

060613994 [2006] RRTA 144 (4 October 2006)

DECISION RECORD

RRT CASE NUMBER: 060613994

DIMA REFERENCE(S): CLF2003/695

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Antoinette Younes

DATE DECISION SIGNED: 4 October 2006

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights.

The matter is now before the Tribunal.

RELEVANT LAW

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, in this case 19 December 2002, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The Tribunal has before it the previous RRT file and 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.

According to the application for a protection visa, the applicant is elderly; was born in Colombo; is of Tamil ethnicity; is of the Christian religion; was educated for 12 years; was widowed; is a retired government employee; departed legally for Australia from Colombo airport on a passport issued in Colombo; had no difficulty obtaining her travel documents; and last entered Australia on a Visitor's visa issued in Colombo and valid for travel to Australia.

In support of the application, the applicant provided a statement in which she claimed that:

- She is a Tamil and a Christian. She worked for nearly four decades. Her brother had a lot of problems with the LTTE, although he had previously been a member of the Eelam Peoples' Revolutionary Liberation front (EPRLF) which worked with the IPKF when the Indian troops were present in Sri Lanka. On a number of occasions, he was subjected to LTTE threats and extortions. He lost his valuables and vehicle to the LTTE. His relative was threatened. Subsequently, he became a member of the EPRLF. His attitudes displeased the LTTE.
- Her brother and his wife were killed by the LTTE. Following his killing, the applicant was approached by the EPRLF to join their party, but she refused because she thought that it would anger the LTTE if she joined EPRLF, and this displeased the senior members of EPRLF.
- She was constantly harassed by the LTTE for money, and because she had no other option, she initially paid them a sum of money, and then further amounts.
- After she returned from Country X, she was approached by members of the LTTE who demanded money from her as compensation for her brother's active campaigns against it and they also accused her of being an EPRLF supporter. Life became very difficult.
- At the same time, EPRLF kept asking her to join their Party, but she again refused as she feared anger by the LTTE.
- She fears persecution from the LTTE because of her deceased brother's activities with the EPRLF, his relative's problems with the LTTE, and the LTTE's constant demands for money.
- Tamils from Jaffna and Batticaloa cannot live in peace in Colombo. She has no relatives in Colombo. She is a well-known person in her area "*through my activities and I always feared that if the LTTE were to ever find out they would torture and kill me particularly escaping from their extortion demands*".
- Not only does she fear suffering serious harm at the hands of the LTTE, but fears constant threats to her freedom and liberty from the EPRLF as they will ask her for money and make requests of her to join their Party. She also fears "*some quarters of government as they work together with the EPRLF*".
- She knows that there is no permanent peace in Sri Lanka "*now that the political situation in Sri Lanka has changed in the light of the recent peace initiatives*".

The applicant provided a number of generic newspaper articles (folios 17-22).

Material provided to the Tribunal

The Tribunal received a submission from the applicant's migration agent which, in addition to restating her claims and providing country information on the current situation in Sri Lanka stated, *inter alia*:

- Although the applicant was born in Colombo, she left Colombo in her childhood. She was educated, married, and resided in [location] (at the same address) between [year] and [year]. The applicant fears persecution on the basis of her being Tamil with family links with the ERPLF/TULF. The applicant is a prominent woman and those groups intended to use her name in their activities. She was harassed and subjected to extortion by those groups.
- The applicant did not apply for refugee status whilst she was in [Country X] because it was after her return from [Country X] that she was subjected to many threats and extortion.
- As an elderly Tamil woman without any relatives in Sri Lanka, the applicant is more vulnerable than others to threats and extortion.
- The applicant did not seek police assistance when faced with threats and extortion because she feared persecution "*from both sides*".

At the commencement of the first hearing held, the applicant handed the Tribunal a number of original documents which included the applicant's passport, birth certificate, ID cards etc. All of these documents showed that the applicant's residence was in a specific area up until the time she last departed from Sri Lanka; that she is an adherent of the Christian religion; and that she is the sister of a prominent person. The applicant's migration agent also provided the Tribunal with material downloaded from the internet which related to the current situation in Sri Lanka.

The applicant's migration agent sent the Tribunal a post-hearing submission, in which it is stated, *inter alia*:

- The applicant did not seek protection in [Country X] because she believed she would be able to live in her local area. She had already paid money to the LTTE and thought it unlikely she would be subjected to further extortion demands. She was under the mistaken belief that the peace talks were going to be successful at the time of her return to Sri Lanka. However, upon her return to Sri Lanka, the applicant was subjected to heavy extortion demands which arose as a result of her family's involvement with anti-LTTE rebels and her race.
- The applicant and her family "*have a long history of being harassed and persecuted for money by the LTTE*". On the last occasion (on her return from [country X]) she was unable to pay the money demanded of her because she has no family to help her and has no funds of her own. Because of the enormity of the sum demanded of her ([sum of money]), the applicant was subjected to enormous pressure. The applicant's subjective fear is based on the objective facts as they exist in [her local area].
- The authorities in Sri Lanka are either unwilling or unable to protect the applicant. The applicant would face serious problems from the LTTE and the authorities if she reports these incidents.

- In recent times it has been reported that the LTTE is continuing to extort money from Tamils; *“they are particularly making heavy demands from their Tamil political opponents”*.
- EPDF, EPRLF and TELO are organizations that are part of the government. It is a well-documented fact that these organizations are responsible for many murders, extortions and abductions. One of EPRLF’s main objectives is to seek out and repress LTTE supporters. EPRLF and EPDP have engaged in repressive activities in Batticaloa and Colombo. The [local district] is *“highly vulnerable for anti-LTTE members and families who are dying, disappearing, and subject to extortion etc, by the Army, EPRLF and LTTE”*.
- The applicant is an old woman and has no family members in Sri Lanka. She does not speak Sinhalese, the language spoken in Colombo. She has no relatives in Colombo. Her only brother and wife were murdered in Colombo by the LTTE. She suffered enormous problems from the LTTE and also from EPRLF and the army. Because of these circumstances, relocation to Colombo is not feasible.
- Because she is a Tamil woman and a supporter of the EPRLF and TULF, the applicant has experienced persecution for the Convention reasons of race, political opinion and social group. Her fears of further persecution are supported by the country information reports.

An examination of the applicant’s passport handed to the Tribunal at the previous hearing shows that on her current passport there have been a number of departures to and from Australia and Country X.

SECOND HEARING

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant was represented in relation to the review by her registered migration agent, who attended the hearing.

Summary of the evidence

The applicant gave evidence that she is of Tamil ethnicity and that she was born in Colombo but when she was very young, she moved to another area where she lived until she came to Australia. She stated that she has three children. She stated that her parents and husband are deceased and that her only sibling, a brother, was killed by the LTTE.

The applicant gave evidence that her brother was involved with the TULF and later in the EPRLF. She said that her brother’s involvement in the EPRLF led to a lot of problems. She said his relative was threatened. She said he and his wife were shot by the LTTE. She said that subsequent to their murder, the LTTE threatened her family and demanded money. She said on one occasion in a specific year, the LTTE took her husband but later returned him because he snored and they were concerned that the army would find their location. The applicant gave evidence that after her brother’s death, the LTTE kept asking for money and her family had to pay on a number of occasions. She said that the LTTE threatened to kill them in case of non-payment. She said after her husband’s death, despite difficulties, she paid the LTTE.

The applicant gave evidence that as well as difficulties with the LTTE, she was approached by the EPRLF, members of which persecuted her and asked her to join the Front. She said although she did not join, she supported the Front. The Tribunal asked the applicant how she supported the EPRLF. She said they met at her brother's house where they were told about the aims of the Front.

The Tribunal asked and the applicant confirmed that she has never been involved in either EPRLF or LTTE activities.

The Tribunal noted that the applicant has travelled to Country X in different years. The Tribunal asked the applicant why she did not seek protection in Country X. She stated that the first time her husband was still alive and he looked after payments to the LTTE. She said in the latter visit, the peace talks commenced and she thought that she could return to Sri Lanka and live happily. She said she did not think that she would be persecuted. The Tribunal indicated to the applicant that it needed to further consider her explanations.

The Tribunal asked the applicant why she does not want to return to Sri Lanka. She stated that when she returned from Country X the second time, the LTTE demanded a large sum of money from her and threatened to kill her in case of non-payment because her brother was working against them. She said although her family was not wealthy, they were targeted by the LTTE because of her brother's involvement in the EPRLF. The applicant said that she has recently heard of a person who was killed by the LTTE near her hometown. The applicant said that she fears that the LTTE would be angry with her because she cheated them when they asked her for money which she did not pay. She fears that she would be asked to join the EPRLF.

The applicant gave evidence that when she was in Sri Lanka, members of the Sri Lankan security forces came to the house at night accusing them of helping Tamils. She said on occasions when she was out, she was subjected to checks by security forces. She said before the peace talks, they broke the glass of her house.

Oral submissions of the advisor

The advisor reiterated the applicant's reasons for not seeking protection in Country X and submitted that the LTTE continue to extort money and target those perceived to be wealthy. He submitted that the applicant would be targeted for her race, imputed anti-LTTE opinion and membership of a particular social group. The advisor noted that there have been heavy fighting recently in Jaffna and Batticaloa and "*LTTE killing everywhere*".

The advisor noted that the applicant has no support in Sri Lanka.

INDEPENDENT COUNTRY INFORMATION

There are serious human rights issues in Sri Lanka. The US Department of State, *Sri Lanka, Country Reports on Human Rights Practices-2004* (Released by the Bureau of Democracy, Human Rights and Labor- March 2006) notes that:

Sri Lanka is a constitutional, multiparty republic with a population of approximately 20 million. President Mahinda Rajapaksa, elected on November 17 to a 6-year term, and the 225-member parliament, elected in April 2004 also for a 6-year term, share constitutional power. According to

the preliminary report of the European Union Election Observation Mission (EUEOM), the November 17 presidential election was generally conducted in a professional and impartial manner, with the exception of the boycott enforced by the Liberation Tigers of Tamil Eelam (LTTE) in the north and east, and was deemed an improvement over the 2004 election. From 1983 until 2001, the government fought the Liberation Tigers of Tamil Eelam (LTTE), a terrorist organization that advocated a separate ethnic Tamil state in the north and east of the country. In 2001, the government and the LTTE announced unilateral cease-fires and signed a formal cease-fire accord in 2002. In 2003 after participating in six rounds of talks facilitated by the Norwegian government, the LTTE suspended the negotiations. The civilian authorities generally maintained effective control of the security forces, although some members of the security forces committed serious human right abuses.

The government generally respected the human rights of its citizens, although serious problems remained. During the year both the government and the LTTE frequently violated the 2002 peace accord. According to Sri Lanka Monitoring Mission (SLMM) statistics, the LTTE committed 14 cease-fire violations for every 1 committed by the government. Civilian deaths due to land mines were drastically reduced through a nationally coordinated humanitarian demining effort. The government enacted emergency regulations three times during the year: twice following the December 2004 tsunami, and once following the August 12 killing of Foreign Minister Lakshman Kadirgamar. The emergency regulations, which remained in effect at year's end, permit arrests without warrant and nonaccountable detentions for up to 12 months. The following human rights problems were reported:

- *unlawful killings by government agents*
- *high-profile killings by unknown actors*
- *politically motivated killings by paramilitary forces and the LTTE*
- *disappearances*
- *arbitrary arrest and detention*
- *torture*
- *poor prison conditions*
- *denial of fair public trial*
- *government corruption and lack of transparency*
- *infringement of religious freedom*
- *infringement of freedom of movement*
- *discrimination against minorities*

There were numerous reports that armed paramilitary groups, suspected of being linked to the government or security forces, participated in armed attacks during the year. These groups included the Karuna faction of the LTTE, the Eelam People's Democratic Party (EPDP), and the People's Liberation Organization of Tamil Eelam (PLOTE). The LTTE continued to control large sections of the north and east and engaged in politically motivated killings, disappearances, torture, arbitrary arrest and detention, denial of fair public trial, arbitrary interference with privacy, denial of freedom of speech, press, of assembly and association, and the recruitment of child soldiers.

.....There were no confirmed reports of politically motivated killings by the government; however, it was often alleged that paramilitary groups, sometimes with the aid of the

government, engaged in targeted killings of political opponents. The government and the army denied the allegations. Human rights organizations and other sources reported an increase in encounter killings by police. At year's end the Human Rights Commission (HRC) reported that police killed 25 individuals in police custody. The HRC determined that 20 of those individuals died as a result of torture in police custody during the year (see section 1.c.).

The last two years have witnessed increased uncertainty both politically and in relation to security in Sri Lanka. In Colombo the major parties continued to dispute the terms and agreed outcomes of the peace process with outgoing President Chandrika Kumaratunga vacillating between hardliners in the Sri Lanka Freedom Party (SFLP) and People's Liberation Front (*Janatha Vimukthi Peramuna* – JVP) and the more conciliatory United National Party (UNP). Of greater concern within the Tamil political environment, a violent schism occurred early in 2004 when Colonel Karuna broke from the LTTE. Based in its eastern strong-hold of Batticaloa, the Karuna faction – which is widely believed to receive support from the government in Colombo – has engaged in an ongoing struggle in the north-east of the country with regular LTTE forces with significant casualties on both sides and making the north and the east the most dangerous and volatile parts of Sri Lanka. These tensions were further exacerbated by the effects of Asian Tsunami which devastated the eastern coast of Sri Lanka. The results of these events have meant that the peace process has stalled. The Government rejected proposed peace talks in Norway and the LTTE, in turn, rejected a compromise proposal by the Norwegian Government that peace talks be held at the international airport in Colombo. A state of emergency was declared in Sri Lanka following the assassination of the Foreign Minister, Lakshman Kadirgamar, on 12 August 2005, widely blamed on the LTTE despite strong denials by the LTTE leadership. The LTTE in turn has demanded a lifting of the state of emergency, saying that it has put the ceasefire agreement at grave risk (Iqbal Athas, 'State of emergency declared in Sri Lanka', *CNN*, 13 August 2005, CX134530; 'Sri Lanka: The target was peace', *The Economist*, 18 August 2005, CX133021; 'Sri Lanka's Tamil Tigers demand end to emergency rule', *PTI*, 28 August 2005, CX133860; 'Sri Lanka PM agrees to scrap plans to share power with Tigers', *Agence France Presse*, 8 September 2005, CX134343; 'Sri Lanka: Tamil Tigers reject Norwegian talks proposal', *NRK*, 9 September 2005, CX134450; Perry, A. 2005, 'Battle for Sri Lanka', *Time*, 13 November <http://www.time.com/time/asia/news/printout/0,9788,1129536,00.html> – Accessed 19 December 2005 – Link; Balachandran, PK 2005, 'Rajapaksa unlikely to upset Lankan applecart', *Hindustan Times Online*, 21 November http://www.hindustantimes.com/2005/Nov/21/7752_1552461,004100180006.htm – Accessed 19 December 2005 – Link; 'Incidents of violence between the LTTE and Tamil National Front (rebel faction led by Vinayagamoorthy Muralitharan alias 'Colonel' Karuna)' 2005, South Asia Terrorism Portal, August <http://www.satp.org/satporgtp/countries/shrilanka/database/violenceincidents.htm> – Accessed 24 November 2005 – Link; Human Rights Watch 2005, 'Sri Lanka: Political Killings Escalate', 16 August, CX131566; Human Rights Watch 2005, 'Sri Lanka: Killings Highlight Weaknesses in Ceasefire', 11 February, CX113788).

Political violence is prevalent regardless of which side happens to be in power. As noted in the *Home Office Report* for October 2004 where paragraph 4.40 present statistics of violent incidents during the 2001 elections in which the UNP was successful. Another independent source of information respecting the same election – Cable CX83973 CIS "*Pravada Journal*" December 2001-remarked:

“Concern has been expressed over the violence in the run up to, during and after the elections, despite the deployment of 40,000 police officers. Observers say the two major parties, the UNP and the PA, were guilty of perpetrating violence. The Colombo based Centre for Monitoring Election Violence (CMEV) has recorded 2,734 incidents of violence and election offences up to the polls and 422 after the elections. These included murder, attempted murder, hurt, grievous hurt, assault, robbery and arson. There were also incidents of threat and intimidation and damage to property. Fifty five people, including 17 on election day, were killed and three were 88 attempted murders and 262 incidents of arson. Twenty incidents of misuse of state property and 43 election offences were recorded. In several places, election monitors were attached. A curfew immediately after the election could not prevent the violence continuing. The PA, which was the ruling party before the elections, was responsible for 1346 incidents and the UNP for 1021.”

FINDINGS AND REASONS

On the basis of the available information, the Tribunal is satisfied that the applicant is a citizen of Sri Lanka of Tamil ethnicity, and that she is outside that country.

The applicant’s passport shows that she departed from Sri Lanka for Australia and Country X on a number of occasions. The applicant did not seek protection in Country X. Whilst the Tribunal is of the view that the returns to Sri Lanka as well as not seeking protection in Country X, raise doubts about some of the applicant’s claims, the Tribunal is satisfied that it would be unreasonable to find that the applicant does not have a genuine fear of persecution because of those factors. The Tribunal has also given weight to the applicant’s explanations.

The Tribunal has had the opportunity to explore with the applicant her claims in the course of a hearing and in consideration of the evidence as a whole, the Tribunal is satisfied that the applicant is generally a credible witness and that the totality of the evidence clearly suggests that the applicant has a profile which would mean that there is a real chance that she would be persecuted if she returned to Sri Lanka.

The Tribunal is satisfied that the applicant’s brother, was affiliated with the Tamil United Liberation Front (TULF) and that he had previously been associated with and later became a member of the Ealam Peoples’ Revolutionary Front (EPRLF) that worked with the Indian Peace-keeping Forces (IPKF). The Tribunal accepts as being plausible that the applicant’s brother on a number of occasions, was subjected to LTTE threats and extortions, and that he lost his valuables and vehicle to the LTTE. The Tribunal accepts as being plausible that the mother-in-law of the applicant’s brother was also threatened. The Tribunal is satisfied that the applicant’s brother and his wife were killed by the LTTE. The Tribunal is satisfied that the brother’s political affiliations gave the applicant pro-TULF, IPKF and EPRLF imputed political opinions and anti-LTTE imputed political opinions.

The Tribunal has decided to give the applicant the benefit of the doubt and accept as being plausible that subsequent to her brother’s death and although the applicant supported the EPRLF, she refused to join the EPRLF when she was approached, which displeased the EPRLF.

The Tribunal accepts as being plausible that the applicant was harassed by the LTTE for money and that her family had to pay on a number of occasions. The Tribunal accepts as being plausible that the LTTE threatened to kill them in case of non-payment. The Tribunal accepts as being plausible that the LTTE took her husband but later returned him because he snored and they were

concerned that the army would find their location. The Tribunal accepts as being plausible that after her husband's death and despite financial difficulties, the applicant paid money to the LTTE. The Tribunal accepts as being plausible that upon the applicant's return from Country X, the LTTE demanded a large sum of money from her and threatened to kill her in case of non-payment. The Tribunal accepts as being plausible that the applicant has not paid this money and that she fears harm as a result of non-payment.

In essence, the Tribunal is satisfied that the harassment by the EPRLF and the LTTE as well as the extortion amounts to serious harm as contemplated by the Act. The question is whether there is a real chance of such harm occurring in the reasonably foreseeable future.

The Tribunal is not satisfied that being Tamil, without more, means that there is a real chance of being persecuted in Sri Lanka. However being Tamil as well as other factors can mean a real chance of serious harm. There is evidence that the LTTE continue to target and intimidate other Tamils. In an article entitled *Embark on a concerted campaign against LTTE terrorism* (<http://lankaweb.com/news/items06/2003-1.html> - accessed 20 March 2006), the author noted that "*Although LTTE claims they are fighting for the rights of the Tamil people.....Their [Tamil people] children are abducted and forcibly trained as LTTE combaters and are forced to pay heavy illegal taxes to the LTTE on all essential commodities and punishment by kangaroo courts...*" In an article on 15 March 2006, *Funding the "Final war" – LTTE Intimidation and Extortion in the Tamil Diaspora* (<http://www.colombopage/archive/March1515854.html> - accessed 20 March 2006), it is reported that "*the LTTE's use of intimidation, harassment, extortion, and even physical violence against members of the Tamil diaspora is effectively stifling Tamil dissent regarding on-going LTTE human rights abuses in Sri Lanka. The LTTE is forcing Tamils, including those who do not support the LTTE, to provide financial support for LTTE operations, including its continuing pattern of child recruitment and political killings*". That article refers to a Human Rights Watch Report concluding that the LTTE even target Tamils living outside of Sri Lanka (*Funding the "Final war" – LTTE Intimidation and Extortion in the Tamil Diaspora*, Human Rights Watch, March 2006).

In consideration of the evidence as whole, the Tribunal is satisfied that the applicant has suffered Convention-related serious harm in Sri Lanka. Although the applicant was not politically-active, the Tribunal is satisfied that as a result of her brother's affiliations, the applicant was perceived as having pro-TULF, IPKF and EPRLF imputed political opinions and anti-LTTE imputed political opinions. In essence, the Tribunal is satisfied that the applicant has suffered serious harm as stipulated by the Act. Looking at the evidence as a whole and given the independent country information, the Tribunal finds that the serious harm suffered by the applicant was essentially and significantly related to Convention grounds, namely her Tamil ethnicity (race) and being imputed with anti LTTE opinions by virtue of her brother's political affiliations. By not being politically aligned with the LTTE, the Tribunal is satisfied that the applicant would have been imputed with anti-LTTE political opinions. The applicant's age group means that there is a real chance that any form of harm by the LTTE and/or any other group would result in her suffering significant harm, constituting serious harm as contemplated by the Act.

The issue of state protection encompasses both the capacity and the willingness of the state to afford such protection. Country information indicates that there are serious security issues in Sri Lanka. The evidence is that the Sri Lankan police, state agents, have themselves been responsible for the commission of serious human rights violations. The US Department of State Report (2006, *supra*) noted that although "*There were no confirmed reports of politically motivated killings by the government; however, it was often alleged that paramilitary groups, sometimes with the aid of the government, engaged in targeted killings of political opponents.*

The government and the army denied the allegations. Human rights organizations and other sources reported an increase in encounter killings by police. At year's end the Human Rights Commission (HRC) reported that police killed 25 individuals in police custody. The HRC determined that 20 of those individuals died as a result of torture in police custody during the year (see section 1.c.)”.

Given the independent country information, the Tribunal is not satisfied that the applicant would be able to receive adequate state protection for any of the harm she fears.

In summary, the Tribunal is satisfied that the applicant has suffered harm essentially and significantly related to her race and actual/imputed political opinions, and given available country information, that there is a real chance of such harm occurring to the applicant in the reasonably foreseeable future. In reaching its findings, the Tribunal has considered relocation but the Tribunal is satisfied that relocation is unreasonable in the applicant's case. The applicant is elderly who does not speak Sinhalese and she has no close relatives left in Sri Lanka.

Therefore, the Tribunal is satisfied that the applicant has a well-founded fear of persecution as contemplated by the Convention.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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> . PRRRNM
