

**0908313 [2009] RRTA 1097 (2 December 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0908313

**DIAC REFERENCE(S):** CLF2009/122274

**COUNTRY OF REFERENCE:** Sri Lanka

**TRIBUNAL MEMBER:** Adolfo Gentile

**DATE:** 2 December 2009

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia [in] September 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] October 2009.
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] October 2009 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. The applicant appeared before the Tribunal [in] November 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. Two observers were requested by the applicant at the hearing, these were [name deleted: s431(2)] and [name deleted: s431(2)]; they were described as friends of the applicant who visited him at the detention centre.
21. The applicant was represented in relation to the review by his registered migration agent who was not present at the hearing.
22. The delegate accurately summarised the applicant's circumstances as follows:

The applicant arrived in Australia on [date] September 2009 on flight [number] travelling from Auckland to Melbourne. He arrived on a Canadian passport issued in the name of [alias] born [date] Upon arrival the applicant was referred to DIAC by Customs after concerns were raised that he did not match the photograph in the passport he presented. During questioning by DIAC staff the applicant admitted that the passport he had presented was not his and stated that his real name was [name] born [date]. He was refused immigration clearance and placed in immigration detention on [date] September 2009. On [date] September 2009 the applicant lodged a Protection Visa application in the name [name]. He is currently being held at Maribymong Immigration Detention Centre.

The applicant states he was born in Jaffna in the north of Sri Lanka and is a Sri Lankan citizen. He identifies himself as a "Muslim speaking Tamil" stating in Form 866C and at interview on [date] October 2009 that he is of Tamil ethnicity. The applicant claims he resided in Jaffna up until 1990 when he and his family were forced to leave as the Liberation Tigers of Tamil Eelam (LTTE) took control of the north of Sri Lanka. He states he and his family fled to Colombo in the west of Sri Lanka. The applicant indicated at interview that he remained in the western part of Sri Lanka with his family between 1990 and 2003, departing on only one occasion in 2001 when he visited Jaffna for a few days.

In 2003 the applicant claims he travelled to Canada after being issued with a student visa. He states he applied for refugee status in Canada approximately six months after he arrived and that this application was refused in 2004 or 2005. The applicant states he lodged an appeal regarding the refusal but his appeal was refused in 2007 and he was subsequently asked to leave Canada by the Canadian immigration authorities. To date, no documentation to support this claim has been submitted by the applicant. At interview, the applicant indicated that he resided unlawfully in Canada between October 2007 and September 2009, before departing for Australia. He states his parents, brother and sister remain in Sri Lanka and he has no family in Australia.

In brief, the applicant claims he cannot return to Sri Lanka as the Sri Lankan authorities suspect he is an LTTE supporter. He claims the Sri Lankan authorities intend to kill him if he returns to Sri Lanka and are not capable of providing him with protection.

23. Before the Tribunal hearing the applicant's adviser sent the Tribunal a copy of a letter from the applicant's father to the applicant (date [in]10/09) and a submission reiterating the claims of the applicant and providing some country of origin information.
24. At the Tribunal hearing the applicant submitted to the Tribunal a signed statement, the original of the letter already sent to the Tribunal by the adviser, a birthday card he received from his mother, a number of internet articles from News Weekly, the Asian Human Rights Commission, TamilNet, and UPI Asia. These deal with the plight of the Tamils in Sri Lanka since the defeat of the LTTE, the murder of a disabled Tamil Youth and disappearances. In addition the applicant provided two reports, one from the U.S. State Department titled *Report to Congress on Incidents During the Recent Conflict in Sri Lanka, 2009*, the other titled *The Implementation of certain Human Rights Conventions in Sri Lanka, final report, 30 September 2009* prepared for the European Commission by Françoise Hampson, Leif Sevón and Roman Wieruszewski. Also included was a newspaper article of undeclared source or date discussing an injunction in the Australian High Court against the deportation of a Sri Lankan citizen who had failed to gain refugee status.
25. The applicant stated that he had left Sri Lanka [in] January 2003 with a student visa for Canada which he obtained in 2002 using a valid passport in his own name and obtaining the visa in the normal manner.
26. He described having left Jaffna for Colombo with his family in 1990 and his brother and sister having been born in Colombo after that. He stated that addresses before 1999 had not been included because the family was moving quite often to different lodgings in the Dehiwela - Mt. Lavinia area of Colombo.
27. He stated that his father was taken by the LTTE in June 2003 because of his repeated refusal to pay increased 'tax' to them when he was moving from Colombo to the north transacting his business of selling watches wholesale. His father was released in 2008 after having been held in different areas of the north the exact location of which not even his father knows as he was transferred from one place to another while blindfolded.
28. Asked why he did not apply for refugee status in Canada sooner, given his situation, he stated that it was not until he found out that his father had been taken by the LTTE that he applied. The Tribunal pointed out that he was now saying that he only studied for three days in Canada whereas in his initial statement he stated that his primary reason for leaving Sri Lanka had been to pursue studies in Canada and his father had been taken six months after he arrived in Canada. The applicant stated that he could not settle down to study because he knew that his father was having problems with the LTTE even before he was taken.
29. The applicant confirmed that, in Canada, he had been refused refugee status, had appealed that decision and had lost the appeal. He was subject to a deportation order.
30. Asked why he had not included his addresses after October 2007 in his Protection Visa form, he stated that it was because he was illegal; he moved from place to place and said that he went from Alberta to Vancouver and then to Toronto by the end of 2008 where he stayed

until he left for Australia via New Zealand in September 2009. He went via NZ because these were the instructions of a person called [name deleted: s431(2)] to whom he had paid \$10,000 to be smuggled out of Canada. He met this man at the Eden Centre in Toronto at the end of July 2009. He paid this man with money he had saved in Canada.

31. Asked why he feared a return to Sri Lanka, he stated that he attended a protest march in support of the Tamils, in Toronto on 30 January 2009. In August of the same year two former Sinhalese friends, whose names he gave the Tribunal, beat him up for his support of the Tamils. He believes that they were informants for the Sri Lanka government and passed on this information; he has been told that he appears on a video shot at the time and said that many people were taking videos. He said that the government is looking for him and have gone to his place a number of times as his father has told him. He stated that they are looking for him as a Tamil from Jaffna whom they believe is supporting the LTTE.
32. Asked what he thought would happen to him on return he stated that he would be detained and killed by the Sinhalese military forces.
33. He confirmed that he does not and has never belonged to any political party and has never attended a demonstration in Sri Lanka. He talks to his family about once a week and he did not ask his father for the letter which his father sent him.
34. He said to the Tribunal that his life is in danger and he has lived in fear for the past seven years. At this point in the hearing he handed the Tribunal his statement which the Tribunal accepted after the applicant signed it and after the Tribunal confirmed that the applicant knew what he was signing. He said that one of the observers at the hearing had helped him with it.
35. The Tribunal confirms that the latter statement contains no material that had not been covered in the previous statement or which was not discussed at the hearing.
36. [In] November 2009 the Tribunal received a letter from the applicant's advisor indicating that the applicant would be providing further submissions and requesting that the Tribunal not make a decision until these were provided.
37. [In] November 2009 in a further letter to the Tribunal the applicant's adviser submitted that the applicant is at a heightened risk of being perceived as supporting the LTTE by the authorities because of his Islamic faith. He cited a number of excerpts purporting to support his contention. He again requested the Tribunal not to make a decision until further submissions from the applicant. The Tribunal contacted the adviser and informed him of the fact that the applicant had not requested and the Tribunal had not provided further time for submissions and that the Tribunal would receive and consider all submissions until such time as the decision was signed.
38. [In] November 2009 the Tribunal received a faxed copy of a submission by the applicant's adviser of the same date in which excerpts of two reports are provided to the Tribunal. The first of these, the report by Sevón and Wieruszewski (see above) had already been provided to the Tribunal in its entirety at the hearing. The second report cited is the U.S. Dept of State "Report to Congress on Incidents during the recent conflict in Sri Lanka 2009", this had also been provided to the Tribunal. The submission refers to an attachment which contains 'details of individuals who have been disappeared in Sri Lanka'; this attachment was not received by the Tribunal. In any event, the applicant had provided an attachment containing the names of

disappeared persons between August 2006 and March 2007 at the hearing. This document was from the Asia Human Rights Commission (see above).

## FINDINGS AND REASONS

39. The applicant has presented a Sri Lankan birth certificate, a Sri Lankan National Identity Card and a Canadian Identity Card as evidence of his identity as [name deleted: s431(2)] born on [date deleted: s431(2)]. In light of this documentation, the Tribunal accepts for the purpose of this review that the applicant is [name deleted: s431(2)] as claimed.
40. The essence of the applicant's claims is that he will be identified as an LTTE supporter because of his Tamil ethnicity, his father's involvement with the LTTE, his Islamic faith and involvement in a pro-Tamil rally in Toronto, Canada.
41. The claims he has made are based upon the premise that he is a Tamil as opposed to a 'Muslim Tamil'; more recently he has stated that his Islamic faith is also a source of fear of persecution.
42. The Tribunal refers to country information cited by the delegate in her decision which indicates that the Muslims in Sri Lanka are regarded as a separate ethnic minority (CX228971); this is reinforced by the UK Country of Origin Information Report 2009 (26 June) cited below:

### Overview

20.01 The CIA World Factbook, Sri Lanka, updated in June 2009, recorded that the population is comprised of Sinhalese (73.8 per cent), Sri Lankan Moors (Muslims) 7.2 per cent, Indian Tamil 4.6 per cent, Sri Lankan Tamil 3.9 per cent, other 0.5 per cent and an unspecified 10 per cent (2001 census provisional data). [30] However, as recorded by the Sri Lankan Department of Census and Statistics (Statistical Abstract 2008, Chapter II, tables 2.10 - 2.11, accessed on 1 June 2009), based on a total population of 18,797,257, the population comprises: Sinhalese (82 per cent), Sri Lankan Tamil (4.3 per cent), Indian Tamil (5.1 per cent), Moor/Muslim (7.9 per cent), Burgher (0.2 per cent), Malay (0.3 per cent), Sri Lankan Chetty (0.1 per cent) and other (0.1 per cent) (figures from the 2001 census). However, data from Jaffna, Mannar, Vavuniya, Mullaitivu, Kilinochchi, Batticaloa and Trincomalee districts in which the 2001 census enumeration was not completed were not included. [58a] The U.S. State Department (USSD), Country Reports on Human Rights Practices 2008, Sri Lanka, issued on 25 February 2009 (USSD 2008) reported that Tamils were 16 percent of the overall population. [2b] (Introduction)

20.02 The Minority Rights Group International, Sri Lanka Overview, undated, accessed on 1 June 2009, elaborated on the ethnic mix:

“Sri Lanka has a plural society. The majority group, the Sinhalese, speak a distinctive language (Sinhala) related to the Indo-Aryan tongues of north India, and are mainly Buddhist.

“There are two groups of Tamils: ‘Sri Lankan Tamils’ (also known as ‘Ceylon’ or ‘Jaffna’ Tamils) are the descendants of Tamil-speaking groups who migrated from south India many centuries ago; and ‘Up Country Tamils’ (also known as ‘Indian’ or ‘estate’ Tamils), who are descendants of comparatively recent

immigrants. Both Tamil groups are predominantly Hindu with a small percentage of Christians. They also speak their own distinct language called Tamil.

“More than one-third of Muslims (includes Sri Lankan Moors, Malays and other smaller religious sects like Boras and Khojas) live in the north and east. The majority of these live in the east, where they constitute about a third of the population. The remaining Muslim community is dispersed throughout the urban centres of Sri Lanka Muslims are also divided between mainly agriculturists living in the east, and traders who are dispersed across the island. Muslims speak both Tamil and Sinhalese depending on the area they live in.

“Veddhas or Waaniy-a-Laato (forest-dwellers) comprises a very small community of indigenous peoples. The entire community is in danger of extinction. Sri Lanka also has other, smaller communities, such as the Burghers who are of Dutch and Portuguese origin.” [78]

## **Muslims**

20.15 The International Crisis Group (ICG) document ‘Development assistance and conflict In Sri Lanka: Lessons From The Eastern Province, Asia Report N°165’, 16 April 2009, recorded that Muslims represent 41 per cent of the total population in the eastern districts of Trincomalee and Ampara and 26 per cent in the Batticaloa district. [76a] (Appendix B) and noted:

“Many Muslims continue to feel vulnerable to attacks and extortion from the TMVP and, to a lesser extent, from government security forces. Tensions between Tamils and Muslims, aggravated by the actions of the Pillayan and Karuna factions, remain high. Many remain bitter over the nomination of Pillayan, rather than the Muslim candidate Hisbullah, as provincial chief minister and complain that Tamils continue to control the provincial administration and council.” [76a] (p5)

“Violent disputes between Tamils and Muslims have been kept to a minimum since the provincial council elections, but deep tensions remain. The central government has done little to foster dialogue and reconciliation between the two communities.” [76a] (p6)

20.16 The UNHCR Eligibility Guidelines of April 2009 noted that “...Muslims in the East have been frequently targeted by the TMVP, which has reportedly harassed, extorted, threatened and killed Muslims in the East, with apparent impunity. Clashes between Government forces and the Muslim community in Ampara have been linked to land use in the region.” [6h] (p10)

43. The Tribunal refers to the applicant’s birth certificate provided by him to the Department which indicates the race of both his parents as ‘Ceylon Moor’. It is noted from the above citations that Sri Lankan Moors – which is a more recent version of the term ‘Ceylon Moors’ – are listed as Muslims and this together with the obvious references in the applicant’s name and surname lead the Tribunal to conclude that the applicant is a Sri Lankan Moor who speaks, reads and writes Tamil by virtue of his place of birth and the place of birth of his father and grandfather. He and the family moved to Colombo when the applicant was ten and his mother was born in Colombo, this accords with the fact that the applicant stated that he also speaks Sinhalese.
44. Given the above information the Tribunal finds that the applicant’s race or ethnicity is Sri Lankan Moor.

45. The Tribunal accepts that the applicant's religion is Islam as he has stated.
46. The applicant has insisted that he is Tamil; however the evidence does not support this contention. He has also stated that he would be 'perceived' to be a Tamil. No evidence has been adduced to support this claim and the Tribunal makes reference to his name and the documents he has presented to find that, even if he were ever stopped on suspicion that he might be a Tamil, his documents clearly indicate otherwise and he would not be regarded as a Tamil and the above country information supports the clear division between Tamils and Muslims in Sri Lanka.
47. The Tribunal, as a consequence, finds that the country information provided by the applicant and which refers to Tamils is not of relevance to the applicant's case.
48. The applicant has also claimed that he would be sought as a Tamil from Jaffna. By analogous reasoning the Tribunal finds that he is not regarded as a Tamil and his birthplace is not of relevance in his case.
49. The Tribunal has considered the applicant's claim that he would be persecuted for reason of his Islamic faith. In support for this proposition, an instance of communal violence is cited dating back to May-June 2008 during the distribution of aid and a 2006 HRW report about anti-Tamil violence. The latter refers to the Trincomalee district and in its listing of victims differentiates between Tamils, Muslims and Sinhalese.
50. The Sri Lanka International Religious Freedom Report 2009 issued by the U.S. Dep. Of State, Bureau of Democracy, Human Rights, and Labor on October 26, 2009, states *inter alia*:

Section I. Religious Demography

...

Approximately 70 percent of the population is Buddhist, 15 percent Hindu, 8 percent Christian, and 7 percent Muslim. Christians tend to be concentrated in the west, Muslims populate the east, and the north is almost exclusively Hindu.

Most members of the majority Sinhala community are Theravada Buddhists. Most Tamils, who make up the largest ethnic minority, are Hindus. Almost all Muslims are Sunnis; there is a small minority of Shi'a, including members of the Bohra community. Almost 80 percent of Christians are Roman Catholics, with Anglican and other mainstream Protestant churches also present in cities. Seventh-day Adventists, Jehovah's Witnesses, Methodists, Baptists, Dutch Reformed, Anglicans, Pentecostals, and members of the Assemblies of God are also present. Evangelical Christian groups have grown in recent years, although membership is small.

...

Restrictions on Religious Freedom

There was no change in the status of respect for religious freedom by the Government during the reporting period. Although the Government publicly endorses religious freedom, in practice there were problems in some areas. Foreign clergy may work in the country, but for the last three decades the Government has limited the issuance of temporary work permits. Members of denominations registered formally with the

Government could work in the country. Most religious workers in the country were indigenous.

Work permits for foreign clergy were issued for one year rather than five years as in the past; work permits can be extended. In the past, it had become regular practice for many foreign religious workers on development projects to use tourist visas to gain entry without encountering any problems with immigration authorities. During the reporting period, however, government authorities informed some religious workers that they would not be able to continue this practice. They were not deported formally but instead were encouraged strongly to leave the country.

Some evangelical Christian groups complained of governmental discrimination in the provision of services. These groups reported that state schools refused to accept Christian children or forced the children to study Buddhism and that the Colombo Municipal Council denied free midday meals to Christians who did not belong to the Catholic Church.

#### Abuses of Religious Freedom

Since 1983, the Government had battled the Liberation Tigers of Tamil Eelam (LTTE), a terrorist organization fighting for a separate state for the country's Tamil, and mainly Hindu, minority. In 2001 the Government and the LTTE each announced a unilateral cease-fire, and in 2002 they agreed to a joint cease-fire accord. The peace process stalled in late 2005 following an escalation in violence. In 2006 renewed fighting broke out, and in January 2008 the Government terminated the cease-fire agreement. The conflict formally ended in May 2009. Adherence to a specific set of religious beliefs did not play a significant role in the conflict, which was rooted in linguistic, ethnic, and political differences. The conflict affected Buddhists, Hindus, Muslims, and Christians. Since 1983, approximately 100,000 persons had died. The Government, paramilitaries, and Tamil Tigers have been accused of involving religious facilities in the conflict or putting them at risk through shelling in conflict areas. During the final days of fighting in April and May 2009, there were unconfirmed reports both of the LTTE locating artillery pieces next to religious facilities and of the army firing heavy weapons at the same sites, often while they were in use as shelters for civilians.

During the reporting period, security forces committed human rights abuses against individuals at places of worship in the north and east. While these incidents had an impact on religious freedom, they were not religiously motivated; instead, they were a product of the conflict. Since 2006 there were numerous reports of killings and disappearances. Some Catholic priests who spoke out on humanitarian issues were among those who disappeared. There is no evidence that the killings and disappearances that occurred in this area during the reporting period were religiously motivated.

...

There were no reports of religious prisoners or detainees in the country.

...

#### Section III. Status of Societal Respect for Religious Freedom

Discrimination based on religious differences was much less common than discrimination based on ethnicity. In general, members of the various religious groups

tended to be tolerant of each other's religious beliefs. However, allegations by Buddhist extremists of Christian involvement in "unethical" or forced conversions continued to be a source of tension between the two communities. Christians denied the charges, responding that people undergo conversion of their own free will. There were reports that members of some evangelical groups made disparaging comments about Buddhism while evangelizing. Some groups also alleged that Christians engaged in aggressive proselytism and took advantage of societal ills such as general poverty, war, and lack of education. Christians countered that their relief efforts were not aimed at converting aid beneficiaries.

During the reporting period, Christians of all groups sometimes encountered harassment and physical attacks on property and places of worship by some local Buddhists who were opposed to conversion and believed the Christian groups threatened them. Some Christian groups occasionally complained that the Government tacitly condoned harassment and violence aimed at them. Police generally provided protection for these groups at their request. In some cases police response was inadequate, and local police officials reportedly were reluctant to take legal action against individuals involved in the attacks. The National Christian Evangelical Alliance of Sri Lanka reported numerous attacks on Christian churches, organizations, religious leaders, or congregants, many of which were reported to the police. Credible sources confirmed some of these attacks. A general increase in the number of attacks on churches, particularly in the south, occurred in April and May of 2008. The most severe attack was in Talangama, Colombo District, when Buddhist monks led mobs attacking the Calvary Church, destroying the building and severely injuring the pastor. No arrests were made following these attacks.

51. The above very recent information indicates a generally-applying respect for religious freedom and is marked by the total absence of any examples of abuses or harm to any Muslim by any other religious group for reason of religion; it does not indicate any attempt by anyone to prevent the practice of the Islamic faith. The applicant has cited an IRIN report which refers to the killing of a number of Muslims in the Batticaloa area in 2008. That report refers to a particular instance of communal violence at a particular time. The Tribunal refers to the fact that the applicant is a long standing resident of Colombo and finds that the information in this report is outweighed by the recent U.S. Department of State report. The Tribunal finds that the applicant does not, now or in the reasonably foreseeable future, face a real chance of persecution because of his religion.
52. The applicant further claims that he would be persecuted for supporting the LTTE. In support of this claim he states that he participated in January 2009 "in some protest rallies in Toronto", Canada. He states that as a result of these activities, in August 2009 two of his former Sinhalese friends beat him; the Sinhalese authorities are after him because there were people videoing during the demonstration; the police have come to his home in Colombo at least on three occasions looking for him, his father has informed him of this in a letter which the applicant supplied to the Tribunal.
53. The applicant has provided internet newspaper articles about the demonstrations held in Toronto from January to May 2009. The applicant has indicated that he attended the one on 30 January in Toronto. Despite the fact that his statements say that he attended 'some protest rallies' in January, the evidence indicates that there was only one rally in January in Toronto and that on 30 January. Some 50,000 people attended this rally. The Tribunal accepts that the applicant attended this rally and it also accepts that he may have been videoed. He claims there were many people using video cameras and the Tribunal finds it plausible that media

would have been present at such an event. The information characterises the march as a demonstration to ‘stop the genocide of innocent Tamils’.

54. The applicant claims that he was beaten by Sinhalese who used to be his friends in August 2009 for his attendance at the rally. The Tribunal finds it implausible and does not accept that two of his ex-friends would beat the applicant and that they would do so some seven months after his participation in a rally, even if the rally was, by implication, critical of the armed forces of Sri Lanka who are mostly Sinhalese. The Tribunal does not consider that attendance at a rally with another 50,000 people in another country would be considered such an overtly hostile act which would impute the applicant with support for the LTTE. The Tribunal has not found any independent evidence, in the U.S. DOS, the Amnesty International or the Human Rights Watch reports that anyone coming back from Canada during or after the rallies has met with any harm or even scrutiny on return to Sri Lanka. The applicant claims that Sinhalese informants in Canada alerted the authorities in Sri Lanka. He further claims that the police who are looking for him told his parents that they saw him on video attending the rally. The Tribunal does not accept that he would be sought by the police who were trying to find his whereabouts because he travelled out of Sri Lanka to Canada with a valid Sri Lankan passport and the authorities would already be aware that he was not in the country and had not returned. Further, the Tribunal finds it implausible that the police would reveal the evidence they had about his presumed participation in rallies to his parents, since this would only ensure that the applicant did not materialise. The Tribunal does not accept that the police visited the applicant’s parents the number of times claimed and for the reasons adduced; it finds the reporting of these purported events in the father’s letter self-serving and contrived. The claim that informants were responsible for communicating information about the applicant to the authorities also means that they would have told them that the applicant was in Canada and not in Sri Lanka.
55. The Tribunal finds that the story of the applicant’s father being kept by the LTTE for five years for not ‘paying’ the ‘tax’ levied upon him by the LTTE displays some elements of implausibility since placing him in custody meant that the LTTE obtained no money from him and for such a considerable period of time; nevertheless the Tribunal is prepared to give the applicant the benefit of the doubt and accept that the applicant’s father was a prisoner of the LTTE for five years. The Tribunal accepts that the applicant’s father was released by the LTTE and that he had, at some point, paid taxes to them. The applicant does not report any contact by the LTTE or the Sri Lankan authorities with his father after the latter was released. The applicant has been out of Sri Lanka during the whole time that his father was held by the LTTE. In the circumstances the Tribunal finds that the applicant will not be at risk of being imputed to be an LTTE supporter because of his father’s past contacts with the LTTE, including the fact that he paid taxes to them. The Tribunal thus finds that there is not a real chance that authorities would impute the applicant with a pro-LTTE political opinion or seriously harm him because of his membership of a particular social group that being his family. Similarly, for the reasons stated above, which indicate a lack of interest in the applicant’s father by the LTTE after his release, the Tribunal finds that the applicant does not face a real chance of persecution by the LTTE on account of his family as a particular social group.
56. In light of the above evidence and discussion the Tribunal finds that the applicant does not face a real chance of persecution for reasons of his real or imputed political opinion, his race or ethnicity and his religion, now or in the reasonably foreseeable future, should he return to

Sri Lanka, thus it finds that that his fear of persecution for any Convention reason is not well-founded.

## **CONCLUSIONS**

57. 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**

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officer's I.D. RCHADW</p>
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