UK and other European countries. The majority of these returnees are Tamil. Although the experiences of individual returnees will vary, many Tamil returnees choose to return to the north, because it is their place of origin, where they have existing family links and the relatively lower cost of living compared to Colombo and other urban areas in the south.¹⁹
60. At the hearing, the applicant responded to the country information put to him by stating that recently friends from his village returned from Australia and they were arrested upon arrival and beaten. They were persecuted and put in jail. They had to be released on bail. Even now upon arrival he will be jailed and subjected to physical persecution. In support of his application for a protection visa, the applicant provided details of four persons, including names, dates of birth and boat ID numbers, who were allegedly forced to return to Sri Lanka and were persecuted in detention upon returning. However, no other information was provided in relation to the precise circumstances or the profile of these individuals or the applicant's friends (from his village). In her oral submissions to the Tribunal, the applicant's representative stated that there is an element of subjectivity and questionable information in DFAT's report. There is a gap between what is reported and what the reality is. In her submission of 30 January 2015, the applicant's representative also contended that even though the DFAT report of October 2014 suggests that it is safe for Tamils to return as failed asylum seekers, this is not the case in practise. The Tribunal does not agree with this contention. The Tribunal considers DFAT reports to be informed, recent and reliable.
61. On the basis of the evidence before it, the Tribunal is not satisfied that the combination of the applicant's ethnicity, past support for the TNA and his living overseas would specifically impute him with having links to the LTTE or expose him to a greater level of interest by the Sri Lankan authorities. The Tribunal is not satisfied that there is a real chance that the

¹⁵ UNHCR, n2, above.

¹⁶ DFAT, *Country Information Report – Sri Lanka* (3 October 2014) and DFAT, n5, above.

¹⁷ DFAT, *Country Information Report No. 12/67*, 29 November 2012, CX299951

¹⁸ DFAT, *MRT/RRT Information Request: LKA41452*, DFAT Report 1478, 28 February 2013.

¹⁹ DFAT, n5, above.

applicant will be persecuted for reasons of any pro-LTTE or anti-government political opinion that may be imputed to him because he has lived in Australia or because he has sought asylum in Australia. The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reason of his membership of the particular social group of 'failed Tamil asylum seekers', or because he is a Tamil who left Sri Lanka illegally and who has applied for asylum in Australia. The Tribunal is not satisfied that there is a real chance the applicant will face serious harm as a result of any follow-up by any other authorities or agencies.

62. Concerning the applicant's illegal departure from Sri Lanka, according to the Department of Foreign Affairs and Trade (DFAT), entry and exit from Sri Lanka is governed by the *Immigrants and Emigrants Act* (the I&E Act). With regard to illegal departure DFAT has advised as follows:

Under Section 45(1)(b) of the Act, it is an offence to depart other than via an official port of entry or exit, such as a seaport or airport. Penalties for leaving Sri Lanka illegally can include custodial sentences of up to five years and a fine of up to 200,000 Sri Lankan rupees (around AUD 1,600).

Returnees are generally considered to have committed an offence under the I&E Act if they depart Sri Lanka irregularly by boat. Where a returnee is travelling voluntarily on their own passport on a commercial flight they may not come to the attention of local authorities if they departed Sri Lanka legally through an official port on the same passport, because they have not committed any offence under the I&E Act.²⁰

63. The information consulted by the Tribunal suggests that the most likely penalty for leaving Sri Lanka illegally would be a fine, unless the person is suspected of facilitating or organising a people-smuggling venture.²¹ DFAT advised in October 2012 that, under Sri Lankan law, people who depart from any place other than an approved port of departure and/or depart without valid travel documents can be charged with an offence under the I&E Act. DFAT reported that, for offences committed under the Act, a prison sentence from one to five years and a fine of LKR 50,000 to LKR 200,000 may be applicable. DFAT reported in October 2012 that this was seldom enforced. It also indicated that, in practice, people being intercepted on people smuggling boat ventures were not given a custodial sentence but issued with a fine for the offence of departing Sri Lanka illegally. This was to act as a deterrent.²² Whilst, later in 2012, DFAT advised that since 2 November 2012 Sri Lankan irregular maritime arrivals returned from Australia have been charged under the law for offences related to their irregular departure,²³ in its October 2014 and February 2015 reports DFAT stated that it had been informed that no returnee who was just a passenger on a people smuggling venture had been given a custodial sentence for departing Sri Lanka illegally. It stated that the Magistrates Court in Colombo typically levies fines of around 5,000 Sri Lankan Rupees (around AUD 40) for persons attempting to depart Sri Lanka irregularly on boats.²⁴

²⁰ Ibid.

²¹ Ibid.

²² DFAT Report 1446, n12, above.

²³ DFAT Report No. 12/67, n12, above.

²⁴ DFAT, n5, above.

64. Information before the Tribunal indicates that returnees charged with offences related to illegal departure may be held on remand for a period before being released on bail.²⁵ DFAT has advised that returnees are arrested and held at the airport for up to 24 hours. They are then produced before a magistrate to apply for bail. All persons are granted bail on personal recognisance, with the requirement for a family member to stand as guarantor. There is no requirement to pay for bail. If the person needs to be held for more than 24 hours, for instance when a person arrives on the weekend or a public holiday, they are placed in the remand section of the Negombo Prison until the court is in session.
65. The evidence before the Tribunal does not suggest, and the Tribunal does not accept, that there is a real chance that the applicant will be detained for a prolonged period of time as a penalty for illegal departure. The Tribunal finds that any period of detention will be short and confined to, at most, a few days. The Tribunal accepts that high-profile former LTTE members who are suspected of committing serious crimes, including terrorism offences are at risk of torture. According to DFAT, this is due in part to the use of torture to extract information or confessions from suspects, and the extended period these people may spend in pre-trial detention. The Tribunal has already found that the applicant does not have any actual or perceived associations with the LTTE. The Tribunal has also found that the applicant would not attract adverse attention from the authorities due to his past TNA links and activities. The Tribunal is not satisfied that he will be imputed with a political opinion because of his illegal departure or treated differently because he is a member of a particular social group of failed asylum seekers or any other particular social group apparent on the face of the evidence.
66. There is no persuasive evidence before the Tribunal to suggest that the applicant would be detained for longer periods of time for any other reason. The evidence before the Tribunal does not establish, and the Tribunal is not satisfied, that the applicant will be singled out for torture or mistreatment or that he will be treated any differently if he is placed in remand for a short period because he is a Tamil, or for any other Convention reasons. There is no information before the Tribunal to indicate that returnees held in remand awaiting bail hearings have been subjected to torture or ill-treatment.
67. The Tribunal accepts that the applicant may be questioned at the airport, charged and placed in remand for a short period. The Tribunal also accepts that prison conditions in Sri Lanka may be poor. However, as it was put to the applicant at hearing, the sources consulted suggest that the treatment the applicant might face upon his return applies to all persons, regardless of race or religion. Tamils are not singled out. The Tribunal is not satisfied, therefore, that being questioned, arrested, charged and detained for a short period in poor conditions, which may include overcrowding and poor sanitation, amount to systematic and discriminatory conduct as required by s.91R(1)(c). The Tribunal finds that the processing of returnees and any penalties that may be imposed on the applicant are the result of the non-discriminatory enforcement of a law of general application.
68. Based on all of the evidence before it, considered individually and cumulatively, the Tribunal is not satisfied there is a real chance that the applicant would face serious harm amounting to persecution for the Convention reasons of his Tamil race/ethnicity, his actual or imputed political opinion or his membership of a particular social group if returned to Sri Lanka and relocated to Colombo.

²⁵ See, for example, Doherty, B, Asylum denied, a penalty awaits at home, *The Sydney Morning Herald*, 8 December 2012, <http://www.smh.com.au/world/asylum-denied-a-penalty-waits-at-home-20121207-2b0qi.html>.

Is Relocation Reasonable?

69. In their submission of 17 April 2013 the applicant's representatives stated that the applicant does not speak Sinhalese and does not know anyone in Colombo. The applicant stated at the hearing that Batticaloa is his ancestral home where he has land and the economic means of making a livelihood. One can manage to live in Colombo for two or three years temporarily but it is not a practical option due to the cost of living and the difficulty in acquiring property. In his evidence to the Tribunal, the applicant also stated that his relationship with his [relative] in Australia has broken down and the people he stayed with in Colombo were relations of his [relative]'s wife. He would be unable to contact these people for assistance.
70. The applicant resided in Colombo, where he was also employed, for approximately two years between May 2010 and May 2012. Whilst the Tribunal appreciates that he was able to find employment in Colombo through assistance provided by the relatives of his [relative]'s wife, the Tribunal is not satisfied that, in the absence any further contact with these distant relatives the applicant would be unable to find employment and the means to support himself. Whilst DFAT has advised that internal relocation options 'can be limited by the absence of family connections or by a lack of financial resources', the Tribunal does not accept that in the applicant's case, absence of family connections would make relocation unreasonable. Having previously lived in Colombo, the applicant's familiarity with, and his knowledge of, the city would enable him to adjust to, and resettle in Colombo. The applicant did not claim that his inability to speak Sinhalese in Colombo had caused him problems or that he would encounter difficulties due to his lack of Sinhalese language skills.
71. The Tribunal further appreciates that living in Colombo may be expensive in comparison to living elsewhere in Sri Lanka. The applicant's evidence indicates that his family have the financial resources to be able to financially assist him and help him to adjust to life in Colombo. In her oral submissions to the Tribunal, the applicant's representative submitted that, due to the applicant's family's opposition to his marriage, which took place in 2009 without the knowledge of his family, they would be more reluctant to provide him with financial support. The applicant, however, gave evidence to the effect that, whilst his parents were initially unhappy about the circumstances of his marriage, they have now accepted his marriage. He has a normal relationship with his parents and [sibling] and remains in regular contact with them. Whilst, in her submission of 30 January 2015, the applicant's representative submitted that his family may be less accepting of him when he returns, there is no persuasive evidence before the Tribunal to indicate this might be the case. She also submitted that the applicant's wife and her family are from the Eastern province. However, neither the applicant nor his representative claimed that his wife would be unable to join him in Colombo.
72. In her submission of 30 January 2015, the applicant's representative submitted that the applicant would be easily identifiable as a Tamil and a person from the east of the country on the basis of his ID card. As a result, he would be 'perceived differently' by Sinhalese people and 'complications' could arise. No further information was provided as to what these complications might entail. As already noted, the Tribunal accepts that the applicant could be identified as a Tamil from the east of the country, and might be subjected to a level of scrutiny and that he may be questioned as to why he was in Colombo. The Tribunal, however, is not satisfied that this would render relocation to Colombo unreasonable.
73. Finally, the applicant has claimed that by relocating to Colombo, he would be forced to give up his right to work on land that he considers his own and that of his family. It is his means of

being productive. In her submission of 30 Jan, the applicant's representative submitted that the expectation for the applicant to relocate to Colombo would disconnect him from his family, his homeland and the relationship that 'gives rise to his protected Convention profile'. His connection is an integral aspect of the 'construction of the particular social group and the persecutory harm that he faces in Sri Lanka'. The Tribunal appreciates that the applicant has a connection with his home area, land and family. The Tribunal does not accept his representative's submission that the applicant's evidence points to his 'inextricable connection between his identity with the land and the Eastern province and the family'. In any event, as it was put to him, he has been willing to leave all that behind and come to Australia, knowing that he might not be able to return to his ancestral land, home area or family any time soon. The Tribunal is not satisfied that the applicant's inability to work in his family land if he were to relocate to Colombo would render internal relocation unreasonable. Nor is the Tribunal satisfied that requiring the applicant to relocate to Colombo would 'mute' his profile, either as a family member of wealthy Tamil landowners in eastern Sri Lanka, or as a wealthy Tamil in eastern Sri Lanka'.

74. On the basis of the evidence before it and having regard to the applicant's circumstances overall, the Tribunal is satisfied that it would be reasonable and practicable for the applicant to safely relocate to Colombo. The Tribunal is not satisfied that there is a real chance that the applicant will face serious harm for a Convention reason by anyone if he were to internally relocate.
75. The Tribunal is not satisfied that the applicant's fear of persecution for a Convention reason in Sri Lanka is well-founded.

Complementary Protection

76. Having regard to the findings of fact above, the Tribunal finds that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm in his home area. However, under s.36(2B)(a) of the Act 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 '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'.
77. For the reasons referred to in paragraphs 41-46, the Tribunal is not satisfied that there is a real risk that the applicant will be subjected to significant harm by Karuna, [Mr A], the SLA, the Sri Lankan authorities or anyone else arising from his actual or imputed political opinion if he were to relocate to Colombo.
78. As noted in paragraphs 47-49, the Tribunal accepts that Tamils continue to face a level of societal discrimination in Sri Lanka and that the applicant may be subjected to a level of scrutiny in Colombo due to his race or place of origin. However, for the reasons already provided, above, the Tribunal is not satisfied that the applicant faces a real risk of being significantly harmed by the Sri Lankan authorities or anyone else due to his race as a Tamil if he relocates to Colombo. Nor is the Tribunal satisfied that, upon relocating to Colombo, the applicant faces a real risk significant harm by the Sri Lankan authorities or anyone else arising from his religion; or being a family member of wealthy Tamil landowners in eastern Sri Lanka, being a wealthy Tamil in eastern Sri Lanka or a combination of these factors.
79. As already stated, the Tribunal accepts that the applicant would likely face arrest on charges of illegal departure. Consequently, he could be placed in remand for a relatively brief period

while awaiting a bail hearing and would later be fined if found guilty. The Tribunal, however, is not satisfied that there is evidence of mistreatment of returnees while in remand. The applicant stated at the hearing that he would be prepared to return to Sri Lanka if the Australian Government guaranteed his safety. As noted above, there have been large numbers of reported involuntary and voluntary returnees to Sri Lanka. The majority of these returnees are Tamils who departed Sri Lanka illegally by boat. There have been no persuasive reports of such persons suffering significant harm as defined by s.36(2A). The applicant did not claim, and the Tribunal is not satisfied, that the applicant would be exposed to significant harm by virtue of the fine that may be imposed on him upon being returned to Sri Lanka. The Tribunal is not satisfied that there is a real risk that the applicant will be subjected to torture, or any other form of mistreatment amounting to significant harm upon his arrival; during or as a consequence of any questioning at the airport or during any period which he may spend in prison or detention on remand upon his return. The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm during any period which he may spend in prison on remand.

80. The Tribunal is not satisfied that the detention conditions the applicant would most likely face in relation to his illegal departure if he were to be remanded for a short period of time, including overcrowding and poor sanitary conditions, amount to any form of significant harm as contemplated by s.36(2A) or that such treatment is intentional as is required by the Migration Act. The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm as a consequence of the poor conditions in prisons during any period which he may spend in detention on remand.
81. For the reasons provided above, the Tribunal is not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will be subjected to any form of harm that would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs (a)-(e) of the definition of torture in s.5(1). The Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm that would involve the infliction of severe pain or suffering, either physical or mental, such as to meet the definition of cruel or inhuman treatment or punishment in s.5(1). Nor is it satisfied that it has substantial grounds for believing that there is a real risk that he will suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is not satisfied that it has substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty.
82. The Tribunal, therefore, is 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).
83. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

84. 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

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

Shahyar Roushan
Acting Deputy Principal Member