

1002652 [2010] RRTA 557 (15 July 2010)

DECISION RECORD

RRT CASE NUMBER: 1002652

DIAC REFERENCE(S): CLF2010/2358

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Angela Cranston

DATE: 15 July 2010

PLACE OF DECISION: Sydney

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 [in] November 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2009. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
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 [in] April 2010 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. In her application, the applicant stated as follows:

I am a Sri Lankan Jaffna Tamil born in [Town A] and lived with my parents in [Town B] in Jaffna till I was married. My grandparents and my parents owned houses and lands including paddy fields in [Town A] and during the 1985 riots we fled from [Town A] when our properties and houses were burned and escaped death from the chauvinistic Sinhalese hooligans and authorities. We returned back to [Town A] after the government urged us to return to our residents but the Sinhalese authorities and criminals systematically threatened us to buy off the lands from us. We moved out of [Town A] permanently and settled in [Town B]. I was working as a teacher at [School 1] in [Town A] and my father managed to obtain a transfer to me to [School 2] in [Town C], Jaffna. We suffered and lived in refugee camps in Jaffna during the combat between the Indian Peace Keeping Force and the LTTE in Jaffna.

After my marriage in 1989, I moved to Colombo and lived with my husband at [address] in Colombo 14. I was teaching at [School 3] and later in 1991, transferred to Colombo. I was leading a normal life in Colombo when my siblings left Sri Lanka once after the other in fear of persecution. Most of my siblings visited me during vacations and stayed with us in Colombo. Around 1996, I retired from work due to the fear of travelling to and from school. After Jaffna was captured by the SLA most of the Jaffna Tamils fled to Colombo from where they travelled overseas to save their lives from the criminals and authorities. The authorities were doing cordon operations in search of LTTE cadres infiltrated among the Colombo Tamils. The frequent visits by the authorities made me to fear as I was forced to attend to interrogation at different army camps and terrorist intelligent units. I tried to migrate to Australian under the skilled migration programme but my application was refused. I continued to live in Colombo in midst of the cordon operation and seldom left home.

I was given private tuition classes for students and staying indoors as much as I could. While the peace accord was in place, it was easy for us to travel to Jaffna frequently. I was travelling to Jaffna to look after my parent's property in [Town B]. When the LTTE cadres ordered me to work for them in Vanni during my trips during the Tsunami disaster, my husband refused to permit me to travel to Jaffna any further. As I was at home I felt pity on the displaced children and was attending to the displace camps in Vanni and spent couple of weeks teaching the students who were preparing to sit for the government examination. I was welcomed by the NGO officers and similar Human Rights organisations for my contribution in educating the displaced and orphan children. The children depended on my teaching and coaching to pass the examination. I decided to camp in Vanni permanently along with other professionals every other week and with the help of the NGO officers involved in service activities on a regular basis. I met many paper reporters and foreign journalists who were attending the Tsunami affected areas in the Vanni and

Mullaitivu districts. The LTTE on the other hand never interfered in my duties instead encouraged me to move to Vanni permanently as I was unemployed and was giving private tuitions. The LTTE members and cadres advised me to spend more time with the displaced as the students in Colombo could afford to find another teacher in the Colombo metropolitan. I found it as a reasonable suggestion and with my husband's permission I moved to Vanni along with few retired teachers who were my friends. I did not have any responsibility on my own as I have no children and came forward to teach other children who were orphaned by the disaster.

I couldn't continue to perform my duties as a teacher after the CID officers arrested me during my return from Vanni. They took photographs and fingerprints of myself and questioned me at length as to the reason of my frequent visits to Vanni district. They refused to believe that I was genuinely teaching displaced and orphaned children and accused me of collecting funds for the LTTE from my siblings living abroad. The paramilitaries who were working along with the army after deserting the LTTE had passed false information to the authorities against me. My husband released me before I was taken into prison. When I came home, the following day, three paramilitaries were at my door step demanding 5 Lakhs from me failing which they threatened to get the authorities to arrest me. I begged with them to leave me alone and came forward to pay them the demanded amount. They ordered that if they saw me visiting Vanni and complain against them or identify them to the LTTE cadres, I could be abducted and killed mercilessly. My husband feared for my safety and refused to permit me to travel out of the house.

With the influence of NGO officers and journalist known to me, I managed to secure a job at [Newspaper A] as [Role 1]. I was working along with the other [Role 1 workers] directly under the weekly editor. Usually the news from the journalist are given to us on a duplicate page for us to check and accuracy before the news and articles are finally printed. We have been requested to check for any information in any article which could be dangerous for publication purposes such as any articles from journalists that would endanger the safety of Tamils in Colombo or in any part of Sri Lanka. Any articles which could instigate communal violence among the ethnic groups were avoided to the maximum. The editors had been advising us not only to proof read the documents but to look for any comments that could affect the company being barred from any similar future publications. As an experienced teacher, I was particular as to details and promptly informed the Editor as to any discrepancies immediately and I was urged to sit for internal examination to be promoted to the position of sub-editor.

The relationship between the co workers and staff in general was very strange as everyone feared to speak out our opinions publicly to one another. No one was aware as the other's involvement in the local political arena. After January 2006, the continuous shootout between the LTTE and the paramilitaries in Colombo Metropolitan, the relationship among the journalists further strained. Everyone one feared for the other as we were not aware as to the other's political involvement. I was not very sure whether I could freely talk with anyone as I feared that the other could be a supporter of the LTTE or the paramilitaries or could be an informer working for the corrupt politicians. Luckily, my house is situated just opposite to my workplace, and it became convenient for me to come home during lunch break to meet my husband I started to work till late in the night as I was living close by. The company encouraged me to take up more voluminous work as I could stay late in the evening. Due to the dangerous political situation especially constant shootout prevailing at that time, employees feared for their safety when returning home late at night using public transport. When the company insisted on my extended working hours, the other employees became jealous of me. I tried to apply for [a position],

which was declined due to internal politics. I lost any hopes of moving to another responsible position even if I was eligible for that post.

Around 2007 I planned to visit my sister in the UK but as she changed her plans to travel to India, I couldn't travel to UK as planned. In February 2008, I travelled to India and from there to Germany to spend time with my siblings. I spent nearly three months abroad and when I returned back in Sri Lanka, I was detained at the airport and was questioned as to my involvement in collecting funds for the LTTE from abroad. As I had all my siblings living overseas, the authorities suspected that my siblings were involved in collecting funds in foreign currencies and were transferring them through me during my foreign travels. I had to convince the officers that I was working as a copy reader and they could confirm with my employers as to my involvement in the LTTE.

Unfortunately, the co workers started to suspect me of having LTTE involvement after my arrest at the airport. Many co workers refused to discuss with me openly as to any news involving LTTE. One of the [other workers, Ms A] became acquainted with me and told me to be careful discussing any issues relating to the LTTE or paramilitaries. We became close after we started to assist one another in our jobs. I came to know that the employees suspected me to have involvement with expatriates who were supporting the LTTE in foreign countries. They were always a suspicion that I could be having involvement in the LTTE. In fact one of the Editor was particular that I should not be appointed as a sub editor after my detention at the airport. The editors under whom I worked urged me to apply for higher positions in the company. I was confident that I would not be questioned as to LTTE involvement as I am genuinely not interested in LTTE policies.

In the later part of 2008, [Ms A], my friend was questioned as to her involvement in the LTTE and how I became associated with her. She had been subjected to severe interrogation coupled with assault that she stopped meeting me. She never told me where she went but warned me that I should leave Sri Lanka permanently as the authorities were suspecting me of having LTTE involvement through my siblings in Canada, Germany, France and UK. In fact my siblings were not in the least interest in the LTTE nor were they interested in attending private political meetings or programmes in the above countries. [Ms A] was very serious when she warned me. She said that I would not be able stand the interrogation which is very demeaning as she had been raped by the authorities. When I told this to my siblings living abroad they urged me to leave the country if I suspected any foul play. I applied for the Australian visa and it was granted to me in September 2009.

In the meantime my sister from the UK decided to come down to convince me to travel to UK with her as all my sisters lived in the European countries. My sister wanted me to apply for UK visa to travel with her out of the country which was rejected. I was shocked and feared when she landed in Sri Lanka, she was detained at the Airport and was questioned at length as to her involvement in the LTTE. I was at the airport with my husband to receive her when three Tamil men approached me and ordered me to follow them without making any scene. My husband was not permitted to come along with me.

I was brought to the CID Head Quarters where I was interrogated as to my sister's and my siblings involvement in the LTTE in the past. When I said that they had left the country in fear of LTTE. The officers told me that they worked for the LTTE from abroad and I had been the middle person to communicate and deal with the LTTE locally. They said that they had wide knowledge as to the method how the Tamils sent money to the LTTE. They ordered me to give all the details of my

relatives in Vanni in the interment camps. I told them that all my relatives had left abroad and no one was in Vanni. They told me that my sister had intimated to them the details of few relatives who were our in laws detained in Vanni and she had come to Sri Lanka to make arrangements to release them from the Vavuniya camps. They wanted me to give details of them. I was in fact not aware of my siblings in laws and when I said that I had no connections with them, the officers started to assault me stating that I had been working in Vanni along with my relatives who were LTTE members. My sister and I were detained in a room for further interrogation. I was shocked to find my sister in the cell after a long time. We were crying together and were praying to god for our release. She told me that she was accused of funding the LTTE through me.

My husband in the mean time informed my other siblings as to our arrest and had approached [Politician A] who got both of us released. The officers ordered that we were not permitted to leave the country and that I should register my sister at the police station. My husband was ordered to surrender my passport at the police station. The police officers were visiting us frequently with Tamil men questioning me as to the reason of my foreign travel in the past. The Tamil men told us that unless I cooperated with them, I could be taken away to prison permanently. They questioned us in which bank moneys were transferred from overseas for the LTTE. I was pleading with the Tamil men to trust me as I had never involved in any LTTE dealings in the past. The Tamil men told me the authorities would continue to harass me unless I pay them money and leave the country immediately. My sister came forward to pay good money to the authorities promptly for our release. They gave the passport to my sister but refused to give my passport till I have them information as to [Newspaper A] Editors and journalist. The Tamil men told me that I should tell them who had been involved in the LTTE in the past and present. I told them that as [Role 1] I had no idea as to the editors and journalists personal life and we usually stayed away from discussing politics at the work place. They said that [Ms A], my co worker and friend had intimated to them as to details of the editors and journalists. They wanted me to give the names of those who were closely associated with me at the work place and I have them the names. The men left the place stating that unless I paid the authorities good money I would be taken away to the prison and charged over the Prevention of terrorism act. My husband continued to plead with [Politician A] and promised to give him money and he got my passport released through the paramilitaries on the condition that I should not leave the country before the investigations were over.

My siblings feared to return to Sri Lanka to take me out. My sister left Sri Lanka and my siblings pleaded with me to visit them so that I could apply for refugee status in Canada, UK Germany or France. I already had the Australian visa but could not travel immediately. My visa to UK and Canada were refused. The only place I could go was to Australia. I feared to leave the country immediately as the paramilitaries could take my husband away in revenge. My husband was constantly in touch with [Politician A] who demanded that we paid 25 lakhs if I wished to leave the country permanently. He said that he had to pay the authorities to permit me to leave the country. We could not collect the money immediately. The paramilitary men were visiting home frequently to check on my whether I had left the country. I was working till late at night in fear of meeting the paramilitaries. They warned that my husband had to face the consequences if I left the country without paying the Minister and them. They said that I could be taken into prison on the ground that I had worked for the LTTE in the past in Vanni and had been collection funds for the LTTE from abroad. Once we paid the money, the Tamil paramilitary men ordered that I should not stay in Sri Lanka any further as the authorities could come in search of me once again and could be molested or murdered as they were convinced that I was a LTTE

fundraiser and Minister would not be able to save me again. They further said that I should not mention to anyone as to the bribe to [Politician A] or them after my release. The office staff refused to talk to me in fear of involvement with the authorities. Few of them whispered to me that unless I left the country immediately, they would have to face the paramilitary and the authorities. The paramilitary men had questioned my staff members as to my involvement in the LTTE in the past. I couldn't live in Sri Lanka in fear of abduction or murder. I immediately left Sri Lanka and arrived in Australia. After arriving here my husband told me that the paramilitary had warned that if I returned back to Sri Lanka, I could be taken away permanently to provision as the authorities were questioning them as to my whereabouts. I cannot live in a country where Tamils are subjected to harassment and torture for being a Tamil and are unfairly suspected of having LTTE involvement in the past. Many Tamils are taken into custody on the above grounds. I was lucky that I at least had the Australian visa to escape from the Sri Lankan authorities. I am concerned as to my husband's safety back in Sri Lanka. I fear to go back to Sri Lanka.

21. At interview the applicant stated the following:

I want to talk about your friend [Ms A]. She's the lady you told that had been arrested by CID. Is that correct?...

How did she come to know about your arrest? You may not know the answer.

I can't exactly tell you.

And how did you find out that she knew?

She told me, you must be careful about your contact with your other colleagues and how you move with them. She told me because of me some people have come and inquired of her and as a result she has been beaten and been given a lot of trouble. She told me she was sexually assaulted and also given a lot of trouble.

Was that because of the association with you?

Because of that she would have contacted me and after that she gave up her contact with me.

How did she know she has been detained because of you?

She told me.

And what did she say to you?

She told me be careful when you move with other people....

...This happened, you said, in the later part of 2008, when [Ms A] was detained herself, do you know what month she was detained?

I cant tell you exactly.

How many months after you return from Germany?

Maybe one or two months after.

Was [Ms A] afraid of talking to you?

Yes and she said be careful when you talk.

Why did she tell that you she was detained and mistreated?

Because she had been moving with me and due to her moving with me....

So when [Ms A] told you what had happened to her and when she warned you, you became very worried and you talked to your siblings?

Yes.

And they told you to leave Sri Lanka?

Yes.

How soon after [Ms A] told you what happened to her did you contact your siblings?

Some time after what she told me.

And [Ms A] warned you, what did she say to you?

She told me that people are suspecting you, therefore don't talk to them unnecessarily, try and get out.

Of Sri Lanka?

Yes out of Sri Lanka....

When [Ms A] told you that you should leave Sri Lanka, how did your husband react?

I come normally late at night to my home because people come to my house in search, there are paramilitary fellows coming and saying I have been giving money and they also come to check.

How many times were you checked?

They come with the military..

[Ms A] told you you should leave Sri Lanka and you contacted your siblings who also said you should leave. And you got a visa and it was granted in September 2009. So why didn't you travel as soon as you got the visa?

They wouldn't allow me to go out they kept asking me for money

Who wouldn't let you go out?

The paramilitaries.

When did they start to stop you from leaving?

I told my sister from the UK about having to go out and suddenly she arrived in Sri Lanka

Your got a visa to go to Australia, you are worried, why did not you leave when you got the visa?

I couldn't go because...they are coming to my house and checking. You must give money.

You applied for a visa but knew you couldn't leave, that doesn't make sense to me?

..

The military, the police, the paramilitaries all get together, they came and took my passport, kept my passport with them and did not my passport.

When did they take your passport?

My sister suddenly came from outside.

Just answer? When did they take your passport?

After September 2009.

But you applied for other visas here, you applied to the Canadians and also to the UK which means you had the passport...

How did [Politician A] make it possible for you to get the passport back?

If you give the money then you can go out

How did [Politician A] get your passport back to you

My husband promised to give the money and thought the help of this paramilitary fellow this was done

Did you actually surrender your passport at any stage to anybody?

My husband agreed to give the money to the paramilitary fellows and got the passport from the paramilitary fellows

When did they take the passport from you? ...

When did you give it to paramilitaries?

I didn't give the passport to them.

So how did they have it/

..We took it ..

And when did you take it?

Till the time the money was given, at the last minute the visa was there.

The paramilitaries wanted your passport

Yes

How did you give it physically to the paramilitaries

They didn't get the passport from me on the ground that we promised the money will be given..

Ever give the passport to the paramilitaries ?

No

I don't understand why you said in your statement you said that the paramilitaries had your passport and your husband had to pay to have it released.

22. The applicant appeared before the Tribunal [in] June 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.
23. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
24. The applicant stated that she filled out the forms and her statement with help from her lawyer. She stated all of it was correct and she did not want to change anything.
25. The applicant stated her brother obtained her visitor's visa which she used to come to Australia in 2009. She stated she came for her nephew's birthday which was [in] February. When asked if she came for any other reason, she stated she came for this reason in particular and because she had the visitor's visa, her sister also came.
26. The applicant stated that in Sri Lanka, she worked as a teacher and then at a newspaper called [Newspaper A] from 2005 until 2009. She was working there in June 2009. The Tribunal asked if there was an event that affected the paper in June 2009 which involved one of the journalists. She stated [Ms A] was harassed and had to leave. She then stated Tissainayagam who was a prominent newspaper journalist was put in prison. She was not sure of the date. The Tribunal indicated that the report referred to another journalist who it stated was working as a columnist at the paper and the other journalist was a former employee of the paper. The applicant then gave the name '[Person 1]' The Tribunal put to her that the reports were in [Newspaper B and Newspaper C]. The Tribunal then put to her there were two female journalists and that [Newspaper C] reported that one of them was [Journalist 1]. The applicant stated she was not working for the newspaper and was captured by the authorities. It was put to her that [Newspaper C] stated she was a columnist for the paper. She stated she might have been contributing but she was not working for the paper. The applicant stated she only saw that [Journalist 1] was arrested on the TV. The applicant stated that at work it was not something they talked about because of the fear they had. The Tribunal put to her the other person was [Person 2]. The applicant stated that [Person 2] was also [Journalist 1] and had changed her name when she married a Muslim. She stated [Journalist 1] worked for the paper before. [Information deleted: s.431(2)]. She stated they did not talk about it at work.
27. The applicant confirmed she travelled to India in February 2008 and then went to Europe.
28. The applicant confirmed that she went to Jaffna 4 or 5 times after the peace accord was announced. She stated the first time she went was for two months in August 2002, and after that she went back for two weeks at each time. She then stated she went for about a week in 2002, she went back for about a week at the end of 2003 and she went back in late 2004 for 2 weeks. She then went back in January/ February 2005 for 2 months.

29. The Tribunal put to her that she had told the Department she went on one occasion for two months and for the other occasions she only stayed overnight. She stated she was talking about Vanni, she would stay in Vanni overnight and then go on to Jaffna. She stated she would go to Vanni on Monday and teach on Monday and Tuesday and she did that about 4 times from 2002 till 2005. The last time she did it for 2 months full time. At that point she was approached to work because of the Tsunami. The Tribunal asked what she was doing there at that time and she said she wanted to help the orphan children through teaching. The Tribunal asked why her activities needed to be organised by others. She stated the NGO and human rights wanted her to teach, and the LTTE also asked her but her husband would not allow her to do it. She stated the place where she stayed and taught was organised by the NGOs. She stated she stayed at the school in Kilinochchi. The Tribunal asked for the names of the NGO or human rights organisations. She stated she did not remember their names. The Tribunal asked how she left Kilinochchi. She stated she stopped going because the paramilitary groups threatened her and after that her husband did not allow her to go back. She stated when she came back to Colombo, she came back in a van to [Town A]. She then caught a train to Colombo and an auto taxi to her house. She stated the paramilitaries came to her house about two or three days after she arrived. They stayed for about two or three hours and demanded money. She gave 500 000 rupees. She stated she did not see them or any other paramilitaries again. She stated no one came to the house between 2005 and September/October 2009.
30. The applicant stated the next time people came to her house was in 2009 when her sister visited her. She stated she and her sister were questioned at the airport and after that they came to her house again. The Tribunal put to her that in her statement she stated she could not continue to perform her duties as a teacher after the CID officers arrested her during her return from Vanni. She had stated they questioned her at length, her husband released her before she was taken into prison and when she came home the following day, three paramilitaries were at her door step. The Tribunal said that sounded different to what she had just said which was that she had travelled back via train and auto taxi and three days later the paramilitaries had turned up asking for money. She had no comments.
31. The Tribunal asked why she went back to work after she had retired. She stated she needed the money, she was a graduate and when the paper requested her to work, she had returned to work. She stated she obtained the job with the assistance of [name deleted: s.431(2)] who was an NGO and knew the journalists. The Tribunal asked what the NGO did. She stated she did not know.
32. The Tribunal asked her to talk about [Newspaper A]. She said it was a normal newspaper that wrote news, poems essays and articles. The Tribunal asked about what. She stated current affairs. The Tribunal asked if they had a particular advocacy role. She stated they wrote about what the government and the country should do, it also wrote about things that happened in the country. She stated they would not publish things that would cause ethnic problems or upheavals. The Tribunal put to her that the paper did report about the social and political concerns of the Tamil community and if it published those things, how was it that they did not discuss politics in the office. She stated she did not talk about her opinions, these things were written by the journalists, and they did not talk about personal opinions. The Tribunal put to her that her alleged role was to make sure that published material did not endanger the safety of Tamils in Colombo. She stated she checked for spelling mistakes and grammar and anything that would affect the company. The Tribunal asked her to give an example of how she had stopped the company being affected. She stated a particular person name and address

would be withheld or she would advise of things that would cause upheaval or 'fight back' The Tribunal asked how she did that. She stated they pointed out things that might affect the peace of the ethnic community. The Tribunal asked how she managed to do that without talking about politics. She stated she could do that on her own. The Tribunal indicated that she was claiming she had done this job however [information deleted: s.431(2)] She stated she [Journalist 1] had left and was working for a foreign office and it was there she was arrested. The Tribunal indicated [Newspaper C] reported she was a columnist for [Newspaper A] [in] 2009. She stated she was working on the weekly part of the newspaper, [Journalist 1] was working on the daily part of the paper and had left, and she usually wrote about [topic deleted: s.431(2)] and when she was arrested she was not with the paper.

33. The applicant confirmed she came back to Sri Lanka [in] 2008. She confirmed that she had been detained at the airport for about 4 hours. She stated they thought she had gone to collect money for the LTTE but she said she was working as a [Role 1] at [Newspaper A] and they rang up the Colombo office to confirm that and then let her go. She then stated they may have contacted [Newspaper A] because they knew she was [Role 1] there.
34. The applicant confirmed that people were talking about her detention when she returned to work and they started to suspect her. She stated she knew they were talking about her and she did not get her promotion because her friend, [Ms A] told her. The applicant confirmed that [Ms A] had told her she was interviewed at the end of 2008. [Ms A] had said because of her association with the applicant, they also suspecting her, she was having problems and she left the country. The Tribunal put to the applicant that she told the Department she had been questioned one or two months after she came back from Germany, in around October/November 2008. She stated [Ms A] had warned her, and her brothers and sisters had also advised she should leave as soon as possible. She stated her sister came to Sri Lanka trying to take her out in October 2009. The Tribunal asked if she did anything between October 2008 and October 2009 in order to leave. She stated her brother in Australia was trying to get her to come. The Tribunal put to her that she applied for the tourist visa in August 2009, which almost a year after [Ms A] had warned her. The Tribunal asked why she waited so long. She stated she could not get out as soon as she liked. She stated she worked late at night and it was dangerous for her to go to the Embassy because of the bombings that were taking place. The Tribunal indicated that the country information did not suggest there were bombings in Colombo after May 2009. The Tribunal also put to her that she had also earlier stated the reasons she came to Australia was because of her nephew's birthday. The Tribunal asked why she did not leave until November if she got the visa in September. She stated her sister came in October and she was then arrested at the airport. The Tribunal put to her she had her Australian visa to come to Australia before that time. She stated her sister was coming. The Tribunal asked why her sister came. She stated she wanted her to go to Europe.
35. The applicant stated they accused her sister of helping the LTTE and they had to give the paramilitaries some money. The Tribunal asked if she ever gave them her passport. She said she gave it to the paramilitaries [in] 2009 which was after she was arrested. They told her she could not go without giving them money, they promised and based on that they were released.
36. The Tribunal put to her that she told the Department she had not given her passport to the paramilitaries. She stated she thought the Department was asking her about the police. The Tribunal put to her that the question the Department asked was about the paramilitaries.

37. The Tribunal also put to her that she told the Department that people came to her house after [Ms A] was questioned however at hearing she stated no one had come to her house until after she and her sister were detained. She stated they only came after her sister came.
38. The Tribunal asked why she was afraid to go back to Sri Lanka. She stated she was afraid to go back because they were looking for her because they thought she was going abroad and getting money to help the LTTE.
39. The Tribunal then stated that the country information suggested that anecdotal evidence suggested that previous involvement or suspected involvement with the LTTE could influence how a person is treated at the airport on return to Sri Lanka and that the Department of Immigration and Emigration (DIE) computer has a 'black-list' of persons of concern but unless the exact spelling of a name, the date of birth and passport number matches that of the returnee/deportee, the person is not stopped.
40. The Tribunal also indicated that it was wondering whether she had worked for the paper in her stated occupation, whether she was detained when she came back from Vanni, and whether she was detained at the airport [in] 2008. The Tribunal indicated she had applied for a visa nearly a year after [Ms A] had allegedly warned her that they suspected her of LTTE connections. The Tribunal also indicated she may have provided inconsistent answers in relation to whether or not the paramilitaries took her passport in 2009.
41. Following the hearing, the Tribunal wrote to the applicant as follows:

In conducting its review, the Tribunal is required by the Migration Act to invite you to comment on or respond to certain information which the Tribunal considers would, subject to your comments or response, be the reason, or a part of the reason, for affirming the decision under review.

Please note, however, that the Tribunal has not made up its mind about the information.

The particulars of the information are:

- **If you were detained upon your return to Vanni**

In your statement dated [date] December 2009 you stated:

I couldn't continue to perform my duties as a teacher after the CID officers arrested me during my return from Vanni. They took photographs and fingerprints of myself and questioned me at length as to the reason of my frequent visits to Vanni district. They refused to believe that I was genuinely teaching displaced and orphaned children and accused me of collecting funds for the LTTE from my siblings living abroad. The paramilitaries who were working along with the army after deserting the LTTE had passed false information to the authorities against me. My husband released me before I was taken into prison. When I came home, the following day, three paramilitaries were at my door step demanding 5 Lakhs from me failing which they threatened to get the authorities to arrest me. I begged with them to leave me alone and came forward to pay them the demanded amount. They ordered that if they saw me visiting Vanni and complain against them or identify them to the LTTE cadres, I could be abducted and killed mercilessly. My husband feared for my safety and refused to permit me to travel out of the house.

This may be inconsistent with what you said at hearing on [date] June 2010 which was when you came back to Colombo, you came back in a van to [Town A] from where you caught a train to Colombo. You stated you went by auto taxi to your house. You stated the paramilitaries came to your house about two or three days after you arrived. They stayed for about two or three hours and demanded money and you gave 500 000 rupees. You did not see them or any other paramilitaries again. You stated the next time people came to your house was in 2009 when your sister visited you.

This may lead the Tribunal to find that you are not a witness of truth and you have not been detained or threatened by the paramilitaries upon return from Vanni.

- **When [Ms A] was interviewed**

At Departmental interview on [date] March 2010 it is recorded you said the following:

I want to talk about your friend [Ms A]. She's the lady you told that had been arrested by CID. Is that correct?...

How did she come to know about your arrest? You may not know the answer.

I can't exactly tell you.

And how did you find out that she knew?

She told me, you must be careful about your contact with your other colleagues and how you move with them. She told me because of me some people have come and inquired of her and as a result she has been beaten and been given a lot of trouble. She told me she was sexually assaulted and also given a lot of trouble.

Was that because of the association with you?

Because of that she would have contacted me and after that she gave up her contact with me.

How did she know she has been detained because of you?

She told me.

And what did she say to you?

She told me be careful when you move with other people....

...This happened, you said, in the later part of 2008, when [Ms A] was detained herself, do you know what month she was detained?

I cant tell you exactly.

How many months after you return from Germany?

Maybe one or two months after.

Was [Ms A] afraid of talking to you?

Yes and she said be careful when you talk.

Why did she tell that you she was detained and mistreated?

Because she had been moving with me and due to her moving with me....

So when [Ms A] told you what had happened to her and when she warned you, you became very worried and you talked to your siblings?

Yes.

And they told you to leave Sri Lanka?

Yes.

How soon after [Ms A] told you what happened to her did you contact your siblings?

Some time after what she told me.

And [Ms A] warned you, what did she say to you?

She told me that people are suspecting you, therefore don't talk to them unnecessarily, try and get out.

Of Sri Lanka?

Yes out of Sri Lanka....

When [Ms A] told you that you should leave Sri Lanka, how did your husband react?

I come normally late at night to my home because people come to my house in search, there are paramilitary fellows coming and saying I have been giving money and they also come to check.

How many times were you checked?

They come with the military.

[Ms A] told you you should leave Sri Lanka and you contacted your siblings who also said you should leave. And you got a visa and it was granted in September 2009. So why didn't you travel as soon as you got the visa?

They wouldn't allow me to go out they kept asking me for money.

Who wouldn't let you go out?

The paramilitaries.

When did they start to stop you from leaving?

I told my sister from the UK about having to go out and suddenly she arrived in Sri Lanka

Your got a visa to go to Australia, you are worried, why did not you leave when you got the visa?

I couldn't go because...they are coming to my house and checking. You must give money.

You applied for a visa but knew you couldn't leave, that doesn't make sense to me?

..

This is relevant because it may be inconsistent with the following extracts from your statement dated [date] December 2009:

In the later part of 2008, [Ms A], my friend was questioned as to her involvement in the LTTE and how I became associated with her. She had been subjected to severe interrogation coupled with assault that she stopped meeting me. She never told me where she went but warned me that I should leave Sri Lanka permanently as the authorities were suspecting me of having LTTE involvement through my siblings in Canada, Germany, France and UK... [Ms A] was very serious when she warned me. She said that I would not be able stand the interrogation which is very demeaning as she had been raped by the authorities. When I told this to my siblings living abroad they urged me to leave the country if I suspected any foul play. I applied for the Australian visa and it was granted to me in September 2009.

This may lead the Tribunal to find that you stated at interview that [Ms A] was interviewed two or three months after you came back from Germany, or July/August 2008 and not in the later part of 2008. If the Tribunal accepts that she was interviewed in the later part of 2008, then the Tribunal may find that based on Departmental records, it was not until [date] August 2009 that you applied for your sponsored family visitor visa to Australia, that is nearly 12 months after you were allegedly warned. This may lead the Tribunal to conclude you have not acted in a way that is consistent with the alleged detention or warning by [Ms A] or the warning by your siblings. This may lead it to conclude you have not been telling the truth about [Ms A]'s alleged detention or warning.

At interview on [date] March 2010, you also stated that before September/October 2009 paramilitaries were coming and saying to you that you had been giving money and they also came to check. You stated they wouldn't allow you to go out and they kept asking you for money.

The Tribunal may find that this is inconsistent with what you stated at hearing which was that between 2005 and September/October 2009 no one came to your house.

This may lead the Tribunal to find that paramilitaries were not coming to your house between 2005 and September/October 2009.

- **If your passport was taken**

In your statement dated [date] December 2009 you said the following:

My husband in the mean time informed my other siblings as to our arrest and had approached [Politician A] who got both of us released. The officers ordered that we were not permitted to leave the country and that I should register my sister at the police station. My husband was ordered to surrender my passport at the police station. The police officers were visiting us frequently with Tamil men questioning me as to the reason of my foreign travel in the past. The Tamil men told us that unless I cooperated with them, I could be taken away to prison permanently. They questioned us in which bank moneys were transferred from overseas for the LTTE. I was pleading with the Tamil men to trust

me as I had never involved in any LTTE dealings in the past. The Tamil men told me the authorities would continue to harass me unless I pay them money and leave the country immediately. My sister came forward to pay good money to the authorities promptly for our release. They gave the passport to my sister but refused to give my passport till I have them information as to the [Newspaper A] News Editors and journalists.

At Departmental interview on [date] March 2010, you stated the following:

The military, the police, the paramilitaries all get together, they came and took my passport, kept my passport with them and did not my passport.

When did they take your passport?

My sister suddenly came from outside.

Just answer? When did they take your passport?

After September 2009.

But you applied for other visas here, you applied to the Canadians and also to the UK which means you had the passport...

.....

How did [Politician A] make it possible for you to get the passport back?

If you give the money then you can go out

How did [Politician A] get your passport back to you

My husband promised to give the money and thought the help of this paramilitary fellow this was done

Did you actually surrender your passport at any stage to anybody?

My husband agreed to give the money to the paramilitary fellows and got the passport from the paramilitary fellows

When did they take the passport from you? ...

When did you give it to paramilitaries?

I didn't give the passport to them.

So how did they have it?

..We took it ..

and when did you take it?

till the time the money was given, at the last minute the visa was there.

The paramilitaries wanted your passport

Yes

How did you give it physically to the paramilitaries?

They didn't get the passport from me on the ground that we promised the money will be given.

Ever give the passport to the paramilitaries?

No

I don't understand why you said in your statement you said that the paramilitaries had your passport and your husband had to pay to have it released.

The Tribunal may find that your answer in relation to if the paramilitaries took your passport has continued to change. This may lead the Tribunal to find it does not accept your passport was taken or that you are a witness of truth.

42. The applicant failed to respond.

Country Information

43. In May 2009, the Sri Lankan government declared victory over the LTTE, ending more than 25 years of armed conflict.

[Newspaper A]

44. [Information deleted: s.431(2)]

45. [Information deleted: s.431(2)]

46. [Information deleted: s.431(2)]

47. [Information deleted: s.431(2)]

48. [Information deleted: s.431(2)].^{1 2 3}

Interrogation at the airport

49. On 14 October 2009 the Colombo post of Australia's Department of Foreign Affairs and Trade (DFAT) reported that while anecdotal evidence suggests that previous involvement or suspected involvement with the LTTE could influence how a person is treated at the airport on return to Sri Lanka there is no "hard evidence to prove this". The report states that "the Department of Immigration and Emigration (DIE) computer has a 'black-list' of persons of concern but unless the exact spelling of a name, the date of birth and passport number matches that of the returnee/deportee, the person is not stopped". DFAT provided the following advice with regard to what profile of person is detained and/or interrogated on arrival at Colombo airport?

50. R.5. Sri Lankan Immigration officers do not appear to have sufficient expertise in profiling passengers and unless the person comes up in an alert list they are not stopped at the border. Where it is known

¹ [Information deleted: s.431(2)]

² [Information deleted: s.431(2)]

³ [Information deleted: s.431(2)]

that a person is a returnee or deportee and is not accompanied, the procedure is for Sri Lankan Airlines staff to take them to DIE. In most cases this occurs but it is not unknown for a person, particularly if they have an onward ticket to be allowed to depart the airport without seeing DIE.

51. *Q.6 Would any of the following factors affect the way an individual was treated at the airport and if so, how?*
52. R.6. While anecdotal evidence suggested that the below factors could influence how a person was treated at the airport, there is no hard evidence to prove this. As previously stated unless there was an alert on the person in the immigration system at the airport and that matched exactly the biodata information being presented to the immigration officer, the person would not be stopped from entering. Experience in managing the return of Sri Lankans who had departed Sri Lanka illegally and made an asylum claim abroad has not shown that they are treated any differently to other deportees. This also applied to two persons who had prior criminal records, with one having an outstanding arrest warrant.
- has a previous record as a suspected or actual LTTE member;
 - has been identified as having relatives in the LTTE.
 - has a previous criminal record and/ or outstanding arrest warrant;
 - has jumped bail/ escaped from custody;
 - has signed a confession or a similar document;
 - has been asked by the security forces to become an informer;
 - has visible scarring;
 - has returned from London or another centre of LTTE fundraising;
 - has illegally departed from Sri Lanka;
 - has made an asylum claim abroad;
 - lacks an ID card or other documentation.⁴

Claimed asylum abroad

53. There is some variation in the reporting on the treatment of Tamil returnees to Colombo. In August 2009 the Australian High Commission in Colombo advised the UK Foreign and Commonwealth Office (FCO) that “there were no procedures in place to identify failed asylum seekers”; and that: “The only way that the authorities were alerted to a failed asylum seeker returning was if the airlines or IOM notified them that a person was a deportee or was being escorted”.⁵ A Tamil returned to Colombo after seeking asylum in Australia would therefore be under no more scrutiny than any other Tamil returning to Colombo and would be

⁴ DIAC Country Information Service 2009, *Country Information Report No.09/75 – Treatment of Tamils – Colombo airport, search operations, disappearances, checkpoints and residency*, source: DFAT (14 October 2009), 14 October - Attachment 14.

⁵ UK Foreign and Commonwealth Office 2009, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, pp.8-18 – Attachment 1.*

subject to the same screening procedures with the same risk criteria for being perceived as having an LTTE association (for a list of these criteria see the paragraphs below). In 2004, Australia's Edmund Rice Centre claimed to be aware of two instances in which returnees had been detained for a number of weeks by Sri Lankan authorities following their return; connecting this development with the manner in which Australian immigration officials had shared information about the returnees with the Sri Lankan authorities and the manner in which the returnees were escorted to Colombo airport by an Australian immigration official.⁶ In recent months Bruce Haigh, a retired Australian diplomat who formerly served at Australia's Colombo post (and at the RRT as a Member), has claimed that it has been the practice of the Australian government, in his experience, to share information with the Sri Lankan government about the identities of Sri Lankan nationals applying for asylum in Australia;⁷ which would indicate that, if such a practice is taking place, the identities of Sri Lankan asylum seekers are being communicated to the Sri Lankan authorities. These claims noted, the UN High Commissioner for Refugees has expressed no concerns about the treatment of Tamil returnees at Colombo airport.⁸

No further information could be located within publicly available sources regarding the treatment of Tamils returned to Colombo from Australia in recent years; although information is available on *the number* of ethnic Tamils who have been returned since 2008. According to the Australian High Commission in Colombo:

Four more Sri Lankan asylum seekers, two Tamils, one Sinhalese and one Muslim, have been removed from Australia after their applications for refugee status were unsuccessful, a spokesman for the Australian Department of Immigration and Citizenship (DIAC) said today.

⁶ Edmund Rice Centre for Justice & Community Education 2004, *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers*, September, pp.27, 56 – Attachment 5.

⁷ Haigh commented as follows on 13 April 2010: "For many years it has been a requirement of the Australian government to seek a security clearance from the Sinhalese police for Tamils seeking refugee status in Australia. When I was posted to the Australia High Commission in Colombo I could see no sense in the arrangement. It was best ignored for all it did was to put the family of the applicant in jeopardy", see: Haigh, B. 2010, 'The AFP gets close to the edge of the law', Online Opinion website, 13 April <http://www.onlineopinion.com.au/view.asp?article=10281> – Accessed 22 April 2010 – Attachment 2; Morgan, D. & Mottram, L. 2010, 'Australian government pressured over Tamils' visa refusals', *ABC News*, 13 January <http://www.radioaustralianews.net.au/stories/201001/2790915.htm?desktop> – Accessed 22 April 2010 – Attachment 4; 'Bruce Haigh' 2009, *ABC News*, 13 April <http://www.abc.net.au/unleashed/stories/s2499656.htm> – Accessed 22 April 2010 – Attachment 3.

⁸ Asked about this issue by the the UK Foreign and Commonwealth Office in August 2009 an officer of the Colombo office of UNHCR replied that while UNHCR had "little involvement with this type of issue", "they were aware that some returned failed asylum seekers were interviewed with CID. If there was any suspicion there would be a quick, and usually non-problematic, interview with CID who would ask things like why they left and how long they were away for. High profile cases, such as those suspected of having involvement with the LTTE, would be taken away for further questioning, usually by the police", see: UK Foreign and Commonwealth Office 2009, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August, p.9 – Attachment 1.

The departure of these intercepted individuals brings the total number of unsuccessful Sri Lankan asylum seekers removed from Australia to 80, since late 2008.⁹

As is noted above, in August 2009 the UK FCO undertook a substantial survey of the views of a number of commentators on the situation at Colombo airport with regard to the manner in which Tamil returnees are processed. The mission consulted with representatives from the Sri Lankan government, UNHCR, human rights groups, other western embassies, and a member of the opposition United National Party (UNP), Mano Ganesan MP. The survey reported as follows:

Sources agreed that all enforced returns (of whatever ethnicity) were referred to the Criminal Investigations Department (CID) at the airport for nationality and criminal record checks, which could take more than 24 hours. All enforced returns were wetfingerprinted. Depending on the case, the individual could also be referred to the State Intelligence Service (SIS) and / or Terrorist Investigation Department (TID) for questioning.

Anyone who was wanted for an offence would be arrested. Those with a criminal record or LTTE connections would face additional questioning and may be detained. In general, non-government and international sources agreed that Tamils from the north and east of the country were likely to receive greater scrutiny than others, and that the presence of the factors below would increase the risk that an individual could encounter difficulties with the authorities, including possible detention:

outstanding arrest warrant

criminal record

connection with LTTE

illegal departure from Sri Lanka

involvement with media or NGOs

lack of an ID card or other documentation.¹⁰

FINDINGS AND REASONS

54. In the absence of evidence to the contrary, the Tribunal accepts that the applicant is a Sri Lankan national. It is claimed in the applicant's Protection Visa application that she fears serious harm in Sri Lanka because of her suspected LTTE involvement. The applicant claimed in her statement that she was arrested by CID officers during her return from Vanni, that [in] 2008 she was detained at the Airport, that her friend [Ms A] was detained and that the applicant was again detained at the airport when her sister arrived from the UK.
55. The Tribunal does not accept that these events occurred for the following reasons.
56. In the applicant's statement dated [in] December 2009 she stated the CID officers arrested her during her return from Vanni, and that when she came home the following day, three

⁹ Australian High Commission, Colombo 2010, 'Failed asylum seekers removed to Sri Lanka', 19 March <http://www.srilanka.embassy.gov.au/clmb/100319MRfailedasylum.html> – Accessed 22 April 2010 – Attachment 6.

¹⁰ UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.5 – Attachment 1.

paramilitaries were at her door step demanding 5 Lakhs failing which they threatened to get the authorities to arrest her. The Tribunal finds this is inconsistent with what she said at hearing [in] June 2010 which was that when she came back to her house in Colombo, paramilitaries came to the house about two or three days after she arrived, they stayed for about two or three hours and demanded money and she gave 500 000 rupees.

57. At Departmental interview [in] March 2010, the applicant stated that before September/October 2009 paramilitaries were coming and saying to her that she had been giving money and they also came to check. The Tribunal finds that this is inconsistent with what the applicant stated at hearing which was that between 2005 and September/October 2009 no one came to her house. This leads the Tribunal to find that even if it accepts that she did return to Vanni and Jaffna after the peace accord (which the Tribunal doubts because she was not able to name the NGO's she allegedly worked for), paramilitaries were not coming to her house between 2005 and September/October 2009.
58. This leads the Tribunal to find that the applicant is not a witness of truth and has not been detained or threatened by the paramilitaries upon her return from Vanni nor that they were coming to her house between 2005 and September/October 2009.

Return from Europe

59. Whilst the Tribunal notes that the applicant has stated that she was interviewed on her return from Europe, the applicant did not claim that anything at the airport adverse happened to her as a result.

When [Ms A] was interviewed

60. At Departmental interview [in] March 2010 it is recorded the applicant stated that [Ms A] had been arrested by CID in the later part of 2008, maybe one or two months after the applicant returned from Germany or July/August 2008. Even if the Tribunal accepts that July/August 2008 is the later part of 2008, it was not until [a date in] August 2009 that the applicant applied for her sponsored family visitor visa to Australia, that is nearly 12 months after she was allegedly warned by [Ms A] to leave the country. The applicant has argued that she feared the paramilitaries would take revenge on her family and her husband was in touch with [Politician A] who demanded money, however the Tribunal does not accept these as reasons for her delay in applying for the Australian visa given that her evidence was that the paramilitaries did not come near her until September/October 2009 and her husband was in touch with [Politician A] only after she and her sister were allegedly detained at the airport in October. Neither does the Tribunal accept it was dangerous to go to the Australian Embassy in Colombo because of bombing because the war ended in May 2009 and the fighting had moved well North of the capital by then.
61. This leads the Tribunal to conclude that the applicant has not acted in a way that is consistent with the alleged detention or warnings by [Ms A] or by her siblings. This leads the Tribunal to conclude the applicant has not been telling the truth about her co workers suspecting her of having LTTE involvement or about the loss of her position on that basis or about [Ms A]'s alleged detention or warnings.

If the applicant's passport was taken

62. In her statement dated [in] December 2009 the applicant stated that her husband was ordered to surrender her passport at the police station and her sister later came forward to pay money to the authorities promptly for her and the applicant's release however they refused to give the applicant's passport until she gave them information about the [Newspaper A] News Editors and journalists. At Departmental interview [in] March 2010, the applicant stated the military, the police and the paramilitaries all got together, came and took her passport after September 2009. She then stated she did not give her passport to the paramilitaries. The Tribunal finds that the applicant's answer in relation to whether the paramilitaries took her passport has continued to change. Even though the applicant has stated she thought the Department was asking her about whether the police and not the paramilitaries took her passport, the Tribunal does not accept this explanation because the applicant herself initially stated at departmental interview that it was the paramilitaries who took her passport. This leads the Tribunal to find it does not accept that her passport was taken or that she is a witness of truth.
63. In summary the Tribunal does not accept that the applicant has ever been questioned or detained in the past or that she has been of any interest to the authorities in Sri Lanka.
64. The Tribunal still has to consider whether there is a real chance that, if the applicant returns to Sri Lanka now or in the reasonably foreseeable future, she will be arrested, detained, abducted, tortured or killed by the Sri Lankan security forces or paramilitary groups for reasons of her race (Tamil), or any political opinion in support of the LTTE imputed to them on the basis of their race or the fact that they are returning from abroad or on the basis of the applicant's alleged employment. The country information suggests that unless a returnee's name is matched on a black list of persons of concern, then they are not stopped.
65. For the reasons given above the Tribunal does not accept the applicant's claims regarding her problems in the past. Accordingly, the Tribunal does not accept that there is a real chance that her name is on any alert list at the airport. Therefore, it is not satisfied that there is a real chance that she will be harmed for any imputed political opinion in the future.
66. The Tribunal has considered whether it accepts that the applicant worked for [Newspaper A]. The Tribunal doubts that this is the case. That is because she was unable to provide details in relation to the work the NGO that allegedly secured the job for her did. When asked to talk about [Newspaper A] she described it as a normal newspaper that wrote news, poems, essays and articles whereas the country reports before the Tribunal indicate that the paper reports about the social and political concerns of the Tamil community. The Tribunal also doubts her evidence that even though she was [Position 1] and it was her job to point out things in articles that might affect the peace of the ethnic community, she managed to do that without talking about politics in the office and she was unable to provide [Journalist 1]'s name as the journalist who [information deleted: s.431(2)] even though reports suggest that [Journalist 1]'s work appeared in the paper. Even though the Tribunal accepts the applicant was able to talk about [Journalist 1] after the Tribunal identified her, the applicant stated she only saw that she was arrested from the TV. The Tribunal finds it difficult to accept that someone working for [Newspaper A] in the role of [Role 1] would not be able to identify this event without prompting or would not know about this event from the workplace.
67. Even if the Tribunal accepts that she worked for the paper, the Tribunal does not accept that this has caused her any harm in the past. Accordingly, it is not satisfied that there is a real

chance that, if the applicant returns to Sri Lanka in the reasonably foreseeable future, that she will be harmed for any imputed political opinion on the basis of her work at the paper.

68. The Tribunal discussed at hearing the country information that suggested that persons who have returned from London or another centre of LTTE fundraising could influence how a person was treated at the airport. The Tribunal notes the applicant has previously returned from Europe, however she did not claim that anything adverse happened to her at the airport as a result. Accordingly, the Tribunal does not accept that she is perceived as having involvement with expatriates who were supporting the LTTE in foreign countries because her siblings are overseas. As the Tribunal is not satisfied she has been perceived as having an LTTE association at any time in the past, the Tribunal is not satisfied that if she returns to Colombo after seeking asylum in Australia that she would be under any more scrutiny than any other Tamil returning to Colombo. Accordingly, it is not satisfied that there is a real chance that, if the applicant returns to Sri Lanka in the reasonably foreseeable future, that she be harmed for any imputed political opinion on the basis of her overseas trips.
69. 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

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