

1010754 [2011] RRTA 320 (4 May 2011)

DECISION RECORD

RRT CASE NUMBER: 1010754

DIAC REFERENCE(S): CLF2010/4988

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Mary Cameron

DATE: 4 May 2011

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2009 and applied to the Department of Immigration and Citizenship for the visa [in] January 2010. The delegate decided to refuse to grant the visa [in] November 2010 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] November 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. In support of the primary visa application the applicant provided a written statement of her claims as follows:
 1. I was born on [date] in Colombo in Sri Lanka. My ethnic group is Tamil speaking Muslim and my religion is Islam. I make this Statutory Declaration in support of my application for a Protection Visa.
 2. I had six children with my now deceased husband [Mr A] (DOB: [date]). [Mr A] was also known as [name] ([details relating to this name deleted: s.431(2)]). Our six children are [name] (DOB: [date]), [name] (DOB: [name]), [name] (DOB: [date]), [name] (DOB: [date]), [name] (DOB: [date]), and [Ms B] (DOB: [date]). All of my children are dependent on me, except for my daughter [Ms B] who is married with a son. [Ms B] is residing in Australia with her husband and child. My five dependent sons in Sri Lanka are currently moving around from place to place in an attempt to keep a low profile, as they are in grave fear for their life after their father was murdered on [date] 2009.
 3. I arrived in Australia on [date] October 2009. I have visited Australia on two previous occasions in order to visit my daughter [Ms B, who] migrated to Australia with her family in or about February 2006. After a short visit to Australia, [Ms B]'s son [name] stayed with me in Sri Lanka because [Ms B] was studying full time and she and her husband could initially not afford to pay for child care for their son. [Ms B's son] and I therefore visited his parents between February 2007 until April 2007, and another time between March 2008 and April 2008 after which time I left my grandson with his parents.
 4. I married my husband on or about [date] April 1982 in Colombo. After we were married, my husband worked as a [vocation] in Saudi Arabia for approximately eight months. Subsequently, and in or about 1986, we moved to an area close to Colombo called [Area 1]. There were not many Muslims in the area at the time. In or about between 1990 and 1992 my husband went to [Country 2] for a number of months for work. He was working in a [company], and also assisting his brother who was importing [goods] from [Country 2] into Sri Lanka. When he returned to Sri Lanka my husband had saved some money, and with this money he bought land in [Area 1]. From this time onwards his business was as a landowner and he sold and bought land also he was doing building construction. My husband started the business "[name]". Slowly he became wealthier over time to the extent that he became a successful land owner.

5. My husband was a very giving person and he had a very pure heart. Slowly he started to become more involved in the Muslim community. Other Muslims were starting to come [Area 1] at this time. My husband was very charitable both with his time and his money. He did not have a lot of money in the beginning, but what he did have; he would give away or donate. He was involved in a huge amount of community work in this regard. He built a mosque and schools called the [names] where no admission fees were charged. He encouraged Muslims to assert their culture and to fight against discriminatory treatment. When he had become well off and could support our family easily he began selling off his land to poor Muslims at a very reasonable rate in order to assist them to establish their own livelihoods. He would also do things such as give poorer people long periods of time to pay back debts that were owed to him, or charge no interest, and was very generous all round in this regard. Slowly he became a highly respected leader in the community.
6. Unfortunately the Sinhalese Buddhist population in [Area 1] did not like my husband given he was Muslim, and because he was encouraging and assisting Muslims to settle in the area and was considered to be a community leader. Over a period of time, and probably from about 1998 onwards (which I believe from memory was the year he started to build the first mosque in the area) we started to have problems. The Sinhalese were annoyed that my husband was building a mosque. During construction, one of the Parliamentary Members [Mr C] who was living in the area sent some thugs with knives and metal bars to attack my husband. They also disturbed and chased the construction workers. The Sinhalese and politicians did not want a mosque, thinking that the presence of a mosque would attract even more Muslims to the area. They were also angry that my husband was selling his land to Muslims (despite the fact that he also sold to Sinhalese if they wanted to buy from him). My husband was not racist and wanted to encourage equality of ethnic background and religion. In this regard he donated a big piece of land to the Buddhist Population for them to build a temple. I have attached an article picturing my husband handing over the deed to the Prime Minister Mahinda Rajapakse (currently the Sri Lankan President). By doing this my husband hoped to gain the support of the Sinhalese population and try to decrease the discrimination against the Muslims in Sri Lanka.
7. As the years went by local gangs began to kidnap Muslim citizens and target them. Our people could not obtain assistance from the police as not only are the Sri Lankan police completely inefficient and under resourced, but also completely corrupt. In addition the police force is made up of Sinhalese Buddhists who frequently discriminatorily withhold protection to Sri Lankan Muslims. Fearing for many of our Muslim community member's lives, my husband began to pay bribes out of his own pocket to the gangs to ensure the release of some of these people when their families could not afford it. He also campaigned for the government to do more to assist the Muslim population of Sri Lanka in the face of these ongoing kidnappings, to little avail.
8. Given my husband's high profile as a respected community leader, in or about 2004 he decided to run for election as a candidate with the Muslim Congress Party. My husband was a strong supporter of the Muslim Congress Party, and moreover, a lot of people in the community were asking him to run given his popularity and the fact that he was so respected and admired. I have attached my husband's Sri Lankan Muslim Congress Candidate Card and other election material leaflets which our family and my husband's supporters gave out to ask for him to be elected. I have also attached advertisements which were placed in the newspaper asking for support for my husband.
9. I gave all my support to my husband because his political beliefs were very genuine and pure. He always had the interests of those poorer people in the area at heart and wanted to

develop the area for everybody's advantage. I hold the same beliefs as my husband in this regard.

10. Unfortunately, soon after my husband became a candidate our lives were in greater danger. The phone would ring frequently with a person on the other end threatening to kill us and our family members, or kidnap us unless my husband withdrew as a candidate for the Muslim Congress. They did not want a Muslim such as my husband in the running in case he obtained power. The Sri Lankan government don't want any sort of leaders from any minority group in the running during an election because if the person is elected the minority group will have someone to follow and may gain more power. This is something that the Sri Lankan government wants to avoid at all costs. Many Tamil election candidates were also killed during this period for this same reason. These threatening callers would say they knew where our sons were and that we might not see them again. My husband and I were petrified. We stopped doing our normal activities, and stopped campaigning in the lead up to the election. Every time we went out we were fearful we were going to be killed. We started going out after dark instead of during the day to avoid being out in public. From 2004 onwards my husband was constantly asked for money and constantly received threats. There was a huge move to try and drive him out of our area by making him go broke. Supporters of other Ministers were frequently calling my husband and asking him to stop helping the Muslims and to withdraw from the Muslim Congress.
11. My husband complained many times to the police however they always refused to help. In retrospect we actually thought that we should not have told the police because they had close links to the Ministers and their thugs and it seemed as if each time we had reported a matter to the police we would receive a call from our assailants asking why we had gone to the police and threatening us further. My husband also complained to the Human Rights Commission, however although I have evidence of these complaints, I am not sure what happened with them. I understand that my husband was too fearful to mention any Ministers names for fear of severe reprisals, so always referred to the gang members or their bodyguards. In addition it was these people from whom he was receiving the direct threats.
12. Although he received over [number] votes, my husband was unsuccessful in his attempt to become elected. We believe that the elections were riddled with corruption, and also the fact that my husband was prevented from going out for fear of his life towards the end of the campaign probably did not help.
13. Between 2004 until 2009 until his death my husband continued his work with the Muslim Congress party. Unfortunately he faced ongoing harassment from different Minister's bodyguards, supporters and gangs in an attempt to undermine his popularity with the Muslim population or drive him out of the area. My husband, as a wealthy Muslim business owner, was also a target for gangs in the area.
14. In or about 2005 a Minister, [Mr D] asked for some valuable land from my husband through his thug supporters. My husband of course did not want to give this land away for free. [Mr D] then threatened to kill my husband if he was not given the land. [Mr D]'s bodyguard came over with a gun and held my husband at gun point until signed some documents in relation to handing over the land. The bodyguard also stole our car. Even now when I think about this incident I shiver. My husband went to the police but they said that they couldn't do anything where a Minister was involved. Subsequently Minister [Mr D] went to the land registry and arranged for the land he had asked for to be transferred out of my husband's name into one of [Mr D]'s close body guard called [name]. He was able to do this because the Registry, like all public authorities in Sri Lanka , is very corrupt, and because he was a Minister and my husband was Muslim. We could not believe this had

happened and felt extremely frustrated and angry, and upset at how discriminatory and unfair the situation was.

15. In or about 2008 one of [Mr C]'s supporter's named [name] came and said that he was calling on of behalf [Mr C] and asked for 5 million in Sri Lankan Rupees . My husband called [Mr C] and asked him why he was demanding this money. [Mr C] said if you can give the land to [Mr D] then why not you give me the money. The Minister also said that my husband should listen to him and stop supporting the SLMC. Basically these Ministers were trying to intimidate my husband into leaving his political career alone and ceasing his assistance to the Muslims in the area. They knew that they could act with impunity given the police supported them and/or do not protect Muslims.
16. In or about early December 2008 two jeeps pulled up outside the house and some men started looking around for my husband. Fortunately he was out. One of them kicked over a chair in anger when I said that my husband was not home. They left a message for him not to contest the election or he would see what happened. I was extremely frightened during this incident.
17. In or about December 2008 our family tried to relocate to an area called [name] where we rented a house for approximately four or so months. However we couldn't operate the business from here and felt that we either had to let it go or return to [Area 1]. My husband and I have always wanted to fight and not give in to oppressors, and we have always done this until my husband's death.
18. During in or about March and April 2009 our house was attacked by main political parties supporters many times. [Mr D]'s gang of supporters came many times. We know this because twice they came in [Mr D]'s own jeep. They came and knocked on the door we had no choice but to open it for fear of them knocking down the door. They then ransacked the house looking for political material. They also threatened that we would come to harm if we put up any more posters or did any other campaigning. I can remember one of [Mr D]'s supporters said that if we were not ready to listen to what they were saying then our whole family would be destroyed.
19. When my husband came home I told him what had happened. He tried to reassure me that we would be okay. That night he received a phone call by someone called [Mr E]. After this phone call my husband told me that he had decided that he would not contest after all but did not tell me why. However he said that he still had to help the party. He therefore did not stop working for the party, and even organised an election rally in this period of time in [location] (a residential area) itself just next to the mosque. He gave a speech during that rally.
20. After this however, my husband said that he didn't want to send the kids to their normal school anymore as he wanted them to go to a better school. However I think the only reason he said this was because he had received threats and was scared to send them to their normal school. He also told me to take the kids to my mother's place and for them not to stay at [Area 1]. When I pressured him to tell me why, he told me [Mr E] was working for [Mr D] and that he had threatened to kill one of our children if my husband did not stop supporting the Muslims congress and this is why he had withdrawn. [Mr E] is a well known thug and murderer. He was in jail, however [Mr D] took him out of the prison using his political influence and now uses him as one of his gang of supporters.
21. On [date] 2009 four men came to my house asking for my husband. I said that he was at the mosque for prayers. They said they had some business to discuss with him and would wait

for him near our house. As my husband left the mosque and walked towards our house and before he reached the gate these men stabbed him with knives in the chest and body many times, right outside the [school] that my husband had set up. Therefore many children and teachers witnessed this incident. I was inside the house when this happened but ran outside when I heard screaming. I was devastated and in shock. I find it very difficult to have to discuss this again. I arranged for my husband to be taken to the hospital and he died in my arms. Before he died my husband told me that the men who had come were arranged by [Mr D] and he told me one of their names.

22. Given many people at the schools had witnessed the murder, someone had called the police. However by the time I came home from the hospital the police had still not arrived. When they did arrive I gave the police a full statement including one of the names of the men that my husband had told me were the perpetrators. After this I did not hear from the police.
23. When my daughter [Ms B] heard about her father's murder she came straight back to Sri Lanka to support me and the family. When she arrived I had still not heard anything from the police. Therefore she went to the police station to inquire about what was happening. They said that the incident had still not been recorded and that she would have to come back later. I had to go back another time and was required to pay some money before the police would give me a copy of a document to show that she had lodged a complaint so that j could follow up in the future. I have attached this to my application. Since then we have heard nothing from the police. My husband's murder was reported in the news and I have the link to the news report which refers to it.
24. On the way back from the police station my daughter was followed by men on bikes. She feared that they were trying to kidnap her or had been spying on her and her movements including going to the police.
25. Soon after this we moved to my brother's house and stayed there for approximately two days. However one night we heard banging on to the door. We are not sure who this was but we were petrified. Accordingly after this we decided to immediately move to my mother's house and stayed there until we left Sri Lanka. In between I stayed at some friend's places.
26. In addition, my older sons had started to receive life threatening phone calls on their mobile phones. Some of the calls were made in order to ask where they were. We heard that people were also asking around the neighbourhood, including some of my sisters who lived in my area, in order to find out where we lived. I moved my sons to a different school in a different area.
27. In or about September 2009 I lodged an application for a visitor visa to come to Australia in order to flee from Sri Lanka. The threats had not ceased, and I felt that I could be found at any time. I arrived in Australia on [date] October 2009. I am now constantly thinking about my sons safety and worrying about them.
28. My main fear in relation to returning to Sri Lanka is that my life, and my family member's lives are at risk. In Sri Lanka there is rampant racial and political discrimination and political assassinations continue in the country. The Sri Lankan government is not only openly fighting the Tamil population but also systematically destroying any minority group who pose any threat to their leadership in the future. Our family was seen as a potential threat due to my husband's heavy involvement with local businesses and social welfare. Muslims are also a clear target in Sri Lanka. The international community have been focusing on the terrible fighting between the Sri Lankan government and the Tamil

population, while many innocent civilians from other minorities such as Muslims have also been targeted within Sri Lanka.

29. As the wife of the deceased [Mr A], I fear that I will be seen as a person of interest given my husband's persecutors will believe that I will continue my husband's social welfare work and our family business and his political work. I therefore fear harm on account of my imputed and actual political opinion in support of the Muslim Congress League, and my membership of my husband's family group. There are so many commitments to be finished by me and my family in our community and I would desperately like to one day go back to Sri Lanka to do this if it is safe for me to do so. I feel a strong obligation to continue my husband's work I have also been politically involved myself, through participating in my husband's work, making contributions from our family business, and attending functions with my husband. I did a great deal of work for the business, such as the banking and book keeping, and going along with my husband to meetings. I am known within some circles of our Sinhalese neighbours as the driving engine of the family business and as an alternative leader of the local Muslim group. I therefore strongly fear that I will be the next target. The tension in our local neighbourhood was becoming increasingly bad before I fled Sri Lanka. I have no choice but to escape to where I can salvage my life and hopefully find a refuge for my children.
30. I fear for my life as a member of the group wealthy Muslim business owners, and on account of my membership of my family group, as a widow of a Muslim wealthy business man. I strongly fear that I will be perceived to still have money and will be targeted on this account. I also fear for my safety on account of my religion, and my ethnicity as a Tamil speaking Muslim. Muslims are most often discriminated against in relation to education and in participating as civil servants in Sri Lanka. Accordingly most of us, including other minority groups such as Tamils, have had to turn to making money through business opportunities. However, the Sinhalese do not like to see Muslims do well and therefore target us for ransoms and large payments of money. There is a deep hatred of Muslims from many sectors of society but the government have not taken any steps to address these issues. With time, the social and racial problems have gone beyond the control of the government and many Muslims have become victims of Sinhalese gangs seeking to target them because of their profile as Muslim business people or family members of Muslim business people. In my opinion, the recent war with Tamils has provided a cover to disempower Muslims by targeting them throughout Sri Lanka, or through acquiescing in targeting them by not protecting them. As I have outlined, the police will not protect me from this harm that I fear as they are ineffective, corrupt and also discriminate themselves against Muslims and Tamil speaking Muslims. The fact that the government has not taken any steps to protect Muslims or to promote equality also allows the police to act with impunity and encourages them not to protect Muslims.
31. I cannot relocate anywhere within Sri Lanka. The situation throughout Sri Lanka is extremely bad with racial hatred rife between minority and majority ethnic groups. Relocation will not bring me a safe environment because politically motivated gangsters have already tried to get information about where we are living from our relatives, friends and neighbours. I have heard that my relatives who lived near to me have now even been threatened unless they disclose where we are. In addition, if we relocated I would not be able to obtain any money from my husband's property business, and therefore would not be able to support myself and my five children alone.
32. Most recently I have heard that [Mr D]'s supporters asked my sister where I was. When she said that she didn't know, they started to drag her son out of the house. I understand that my sister started screaming and making a fuss and they didn't take her son.

33. In light of my grave fears of harm in Sri Lanka, I respectfully ask the Australian government for protection in Australia.

21. The applicant also provided financial and property related documents; copies of documents associated with several complaints made by her (now deceased) husband to the Human Rights Commission of Sri Lanka; copies of several newspaper articles and published photographs describing and depicting the applicant's husband engagement in civil affairs in Sri Lanka; copies of numerous photographs of the applicant's husband participating in meetings and civic events; copies of the applicant's husband's passport and driver's license; a copy of his Death Certificate; numerous documents identifying the applicant's husband as an active member of and a political candidate for the Sri Lankan Muslim Congress; copies of records of complaints made by the applicant's husband to the Sri Lankan police regarding extortion attempts and threats made against him; a newspaper article describing the murder of the applicant's husband, and an order for an inquiry of post-mortem.
22. Also provided in support of the visa application was as a submission from the applicant's representative stating that the applicant fears that if she is returned to Sri Lanka, she will suffer persecution for reason of (i) her political opinion in support of the Muslim Congress Party (MCP) and her work done with her husband in support of the MCP; (ii) her imputed political opinion in support of the Muslim Congress Party on account of the fact that she was married to her husband, and her work done with her husband in support of the MCP; (iii) her membership of her husband's family group, where her husband was a well known political activist for the MCP and a well known Muslim business owner and community leader; (iv) her membership of the particular social group 'wealthy Muslim business owners' or 'business owners'; (v) her Muslim religion; (vi) her Muslim Tamil ethnicity. The submission also addresses the lack of effective state protection in Sri Lanka.
23. The delegate refused the application [in] November 2010.
24. In support of the review application the applicant provided a further statement addressing aspects of the delegate's decision, expanding on aspects of the applicant's claims and including some additional claims relating to the applicant's departure from Sri Lanka and asylum claim made in Australia, and her potential return to Sri Lanka with the Sri Lankan government having knowledge that she had unsuccessfully sought asylum in Australia.
25. The applicant appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms B], who is the applicant's daughter. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.
26. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
27. During the course of the hearing the applicant was demonstrably distressed, especially when giving evidence about her family life in Sri Lanka and the death of her husband. The applicant confirmed that she was born in [year deleted: s.431(2)] in Colombo and is of Tamil ethnicity and Muslim religion. She was married to [Mr A] (also known as [name deleted: s.431(2)]) from 1982 until his death [in] 2009. Her husband was a property developer in the [Area 1] area prior to his death. She has six children, five of whom are sons living in Sri Lanka and one who is her daughter who is currently living in Australia.

28. The Tribunal asked the applicant about her involvement in her husband's businesses. She stated that she assisted him in his work, including office work and record management although her work was unpaid. According to the applicant she also assisted her husband in his extensive social welfare work which has included flood relief for the local Muslim community, and assistance with education, the building of mosques and other community development activity. The applicant told the Tribunal that she and her husband were very close and that he discussed everything with the applicant.
29. The Tribunal asked the applicant about her husband's work in the community. She told the Tribunal that her husband had been involved in politics for many years at the regional level. He was on the committee of the local mosque, and was a Justice of the Peace. He provided construction materials for local schools and donated money for a library. The applicant stated that her husband had also helped with a school associated with the mosque and helped people of other religions in the community as well. She stated that he had built [number deleted: s.431(2)] mosques in the district.
30. The applicant told the Tribunal that her family's problems started around 1998 when her husband built the first mosque in the area, which led to many Muslims coming to the area and bringing their children to study the Koran. The local Sinhalese community objected to the building of the mosque and neighbours came and raised their objections. The applicant's husband listened to the objections and negotiated but he insisted on his right to live in the area and to foster his religion. He built the mosque on his own land, but nevertheless some local people did cause trouble and the applicant's family experienced harassment. The applicant named some local politicians who were associated with her husband's difficulties at the time.
31. The applicant told the Tribunal that it started to become common for Muslim citizens to be kidnapped by gangs. She stated that there were numerous incidents where people were kidnapped and not returned. She stated that she knew that she and her family members were possible targets because of their wealth and her husband's high profile in the Muslim community.
32. The Tribunal asked the applicant about her husband's political involvement. She told the Tribunal that her husband ran for local council election in 2004 as a candidate for the Sri Lankan Muslim Congress (SLMC). She told the Tribunal that their lives had been in danger at the time because of the strong support of the Muslim community for her husband's candidacy. She stated that her husband was pressured to withdraw from the election process. She again named several Sri Lankan politicians, including a current member of the Sri Lankan parliament as exerting adverse pressure on her husband. The applicant told the Tribunal that she became very worried about her family's welfare but that her husband insisted that they stand up for the rights of the community. Despite this he reduced his campaigning and ended up receiving about [number deleted: s.431(2)] votes which was not sufficient to be elected. The applicant told the Tribunal that her husband would have received more votes had he been free to campaign. She stated that by 2008, when more Muslims had settled in the area he would likely have received many votes had he run for office again, but he was unable to do so.
33. The Tribunal pointed out that the SLMC is now a part of the government of Sri Lanka having changed political allegiances and entered into a coalition with the Sri Lankan government in November 2010. The applicant stated that if this is the case then the SLMC is a small minority within the coalition government and will remain under pressure to comply with

majority policy. She stated that minority groups are significantly disadvantaged in Sri Lankan political life.

34. The Tribunal discussed with the applicant her evidence that her husband was extorted by supporters of government figures in 2008. The Tribunal asked the applicant whether the events she had described were simply attempts by these political figures to obtain money, and her husband was targeted because he was wealthy, or whether her husband was targeted because of his political opinions and activities. The applicant told the Tribunal that it was clear to her that government figures were trying to intimidate her husband into staying away from any political ambitions. The Tribunal noted that the applicant's husband did not appear to have had any formal political involvement after the 2004 provincial election campaign. The applicant stated that this was not the case as he had been a branch organiser of the SLMC and had maintained that position until his death.
35. The Tribunal noted that the applicant's Australia resident grandson, who is an infant, had returned to Sri Lanka to live with the applicant for a period of time, and queried whether she had been concerned for his safety. The applicant stated that all of her family was in Sri Lanka and she did not, at the time, realise the extent of the risk to her safety in that country. She stated that small children do, on occasion, get kidnapped in Sri Lanka but she had thought that she could manage, and she wanted her grandson to know his family.
36. The Tribunal discussed with the applicant the events she described in her submissions as taking place in or around December 2008 when some men came to her family home and threatened her husband. The Tribunal also discussed with the applicant problems the applicant's family had in 2009 when a particular government minister had his supporters threaten the applicant and her family. The applicant told the Tribunal that her husband decided not to contest any elections after 2004 because of threats to his family. She told the Tribunal that her husband repeatedly reported the threats made against him and his family to the police, but it seemed that the police then leaked this information back to the perpetrators. The applicant told the Tribunal that when the threats were at their worst, she moved her children to a different school near her mother's home, and she and her husband also moved house for a period of time, but eventually returned home. She stated that they also sought protection from the SLMC, but the party did not have the capacity to protect them.
37. The applicant confirmed that her husband was attacked and killed [in] 2009 outside the family home. She told the Tribunal that the Sri Lankan police and the Sri Lankan authorities had done nothing about this, and she could not accept this. She stated that she is now very scared for herself and for her children. The Tribunal noted that both the applicant and the applicant's daughter who returned to Sri Lanka when her father was killed had lodged reports to the police about the death of [Mr A], and asked the applicant what has happened as a result. The applicant stated that no action has been taken by the police.
38. The Tribunal noted that records on the Departmental file indicate that the applicant lodged a complaint with the Sri Lankan Human Rights Commission in October 2009, and queried the content of this complaint and its outcome. The applicant stated that she had written to the Human Rights Commission that no action was taken by the Sri Lankan police following the murder of her husband, and the human rights of her family had been violated. She stated that no response to the complaint was received.
39. The applicant told the Tribunal that after her husband's death she moved to her brother's house for a while. She stated that people came to her house and asked where the family had

gone. She stated that she moved her children from an international school in Colombo where there were lots of Sinhalese students to a Tamil speaking school. She stated that despite these precautions she received threats against herself and her children. The Tribunal asked the applicant who she thought was responsible for these threats and she named two Sri Lankan politicians. The Tribunal asked the applicant why she thought that these political figures were behind the threats to her family. The applicant stated that she believed this because the politicians she had identified and their supporters had spoken directly to her husband in the past.

40. The Tribunal asked the applicant what she fears will happen to her if she returns to Sri Lanka. The applicant stated that she fears she will be killed. When the Tribunal asked her who she fears will kill her, the applicant again named a Sri Lankan political figure, and stated that his supporters were involved in extortion and similar activities. The Tribunal asked the applicant whether she thought that this risk had altered since she departed Sri Lanka and the SLMC had entered into a coalition with the government. The applicant said no, because she will still be perceived as an opponent of the government and of the local politicians who she believes are behind the killing of her husband.
41. The Tribunal discussed with the applicant country information regarding the improved circumstances for Tamils in Sri Lanka since the cessation of hostilities between the Sri Lankan government and the LTTE, which indicates that it appears unlikely that Tamil Moors affiliated with the SLMC would presently face harm in Sri Lanka for this reason. The applicant acknowledged the improved security situation in Sri Lanka but stated that this did not reflect the situation for a person such as herself who had been identified as a threat to political power brokers at the local level. She stated that she will not be protected by the Sri Lankan authorities, and that this is demonstrated by her past experiences, when the police failed to protect her husband or to respond to his murder, and have failed to act on threats made against the applicant. The applicant gave evidence that her children have continued to experience threats in Sri Lanka.
42. The applicant provided further evidence that Muslims experience discrimination in Sri Lanka. She also gave evidence that Tamil speaking people are discriminated against in Sri Lanka. Her evidence about these matters was scant and expressed in very general terms.
43. Subsequent to the hearing the applicant's representative provided a further written submission stating that the alliance between the SLMP and the UPFA does not lessen the applicant's fear of harm if she returns to Sri Lanka, and that the concerns of the Muslims in the community have not been addressed following this alliance. According to the submission the safety of individual Muslims in the community from attack by political opponents has not changed and the applicant who is perceived as potentially causing problems for the UPFA will remain at risk of serious harm in Sri Lanka.
44. According to the submission of the applicant's representative the alliance of the SLMC and the Sri Lankan government was a matter of expediency, and does not improve the personal situation of the applicant should she return to Sri Lanka. The submission incorporates extensive country information in support of its contentions regarding the current political situation in Sri Lanka.
45. Also provided to the Tribunal were a letter from the President of the [centre deleted: s.431(2)] in support of the application; a letter from [name deleted: s.431(2)] MP, the Federal Member for [constituency deleted: s.431(2)] in support of the application, and a psychological report

from psychologist [name and organisation deleted: s.431(2)], describing the applicant's psychological condition, assessed over six consultations, as including symptoms of post traumatic stress disorder and a major depressive episode, and supporting the application.

FINDINGS AND REASONS

46. The applicant travelled to Australia on a valid Sri Lankan passport and states that she is a national of Sri Lanka. She has provided evidence of her life in Sri Lanka. The Tribunal finds that the applicant is a national of Sri Lanka and therefore for the purposes of the Convention the Tribunal has assessed her claims against Sri Lanka as her country of nationality.
47. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings on the claims the applicant has made. This may involve an assessment of the applicant's credibility. In assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by the applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Moreover the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J: *Selvaduri v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547. If the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make a finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true.
48. The Tribunal has considered the applicant's claims to fear persecution in Sri Lanka for the reasons submitted, which are that she faces persecution and/or substantial discrimination amounting to a gross violation of human rights in the form of abduction or arbitrary arrest and detention, imprisonment, extortion, physical assault and torture, and possible death, at the hands of the Sri Lankan authorities, opposition party members, or other non-state actors on account of;
 - (i) her political opinion in support of the Muslim Congress Party (MCP) and her work done with her husband in support of the MCP;
 - (ii) her imputed political opinion in support of the Muslim Congress Party on account of the fact that she was married to her husband, and her work done with her husband in support of the MCP;
 - (iii) her membership of her husband's family group, where her husband was a well known political activist for the MCP and a well known Muslim business owner and community leader;
 - (iv) her membership of the particular social group 'wealthy Muslim business owners' or 'business owners';
 - (v) her Muslim religion;
 - (vi) her Muslim Tamil ethnicity; and

(vii) as a returnee who has made asylum claims in Australia.

49. The applicant's claims are based on the Convention grounds of political opinion, race, religion and membership of a number of particular social groups. Essentially, the applicant claims to have been a supporter of the Sri Lankan Muslim Congress of which her husband was a prominent member and organiser who ran for office in 2004. She claims that as a result of her husband's political profile, his profile as a wealthy businessman and his activity in support of the Muslim community in Sri Lanka he was targeted for extortion by government supporters and eventually killed. She claims that she too has been threatened and extorted. She fears facing serious harm if she were to return to Sri Lanka.
50. The Tribunal found the applicant to be a largely credible witness, particularly in regard to past events involving her husband in Sri Lanka, including the failure of the Sri Lankan authorities to protect her husband from threats, extortion and finally murder. Based on the applicant's evidence at the Tribunal hearing, and with reference to the psychologist report provided and the letter from the President of the [centre deleted: s.431(2)], the Tribunal accepts that the applicant is genuinely, albeit subjectively, extremely fearful of returning to Sri Lanka. However it is established law that a "well founded fear" involves both a subjective and objective element, and requires an objective examination of the facts to determine whether the fear is justified (*Chan v MIEA* (1989) 169 CLR.).
51. As a result of hearing the applicant's oral evidence at hearing the Tribunal has formed the view that some aspects of the applicant's written submissions were exaggerated to enhance her claims. For instance she claimed to have had significant involvement, in association with her husband's political activities, with the SLMC. However, at the Tribunal hearing she acknowledged that she has never been a member of the party, and demonstrated little awareness of the political landscape in Sri Lanka, not knowing that the SLMC has entered a coalition with the Sri Lankan government, and is therefore no longer in opposition.
52. Similarly the applicant has submitted that she fears serious harm in Sri Lanka based on multiple grounds including her Muslim religion and her Tamil ethnicity. However at the hearing the applicant's evidence was very scant in relation to these claims. When questioned by the Tribunal about her claims to have experienced discrimination for reason of her religion, she stated that this was because of the way they dress, and that children in schools would grab at one's head coverings. She then stated that "we can't go to the mosque". When questioned by the Tribunal about her claims to fear persecution for reason of her Tamil ethnicity, the applicant stated that in addition to being a Muslim there is the fact that they speak Tamil, and that when men come into the house they speak their own language which "oppresses us".
53. The applicant's oral evidence about these matters was vague and lacking in detail. However, in considering the applicant's claims as a whole, the Tribunal has given limited weight to these particular aspects of her evidence as they do not detract from her evidence in respect to her central claims.
54. In its assessment of the applicant's claims the Tribunal has taken into account the country information set out in the following paragraphs.
55. In March 2008 Human Rights Watch (HRW) released a report on disappearances and abductions in Sri Lanka. The report states that many of the victims of abductions in Colombo (and other districts) were Tamil business owners. Twelve were murdered, five released after

the payment of large ransoms, and 51 were still missing at the time of the report. The report states that: “Initially business owners victimized in the abductions were predominantly Tamil, but in 2007 Muslim businessmen were also targeted. According to media reports, in May 2007 more than a dozen Muslim businessmen were abducted. Some were released after paying ransoms ranging from 30 to 100 million SLR (US\$ 300,000-1,000,000). These abductions have created an atmosphere of fear and panic among the Tamil and Muslim business communities”. (Human Rights Watch 2008, *Recurring Nightmare-State responsibility for Disappearances and Abductions in Sri Lanka*, March pp 68-69)

56. The 2007 US Department of State (USDOS) Human Rights report likewise states that “In addition to politically motivated abductions, there were dozens of kidnappings for ransom, with payment demands ranging from \$20,000 (2.25 million rupees) to \$750,000 (60.6 million rupees). Although initially the problem appeared limited to the Tamil business community, in June and July dozens of Muslim businessmen were kidnapped for ransom, the vast majority of whom were released after ransom was paid. However, less than half of Tamil businessmen kidnapped for ransom were released after the ransom was paid.”(US Department of State 2008, *Country Report on Human Rights Practices for 2007 – Sri Lanka*, March, Introduction, Section 1.b)
57. The latest USDOS Human Rights Report (for 2008) does not report any incidents of abductions of businessmen in Colombo or elsewhere. (*US Department of State, 2009, Country Report on Human Rights Practices 2008 – Sri Lanka*, February.)
58. On 14 October 2009 the Colombo post of Australia’s Department of Foreign Affairs and Trade (DFAT) provided advice with regard to, among other things, the security situation in Colombo. According to DFAT, “Anecdotal evidence and newspaper reporting suggest that the majority of abductions in Colombo are criminal based, sometimes on the instructions of politicians” (DIAC Country Information Service 2009, *Country Information report No 09/75 –Treatment of Tamils- Colombo airport, search operations, disappearances, checkpoints and residency – sourced from DFAT advice 12 October 2009.*)
59. An August 2009 UK Home Office fact-finding mission report also looks at the incidence of ‘politically motivated’ disappearances compared with abduction for ransom. The sources consulted generally concurred that there was often a combination of political and financial reasons. The representative of the Swiss Embassy in Colombo also said that “sometimes denouncement and personal revenge could also play a role”. The UNHCR Protection Officer mentioned reports of cases of extortion faced by Muslims. The relevant extract is as follows:

What is the incidence of ‘politically motivated’ disappearances compared with abduction for ransom/money?

3.15 The senior intelligence official said that some abductions were for ransom and the police was taking action to curtail this. He could not comment on political motivation.

3.16 The Human Rights Activist said that it was either for political reasons or for ransom. He could not say exactly in what proportion, but had the impression that recent cases seem more related to ‘commercial reasons’, i.e. for ransom.

3.17 The representative of the Swiss Embassy in Colombo said there were cases where there seemed to be a strong political motive; where media, human rights or political activities were involved. But there often seemed to be a mixture of both elements. Sometimes denouncement and personal revenge could also play a role. As for Colombo, the Embassy knew only about a few cases that were reported. The Swiss Asylum Section had the impression that detentions

resulting from regular checks and cordon operations were not always due to investigations against terrorism, but also driven by the security forces' desire to get money. Some inmates had told the Asylum Section that, for whatever reason, the number of suspects in the cells remained the same.

3.18 The UNHCR Protection Officer said there were some politically motivated cases such as the well-known cases of some journalists. Reports of cases of extortion faced by Muslims were also mentioned.

3.19 CPA said that there had been one or two cases of businessmen. Those in a particular form of work, media personnel are targeted, probably more than those abducted for ransom. In June 2009 there was a case of a media-related person who was abducted and later dumped somewhere in Colombo.

3.20 The former Chief Justice, Sarath Silva, stated that there had been both money related and politically motivated cases, sometimes the two elements were related.

3.21 Professor Wijesinha said that abductions for ransom still happened. Officials were sometimes found to be involved in such abductions and so were members of some paramilitary groups, but not necessarily acting officially or on instructions from such groups. More frequently they were acting in connection to criminal elements.

3.22 Mano Ganesan MP was of the view that most disappearances were politically motivated, adding that they did not occur in Colombo. Ransom abductions occurred but it was more likely to be just intimidation, demanding protection money.

60. The 2008 Human Rights Watch report states that there is evidence of involvement by non-state armed groups and local security forces in the abductions for ransom of Tamil and Muslim businessmen. The report states: "Particularly in Colombo, and in the eastern districts...the lines between politically motivated 'disappearances' and abductions for ransom have blurred since late 2006, with different groups taking advantage of the climate of impunity to engage in abductions as a way of extorting funds. While criminal gangs are likely behind some of the abductions, there is considerable evidence that the Karuna group and EPDP have taken up the practice to fund their forces, while the police look the other way" (UK Home Office 2009, report of *Information Gathering Visit to Colombo*, Sri Lanka 23-29 August 2009.)
61. A 2007 International Crisis Group report on the human rights crisis in Sri Lanka discusses the surge in abductions of Tamil and Muslim businessmen for ransom. The ICG report states that "there is widespread concern in minority communities that the abductions are part of a broader plan by Sinhalese extremists to drive Tamils and Muslims out of key economic sectors". The report also states that "the police have not followed up any leads provided to them". The relevant extract follows:

The reliance on paramilitaries to fight the government's war, while refusing to pay them for it, has blurred the lines between political and criminal violence. What may have started out as an attempt to establish an extra layer of militant taxation or undermine LTTE taxation networks has descended into increasing lawlessness and insecurity for all minority businessmen. Any rich entrepreneur from the Tamil or Muslim communities is now a potential target. In May 2007 there were reports of more than a dozen Muslim businessmen abducted for ransom. Some were reportedly released after paying 50 million SLR (\$500,000).

Although this may indicate a general descent into criminality from earlier, more politically motivated abductions, there is widespread concern in minority communities that the

abductions are part of a broader plan by Sinhalese extremists to drive Tamils and Muslims out of key economic sectors. A Tamil lawyer claims that “there is a more subtle targeting of Tamil business now than in 1983. Now they are snuffing out the economic lifeline. What they failed to do in the 1983 riots, the JHU and the JVP together, with the help of security forces, are succeeding in today.”

Certainly many Tamil businessmen have left the country, deciding it is too risky to remain in Colombo. There is no protection in these cases: the police have not followed up any leads provided to them. (International Crisis Group 2007, *Sri Lanka's Human Rights Crisis*, Asia report No 135, 14 June pp. 11 -12.)

62. Based on the applicant's evidence and the supporting documentary evidence on the Departmental and Tribunal files including a large number of photographs, identity documents, police and Human Rights Commission reports and newspaper reports, the Tribunal accepts that the applicant's husband [Mr A] was a prosperous businessman who was influential in the local Muslim community and was a branch organiser of the Sri Lankan Muslim Congress and ran for office as an SLMC candidate in 2004, continuing his political activity until his death in 2009. Based on the evidence before it and in consideration of the country information set out above, which is consistent with the applicant's evidence, the Tribunal accepts that the applicant's husband experienced extortion over a period of years and was killed in 2009.
63. Based on the country information available to it the Tribunal accepts that there is a risk of extortion, kidnap for ransom or murder for wealthy Muslim business owners in Sri Lanka. The Tribunal also accepts from the country information that the motives for extortion and abductions can be a combination of political and financial factors. As noted by the former Chief Justice of Sri Lanka, in some instances the motives are mixed, and are both financial and political (excerpt from UK Home Office report at paragraph 58 above).
64. The central issue before the Tribunal is whether, based on all of the evidence, these risks extend to the applicant who is the widow of a wealthy Muslim business owner, who was politically active in the Muslim community in Sri Lanka prior to his death.
65. The Tribunal accepts from the documentary and financial evidence provided that the applicant is a Muslim of Tamil ethnicity, and that she retains much of her former husband's financial and other assets, although she acknowledged that his estate has been left largely unmanaged since her departure from Sri Lanka. Wealthy Muslims in Sri Lanka have been identified in the past as prime targets of abduction for ransom, and abductions for ransom appear to be multifaceted and not solely based on a perception of a target's personal wealth. The International Crisis Group's concern which is set out in the country information above is mirrored in reports pointing to a heightened level of antagonism towards Muslims by segments of the Sinhalese community and some government linked political parties, such as JHU (see Izeth Hussain, 2008, *Neo Fascism and SL Muslims*, Sri Lanka Guardian, 27 December, <http://www.srilankaguardian.org/2008/12/neo-fascism-and-sl-muslims.html>; and *Sinhala War against Muslims...*, 2009, Lankanewspapers.com, 12 March, http://www.lankanewspapers.com/news/2009/3/40780_space.html). Indeed, Champika Ranawaka, the current Parliamentary leader of the JHU and a Cabinet Minister, has been known to have made public comments to the effect that Sri Lanka was the homeland of the Sinhalese and that Tamils and Muslims had no rights to the nation (see *Muslims to protest against Champika Ranawaka*, November 2008, The Lanka Sun, http://lankasun.com:8000/index.php?option=com_content&task=view&id=6892&Itemid=26;

and All systems go for elections in 2009, The Nation on Sunday, <http://www.nation.lk/2008/11/16/politics1.htm>).

66. The UNHCR has also advised that recently Muslims have experienced targeted violence and other human rights violations by government actors as well as pro-government Tamil groups. Muslims who are perceived to oppose government policies are considered to be at greater risk of harassment, threats and violence. (UNHCR eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, April 2009, UNHCR Refworld, <http://www.unhcr.org/refworld/docid/49de0b6b2.html>).
67. The Tribunal is also prepared to accept that the applicant has been a supporter of the Sri Lankan Muslim Congress for many years. Although the Tribunal is not entirely satisfied by the applicant's evidence as to her degree of involvement with her husband's business and political activities, it nevertheless accepts that her involvement in these arenas was sufficient to clearly identify her as a participant in his business affairs and his political life. The Tribunal accepts from the totality of the evidence that the applicant is, subsequent to her husband's murder, a wealthy Muslim business owner in her own right. The Tribunal therefore concludes, in light of the country information before it, that the applicant's membership of a particular social group, being wealthy Muslim business owners, or alternatively wealthy Muslims, puts her at risk of serious harm if she returns to Sri Lanka.
68. On the basis of the evidence before it, the Tribunal is satisfied that there is a real chance that the applicant could face abduction for ransom, threats to her life or liberty, or significant physical harassment and ill-treatment in Sri Lanka. The Tribunal is satisfied that the harm the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Act. The Tribunal is satisfied that 'wealthy Muslim business owners in Sri Lanka' constitute a particular social group within the Convention meaning and that the applicant is a member of this group. The Tribunal is satisfied that the applicant's membership of the particular social group referred to together with her political opinion are the essential and significant reasons for her fear of persecution as required by paragraph 91R(1)(a) of the Act. The persecution would also involve systematic and discriminatory conduct for the purposes of the Act: s.91R(1)(c). Further, in the Tribunal's view, the real chance of serious harm extends to the entire country of Sri Lanka. The Tribunal does not consider there is any safe haven for minority groups in Sri Lanka at present.
69. The Tribunal accepts from the independent country information set out in this decision that the authorities in Sri Lanka are unable, or unwilling, to prevent these kidnappings and in some cases, may be involved in them. Where opposition party supporters, or non-ruling minority groups such as Muslims, are extorted or abducted, the Tribunal considers there is not adequate State protection available in Sri Lanka.
70. There is no material which indicates that the applicant has a right of residence in any third country, being only a citizen of Sri Lanka and currently in Australia.
71. For the reasons outlined above, the Tribunal is satisfied that the applicant's fear of persecution is well-founded.

CONCLUSIONS

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

DECISION

73. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.