

1506945 (Refugee) [2016] AATA 4064 (6 July 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1506945
COUNTRY OF REFERENCE:	Sri Lanka
MEMBER:	Sean Baker
DATE:	6 July 2016
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 06 July 2016 at 3:57pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the Migration Act 1958 (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, applied for the visa [in] June 2013 and the delegate refused to grant the visa [in] May 2015. The applicant provided a copy of the delegate's decision with his application for review.
3. The applicant applied for a Protection (Class XA) visa. However, by operation of s.45AA of the Act and r.2.08F of the Migration Regulations 1994, from 16 December 2014 the application is taken to be, and to have always been, a valid application for a Temporary Protection (Class XD) visa and is taken not to be, and never to have been, a valid application for a Protection (Class XA) visa.
4. The applicant appeared before the Tribunal on 23 October 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Sinhala and English languages. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from

Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. The issue in this case is whether the applicant's past claims of harm are credible and whether, in light of new country information, he will face a real chance or a real risk of harm on return. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
11. The applicant claims to be a [age] male born Puttalam district, North Western province, Sri Lanka. He is Sinhalese and Roman Catholic. He speaks, reads and writes Sinhalese. He is married and has no children. In his protection visa application and at interview he claims to have worked legally in [country] on consecutive temporary working visas from December 2005 until December 2008.
12. The applicant made a statutory declaration

Background:

My name is [name] and I am a [age] male born in [name] village, [Town 1], Puttalam District, North west Province, Sri Lanka. The following is only a summary of my claims for protection. It is not an exhaustive statement of the reason or reasons why I cannot return to my country of origin. I will provide further information in relation to my present claims during my interview with the POE officer. An Entry interview was conducted with me [in] May 2013 with a DIAC officer. During that interview I was asked to provide my claims in a brief form which is why not all my claims were given at that stage. Also I have not been explained what is relevant and what I am required to disclose to the Department for the purpose of assessment of my claims.

My citizenship is Sri Lankan. My ethnicity is Sinhalese and my religion is Roman Catholic. I am married and I have no children. My father is deceased from an accident in 1991. My mother and [sibling], currently reside in Sri Lanka.

I have lived in Sri Lanka my whole life, apart from three years in [country] for work.

I fear returning to Sri Lanka because my life was threatened because of my political associations.

Why I left my country:

I have supported the UNP party since I was [age]. Prior to the 2010 elections I went to about four meetings with [Mr A], who is an MP. I was involved in poster campaigning prior to the 2010 elections, I also did door to door canvassing, On January [date] 2013 In [Town 1] I went to a meeting and on the way an incident happened. There was a fight between UNP supporters and those of the present government. They beat us, I was hit and beaten all over my body, and have scars on my back and legs from their weapons, They also had hand bombs which they threw, [Mr A] was also with us and he was beaten. He said to the group to go somewhere to be safe. His private security took him away. I went to my village house and then that evening went to my [relative]'s house in [Town 2]. I went to a

private doctor and got my wounds attended to. I stayed in [Town 2] for two years, until I left for Australia.

In January 2013 I visited my mother in our home village. While I was there, on January [date], one of my friends [Mr B] was killed because of his political opinion. That evening the people who killed him came to my house looking for me. When the vehicle stopped outside my house I got scared as I knew it was the same group, and I ran away.

I returned to [Town 2]. I found out that after I left that they had hit my mother and my [sibling]. They asked my [sibling] where I was but [sibling] did not give any information. Then I came to know about the boat going to Australia and I organised to come here.

What I fear might happen if I go back to my country:

I fear the supporters of the present government will kill me if I return to Sri Lanka.

Who I think will harm or mistreat me if I go back;

I am afraid of the supporters of the current government because they want to kill me because I am a UNP supporter.

Why I believe they will harm or mistreat me if I go back:

They will harm me and kill me because of my activities supporting the UNP,

Why I believe that the authorities in my country will not protect me if I go back:

I am afraid of the current government and its supporters, who are targeting UNP supporters with impunity. Also no action has been taken about the killing of my friend or the beating of my family, although they made a report,

Why I believe I will suffer significant harm:

I believe I will suffer significant harm because I have already suffered cruel and inhumane treatment in the past, and these people have harmed my [sibling] and my mother, and killed my friend. They are inquiring about me.

Why I cannot relocate

I cannot relocate to any part of Sri Lanka because I believe these people will find me, as they are making inquiries about me. They have government resources and will locate me, even in Colombo.

13. The applicant submitted copies of identity documents including his Sri Lankan passport, birth certificate, ID card and marriage certificate, as well as [country] visas in his passport.
14. The applicant's representative made oral submissions at the applicant's interview, claiming that the applicant had issues recalling past incidents and dates, he was emotionally stressed and distrusted authorities, that he had been involved in politics due to his family, he had an administrative role, but had worked with high profile politicians which placed him at risk.
15. The delegate refused the application. The delegate found that the applicant was from Puttalam North Western province, Sri Lanka and Sinhalese. The delegate noted that despite claiming to have supported the UNP for approximately 15 years, working

closely with high profile politicians, the applicant could not demonstrate a level of knowledge of the party consistent with his claims and his claimed level of activity. The delegate did not accept that the applicant was a UNP supporter for 15 years, that he worked closely with [Mr A], that the applicant was attacked in January 2010 alongside [Mr A] by government supporters, nor that the applicant's family was attacked in January 2013 by government supporters. The delegate went on to find that the applicant would not be harmed for a convention reason. The delegate went on to find that, as a failed asylum seeker and a person who had departed unlawfully, the applicant would not face serious or significant harm on return.

16. On 21 October 2015 the applicant's representative made a pre-hearing submission which set out country information which it was argued indicated that failed asylum seekers or returnees from western countries faced harm on return, and reiterated that the applicant would face harm on return due to the work he has carried out for the UNP, notwithstanding the changed political landscape, that gangs linked to individual politicians intimidate voters and opposition politicians participate at personal risk. The submission argued that the delegate had been concerned with the applicant's credibility due to minor inconsistencies, and that the applicant's work for the UNP was witnessed by many in his community and he associated with a known politician, and now opposition parties would plausibly want to target UNP supporters. The submission included country information about the situation in Sri Lanka before the most recent elections, and less recent information about the situation for returnees from the West/failed asylum seekers, and briefly set out complementary protection claims.

Identity and nationality

17. The applicant has provided copies of his Sri Lankan passport, identity card and birth certificate, as well as an untranslated marriage certificate. On the basis of this information and with no evidence to the contrary I find that the applicant is who he claims to be and is a National of Sri Lanka and that Sri Lanka is his receiving country.
18. The applicant stated at hearing that he had travelled to [country] to work between approximately 2006 – 2008. He stated that he had no right to enter and reside in any other country. On the basis of his evidence and with no evidence to the contrary I find that the applicant does not have a right to enter and reside in any third country.

Mental health of the applicant

19. Before the delegate and before me the applicant has claimed to not be able to remember past incidents and dates. I asked him if he had any medical condition which had been identified. He said that he had gone to [agency], he had difficulty sleeping and sometimes he recollects past things and in that context he has difficulties. I asked for details about his attendance at [agency] and he said he did not remember much, it was about a year ago. He said he was given some photos of the boat on which he came to Australia, he did not know why, and some ointment to help him sleep. He said he was not working now as he had a headache.
20. During the hearing, when pressed on details of events or inconsistencies, the applicant would claim that these difficulties related to his difficulties with remembering. I noted that it appeared to me that he may be using this as a device to explain the inconsistencies. At the end of the hearing I noted that I was not sure that his claimed mental health issues explained the difficulties and inconsistencies with his evidence as raised and that even if I accepted that he had visited [agency] about

a year before the hearing I was not sure his claimed mental health issues explained the inconsistencies from today and before the department.

21. After the hearing the representative provided a short submission which provided evidence of the applicant's mental wellbeing, arguing that the letter from [agency] dated [in] October 2015, and from the applicant's counsellor there, dated [in] March 2014, demonstrated that the applicant attended counselling there between August 2013 and June 2014, noted that the counsellor in March 2014 had written that the applicant presented with symptoms consistent with depression which interfered with sleep and involvement in daily activities and experienced intrusive memories and needed counselling to reduce the disabling effect of anxiety and restore meaning and purpose to his life, and argued that the letters should be given due weight in assessing the applicant's credibility and that the concerns I raised may have stemmed from these mental health ailments.
22. I accept the letter from the counsellor. I do not believe that a more detailed letter is required. I accept that the applicant presented with symptoms consistent with depression which interfered with sleep and involvement in daily activities and experienced intrusive memories and needed counselling to reduce the disabling effect of anxiety and restore meaning and purpose to his life. However, even if I accept that this limits his ability to recall some details, I do not accept that this explains his inability to discuss and recall significant claimed past events and the difficulties I have discussed below. I have had regard to the opinion of the counsellor but I do not accept that it explains or excuses the below concerns.

Actual or imputed political opinion

23. I have considered the applicant's claims that he fears harm for reasons of his political involvement and actual or imputed political opinion.
24. I have real concerns that the applicant has been engaged in politics to the level and extent he claims. He has claimed to have been involved with the UNP for 15 years, and to have been involved with high profile UNP politicians, particularly [Mr A].
25. When I asked him at hearing to tell me about this he said that he had no fear of return but he did have some concern as he had worked for [Mr A]. He then said that he had asked [Mr A] to give him a letter but [Mr A] has asked for money to do so. He said his lawyer had told him to go and get a letter so he had told his mother, and when asked, [Mr A] had asked for money from his mother. The applicant said that his family did not have the financial ability to pay for such a letter.

The applicant's political activities

26. The applicant claimed that he had canvassed for the UNP and put up posters and decorations and door to door canvassing. When prompted he also said that he had taken part in campaigns and went village to village canvassing for them. He said that during the period when he did politics he had a lot of fear by doing this.
27. However, the applicant said that he was not sure what would happen, and conceded that these things had happened in the past and that the political situation now had changed, and that now it was good there.
28. I asked the applicant if he was a member of the UNP. He said he was, he had voted for the person he liked. I asked if he had a membership card and paid membership fees and he said he did not. I asked what had attracted him to the UNP. He said that

from his youth he had wanted to get government employment because his mother had told him that if he got into the government sector he would get a pension, and because in Sri Lanka you will not get government work unless you work for a political party, that was his main reason for supporting the UNP. I asked him what the policies of the UNP were. He said he didn't have a great knowledge of the policies of the party, he said back then he could remember but now he finds it difficult. He said that the party likes to apply the law equally. I noted he had claimed to have gone from village to village canvassing, and asked what he had said to people. He said when they were going canvassing a group went and there were some educated people who could talk and explain well.

29. I asked if he had attended any meetings for the 2010 election and he said he had but he could not remember the dates, they were held in many places such as [Town 1], [village], Puttalam, I asked who he had gone to these events with and he said a good number of friends were there and a lot of people were there. I asked if there had been any MPs or people hoping to be MPs and he said he could not remember that. I asked who he had supported in the 2010 Presidential election and he said [Mr A]. When I probed this he said that he had supported Sarath Fonseka. I asked if anything had happened to him during this campaign. He said that when he was going campaigning with [Mr A], the opposition party members created problems and threw stones towards them. I asked if he could describe this in more detail and he said that nothing had happened, there was no damage done at that time, they just threw stones. I asked if this was all. He said a lot of things happened, he could not explain, they threw stones and shot. I asked if this was all that had happened to him in the 2010 elections and he said that in addition to that they had come to the village office and attacked the village office and burned it, those things have happened. He said that those were the things that happened to him in 2010.
30. Later in the hearing the applicant's representative said that the applicant had given a reasonable explanation for his assistance of the UNP. The representative said that he had been consistent with his claims of support of the UNP, and if the UNP was involved with them this would suggest his area would be aware of his political opinion, and he may be targeted by members of opposing political groups in his area.

The death of his friend

31. He focused on the claimed death of a friend of his, [Mr B]. He said because his friend got killed he was not sure what would happen if he went back. I asked when his friend was killed and he said that he could not remember. I asked what the circumstances were of his friend being killed and he said the news was that it was a political killing but he was not quite sure. He said because of his problems he had difficulty sleeping and so he had forgotten these past things and could only tell me approximately. He said that [Mr B] was a [vehicle] driver who would drive around [Mr A] and had his [vehicle] decorated with UNP paraphernalia. The applicant said that he became friendly with [Mr B] when he was doing politics and they became good friends.
32. The applicant said that during the period when [Mr B] was assassinated they also came to his house but he got the news that they were coming to harm him so he did not go home he avoided home and went to [Town 2]. Later he said that they had come to his house the same day as [Mr B] was killed. I asked how the applicant had heard that [Mr B] was assassinated. He said he came to know about this, the message came to his house. I asked how specifically. He said maybe he came to know about it through a friend of his, but that anyhow the news came to his house. He said he was at home and he heard vehicles so he left and went to [Town 2]. I

asked where his wife was at that time and he said she was living in [Town 2]. He then said that he could not remember if he had been married at that time. I asked who was at his house in [Town 1] and he said his mother and [sibling]. He said that the people who had come in search of him had questioned his mother and [sibling] and assaulted them.

33. I asked how he knew [Mr B] was killed because of his political opinion. The applicant said because of the situation in the country during that period he thought it was a political killing, but he was not sure if it was political or personal.
34. I asked if he knew why the people had come to his house and he said he didn't really know the reason for them coming to his house, he suspected that since the person who got assassinated was a good friend of his, that if he had been at home at that time he was not sure what would have happened. I asked if the people had said anything to his mother or [sibling] and he said they had questioned them about him. I asked the applicant what [Mr B] was doing politically and he said that he was a [occupation] for [Mr A] and used to go in the [vehicle] very frequently exhibiting his banners and symbols.

Other harm experienced?

35. The applicant recounted the above incidents at the hearing. I asked him if these were the only incidences of harm he had experienced and he said they were. I asked him a little later if anything had happened to him after the people came to his house and assaulted his mother and [sibling] and he had gone to [Town 2] and he said nothing had happened to him after that. I asked if anything had happened to his mother or [sibling] or wife after that and he said that on several occasions they had threatened his [sibling] and questioned his [sibling] about him. I asked when this had happened and he said he could not remember that period.
36. I summed up his claims, noting that he had claimed that stones had been thrown in the 2010 election, his friend had been killed and on the same day people had come looking for him and asked if anything else had happened to him in Sri Lanka. Initially he said yes, and when I asked him what he had said he could not remember now.
37. I then read to him from his statement, in which he described an attack in [Town 1] in which there had been a fight between UNP supporters and supporters of the then government, in which he was beaten and hit all over his body, and had the scars on his back and legs from their weapons and [Mr A] was also there and was beaten, that [Mr A] told the applicant and others to go somewhere safe and the applicant went to [Town 2] and went to a private doctor and got his wounds attended to, and the applicant stayed in [Town 2] for two years until he came to Australia. I noted that he had not mentioned this incident, which sounded to me like a very significant incident. In response he said that at the beginning he had told me that his memory was not good and he had forgotten most things but had remembered after I had mentioned it.
38. I noted that I may not accept this, I might accept that he had difficulty recalling dates or details with accuracy but it appeared to me that he had neglected to mention the whole event, that it appeared to be the most significant thing he claimed had happened to him, that he had not been able to tell me that it had occurred even though I had repeatedly asked him if he had suffered any other harm, and that I may find that he had not told me about it at the hearing because it had not happened and that I may be unable to rely on his testimony. In response he said that this had happened to him and he attended to his injuries but he did not have a good memory to recall this, as he had said at the beginning.

39. Later I asked the applicant if he had been jailed or arrested or charged. He said he had been sent to jail for a few days. I asked what for and he said he could not remember. He said it had been for 6-7 days with a good number of friends and they were kept in a cell, and he could not remember why. I asked when this happened and he said during the period when he was doing politics. I asked if he had mentioned this in his statement. He said he may have stated it. I noted that it did not appear to be in his statement. I asked if he had mentioned this to the Department officer when he was interviewed. He said he could not exactly tell whether he had stated it at the interview, when I questioned him about it, it came into his mind. I noted that this appeared to be a new claim that he had mentioned for the first time today which raised considerable concerns that this had occurred and that I may take the view that he had invented this to bolster his claims.
40. The applicant's representative submitted that the fact he had been in jail for a short period of time might cause him to have issues if he is back in custody. The applicant was not able to say the reason he had been jailed and this may cause the authorities to investigate more on return. I asked the representative if there was any indication that the applicant had claimed earlier in the process to have been jailed and the representative said they had not seen that and the forms did not seem to indicate that.
41. I found the applicant's evidence of his claimed role with the UNP unconvincing. He claimed that he had been unable to get evidence from [Mr A] of his involvement because [Mr A] had asked for money in order to provide a letter, and he was unable to provide any details which might allow for his claims to be verified, for example if he was able to give details of the approximate dates or times of events he claimed happened. I do not accept the submission of his representative that the applicant has been consistent in his claims over time. If his claims contained detail or even some recollections that indicated a lived experience on the part of the applicant, I could accord this weight, but the applicant has been consistent only in claiming at a very generalised and vague level that he has been involved with the UNP for 15 years, but has been unable to provide any detail about this long involvement, has claimed he was involved with [Mr A] but again has been unable to provide details of this association, and when further detail has been sought he has been almost completely unable to provide any.
42. I have considered the evidence of the applicant. As set out, there were significant inconsistencies between his claims in his statutory declaration and his evidence at hearing. Even accepting his symptoms consistent with depression, sleep interference and anxiety, he was unable to provide any clear explanation of what he had done, when, or why he had done it. I do not accept that these symptoms explain his inability to speak about his claimed past experiences in anything more than the most general of ways. I accept that the applicant, given his symptoms, may misremember details or dates, and have taken this into account when assessing his evidence, but I do not accept, on the evidence before me, that this explains the concerns I have with his evidence, because I spent considerable time checking and re-checking his responses, and because the inconsistencies were significant, and were accompanied with vague and undetailed answers. I have considered his various explanations for the inconsistencies but I find these unconvincing. Significantly, the applicant failed to mention or describe at hearing the main event he claimed had happened to him; the attack which left him with injuries that had to be treated by a private doctor and have left him with scars. I find he failed to mention this despite repeated prompts and questioning of whether he had suffered any other harm in Sri Lanka. Further, he raised a claim which I find has not been raised previously, of having been imprisoned

for 6-7 days, but was able to provide no detail about this at all. On the basis of these concerns I find that these events have not happened.

43. On the basis of these concerns I do not accept that the applicant was an active supporter or member of the UNP, in the sense that I accept he may have voted for the UNP in elections, but I do not accept that he has campaigned for, put up posters for, done door to door or village to village canvassing or supported in any other way the UNP, because he was unable to give any detail about campaigning, and what he did. I find therefore that he was at most a very low-level supporter, restricted to voting for them at elections, of the UNP in his local area.
44. I do not accept that the applicant was attacked on his way to a meeting in [Town 1] [in] January 2013 during a fight between him and other UNP supporters and supporters of the then government, I do not accept that he was hit and beaten all over his body, and was scarred on his back and legs from their weapons used in this claimed attack, that they threw hand bombs, that [Mr A] was there and was also beaten, that he told the applicant to go somewhere safe, that the applicant fled to [Town 2] and to a provide doctor and got his wounds attended to and stayed in [Town 2] for two years. As noted above, the applicant failed completely to mention any aspect of this, the most significant and serious claimed incident at hearing, I have not accepted his reasons for why he did not and along with his vague and undetailed claims, I have reached a positive state of disbelief that this event occurred.
45. I do not accept that a friend of his, [Mr B], was a [occupation] and [vehicle] driver for [Mr A], and/or was killed, in a politically motivated attack or otherwise, because his evidence on this was vague and undetailed. I do not accept that people came to the applicant's house seeking him after this killing because his evidence on this was vague and undetailed. For this reason I do not accept that the applicant's mother and [sibling] were harmed by these people at this or any other time. I do not accept that the applicant went to meetings with or has any connection with [Mr A] whatsoever, apart from being in his electorate, because he was unable to give any details of this association and his activities. I do not accept that the applicant has worked for [Mr A] or the UNP in any capacity. I do not accept that the applicant was in hiding in [Town 2], given my above findings. I do not accept that anyone is inquiring after the applicant given my above findings.
46. I do not accept that the applicant was jailed during the period he was doing politics or at any other time because he introduced this claim for the first time only at the hearing when he had had considerable opportunities to raise it earlier, and then was unable to provide any details about this event at all. Consequently I do not accept that this claimed event will lead the authorities to investigate more if he is returned to Sri Lanka, because it did not happen.
47. I do not accept that the applicant's life has been threatened at any time due to his political associations, or for any other reason.
48. I find, on the evidence I accept, that no one will seek to harm the applicant for any reason connected to his claimed involvement in politics. The applicant was unable to say who he feared harm from on return but had a feeling that something would happen to him but he could not tell me who would harm him or what danger would come to him.
49. The applicant also conceded that the political situation had improved. I discussed with him at hearing that there have been considerable political changes in Sri Lanka since he has left, and that the party he claims to support, the UNP, have gained

power, in coalition, and are presently leading the government.¹ I noted to him that country information indicated that in his local area, Puttalam, the UP had achieved over 50% of the vote.² I have considered the pre hearing submission but I note that the information there largely refers to the situation prior to the 2015 elections and I prefer the information I discussed and shared with the applicant at hearing. I find that there is no basis to conclude that the applicant, as a low level UNP supporter who I find has not been targeted for harm in the past for this reason, will be harmed on return. I find on the country information that the prospect of the applicant being harmed in the future for his political opinion or activity is remote, and not one that could be considered a real chance or real risk of occurring.

50. I find that the applicant does not face a real chance of serious harm arising out of his political opinion, now and in the reasonably foreseeable future. I find that the applicant does not have a well-founded fear of persecution for this reason.
51. Further, considering the evidence as discussed, I do not consider that the applicant has a real risk of significant harm for this reason.

Returning as a failed asylum seeker

52. I accept that the applicant has illegally departed Sri Lanka, departing by boat and travelling to Australia in February 2013. I have considered that the applicant is a Sinhalese man, a very low-level UNP supporter, and will be identified as a failed asylum seeker on return.
53. As discussed with the applicant at the hearing, specific advice received from DFAT states that people of Sinhalese ethnicity returning to Sri Lanka are subject to the same entry procedures as any other citizen:

R1. Returnees are subject to standardised identity and security checks regardless of ethnicity and the circumstances of their departure from Sri Lanka. Tamils returning to Sri Lanka are subject to the same entry procedures as any other citizen of Sri Lanka. The Government of Sri Lanka has standardised re-entry procedures in place at the airport to undertake identity and security checks for all returnees. These processes are applicable to all Sri Lankan returnees regardless of ethnicity and are standard for returnees from all countries regardless of the circumstances around their departure from Sri Lanka (i.e. regardless if the returnee is voluntary or involuntary).

In general, all arrivals at the airport are screened against an immigration database. Sri Lankan law enforcement agencies, including intelligence agencies, may place alerts against names in the immigration watchlist. A person with an alert against his or her name would be subject to further questioning at the airport.

Where a person is not on the immigration watchlist but the person is otherwise identified to be of security interest, such as if a person has been removed/deported

¹ BBC Asia, 'Sri Lanka elections: UNP victory as Rajapaksa hopes rebuffed' 18 August 2015, accessed at <http://www.bbc.com/news/world-asia-33970289>; Sri Lanka Mirror, 'Ranil takes oath as PM : MoU signed for national govt' 21 August 2015, accessed at <http://www.srilankamirror.com/news/item/5846-ranil-takes-oath-as-pm-mou-signed-for-national-govt> ; DFAT Country Report Sri Lanka February 2015 at 2.3, in all significant respects the same as DFAT Country Information Report – Sri Lanka – 18 December 2015.

² http://adaderana.lk/general-election-2015/district_result.php?dist_id=Puttalam

(returnee) or is suspected of being involved in criminal behaviour, including people smuggling, s/he is likely to be interviewed by Police's Criminal Investigation Department (CID) airport office or the State Intelligence Service (SIS), or both. This checking would occur regardless of ethnicity.

We understand that where a person is known to be a non-voluntary returnee (we note again regardless of ethnicity), Sri Lankan immigration authorities have a standing agreement to refer the person to both SIS and CID at the airport for questioning.

The process for returnees (non-voluntary and/or voluntary returnees) who have departed Sri Lanka illegally (not through an official port of entry/exit or not with a valid travel document) is that they will be processed by Sri Lanka's Department of Emigration and Immigration (DIE), SIS and Airport CID. Procedures include Airport CID obtaining police and security clearances, including from the person's local police office, to confirm there are no outstanding warrants against the person before they are allowed to exit the airport. ...

In situations where the person is required to be interviewed by Sri Lankan security agencies, the SIS interview would normally precede the police interview. In the SIS interview, the returnee would be checked against intelligence databases. In the police interview, checks against police databases would be made, fingerprints would usually be taken and the person photographed. It would also be common for the person to be held until checks are made with the returnee's local police station.

Increasing numbers of Sri Lankans have been returned from Australia either voluntarily or non-voluntarily in 2012. A representative from Post (DIAC) is present at the airport for the arrival of non-voluntary returns. The arrival of voluntary returns is facilitated by the International Organization of Migration. Based on post's current experience, Sri Lankan agencies endeavour to complete identity and security checks as soon as possible. Police's Deputy Inspector General of CID has advised post that CID endeavours to complete all processing at the airport as quickly as possible with no unnecessary delays. Post has not observed any difference in the way Tamil returnees are treated in comparison to Sinhala or Muslim returnees.

R.2. Post has not received any evidence to support allegations of mistreatment of returning Tamils to Sri Lanka. To date, Sri Lankans who have been returned from Australia have not made any complaints to post of mistreatment at the airport or on return to their places of residence. Post has not received any allegations of mistreatment by returnees since 2009. Post followed up an allegation of mistreatment made by a Sinhalese returnee in 2009 and no evidence was found to substantiate the allegation.

We have spoken to NGOs involved in facilitating the voluntary return of former asylum seekers/refugees to Sri Lanka. NGOs told us they have not witnessed or received any allegations of mistreatment from any of the Tamil Sri Lankans they have facilitated.

We contacted the British High Commission in Colombo to follow up on allegations documented by the organisation Freedom from Torture in its September 2012 report "Sri Lankan Tamils tortured on return from the UK" [CIS24086]. The Migration Directorate from the Foreign and Commonwealth Office (FCO) in London responded:

"We have received no substantiated cases of mistreatment on returns for our returnees, and claims made by organisations such as Freedom from Torture and Human Rights Watch are not supported by any of our interlocutors. There was an instance earlier this year (2012) where one of our returnees claimed to have been tortured on arrival. We had him medically examined and two scrapes on his shins were considered consistent with his allegation that he had been kicked under the

table by a CID officer. Nothing was ever confirmed however and even if it had been it could hardly be considered to be torture."³

54. The UNHCR noted claims of detention, ill-treatment or torture regarding Sri Lankans – particularly Tamil – asylum seekers returned to Sri Lanka following the rejection of asylum claims, but acknowledged that '[t]here is no systematic monitoring after arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned'.⁴
55. However in the country guidance case of GJ & Others (post –civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) it was determined that:

There are no detention facilities at the airport. Only those whose names appear on a stop list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days, see paragraph 356 (6).

A person whose name appears on a computerised –stop list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a stop list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant, see paragraph 356- 7(d).

The authorities maintain a computerised intelligence-led watch list. A person whose name appears on a watch list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces see paragraph 356- 7(9).⁵

56. I note that Freedom from Torture, Amnesty International and Human Rights Watch all reported instances of torture for some people who had returned from overseas. These reports identify that the risk of torture is more likely to occur for Tamil failed asylum seekers.
57. In August 2011, the Immigration and Refugee Board of Canada (IRBC) reported on the treatment of Tamils returning to Sri Lanka, including failed asylum seekers. The report cited information provided by the Canadian High Commission in Colombo, which noted that –[t]he screening process is the same for all persons returning to Sri Lanka – whether voluntary or by escort. The process is not impacted by ethnicity.⁶

³ CX299951: Sri Lanka: CIS Request Sri Lanka: Questions arising from recent applications, DFAT, 29 November 2012

⁴ UN High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December, p.8 <<http://www.unhcr.org/refworld/docid/50d1a08e2.html>> <CIS29707>

⁵ UK Home Office Operational Guidance Note Sri Lanka July 2013

⁶ Immigration and Refugee Board of Canada, 'Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport', LKA103815.E, 22 August 2011 CIS29896

Further information on procedures at the airport can also be found in the UK Home Office Country of Origin Information report of March 2012.⁷

58. The UNHCR has indicated that returnees may receive further contact from the authorities after arriving in their village of destination:

UNHCR post-return monitoring data indicate that in 2011, upon arrival in the village of destination, 75% of the refugee returnees were contacted at their homes by either a military (38%) or police (43%) officer for further "registration". 26% of these returnees were again visited at home for subsequent interviews, with a handful receiving a number of additional visits by the police or military.⁸

59. I discussed this information with the applicant, including whether he had any fears of being harmed whilst being questioned and then returning to his village. He did not indicate he had any concerns. The applicant indicated he had no reason to believe he was on an immigration watchlist, had no outstanding criminal charges or involvement in people smuggling.

60. I have had regard to the country information, including that in the submissions, but I find I prefer the specific information from DFAT as it has summarised and agrees with a range of authoritative sources. I find that the country information indicates that people returning as failed asylum seekers are not harmed or differentiated on that basis by the authorities, and that the authorities do not see the attempt to seek asylum as a concern, unless the person has actual or imputed links with the LTTE, certain opposition politicians and political activists, human rights activists or journalists. I have considered the applicant's profile and his claims, and I do not consider that he is a person whom the authorities would have any interest in, I do not accept that the applicant has, or would be imputed with, any of these profiles.. He has not been charged at any time in the past, and I do not consider, assessing what I accept of his claims, that there is any reason why the authorities would have any interest in him on return to Sri Lanka. I find that the applicant is not wanted by the Sri Lankan authorities and will not be subjected to any detention or interrogation on arrival to Sri Lanka other than the standard questioning and procedures described by DFAT. I find that the applicant will not be harmed during the questioning process at the airport on return to Sri Lanka.

61. I accept that the Sri Lankan authorities will conclude that the applicant has sought asylum in Australia, given his unlawful departure by boat and the context and circumstances in which he would be returned. I do not accept, given that the process of refugee assessment in Australia is given a high level of confidentiality, that his individual claims would be known to the Sri Lankan authorities. I have considered the country information before me, and his claims, and I do not accept there is a real chance or a real risk that the authorities will have any concerns in relation to his imputed asylum claim that would lead to them harming him at any stage of his return and questioning, being charged and remanded and bailed process, or him being

⁷ UK Home Office, Sri Lanka: Country of Origin Information (COI) Report' 7 March 2012, 7 March, pp.202-203
<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/srilanka12/report-070313.pdf?view=Binary> CIS29709

⁸ UN High Commissioner for Refugees, „UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka“, 21 December 2012, p.8
<http://www.unhcr.org/refworld/docid/50dla08e2.html> CIS29707

possibly convicted and sentenced for his unlawful departure, or on his return to his home area, for this reason or because of his residence in a western country, seeking asylum in a Western country or any other reason connected to this, either individually or cumulatively.

62. I accept the country information, including from Amnesty International, Human Rights Watch and Freedom from Torture, which reports cases of returnee failed asylum seekers being specifically targeted and harmed by the Sri Lankan authorities, but as I discussed with the applicant, I find these reports relate to specific, and quite uncommon, usually Tamil returnees, and I consider that the authorities are considering the specific profiles or imputed profiles of the person, such as real or imputed LTTE links. The applicant does not have such a profile as a Sri Lankan Sinhalese male and low-level UNP supporter, has not claimed he would be suspected of having actual or imputed LTTE links and has not provided any other basis on which he would be imputed with a profile. I do not accept that these reports are indicative that returnees in general are at risk, and I do not accept that a person with the applicant's profile and circumstances will be harmed on return as a failed asylum seeker. I do not accept that there is a real chance or real risk that the government will detain, harm, torture or kill the applicant due to any assumption that he has criticised the government in the course of seeking asylum, or otherwise arising from seeking asylum.
63. I accept that the applicant will be questioned by Sri Lankan authorities at the airport on his return, to establish who he is and his right to enter the country. However, having regard to his accepted circumstances, I do not accept the applicant faces any real chance or real risk of being detained for questioning or otherwise targeted for harm – at the airport or in his home area - due to his identification as a failed asylum seeker, or any adverse real or imputed political opinion, including his or his family's political activity, or because of his illegal departure, from Sri Lanka, individually or cumulatively.
64. Further, I do not accept that there will be any imputed anti-Government political opinion arising out of his departing Sri Lanka. I note that the applicant is now pro-government in his political opinion, given the changes in Sri Lanka since he departed in February 2013. I do not consider that the authorities would seek to harm him because he left as a low-level UNP supporter in the past, given the change of government.
65. Having regard to the applicant's circumstances, I do not accept the applicant will be of adverse interest to the authorities on return to his home area. While he may be required to report to the authorities on return to his home area, I do not accept that this will lead to any serious or significant harm to the applicant, given that there is no reason for the authorities to be concerned about the applicant, a Sinhalese man of no adverse interest.
66. If the applicant is questioned or monitored briefly at the airport or in his home region by the authorities due to his illegal departure, I do not accept this amounts to serious harm or significant harm. I do not accept that the applicant would be of ongoing interest, or that he would face a real chance of serious harm or a real risk of significant harm in this context. I do not find the weight of evidence before me supports that view.
67. For these reasons I find the applicant faces no real chance of serious harm or a real risk of significant harm as a Sri Lankan male returning as a failed asylum seeker from Australia (or the West or overseas).

Illegal departure

68. I accept that the applicant has illegally departed Sri Lanka, departing by boat and travelling to Australia. At hearing I discussed with him my understanding from the country information about the situation on return:

Offences under the Immigrants and Emigrants Act

5.27 Most Sri Lankan returnees from Australia are questioned by police on return and, where an illegal departure from Sri Lanka is suspected, are charged under the I&E Act. DFAT understands that in most cases, these individuals have been arrested by the police at Colombo international airport. As part of this process, most returnees will have their fingerprints taken and be photographed. They are transported by police to the Magistrates Court in Negombo at the first available opportunity after investigations are completed, when custody and responsibility for the individual shifts to the courts or prison services. The Court makes a determination as to the next steps for each individual. Those arrested can remain in police custody at the CID Airport Office for up to 24 hours. Should a magistrate not be available before this time—for example, because of a weekend or public holiday—those charged are held at the nearby Negombo Prison.

5.28 DFAT was informed in March 2014 by Sri Lanka's Attorney-General's Department, which is responsible for the conduct of prosecutions, that no returnee who was just a passenger on a people smuggling venture has been given a custodial sentence for departing Sri Lanka illegally but fines have been issued to act as a deterrent towards joining boat ventures in the future. The Magistrates Court in Colombo typically levies fines of around 5,000 Sri Lankan Rupees (around AUD 40) for persons attempting to depart Sri Lanka irregularly on boats. However, in Negombo, the magistrate, who handles a large number of these cases, typically levies fines of around 50,000 Sri Lankan Rupees (around AUD 400) to act as a deterrent. In most cases, returnees have been granted bail on personal recognisance immediately by the magistrate, with the requirement for a family member to act as guarantor. Sometimes returnees then need to wait until a family member comes to court to collect them.

5.29 DFAT has been advised that no returnees from Australia to Sri Lanka have been charged under the PTA. While credible, DFAT cannot verify this claim⁹

69. I accept that on return the applicant would be interviewed by the relevant authorities on return, who would identify the applicant's unlawful departure and the applicant may then be charged with departing unlawfully. I raised this country information with the applicant for comment, including that he would face charges that any person who left Sri Lanka in a manner that is prescribed by Sri Lankan legislation would face. As above he indicated that he had not been involved in people smuggling. He did claim that he had spent time in jail previously but I have dismissed this claim above and he did not otherwise claim to have been previously convicted of any matters. I noted to the applicant that he may be held on remand for a short period of, at most, 14 days until a magistrate was available and he would then be released on bail to return at a later date.
70. I noted that punishment, if convicted, could be up to 5 years imprisonment and up to a 200,000 rupee fine under the applicable laws but that country information from DFAT indicated that there is discretion and that the most likely outcome is that the

⁹ DFAT report February 2015 at 5.27 to 5.29, in all significant respects the same as DFAT Country Information Report – Sri Lanka – 18 December 2015 on these points.

applicant would pay a fine, rather than imprisonment. This information indicates that fines that have been handed out are between 5000 – 50,000 rupees for people departing or attempting to depart Sri Lanka irregularly on boats.¹⁰ I noted that this may lead me to conclude that the fine the applicant would have to pay would be similar or not much higher. The applicant said that if he had to pay 5,000 he would be able to, but if it was 50,000 he would not be able to. I noted that I may take the view that his mother and [sibling] would be able to assist, and that he had earned a reasonable amount in his past work and I may assess that he would be able to pay the higher fine. I note that his evidence in his protection application and at hearing was that he had worked either as a contractor or employee until he had departed Sri Lanka as a [occupation]. He said at hearing that his salary was sufficient for day to day living.

71. I find that the applicant would not spend more than a brief time in remand at the airport or in prison, that he will be released on bail, and may have reporting conditions attached to him, but that these circumstances will not lead to him being harmed or seriously or significantly harmed. I do not consider on the country information and his accepted circumstances that the applicant will be remanded for an extended period on return to Sri Lanka due to the manner of his departure from Sri Lanka in 2013. I accept that the applicant will be charged under Sri Lankan law with departing unlawfully from Sri Lanka. I find that the information suggests that those who breach the law by departing illegally are generally held briefly (for hours or at most up to fourteen days) on remand then bailed pending hearing, and then face a financial penalty (and not a custodial sentence). I find that the *Immigration & Emigration Act* applies generally to those who breach the provisions and is not discriminatory on its face or its intent, and does not differentially impact any particular section of the Sri Lankan population. I find that these laws are not selectively enforced. Accordingly, I find that the *Immigration & Emigration Act* applies generally to those who breach the provisions, including the imposition of the penalties for breaching the Act. I find that the applicant's brief remand by the authorities for questioning, charging, and then awaiting a bail hearing will not of itself constitute systematic and discriminatory conduct, that s.91R(1)(c) is not met and therefore the conduct is not persecution. On the country information I find that there is no real chance or real risk of the applicant being sentenced to a term of imprisonment. I find, rather, that he will be fined, an amount of between 5,000 and 50,000 rupees on the country information I accept. I find on the information before me that he will be able to pay the fine from any work he gets and with the support of his mother and [sibling]. I find that the applicant will be able to pay the financial penalty imposed. I find therefore that there is no real chance or real risk he will face serious or significant harm in the reasonably foreseeable future as a result of any legal penalty being imposed.
72. I have considered whether a conviction for illegal departure under the Immigrants and Emigrants Act gives rise to a real risk the applicant will suffer significant harm. The country information above indicates that the penalty most likely to be imposed on the applicant is a fine. That is the penalty currently being imposed on persons who have been determined to have illegally departed Sri Lanka. I do not consider the imposition of a fine, or the process of being charged and possibly convicted, constitutes serious or significant harm.

¹⁰ DFAT report February 2015 at 5.27 to 5.29, in all significant respects the same as DFAT Country Information Report – Sri Lanka – 18 December 2015 on these points

73. Having regard to the applicant's background, his ability to readily establish his identity (as he has done in the course of the protection visa application) and the presence of family in Sri Lanka, and noting the *Immigrants and Emigrants Act* bail provisions encompass bail on personal recognisance and without requirement of financial surety, I find the chances remote that the applicant will spend more than a very short period (of hours or at most days, to a fortnight) remanded in custody awaiting bail, after his return to Sri Lanka.
74. Even accepting that country information indicates examples of overcrowding and generally poor conditions in prisons in Sri Lanka,¹¹ I find the chances remote that the applicant will be targeted and harmed for any reason in the context of a very brief stay in remand pending bail. I find that the applicant will be remanded for a short period as part of a lawful process applied consistently and without discrimination to those who breach a particular law. I do not consider that all prisoners, or prisoners who share a profile with the applicant of his accepted circumstances, will be subjected to harm by the authorities during a brief period of remand, I find it speculative and the chances remote that he will face serious or significant harm in this context.
75. I have had particular regard to the country information in relation to torture or mistreatment of returnees: DFAT states:

Torture or mistreatment of returnees

4.22 DFAT is aware of a small number of allegations of torture or mistreatment raised by asylum seekers who have been returned to Sri Lanka but cannot verify these reports. Verification is complicated by the fact that many allegations are made anonymously, often to third parties.

4.23 There have been thousands of asylum seekers returned to Sri Lanka since 2009, including from Australia, the US, Canada, the UK and other European countries, with relatively few allegations of torture or mistreatment (see also 'Treatment of Returnees', below). Although DFAT does not routinely monitor the situation of returnees, DFAT assesses that the risk of torture or mistreatment for the majority of returnees is low, including those suspected of offences under the *Immigrants and Emigrants Act*. Under the previous Rajapaksa government, DFAT assessed that the risk of torture or mistreatment for returnees was greater for those suspected of committing serious crimes, including terrorism offences. This was due mostly to the greater exposure these returnees had to authorities on their return which generally includes extended periods of pre-trial detention. While overall monitoring has reduced under the Sirisena government and general fears about mistreatment have reduced, it is difficult to verify if the intent to improve general conditions has yet led to a lower risk of torture or mistreatment of returnees.¹²

76. I have had regard to the submissions but I find the assessments of DFAT, in both the February and December 2015 reports are supported by the weight of country information and I give the DFAT assessment greater weight.

¹¹ DFAT Country Information Report – Sri Lanka – 18 December 2015, 5.13 – 5.14, which supports the country information discussed with the applicant at hearing.

¹² DFAT Country Information Report – Sri Lanka – 18 December 2015, which supports the country information discussed with the applicant at hearing.

77. I have considered these conditions with respect to the complementary protection provisions of the Act. I note the guidelines of the relevant Departmental PAM3 in this respect, including the discussion of prison conditions. While the applicant may be placed in overcrowded and poor conditions for a short period of time, I do not accept that the authorities are intentionally seeking to harm the applicant by placing him in these conditions for the short period he would be detained.
78. Given the short term nature of the detention and the country information that the risk of torture or mistreatment for the great majority of returnees is low, I find that the risk he will be subject to torture or any other form of significant harm is remote. Furthermore, based on the country information, I find that any treatment the applicant may face upon return to Sri Lanka (including a fine and detention and poor prison conditions) would not amount to significant harm as this would apply to every person in Sri Lanka who breached the illegal departure law. As this is a real risk faced by the population generally and not the applicant personally under s.36(2B)(c) this is taken not to be a real risk that the applicant will suffer significant harm.
79. I also do not accept that the applicant will be singled out or intentionally harmed by the authorities in these circumstances while on remand. I do not accept that there is any intention on behalf of the authorities to significantly harm the applicant while being detained. I find that there is no intention on the part of the authorities to inflict pain, suffering or humiliation on the applicant. I also do not consider that the applicant's detention in these conditions for a short period of time constitutes significant harm. I find that the applicant does not face a real risk of significant harm while detained on remand.
80. In these circumstances, I find the applicant does not have a real chance of serious harm now or in the reasonably foreseeable future due to his illegal departure, taken alone or in combination with his other circumstances. Further, I also find that the applicant does not face a real risk of significant harm due to his illegal departure, taken alone or in combination with his other circumstances.
81. I accept that the applicant is a Roman Catholic. At hearing he claimed that he had not been a Catholic from birth but had read the bible and converted. I have some doubts about this but even if I accept his claim to be a Catholic convert, as I explained to him at hearing, the country information does not indicate that there is a real chance or real risk of people being harmed for converting to Catholicism. In response he said that in terms of religion he has no fear at all. I note DFAT reports that:

Four major religions are practiced in Sri Lanka: Buddhism; Hinduism; Islam; and Christianity (mainly Roman Catholicism). According to the census, 70.2 per cent of the population are Buddhist, 12.6 per cent Hindu, 9.7 per cent Muslim, 6.1 per cent Roman Catholic and 1.3 per cent other Christian denominations, with less than 10,000 from other religions. Buddhists generally follow the Theravada tradition. The majority of Muslims are Sunnis, although there are a small number of Shias, including members of the Bohra community.

Buddhists are concentrated in the southern, central and eastern areas of Sri Lanka. The Northern Province is predominately Hindu. Muslims are predominately located in the Eastern, Western and North-Western Provinces. Christians are concentrated in the Western and North-Western Provinces.

...

The Sri Lankan Constitution guarantees freedom of religion and belief while giving Buddhism a 'foremost place'. Attacking places of worship or religious objects is

punishable with a fine and/or a maximum of two years imprisonment. Acts intending to insult religion are punishable by a fine and/or a maximum of one year imprisonment.

There is a place for religions other than Buddhism in public life. Prominent Buddhist, Hindu, Muslim and Christian leaders are invited to all national functions, although only Buddhist rituals are performed at most events. Government dignitaries host and attend important events for different religions and Sri Lanka recognises religious holidays for all four religions. In the current government, there are four Ministers each with portfolio responsibilities for the four major religions.

School students are able to study their choice of Buddhist, Hindu, Muslim and Christian religions in most public and private schools, depending on the availability of teachers. There are also public schools for Hindu and Muslim students.

DFAT assesses there is little official discrimination on the basis of religion. There are no official laws or policies that discriminate on the basis of religion.

Religious tension rose after mid-2012, although the new Sirisena government has publicly said it is committed to ethnic and religious reconciliation. In a 2013 report, the Centre of Policy Alternatives (CPA) listed 65 cases of attacks on places of worship throughout the country between May 2009 and January 2013. The majority of cases reported by CPA were against evangelical Christian churches. The majority of incidents, where perpetrators were identified, were instances of Sinhala Buddhist attacks on other religious places of worship.

According to the SLMC, the largest Muslim political party in Sri Lanka, there were at least 241 anti-Muslim attacks and 69 anti-Christian attacks during 2013, some of which involved physical violence or the destruction of property. While charges have been laid in some cases and other cases have been settled between the parties, many attacks were not investigated. In April 2014, the former Government established a special police unit to investigate 'complaints relating to religious matters'. In the latter part of 2014, there was a drop in reported anti-Muslim attacks.

DFAT assesses that most members of religious groups in Sri Lanka are able to practise their faith unmolested. However, the risk of harassment or violence increases where practitioners attempt to proselytise or to carry out 'unethical conversions' which generally involves a financial inducement to convert religion.¹³

82. I find that the applicant does not have a subjective fear of harm on the basis of his religion. I find that, as a Catholic, even if a convert, he will not face a real chance or real risk of harm on this basis, because he comes from an area where there is a concentration of Christians, because he has not claimed and I do not accept he has or will proselytise, and because the country information indicates that the vast majority of people can practice their religion peacefully and without restrictions or the threat of violence.
83. Having regard to all the circumstances and findings above, both individually and cumulatively, I find that the applicant does not have a real chance of serious harm in Sri Lanka arising from his limited political activity, his actual or imputed political opinion resulting from this limited activity, his ethnicity or religion, his status as a

¹³ DFAT report February 2015 2.11 - 2.12; 3.13 – 3.19, in all significant respects the same as DFAT Country Information Report – Sri Lanka – 18 December 2015 on these points

failed asylum seeker or returnee from a Western country or a person who left Sri Lanka illegally or any other reason.

84. Having regard to all the circumstances and findings above, both individually and cumulatively, I find that there are not substantial grounds for believing that there is a real risk that the applicant will suffer significant harm upon being removed from Australia to Sri Lanka.

Conclusions

85. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
86. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
87. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

88. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Sean Baker
Member