

1304279 [2013] RRTA 420 (2 July 2013)

DECISION RECORD

RRT CASE NUMBER: 1304279
DIAC REFERENCE(S): CLF2012/212207
COUNTRY OF REFERENCE: Sri Lanka
TRIBUNAL MEMBER: Peter Murphy
DATE: 2 July 2013
PLACE OF DECISION: Melbourne
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

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 (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, applied to the Department of Immigration for the visa on 6 November 2012 and the delegate refused to grant the visa on 15 March 2013.

RELEVANT LAW

3. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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.

Refugee criterion

4. 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 Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
5. 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.
6. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
7. 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.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. 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)). Examples of 'serious harm' are set out in 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.
10. 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.
11. 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.
12. 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 being persecuted for a Convention stipulated reason. 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.
13. 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.
14. Whether an applicant is a person in respect of 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.

Complementary protection criterion

15. 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').

16. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
17. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

18. 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 – to the extent that they are relevant to the decision under consideration. The Tribunal has taken account of this direction in reaching its decision in this matter.

CONSIDERATION OF CLAIMS AND EVIDENCE

Initial claims and the delegate's decision

19. The applicant arrived in Australia on 24 July 2012 as an irregular maritime arrival and was initially interviewed by the department in August 2012. On 6 November 2012 he lodged a protection application in which he claimed to be a [age]-year-old married male citizen of Sri Lanka, who was born in [City 1], was of Tamil ethnicity and a [tradesperson] by occupation. In a statutory declaration attached to his application, he stated:
 - He finished schooling in [year] in [City 1], but did an informal apprenticeship [in a trade] whilst at school and then worked as a [tradesperson] until 1997 and commenced his own business [in his trade].
 - He is married and he and his wife have [family composition removed].
 - He lived most of his life in [City 1] district, which was controlled for a long time by the LTTE and the army suspects Tamils there supported the LTTE and have anti-government and separatist views.
 - He first encountered problems with the army and CID in 2003 during the conflict years when the CID was seeking out LTTE supporters. They came to his [business] in 2003 and took him for interrogation and accused him of being an LTTE supporter and tortured him. Eventually he was released but further visits and interrogation and torture sessions

continued almost weekly from 2003 until around 2007, when CID slowed their harassment and came once a month. This continued until September 2011, and was because informers said some of his customers were LTTE members.

- Although there had been no further visits since September 2011, he lived in fear and knows the CID has a file on him, and he may be killed by the CID in an interrogation session. In his neighbourhood there have been at least 5 Tamils abducted by the CID and never seen again and there is usually a gap of 1-2 years between interrogations ceasing and persons disappearing and he fears it is only a matter of time before he is abducted.
 - He fears torture and death from the CID as they suspect he was involved with the former LTTE. He also fears that as a failed asylum seeker he will be arrested at the airport if returned and be imprisoned and tortured by the CID at the airport. He believes the CID suspect him of being an LTTE supporter, because he is a Tamil from [City 1] district.
 - There is no protection in Sri Lanka and he cannot relocate as they will find him.
20. The applicant was interviewed by a departmental officer, and on 15 March 2013 a delegate refused him a protection visa as he was not satisfied the applicant was a person to whom Australia had protection obligations. In a decision record of the same date the delegate did not accept the applicant was being pursued by authorities prior to his departure from Sri Lanka, and noted his claim interrogations and visits had ceased by September 2011. The delegate concluded had the applicant been of any ongoing interest to authorities or been suspected of LTTE involvement, he would have been the subject of ongoing attention after [month] 2011, and would have been easy to locate, as he had resided in the same location for 25 years. The delegate concluded this meant authorities did not suspect him of being associated with the LTTE and that he was of no interest to authorities. The delegate did not accept the applicant was of adverse interest to authorities because he was Tamil, and referred to December 2012 UNHCR guidelines which indicated UNHCR no longer considered there a need for group based protection mechanisms for Tamils from the north of the country.
21. The delegate considered the claim that as a returned failed asylum seeker the applicant would face harm. Whilst he accepted the applicant would be interviewed and fined by authorities on return for illegal departure, he did not accept the treatment the applicant would face amounted to persecution. The delegate also concluded the applicant had not been associated with the LTTE and would not be imputed to have been associated with the LTTE on return. As a result the delegate concluded he did not have a well-founded fear of persecution for a Convention reason, and also concluded he was not owed protection obligations under the complementary protection provisions of the Migration Act.

The Tribunal application and further submissions

22. On 19 March 2013 the applicant sought review of the decision to refuse him a protection visa and a copy of the delegate's decision was provided with that application. On 8 April 2013 the Tribunal wrote to the applicant advising it had considered all the information before it but was unable to make a positive decision on that information. It invited him to appear at a hearing on 27 May 2013 to give evidence and present arguments.
23. On 22 May 2013 a written submission was received which asserted the applicant feared he would suffer persecution in Sri Lanka because of his Tamil race, an imputed political opinion as a supporter of the LTTE and opponent of government, and his membership of a particular

social group being failed asylum seekers returning to Sri Lanka. It also asserted he would be imputed to be opposed to the government because he repaired [equipment] for the LTTE, because his [relative] was an LTTE member, his Tamil ethnicity and his status as a failed asylum seeker, and that he faced “*significant harm*” as defined in the Act.

24. The submission addressed aspects of the delegate’s decision, and in particular issues relating to the assessment of credibility and the manner in which inconsistencies in his claims at various stages of the process ought to be dealt with. In particular, it indicated the applicant claimed to fear harm because [his relative] was an LTTE member, and the CID were aware of this and had shown him photos of his [relative] whilst interrogating him. It acknowledges he had not previously mentioned this claim as he “*did not think it was relevant or important*” and because of the “*shame and embarrassment he felt in having a family members involved in the LTTE.*” It was also asserted his wife and [children] had been visited by authorities in Sri Lanka since he left, and had moved because of harassment by authorities, and had developed psychological problems as a result.
25. The submission included annexes addressing the situation of returnees to Sri Lanka, and violence against Tamils. The Tribunal had regard to those submissions.

The Tribunal hearing

26. The applicant appeared before the Tribunal in Melbourne on 27 May 2013 to give evidence and present arguments and was represented by his registered migration agent Mr [A], who participated by telephone from Sydney. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. The applicant provided several documents at the start of the hearing, only one of which was in English. The Tribunal indicated if he wished to rely on such documents, they would need to be translated into English, and indicated it would allow further time for the applicant’s adviser to consider whether to have the documents translated.
27. The applicant said he was [age] years old, married with [children, and his family] resided in [Town 2], in the [City 1] region of northern Sri Lanka. He said his family had lived in that area for a considerable period of time, but subsequently said his wife and children moved addresses within the town in the last two months because of problems with people asking about him. The Tribunal asked why people would ask about him. He said because his [business] had been closed for 3 months, the CID was asking about him and since his wife and [children] moved there had been no further enquiries with them about him. The Tribunal asked whether his [children] continued to attend the same school as they did prior to relocating within [Town 2]. He confirmed they did. The Tribunal queried why, if the CID was interested in interrogating his family about him and his children still attended the same school, moving to another location in the same town would make any difference. The applicant said his wife felt better in the new location, as there was greater family support, as the parents she had been living with at her former address were elderly.
28. The Tribunal asked why the CID would be interested in his whereabouts. He said it was because they believed he was associated with the LTTE as he did work for the LTTE repairing their [equipment]. The Tribunal observed there appeared to be a difference between somebody who actively worked for, or was part of the LTTE, and someone who simply carried out work for them, like repairing [equipment]. The applicant denied ever having been part of the LTTE himself, but said a [relative] had worked for the LTTE in a [role]. He said the CID knew about this, and had asked him about her, and even asked him to provide a

photograph of her sometime around 2007. He also said this was an important aspect to his concern about returning home.

29. The Tribunal observed that his claim to have a [relative] in the LTTE was not raised in his entry interview or protection application. It expressed concern that a matter which he said was an important part of his concern about returning to Sri Lanka and which appeared very relevant to his claim to fear persecution because he would be imputed to be a supporter of, or linked to the LTTE was not raised at an early stage. He then said he had not given much weight to this issue, but had put more weight on his own association with the LTTE through his [equipment] repairs. The Tribunal observed difficulty accepting he would not have recognised as significant, the fact he claimed to have a relative who was known to be a member of the LTTE, and who had been the subject of interest by authorities when making his claims, and that this may be an issue that went to his credibility. The applicant then said he had not wished to tell anyone about his [relative] as he was embarrassed to have a relative in the LTTE. The Tribunal observed it may not accept this explanation, given his case was largely based on fear of harm because he was perceived to be associated with or linked to the LTTE.
30. In terms of his work he said he did work for everybody who needed [equipment] repaired, not only the LTTE. The Tribunal asked how he knew the people who bought their [equipment] to him were LTTE member. He said it was because they came in uniform. The Tribunal observed that the area where he lived was an area where the LTTE was very active prior to cessation of hostilities, and had controlled that area. The applicant agreed this was the case.
31. He said his problems really started around 2003 when people in the area told the CID he was working for the LTTE. He said he was initially detained and taken in a white van and held for various periods of time and tortured. He said this happened on five occasions, first in 2003, and again until 2007. He said in addition to being taken away, CID officers regularly came to his house and shop and questioned him. The Tribunal asked when he was last questioned like this. Initially he said it was in 2009. Following further questions he then said the last time they came was in April 2011. The Tribunal observed he had previously said it was in 2009. The applicant said as the CID came so many times, he had not taken account of the exact date. The Tribunal observed his evidence had been very precise in identifying “April 2011” as the final time they came. He said he did not remember properly, and his memory was poor.
32. The Tribunal referred to his declaration provided with his protection application and observed he was also very precise in that declaration when he stated the last time he was questioned or interrogated by authorities was in “September 2011” It observed this was again different to his earlier evidence that he was last interrogated in either 2009, or April 2011. He said his mind was upset because they had come so many times.
33. He said he left Sri Lanka in July 2012 by boat, unlawfully without a passport and had never held a passport or previously been outside Sri Lanka. The Tribunal asked what made him leave in July 2012, given his claim that the last time he was the subject of enquiries was either in April or September 2011. He said these things happened in 2011, and that was why he left. The Tribunal observed it was still many months before he left following what he said was the last time authorities visited him. He then said he could not go outside, and was hiding until he got the chance to leave. The Tribunal asked if in that period he continued to operate his [business]. He said he did. The Tribunal observed that under those circumstances, it had difficulty accepting he was “hiding” as claimed.

34. The Tribunal asked when hostilities between the LTTE and Sri Lankan Government ended. He said he could not really remember. The Tribunal indicated it was around 2009. The applicant said despite this, the LTTE were still there. The Tribunal referred to information from DFAT in October 2012, which noted the release of some 10,000 LTTE cadre, a reduction in the level of soldiers posted in the North, and an improvement in the overall military situation since cessation of hostilities. It observed this suggested the government of Sri Lanka have eased its efforts against the LTTE, other than perhaps against senior and high profile activists, and asked why he would be of any interest to authorities in Sri Lanka, given he was not an LTTE member, and had only repaired their [equipment] in the past.
35. The applicant said he was a Tamil, which put him at risk wherever he went in Sri Lanka. The Tribunal acknowledged country information which suggested in the past there had been a significant degree of harm perpetrated against Tamils, but that since cessation of hostilities there were reports the situation had improved significantly. It referred to reports from the United Kingdom Home Office in September 2012 and the UNHCR in December 2012, both of which suggested an absence of risk on return to Sri Lanka for Tamils as such, although it noted the UNHCR report did identify categories of persons who may still be at risk because of their personal profile. The Tribunal also acknowledged there was other information which did not support those conclusions, but noted if it accepted the reports to which it had referred, this would suggest simply being a Tamil would not be sufficient to create the degree of harm necessary to amount to persecution for a Convention reason. The applicant disagreed, saying there was no certainty for his safety, and because he left by boat, authorities would do something to him on return, because he had worked for the LTTE and left illegally.
36. The Tribunal asked what he thought would happen to him if he returned to Sri Lanka because he had left the country illegally. He said the government had a list of people, and knew he had left, because his shop had been closed, and his neighbours told people he had gone to Australia. The Tribunal asked why the government of Sri Lanka would have any interest in harming him now simply because he left illegally. He said if he returned he would have to report, and whilst he would be released, they would go after him at some later date.
37. The Tribunal referred to further information, in particular reports from DFAT suggesting that leaving Sri Lanka by boat without lawful authority was an offence under Sri Lankan immigration law, and persons returning who departed under those circumstances may be interviewed, charged and brought before the courts, and face penalties under that legislation. It referred to further information which suggested by early 2013 some 1000 persons had been brought before the courts in relation to such offences, but DFAT officials were not aware of any evidence or allegations of discrimination against Tamils in those proceedings, or of allegations of mistreatment of returnees whilst on remand. The applicant said whilst this may be happening, they would be targeted after they were released. The Tribunal asked why anyone would have interest in harming him after he was released. He said again it was because they believed he had worked for the LTTE, his [relative] was with the LTTE, because he left illegally and that he would be asked to identify other LTTE people in his area.
38. The Tribunal referred to country information suggesting since cessation of hostilities there did not appear to be the same degree of interest in low-level LTTE supporters or people who may have helped the LTTE. It noted one report indicated some 10,000 LTTE cadre had been released, suggesting even persons who had actively supported and been part of the LTTE were no longer of any real interest to authorities. As a result, it indicated it may not accept he fell within the group of persons who were of any ongoing adverse interest to authorities in Sri Lanka if he returned. It also observed in the region where he came from, most Tamils living

there during the hostilities would have had to support the LTTE as it had controlled that area. Given the government was releasing harder line LTTE activists, it expressed difficulty accepting given his own limited personal profile that he would be of any interest. He again said he lived in fear, could not live peacefully, and this was why he came to Australia.

39. The Tribunal observed that sometimes people left their country and came to Australia because of a perception this country offered a better economic or educational lifestyle for individuals and their family, rather than out of fear in their home country. The applicant said this was not the case and he came to save his life, and had a business repairing [certain products].
40. The Tribunal asked about his assertion in written submissions that he may be imputed to be opposed to the Sri Lankan government, and asked him why this was the case. He said it was because he was Tamil, and the government was opposed to the Tamils, and as a result he needed to live in this country, where he wished to bring his children to live with him.
41. At the conclusion of its questioning, the Tribunal invited his adviser to indicate if there were further questions he felt needed to be asked. [Mr A] indicated nothing came to mind. He did however say he attended the delegate's interview with the applicant, who he observed he had difficulty articulating views or answering particular questions, and said his different responses to the same questions at hearing was an example of this. He acknowledged however that the applicant had some education. The applicant then said he did 9 years of school in Sri Lanka.
42. The Tribunal referred to further information relating generally to the situation for returnees, and whether there was evidence of mistreatment on return. The applicant again said he did not know about this, but that there were often things happening that may be unknown.
43. The Tribunal asked if there was anything else he wished to add. He indicated there was not. The Tribunal invited his adviser to make any verbal submissions, but noted as it was allowing 14 days for the applicant to decide whether to provide translations of documents submitted at the hearing, any further submissions could also be made in conjunction with provision of those documents. [Mr A] indicated he would consider that course, but also noted he relied on the written submission previously provided to the Tribunal.
44. At the conclusion of the hearing the applicant presented a photo of taken some 14 years ago, of him working in his [business]. The Tribunal noted the photograph but did not need a copy.

Post hearing submission

45. On 11 June 2013 the Tribunal received further correspondence from the applicant's adviser, including English translations of two documents submitted at hearing. There was also a statutory declaration from a Tamil community representative in Melbourne supporting claims by the applicant that his [relative] was affiliated with the LTTE, and that the applicant would be at risk on return. A copy of a transcript of an ABC program from April 2013 was also included, and the Tribunal had regard to those documents in reaching this decision.

COUNTRY INFORMATION

General Tribunal research on the situation of Tamils in Sri Lanka

46. Human rights observers have noted a number of improvements in the overall situation in Sri Lanka for the Tamil communities living in the North and the East. Reports of human rights abuses in the Northern and Eastern provinces have reportedly decreased and in these areas “there have been no cordon and search operations since the end of the conflict in May 2009”.¹ Large numbers of Tamils displaced by the fighting have been allowed to leave the camps in which they were being held. Roads linking Colombo to the North and East have been reopened creating increased opportunities for trade and development, and allowing for the return of former residents, visiting relatives, and even tourism.²

47. An article in the Weekend Australian of May 2010 provided this overview:

Is it safe for Tamils in Sri Lanka? Most agree that it is. There is a common misconception in Australia, fed in part by the Tamil diaspora, that Tamils are subject to acute, daily persecution in Sri Lanka. They are not ... In the north things are complicated. There, many Tamils are victims of war and trauma or are displaced. The northern regions are battle scarred and dilapidated.... Most Tamils live in Colombo, Sri Lanka’s raffish southern capital. They exist side by side with the Sinhalese majority, studying, working and prospering.³

48. In October 2012 the Australian Department of Foreign Affairs and Trade stated:

The Sri Lankan Government has released over 10,000 former LTTE cadre after completing Government-run rehabilitation. According to Ministry of Defence statistics from 8 August 2012, 10,973 persons have been re-integrated after completing rehabilitation. Another 636 persons were undergoing rehabilitation. Another 160 persons were undergoing legal proceedings.

...

Sri Lanka closed its remaining internally displaced person (IDP) camp, known as Menik Farm, on 24 September 2012.

The security situation in the north and east is greatly improved since the end of the military conflict, although incidents of violence can occur.

A visible security forces presence remains, particularly in the Northern Province, although the number of officers has reduced slightly since the end of the conflict. The visibility of military is less than before, with officers being confined to their barracks and police responsible for law and order. The role of the security forces in the north and east, including intelligence operatives, continues to include the monitoring of anti-government sentiment, LTTE and any form of civil resistance.

Mines and unexploded ordnance remain widespread in the north, particularly the northern Vanni region, although demining is continuing. A few isolated areas which have not yet been certified as cleared of mine or UXO hazards remain in the east. The security forces continue to undercover caches of weapons, ammunition, explosives and other remnants of war in both the Eastern and Northern Provinces, although this is less frequent now than in the first couple of years after the conflict.

Incidents of abduction have significantly reduced since the time of the military conflict and the immediate aftermath of the conflict, although cases continue to be reported.

¹ United Kingdom: Home Office, Country of Origin Information Report - Sri Lanka, 18 February 2010, 4.23 in: <http://www.unhcr.org/refworld/docid/4b8bdb0c2.html>.

² <http://www.csmonitor.com/World/Asia-South-Central/2010/0226/Sri-Lanka-ambitious-plan-to-rebuild-ground-zero-in-war-with-Tamil-Tigers>

³ Maley P., “Sri Lanka risks losing the peace” 8 May 2010, <http://www.theaustralian.com.au/news/opinion/sri-lanka-risks-losing-the-peace/story-e6frg6zo-1225863648502>

The crime wave that was reported in the Northern Province in the immediate aftermath of the conflict, including abduction for ransom and thefts, has reduced.

More generally, residents of the north continue to call for the removal of the military from their areas and a return to civilian administration. Those residents engaged in political work (in an anti-government stance) or involved in human rights work may be targeted.⁴

49. Other sources also determined that whatever the situation may have been previously, Tamils were now no longer considered to be at risk per se, however there were some factors that may increase the risk to an individual such as a previous criminal record, outstanding arrest warrant, LTTE Association. In September 2012, the UK Home Office noted:

There is no evidence from UNHCR as to any risk on return to Sri Lanka for Tamils per se. Their programme of voluntary assistance from India and other countries, where Tamils, settled during the conflict, indicates they deem it safe to return Tamils and the priority is to ensure that they are recipients of the various aid programmes to re-establish themselves. Returnees from India are not failed asylum seekers; however, this is relevant as the allegations are that all categories of Tamil returnees to Sri Lanka are at risk.⁵

50. In December 2012 the UN High Commissioner for Refugees, stated that in light of an improved human rights and security situation, there was “*no longer a need for group based protection mechanisms or for the presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country*”. It did note however that some groups of persons of Tamil ethnicity may still require international protection:

More specifically, the possible risks facing individuals with the profiles outlined below require particularly careful examination. UNHCR considers that individuals with these profiles – though this list is not exhaustive – may be, and in some cases are likely to be in need of international refugee protection, depending on the individual circumstances of their case.

- (i) persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE);
- (ii) certain opposition politicians and political activists;
- (iii) certain journalists and other media professionals;
- (iv) certain human rights activists;
- (v) certain witnesses of human rights violations and victims of human rights violations seeking justice;
- (vi) women in certain circumstances;
- (vii) children in certain circumstances; and
- (viii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in certain circumstances.⁶

Returned failed asylum seekers and illegal departure

51. In 2011 the Canadian Immigration and Refugee Board noted all Sri Lankan nationals are treated in the same manner with regard to entry procedures into Sri Lanka, and that failed asylum seekers and Tamils are not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry.⁷ Whilst Australian Department of Immigration

⁴ Department of Foreign Affairs and Trade 2012, *DFAT Report 1446 – RRT Information Request: LKA 40999*, 22 October.

⁵ UK Home Office 2012, *Country Policy Bulletin – Sri Lanka*, October, p.9

⁶ *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka*, 21 December 2012

⁷ Immigration and Refugee Board of Canada 2011, *LKA103815.E – Sri Lanka: 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*, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011; Rutnam, E. 2011, ‘UK satisfied with Lankan deportation’, *The Sunday Leader*, 26 June

research indicates non-voluntary returnees to Sri Lanka would be likely to be interviewed by the police, the State Intelligence Service (SIS) or both,⁸ DFAT advised that Tamils returning to the Sri Lanka were subject to the same entry procedures as any other citizen of Sri Lanka and that DFAT had not observed any difference in the way Tamil returnees were treated in comparison to Sinhala or Muslim returnees.⁹ However, there is alternative information available from non-government organisations (NGOs), academics and media reports indicating that failed asylum seekers are specifically held for questioning, detained and arrested at the airport on return to Sri Lanka.¹⁰ Foreign based Tamils have also reportedly been similarly treated on arrival in that country.¹¹

52. The Canadian Immigration and Refugee Board in a Response to Research Request (LKA103815.E) dated 22 August 2011 noted the comments of adjunct professor of political science at Temple University, who was conducting research on Sri Lanka, that people who left the country illegally and have no documentation upon their return are selected for screening; however, as mentioned already, they would be "safe" if they are not connected to any government-opposed activities. They also spoke to the South Asia Regional Director of the UK Border Agency who said that they:

constantly monitor the country situation, and issues of safety on return have not arisen. There is no evidence that those who were previously removed to Sri Lanka have been mistreated. All those who returned to Sri Lanka last week passed through border control procedures and were allowed to proceed without incident." (*The Sunday Leader* 27 June 2011)

53. The Danish Immigration Service undertook a fact-finding mission to Sri Lanka in July 2010 and reported in October 2010 (*Human Rights and Security Issues concerning Tamils in Sri Lanka*). The report found that if a returnee had their own passport and was unescorted they would go through airport controls without investigation. If the person was unescorted or had Emergency Travel Documents then they would be handed to the Department of Immigration and Emigration to confirm the nationality and that they were not wanted. If not wanted generally they would be allowed entry. If on the wanted list they would be handed over to the Terrorist Investigation Department for further investigation. A spokesperson from the British High Commission had not heard of returnees who were picked up by police or the intelligence service after their entry to Sri Lanka. The Norwegian Embassy reported that there were no incidents since 2008 of people being detained at the airport upon return, or

<http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/> – Accessed 18 November 2011; DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September.

⁸ DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September.

⁹ Department of Foreign Affairs and Trade 2010, *Sri Lanka: Treatment of Tamils: CIS Request No LKA10612*, 21 September.

¹⁰ Immigration and Refugee Board of Canada 2011, *LKA103815.E – Sri Lanka: 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*, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011; 'Tamils heavily victimised at Colombo airport' 2011, *Sri Lanka Guardian*, 5 January

<http://www.srilankaguardian.org/2011/01/tamils-heavily-victimised-at-colombo.html> – Accessed 18 November 2011; Edmund Rice Centre 2010, *One year after the war Sri Lanka is not safe*, 19 May

http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=260 – Accessed 18 November 2011.

¹¹ Jayadevan, R. 2011, 'Sri Lanka harass visiting Tamils at the Colombo airport', *Sri Lanka Guardian*, 11 June

<http://www.srilankaguardian.org/2009/06/sri-lanka-harass-visiting-tamils-at.html> – Accessed 18 November 2011; Tamil Journalist Arrested at BIA' 2010, *The Sunday Leader*, 21 November

<http://www.thesundayleader.lk/2010/11/21/tamil-journalist-arrested-at-bia/> – Accessed 18 November 2011.

having problems with re-entry although they did not formally monitor returnees. However people with a clear LTTE profile could be detained for further investigation. It stated:

A diplomatic mission said that the vast majority of Tamils returning at the moment are facing a minimal risk for undergoing a scrutiny at the airport. The source commented that the way people will be screened today seem to be the result of improved intelligence, also exchange of intelligence between countries in Asia. People with a clear LTTE-profile or people suspected of money transfer would be detained for further investigations. According to the source there is in general no difference in the way Tamil and Sinhalese people are treated at the airport, and there are also examples of Sinhalese human rights defenders who have been detained for investigations.¹²

54. The Danish report also stated:

—According to the Norwegian Embassy, [in Colombo] a returnee from abroad would not be visible in the community, and it would not be a problem to find housing and a job.

55. The 21 December 2012 UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka*, states:

All returnees under the UNHCR facilitated voluntary repatriation programme undergo a questioning session by Immigration Officials for one to two hours upon arrival, followed by security interviews by the State Intelligence Service (SIS), which can take from 30 minutes to five hours. UNHCR is not permitted to remain in the interview room during this process, but waits for the returnees outside the room. Individuals have been allowed to proceed from the security interviews to their destinations. UNHCR provides return and reintegration assistance, including support with onward transportation from the airport to home areas, a reintegration grant, and on-going protection monitoring post-return.

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.

56. The August 2011 IRB research response also provides relevant information obtained by their Research Directorate in a telephone interview on 30 June 2011 with “an adjunct professor of political science at Temple University, who is currently conducting research on Sri Lanka”. The professor made reference to “information from sources in Sri Lanka” which “suggests that the government has stationed former Tamil Tigers, who have sided with the government and are working with the Sri Lankan security forces” at Colombo international airport, “where they screen arriving individuals.” The professor provided the following information in relation to the treatment of Tamils or persons associated with “Tamil causes” on arrival at the airport, which indicates that such persons are “very likely” to be taken into custody. It is also indicates that there have been reports of “abuse and torture” of airport detainees:

if you are a Tamil and have any connection to the Tamil causes, it is very likely that you would be screened at the airport and taken into police custody. It is very hard for anyone that has a connection to the Tamil Tigers to go back to Sri Lanka. (Adjunct Professor 30 June 2011)

He also said that Tamils without any connection to the Tamil Tigers but with a history of opposing government policies would be considered associated with the Tigers and be screened at the airport (ibid.). The professor further stated that a person who has any past connection to the Tamil Tigers or a history of opposing the government will be detained and questioned

¹² Danish Immigration Service 2010, Human Rights and Security Issues concerning Tamils in Sri Lanka: Report from Danish Immigration Service’s fact-finding mission from Colombo, Sri Lanka. 19 June to 3 July 2010, October, p. 26 – CISNET Sri Lanka CISLIB19345.

(ibid.). He added that there have been reports of "abuse and torture" of airport detainees (ibid.).¹³

57. DFAT stated in regards to illegal departure:

Section 45 A to G of the I&E Act deals with penalties for offences under the Act. For offences committed under the I&E Act, a prison sentence from 1 to 5 years and a fine of 50,000 LKR to 200,000 LKR may be applicable. However, in reality this is seldom enforced.

...

In post's experience up until 16 October 2012, no failed asylum seekers who have returned from Australia have been charged under the I&E Act Section 45 (1)(a) for offences related to their irregular departure from Sri Lanka on their arrival back in Sri Lanka.¹⁴

58. The British High Commission provided advice to the UK Home Office on 5 January 2012 regarding the screening process for returnees at Bandaranaike International Airport, Colombo. The advice stated that security procedures for all returnees appeared to have relaxed, regardless of ethnicity. Relevant information regarding the screening process at the airport for involuntary returnees is included in full, below:

Returnees who are being escorted will be presented to the duty Chief Immigration Officer in the immigration arrivals hall by the escorting officers. Those who are not escorted should be presented to the duty Chief Immigration Officer by an airline official, although this does not happen in all cases. All returnees must be in possession of either a valid passport or an Emergency Passport issued by the Sri Lankan High Commission in London. They must also complete an arrival card, which they should have been given on the plane, and present this to immigration along with their passport.

UK returnees escorted or presented by the airline are immediately identifiable as returnees to DIE. Unescorted returnees travelling on Emergency Passports issued by the Sri Lankan High Commission in London will be questioned by DIE to ascertain if they are returnees. However, unescorted returnees travelling on their original passports will in all probability not even be questioned by DIE unless they bring themselves to the immigration officers' attention in some other way e.g. presenting a document containing forged or unauthorised endorsements.

DIE procedures are the same for all deported and returned Sri Lankan nationals and they will interview them merely to confirm their Sri Lankan nationality. They record the details of all returnees in a register (logbook) which is held in the duty Chief Immigration Officer's office. Once satisfied that a returnee is a Sri Lankan national in many cases they refer them to the State Intelligence Service (SIS) and the Criminal Investigations Department (CID). If DIE is not satisfied that a returnee is Sri Lankan, for example they suspect they are a national of another South Asian country, them [sic] under the UK-Sri Lanka bilateral readmission agreement, the person would be sent back to the UK. The State Intelligence Service (SIS) is often notified by the Sri Lankan High Commission in London about planned enforced returns from the UK. SIS interviews every deportee and ascertains the grounds for their deportation/removal, how they left Sri Lanka and their background. SIS keeps paper and computerised records. SIS paper records date back 60 years and are currently being put onto a computer database. SIS computer records are available at the airport to both SIS and (on request) CID officers.

¹³ Immigration and Refugee Board of Canada 2011, LKA103815.E – Sri Lanka: 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, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011.

¹⁴ Department of Foreign Affairs and Trade 2010, Sri Lanka: Treatment of Tamils: CIS Request No LKA10612, 21 September.

Once SIS has completed their interview the returnee is then passed to CID. The main CID offices are on the ground floor adjacent to the DIE embarkation control, and underwent a complete refurbishment in 2010 funded by the Australian government. The office suite has three purpose built interview rooms, and facilities where returnees can relax and eat meals. All returnees/deportees passed to CID are interviewed, photographed and wet fingerprinted. The main objective of these interviews is to establish if the returnee has a criminal record, or if they are wanted or suspected of committing any criminal offences. The photographs are stored on a standalone computer in the CID office at the airport and the fingerprints remain amongst paper records in the same office. Checks are initiated with local police, but returnees are released to a friend or relative, whom CID refers to as a surety. The surety must provide their personal details and accept responsibility for the returnee. They are not required to lodge any money with CID. Some returnees have subsequently informed the British High Commission that around a week after they have returned to their home address they receive a follow-up visit from their local police to confirm their presence. On completion of their procedures CID will walk the returnee back to DIE. The duty immigration officer will then endorse the returnee's passport/emergency passport with an immigration arrival stamp and hand it back to the returnee. The returnee will then be allowed to proceed to the Duty Free area, baggage reclaim and Customs. Emergency passports are considered full official documents issued by the Sri Lankan authorities. They are a proof of identity and are valid to go through any checkpoints.

59. The British High Commission noted six instances of returnees from the United Kingdom being detained on arrival Two were arrested for forgery offences in 2010, three for forgery offences in 2011 and one was arrested due to an outstanding arrest warrant in 2011.¹⁵
60. In August 2011, the Research Directorate of the Immigration and Refugee Board of Canada (IRB) published a research response which provided information from a number of sources on the treatment of Tamil returnees, including failed asylum seekers, on their return to Sri Lanka.¹⁶ It was reported that an official from the Canadian High Commission in Sri Lanka had sought information “from Sri Lankan government officials, mission staff and other in-country stakeholders” and had provided the information that had been gathered to the IRB on 16 August 2011. This information indicated that Sri Lankan nationals are subject to the same screening process on their return to Sri Lanka, regardless of their ethnicity. It was noted that persons removed to Sri Lanka are interviewed at the airport by security forces to obtain information in relation to human trafficking and smuggling. In addition, it was stated that criminal background checks of returnees are also conducted which may take 24 to 48 hours to complete.¹⁷ A Canadian High Commission official stated that the High Commission was aware of “only four cases” of persons being detained upon arrival. The official indicated that these cases “involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity”.¹⁸

¹⁵ UK Home Office 2012, *Sri Lanka: Country of Origin Information Report*, 7 March, pp.202-203

¹⁶ Immigration and Refugee Board of Canada 2011, *Sri Lanka: 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 <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

¹⁷ Immigration and Refugee Board of Canada 2011, *Sri Lanka: 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 <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

¹⁸ Immigration and Refugee Board of Canada 2011, *Sri Lanka: 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 <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

61. An article from the *Sunday Leader*, published on 26 June 2011, included the transcript of an interview with Chris Dix, South Asia Regional Director of the UK Border Agency. This interview took place in the immediate aftermath of 26 failed asylum seekers from Sri Lanka being returned from the United Kingdom. In response to a question regarding the monitoring that was conducted by British authorities of persons deported to Sri Lanka, Dix expressed the view that there was no evidence of safety issues on return for deportees.¹⁹
62. There is alternative information available which indicates that Tamils and failed asylum seekers are being specifically targeted by the Sri Lankan authorities on their return. For example, according to a September 2011 *BBC Sinhala* report, Amnesty International reportedly stated that “the end of the conflict two years ago had not diminished the risks faced by failed Sri Lankan asylum seekers” Amnesty International were also said to be maintaining “*that deportees face arrest and detention upon their return*”.²⁰
63. In its August 2011 research response, the IRB indicated a joint submission had been prepared for its Research Directorate which provided information regarding the treatment of deportees and failed asylum seekers on their arrival in Sri Lanka. The joint submission, dated 18 July 2011, was prepared by four parties: the Law and Society Trust,²¹ the INFORM Human Rights Documentation Centre,²² Networking for Rights in Sri Lanka,²³ and “a human rights lawyer in the United Kingdom”.²⁴ The submission indicated that immigration authorities were alerted about the impending arrivals of failed asylum seekers, and that persons who are deported to Sri Lanka or returned as a failed asylum seeker were subjected to “special questioning” by police and members of the TID at the airport on arrival. The submission also indicated that such persons were “almost always detained” for varying periods “until security clearance is obtained” The submission also indicated that Tamil returnees were particularly vulnerable if they arrived individually and no one knew they were arriving.²⁵
64. A *Sri Lanka Guardian* report, published on 5 January 2011, made reference to “the heavy presence of the intelligence officers” at Colombo International Airport. In addition, it stated that “Tamils travelling from overseas are being systematically targeted and put through extensive interrogative processes for several hours” Terrorism Investigation Department (TID) officials were reportedly “armed with airline passenger lists single out individuals and take them into custody. Some of them are held at the airport for several hours and interrogated whilst some are taken away in unmarked white vans to unknown destinations” In

¹⁹ Rutnam, E 2011, ‘UK satisfied with Lankan deportation’, *The Sunday Leader*, 26 June <<http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/>> Accessed 18 November 2011

²⁰ ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September <http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

²¹ The Law and Society Trust is “a non-profit organization based in Colombo that is “conducting human rights documentation, research and advocacy” work.

²² The INFORM Human Rights Documentation Centre is a Sri Lankan human rights organization that has been active since 1989 and that focuses on monitoring, documentation and networking

²³ Networking for Rights in Sri Lanka is “a group creating a national and international network of Sri Lankan human rights defenders” .

²⁴ Immigration and Refugee Board of Canada 2011, *Sri Lanka: 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 <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

²⁵ Immigration and Refugee Board of Canada 2011, *Sri Lanka: 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 <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

relation to what happens to persons taken away in “unmarked white vans”, it was stated that “according to airport sources, some of those taken in unmarked vehicles are taken to unknown places and their fate is not known unless they are released”. It was reported that there had been an increase in the arrest of “Tamils from London” after “the failed visit of the President Mahinda Rajapakse to the UK”.²⁶

65. Reports refer to specific examples of both failed asylum seekers from Sri Lanka and Tamils being detained at the airport on arrival in that country. For example, in September 2012, Human Rights Watch claimed to have documented thirteen cases of failed Tamil asylum seekers being subjected to arbitrary arrest and ill treatment, including torture and sexual assault, on their return to Sri Lanka. In several cases, returnees were detained at the airport by CID officials.²⁷ Non-government organisation Freedom From Torture has also published a report in September 2012, documenting 24 cases of Tamils who returned to Sri Lanka from the United Kingdom voluntarily allegedly being detained and tortured. In many cases, the returnees were detained within a month of their return, often at their homes or at checkpoints.
66. One case involved detention on arrival. Many of the returnees had real or perceived associations with the LTTE, and were interrogated about these links during detention. Five detainees were reportedly interrogated about “their own activities and/or the activities of other Tamils in the UK in support of the LTTE”.²⁸ This report builds on an earlier Freedom From Torture report published in 2011, which concluded that “notwithstanding the formal conclusion of hostilities, Tamils with an actual or perceived association with the LTTE remain at particular risk of detention and torture in Sri Lanka”.²⁹
67. A report from *BBC Sinhala*, published on 29 September 2011, makes reference to the case of 50 Sri Lankan nationals who had been deported back to Sri Lanka from the United Kingdom. It was stated in this report that most of the deportees were “ethnic Tamil asylum seekers”,³⁰ while a report from *The Island* stated that all 50 of the deportees had been “denied political asylum”.³¹ On their return to Sri Lanka, the deportees were reportedly “initially detained by the police at Colombo international airport”, but were then released after questioning.³²
68. According to a 2012 article on Tamil Net, a “28-year-old Tamil man, recently deported from the UK was found killed in Trincomalee on 18 April” The man had reportedly seen “strange

²⁶ ‘Tamils heavily victimised at Colombo airport’ 2011, *Sri Lanka Guardian*, 5 January
<<http://www.srilankaguardian.org/2011/01/tamils-heavily-victimised-at-colombo.html>> Accessed 18 November 2011

²⁷ Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>> Accessed 27 September 2012

²⁸ Freedom from Torture 2012, ‘Sri Lankan Tamils tortured on return from UK’, 13 September
<http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf> Accessed 17 September 2012

²⁹ Freedom from Torture 2011, *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011*, p.23
<http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf> Accessed 12 September 2012

³⁰ ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September
<http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

³¹ Gunasekara, L & Nivunhella, S 2011, ‘Fifty deportees arrive from UK’, *The Island*, 29 September
<http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=35789> Accessed 18 November 2011

³² ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September
<http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

persons” wandering around his house earlier in the day, and had warned relatives not to go out. The report noted another returnee, had been “knifed to death by a motorbike squad in a Sri Lanka Army camp in Vadamaradchi on Tuesday”, and that while ‘white-van’ disappearances were well-known, “the present trend seems to be the use of a knife”.³³

69. A May 2010 press release from the Edmund Rice Centre “an Australian research, advocacy and networking organization that also works with refugees and asylum seekers”, al provides information indicating that Tamils and failed asylum seekers from Sri Lanka are at risk of mistreatment on their return to that country. Phil Glendenning, the Director of the Centre, was quoted as stating that “the attitude held by the authorities is that any Tamil who fled the country in an unauthorized way must be an LTTE sympathizer, or if they are Sinhalese, then they must be a traitor”. Glendenning also indicated that failed asylum seekers returned to Sri Lanka were being taken into custody by Sri Lankan security forces, with some being detained or assaulted. “One man who is still in jail has lost the hearing in one ear given the severity of the assault he suffered, and another has received damage to his sight.”
70. A report from Amnesty International, published on 17 June 2011, refers to 26 failed asylum seekers from Sri Lanka, “most of them Tamil”, being taken in for questioning on their arrival in Colombo. Yolanda Foster, Amnesty International’s Sri Lanka researcher, was quoted as stating that “the government of Sri Lanka have a history of arresting and detaining rejected Sri Lankan asylum seekers upon their return and we are aware of cases of people being tortured”.³⁴ Immediately prior to the deportation of these failed asylum seekers to Sri Lanka, Human Rights Watch had expressed the view that “Sri Lankan nationals who have been affiliated with or are considered to be supporters of the Liberation Tigers of Tamil Eelam (LTTE), would be at significant risk of persecution if deported back to Sri Lanka”.³⁵ The *Sunday Observer* reported on 19 June 2011 that Sri Lanka Police had found “no criminal charges” against the 26 failed asylum seekers. A police spokesman reportedly stated that none of these failed asylum seekers had been arrested and they had all “already returned to their homes” The report indicated that the group of 26 comprised 15 Tamils, seven Muslims and four Sinhalese.³⁶ A report from *The Sunday Leader* stated that not all of the 26 were asylum seekers, referring to a claim by one of the deportees that he and others among the group were student visa over stayers instead.³⁷
71. A DFAT report in October 2012 indicated:

Under Sri Lankan law people who depart from any place other than an approved port of departure (such as an airport or seaport) and/or depart without valid travel documents can be charged with an offence under the Immigration and Emigration Act of 1948 (I&E Act).³⁸

³³ Tamil Net 2012, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, 28 April <<http://www.tamilnet.com/art.html?catid=13&artid=35136>> Accessed 30 April 2012

³⁴ ‘Sri Lanka must not torture rejected asylum seekers’ 2011, *Amnesty International*, 17 June

³⁵ Human Rights Watch 2011, *Letter to United Kingdom’s Home Secretary Theresa May and Foreign Secretary William Hague on Deportation of Rejected Asylum*, 16 June <<http://www.hrw.org/news/2011/06/16/letter-uk-home-secretary-theresa-may-and-foreign-secretary-william-hag>> Accessed 18 November 2011

³⁶ Yatawara, D 2011, ‘All UK deportees now in their homes in Sri Lanka’, *Sunday Observer*, 19 June <<http://www.sundayobserver.lk/2011/06/19/sec02.asp>> Accessed 18 November 2011

³⁷ Anver, G & Wickrematunge, R 2011, ‘Deportees return to Lankan soil’, *The Sunday Leader*, 19 June <<http://www.thesundayleader.lk/2011/06/19/deportees-return-to-lankan-soil/>> Accessed 18 November 2011

³⁸ Department of Foreign Affairs and Trade 2012, *DFAT Report no. 1446 – Sri Lanka: RRT Country Advice Information Request LKA40999*, 22 October

72. A later DFAT report of 4 March 2013 (DFAT report 1480) reported unlawfully departing Sri Lanka without proper authority was an offence under section 45 of the Immigration Act, and the penalty for that offence was a fine or imprisonment of up to 2 years. DFAT advised that current experience was that imprisonment was uncommon, and finds the maximum were unusual. It noted Sri Lankan police had advised that terms of imprisonment were usually imposed where the offenders are repeat offenders, or have some connection associated people smuggling activities³⁹.
73. In its October 2012 report DFAT advised:
- The Government of Sri Lanka now has standardised procedures in place for identity and security checks at the airport for all returnees. These procedures are standard for returnees from all countries regardless of the circumstances round their departure from Sri Lanka. This involves the returnee being interviewed by DIE [Department of Immigration and Emigration], SIS [State Intelligence Services] and Police Airport CID [Criminal Investigation Department] ... Post notes that a returnee returning on a commercial flight and travelling on their own passport may not come to the attention of local authorities if they have departed Sri Lanka legally/lawfully...⁴⁰
74. Subsequent DFAT advice in early 2013 was that from late November 2012 the Sri Lankan government commenced enforcement of laws relating to persons who had departed Sri Lanka without proper authority, and that returned asylum seekers who arrived in Australia by boat, having departed illegally, have been charged and remanded for offences under the Immigration and Emigration Act. That report noted the opinion of DFAT was that Sri Lankan authorities were not making any distinction between voluntary and non voluntary returnees⁴¹.
75. A 4 March 2013 DFAT report (DFAT Report 1479) noted the process was that returnees from Australia were arrested by Sri Lankan police CID after being processed back into Sri Lanka by immigration officials, and were held in police custody at the CID airport office throughout the investigation period which could last 24 hours. That report noted persons were then produced before a magistrate in the magistrate's court to determine whether the person was to be released on bail, to appear before a court at a later date or to be remanded in custody. It noted if the person needed to be held for more than 24 hours as a result of magistrate's court not sitting, such person would be transferred to the Negombo remand section until the court is next in session. That report indicated DFAT officials understood the current process was that persons were granted bail based on personal undertakings without the requirement for family member to stand guarantor, and that there was no payment required to bail. It also noted however a court may refuse bail in cases where that person was found to be a facilitator or organiser of people smuggling, or that specific bail conditions may be imposed if the person was a repeat offender.⁴²
76. In a follow-up report received on 29 March 2013 (DFAT report 1489) DFAT reported there were now approximately 1000 individual cases before the court, and officials were not aware

³⁹ Department of Foreign Affairs and Trade 2013, *DFAT Report no. 1480 – Sri Lanka: RRT Country Advice Information Request LKA40999*, 4 March 2013

⁴⁰ Department of Foreign Affairs and Trade 2012, *DFAT Report no. 1446 – Sri Lanka: RRT Country Advice Information Request LKA40999*, 22 October 2012

⁴¹ Department of Foreign Affairs and Trade 2013, *DFAT Report no. 1478 – Sri Lanka: RRT Country Advice Information Request LKA41452*, 28 February 2013

⁴² Department of Foreign Affairs and Trade 2013, *DFAT Report no. 1479 – Sri Lanka: RRT Country Advice Information Request LKA41452*, 4 March 2013

of any evidence or allegations of discrimination against Tamils in court proceedings, or of allegations of mistreatment of returnees whilst on remand.⁴³

FINDINGS AND REASONS

Country of Nationality and Origin

77. The Tribunal finds the applicant is a citizen of Sri Lanka and no other country. In reaching this finding the Tribunal accepts his claims, which are consistent with documents provided in support of his application. His claims are assessed on the basis Sri Lanka is his country of nationality. For the purposes of s.36(2)(aa) Sri Lanka is also the “receiving country”.
78. The Tribunal finds the applicant is of Tamil ethnicity, was born in [City 1], in northern Sri Lanka, and lived in that area, where he operated a [product] repair business until shortly prior to leaving Sri Lanka in July 2012. In reaching these conclusions, the Tribunal accepts the evidence of the applicant on those issues.

Credibility

79. The Tribunal did not find the applicant credible on aspects of his claims, and considered he embellished and exaggerated aspects of his claims to support his application. Whilst he claimed to fear harm because his [relative] allegedly worked in an LTTE [unit], this claim was not made as part of his initial protection application. The Tribunal considers his failure to raise an issue directly relevant to his claim to fear harm on the basis of being imputed to be an LTTE supporter, to significantly weaken his assertion at hearing that his relationship to his [relative] was an important part of why he feared return to Sri Lanka.
80. In reaching this conclusion the Tribunal considered, but does not accept his assertion that his failure to mention this aspect in his initial claims was due to depression or his state of mind at the time. The Tribunal considers had he genuinely considered his relationship to his [relative] to be relevant to his risk on return, he would have identified it as part of his initial claims. The fact he did not, casts considerable doubt on whether he genuinely believed this was a something which was relevant to him on return. Similarly the Tribunal does not accept his failure to mention it earlier related to embarrassment about disclosing to Australian officials that he had a relative in the LTTE, or that he did not think it was important. This particular explanation suggests he considered the issue, and consciously chose not to raise it, despite his overall claim to fear harm on return because of his assertion authorities in his home country would impute him with an anti-government or pro LTTE opinion, and his assertion he had been interrogated about his [relative] and was either shown or asked to provide authorities with a photo of her.
81. The applicant claimed he was regularly interrogated and tortured by authorities in Sri Lanka from 2003 onwards. He provided inconsistent and contradictory information about the duration of this adverse treatment, initially stating in his detailed statutory declaration that it continued until September 2011. At hearing however he first stated it continued until 2009, but later said it continued until April 2011. The Tribunal considers his inability to provide consistent information about the time at which he alleges such mistreatment ceased undermines the weight it can give to his assertions generally, and leads it to doubt such

⁴³ Department of Foreign Affairs and Trade 2013, *DFAT Report no. 1489 – Sri Lanka: RRT Country Advice Information Request LKA41955*, 29 March 2013

mistreatment continued for as long as claimed, or the frequency on which such mistreatment was said to have occurred. In reaching this conclusion. The Tribunal considered, but does not accept his assertion that his ability to recall dates and times accurately was a product of poor memory or the effects of torture or mistreatment. Whilst the Tribunal accepts a person's ability to recall events may be adversely affected by such events, the Tribunal does not accept in this instance that this suitably explains his inability to more consistently recall when such mistreatment ceased, and leads it to place little weight in his assertion that his mistreatment continued after 2009.

82. Country information (above) suggests that particularly during the period of hostilities up until 2009, Tamils in the Northern part of Sri Lanka were treated adversely. This is consistent with the applicant's initial assertion at hearing that such treatment continued until 2009, and the Tribunal accepts this was the case prior to 2009 for the applicant. On that basis the Tribunal is prepared to accept he was the subject of some adverse official attention and mistreatment from 2003 during the period of conflict, which ended in 2009. It is not however satisfied such mistreatment continued after that time, or that he was experiencing such mistreatment in April or September 2011 as claimed at different stages of the protection process, or that he was of any adverse interest to authorities at that time. It also finds he was of no adverse interest to authorities when he departed Sri Lanka in July 2012. Given this finding, the Tribunal also rejects his assertion that since his 2012 departure, authorities in Sri Lanka have been harassing his family or making enquiries with his family about his whereabouts, or that such authorities maintain an ongoing file on him or that he is now of any adverse interest to Sri Lankan authorities for any reason.
83. The applicant also claimed between the time the visits from authorities and mistreatment stopped in 2011, until he departed for Australia in July 2012, he was able to avoid further attention because he was in hiding. The Tribunal does not accept this assertion. His evidence at hearing was that he continued to operate his long established [product] repair business right up until he left Sri Lanka, and the Tribunal accepts this, but finds it inconsistent with his assertion to have been in hiding. The Tribunal considers he made the claim to have been in hiding in an attempt to exaggerate the extent to which he had been adversely treated by authorities in Sri Lanka to explain why he had not attracted any recent official interest prior to July 2012, and to explain why he claimed to need to flee Sri Lanka in July 2012, when even on his own assertion, authorities were not taking any interest in him at that time.
84. The Tribunal rejects his assertion he would face delayed adverse treatment from authorities because there is a period of time in which there is no interest shown by authorities and them acting to harm persons previously of interest. The Tribunal considers this particular assertion to be simply speculative, and not supported by any country information to suggest this is the manner in which authorities in Sri Lanka operate. The Tribunal considers had he been of any interest to authorities after 2009 or in 2011 or 2012, they would have continued to pay attention to him. He acknowledges they did not do so in the period prior to his departure, which leads the Tribunal to conclude this was because he was of no such interest to them.
85. The applicant claimed to fear harm by Sri Lanka authorities for the following reasons:
 - His Tamil ethnicity,
 - His relationship to his [relative], who he asserted was an LTTE member known to authorities.

- His imputed political opinion as a suspected member or supporter of the LTTE through his work as a repairer who had worked on LTTE [equipment], and as someone who had been the subject of past attention from authorities.
- His status as a failed asylum seeker being returned from Australia.

Fear of harm because of his Tamil ethnicity

86. Whilst the Tribunal accepts there is evidence of past significant discrimination and harm inflicted on persons of Tamil ethnicity, it concludes the situation for Tamils in Sri Lanka has improved significantly since cessation of hostilities between the Sri Lankan government and LTTE in 2009. As a result the Tribunal does not accept simply being of Tamil ethnicity is of itself sufficient to give rise to a real chance of persecution if the applicant was to return to Sri Lanka now or in the reasonably foreseeable future. In reaching this conclusion, the Tribunal relies on and accepts advice contained in the September 2012 UK Home Office, and the December 2012 UNHCR “guidelines” set out above. Those reports are consistent with an earlier 2010 general news report (see the “Australian” report above) that the situation for Tamils had considerably improved since cessation of hostilities and the defeat of the LTTE in 2009. Those guidelines list a series of profiles which, whilst not intended to be exhaustive, indicate categories of person the UNHCR considers may still be in need of international refugee protection, depending on the individual circumstances of their case. The Tribunal accepts and relies on those guidelines, and finds the applicant does not fall into any of the identified categories. In reaching this conclusion, the Tribunal considered the contrary assertions by the applicant, and reports referred to in his submissions, but prefers the information in the UK Home Office and UNHCR reports referred to above. The Tribunal is also not satisfied he would be imputed to have a political opinion opposed to the government of Sri Lanka simply because of his Tamil ethnicity. The Tribunal therefore finds his claim to fear persecution on return to Sri Lanka because of his Tamil ethnicity is not well founded. Similarly the Tribunal is not satisfied there is a real risk he would face significant harm as defined for the purposes of s.36(2)(aa) if removed to Sri Lanka because of his ethnicity.

Fear of harm because of his relationship to his [relative]

87. The applicant makes no claim to have been personally involved with the LTTE and there is no material before the Tribunal to indicate such involvement. It accordingly finds he was not so involved. He did however claim during the latter part of his protection process, that a [relative] had worked with the LTTE in a [unit]. He did not make that claim as part of his initial claim to fear return, and in the pre hearing submission received on 23 May 2013 conceded he failed to do so. The Tribunal considers his failure to mention this at an early stage is inconsistent with the existence of a genuine belief on his part that his relationship with his [relative], or her past activities was relevant to his claim for protection. This significantly undermines the weight the Tribunal can give to that assertion as a basis for his claim to fear harm in Sri Lanka. In reaching this conclusion the Tribunal considered, but does not accept as plausible his assertion he had not wished to refer to that issue because he was embarrassed at having a relative associated with the LTTE, or that he had not thought it relevant or important. Given his claim for protection is substantially based on the assertion he was or would be imputed to be a supporter of the LTTE and had experienced past harm for that reason, the Tribunal does not accept he would not mention this aspect, or see it as critical to his application.

88. The Tribunal also rejects his assertion authorities in the past questioned him about his [relative] and her LTTE activities and either showed him a picture of her or requested him to provide a photo of her. He provided conflicting evidence on this issue, in that his pre hearing submission asserted he was shown a photo of his [relative] by authorities, whilst his evidence to the Tribunal was that he was asked by authorities in 2007 to provide a photo of her. The Tribunal considers that had authorities shown him a photo of her, requested one from him or interrogated him about her as claimed, this would have further raised the significance of his relationship to his [relative] as a critical part of his protection claims, and would have been mentioned at a very early stage. The failure to have done so until a much later stage leads the Tribunal to conclude he was never shown a photo of his [relative], or asked to provide a photo of her, and was never interrogated by authorities about her. This reinforces its conclusion above that his failure to mention his relationship to his [relative] is inconsistent with the existence of a genuine belief on his part that such relationship or her past activities are relevant to his claim for protection and further undermines the weight the Tribunal can give to that assertion as a basis for his claim to fear harm if returned or removed to Sri Lanka.
89. Similarly the Tribunal does not accept his failure to mention this aspect at the initial stages of his protection process was due to depression or his state of mind at the time. He was able to give detailed information for a statutory declaration, and the Tribunal does not accept there is any material on which it would conclude he was adversely affected by depression or other factors at that time to the extent he would fail to identify and raise a relevant factor such as this. As a result the Tribunal does not accept he genuinely believed his relationship to his [relative] was of any real relevance or significance to his claim for protection in Australia, and this was why he did not mention it previously. Given the late identification of this issue, the Tribunal also initially had reservations as to whether his [relative] was ever affiliated with the LTTE as claimed. The Tribunal however accepts there is now additional material, provided in the post hearing submission from a local Tamil community leader in Australia that supports that claim. Whilst the Tribunal has not had the opportunity to speak to that person or explore the contents of their statement, it proceeds on the basis the [relative] of the applicant did work in a [unit] of the LTTE as claimed.
90. The Tribunal does not however accept his relationship with his [relative] or her past work or profile is sufficient to give rise to a real chance of persecution to him if he returned to Sri Lanka now or in the reasonably foreseeable future. In reaching this conclusion, the Tribunal notes information above that indicates since cessation of hostilities between the Sri Lankan government and the LTTE in 2009, more than 10,000 former LTTE cadre who were detained have been released and returned to the community (see the October 2012 DFAT report). The Tribunal accepts that report demonstrates even persons directly affiliated with the LTTE as active supporters have been released, and under those circumstances concludes the risk to the applicant of persecution, merely because of a relationship by marriage to a person who had worked in a [unit] of the LTTE is minimal, and does not give rise to a real chance of persecution now or in the reasonably foreseeable future. Similarly the Tribunal is not satisfied the applicant would be imputed to be an opponent of the government of Sri Lanka simply because of his relationship to his [relative].
91. The Tribunal therefore finds his claim to fear harm on return to Sri Lanka because of his relationship to his [relative] is not well founded. Similarly the Tribunal is not satisfied there is a real risk he would face significant harm as defined for the purposes of s.36(2)(aa) if removed to Sri Lanka because of his relationship to his [relative].

Fear of harm because of his [product] repair business

92. The Tribunal accepts the applicant was a [product] repairer in Northern Sri Lanka as claimed, and as such may have repaired and worked on [equipment] owned by the LTTE. It is also, despite its concerns about his credibility expressed above, prepared to accept he may have been interrogated and assaulted by authorities in the period from about 2003, in an attempt to have him provide information about persons who could have had LTTE links and who may have been customers of his repair business. The Tribunal is satisfied that such adverse treatment occurred through the period when the conflict between the Sri Lankan government and LTTE was at a high level, prior to cessation of hostilities in 2009 and the improvement in the security situation and treatment of Tamils in northern Sri Lanka.
93. As a result of the changed circumstances, the Tribunal does not accept this past mistreatment will reoccur, or give rise to a real chance of persecution if the applicant returned to Sri Lanka now or in the reasonably foreseeable future. In reaching this conclusion, the Tribunal also notes he lived in an area which was, during the period of hostilities between the Government and the LTTE heavily influenced or controlled by LTTE activity, and it is therefore neither unusual nor surprising his repair business would involve servicing [equipment] owned or used by LTTE members in that area. The Tribunal accepts country information above (such as the October 2012 DFAT analysis) that shows since cessation of hostilities in 2009, the security situation in the North of Sri Lanka has improved considerably. The Tribunal also accepts the December 2012 UNHCR “guidelines” which set out categories of person who may still be in need of international protection. Whilst such guidelines are not conclusive, the Tribunal notes they are useful indicators as to those persons who may remain at risk. The Tribunal notes that the applicants own profile does not fall within any of those categories.
94. Whilst the Tribunal is prepared to accept that the applicant had come to the adverse attention of authorities during the conflict in Sri Lanka, it does not consider this would bring him within the category of persons who may still face significant harm, sufficient to amount to persecution now or in the reasonably foreseeable future. The Tribunal is also not satisfied the applicant would be imputed to have a political opinion opposed to the government of Sri Lanka because of his former work as a [equipment] repairer. The Tribunal therefore finds his claim to fear harm on return to Sri Lanka because of his past work as a [equipment] repairer or repairer of [equipment] owned or used by the LTTE is not well founded. Similarly the Tribunal is not satisfied there is a real risk he would face significant harm as defined for the purposes of s.36(2)(aa) if removed to Sri Lanka because in the past he worked as a [equipment] repairer of [items] owned or used by the LTTE.

Fear of harm as an unsuccessful asylum seeker returnee, or for leaving Sri Lanka illegally

95. The applicant claimed he would be persecuted because he illegally departed Sri Lanka, and would be returning as a failed asylum seeker, and whilst he may initially be released, claimed he would be targeted by authorities after release. The Tribunal rejects those assertions.
96. The Tribunal accepts he left Sri Lanka in July 2012 without a passport and in a manner that was not in accordance with Sri Lankan law governing departures, and that this would be identified on his return. It also accepts if returned, he is likely to be identified as a person who unsuccessfully claimed asylum overseas or in Australia specifically. Having regard to country information above (for example, see the UNHCR report of December 2012) the Tribunal also accepts returnees who depart unlawfully face questioning on return, and that the applicant may face such questioning. The Tribunal does not however accept such questioning amounts to “serious harm” required to constitute persecution under Australian law, nor is it satisfied that it amounts to significant harm as defined for the purposes of s.36(2)(aa).

97. The applicant indicated he believed he may be released after being returned to Sri Lanka and the Tribunal considers that based on country information above, this is likely to be the case. Whilst the laws relating to illegal departures from Sri Lanka may not have been previously actively enforced (see the 22 October 2012 DFAT report, above) more recently, the Tribunal accepts returned failed asylum seekers from Australia have been charged and have faced court under Sri Lankan law, which has resulted in them being detained varying periods of time. As such the Tribunal accepts in addition to questioning, the applicant could face prosecution under that law, which may result in him being detained for a period of time. The Tribunal does not however accept such questioning, prosecution, detention or any penalty ultimately imposed under Sri Lankan law amounts to “serious harm” as required to constitute persecution and is satisfied any such actions, or penalty he may ultimately face on conviction arises under a law of general application, and that this law will not be applied in a discriminatory way because of his ethnicity or any other Conventions reason. As such the Tribunal is not satisfied any investigation, detention, prosecution or ultimate penalty on conviction amounts to persecution under the Convention. Similarly the Tribunal is not satisfied it would amount to “significant harm” as defined for the purposes of s.36(2)(aa).
98. In reaching these conclusions the Tribunal recognises there are conflicting reports about treatment of returnees who departed illegally on return to Sri Lanka, and that some reports refer to instances of persons who claim to have experienced mistreatment on return (See the Edmund Rice Centre report and the Amnesty International report of 17 June 2011, and the ABC report referred to by the applicant in the post hearing submission). The Tribunal also accepts the UNHCR continues to recognise several categories of persons whose profile may place them in need of protection. The Tribunal has considered that material, but concludes that based on other material which it prefers (the 4 March 2013 and 29 March 2013 DFAT reports above) whilst the applicant may be interviewed, and even charged with immigration offences, he would be released pending the outcome of such immigration charges. The Tribunal concludes such treatment does not of itself amount to serious harm, or significant harm and that the applicant, who lacks other current personal risk characteristics or profile beyond having illegally departed Sri Lanka or being a Tamil, does not face a real chance of persecution, or a real risk of significant harm for reason of his illegal departure from Sri Lanka or his status as a failed asylum seeker.
99. After considering the country information available, including information referred to submissions on behalf of the applicant, the Tribunal does not accept the applicant faces a real chance of serious harm if returned to Sri Lanka now or in the reasonably foreseeable future because he is a Tamil, an unsuccessful asylum seeker returnee, or a person who left Sri Lanka illegally. As such it finds his fear of persecution in Sri Lanka for such reasons is not well founded. The Tribunal is also not satisfied there is a real risk he would face significant harm if removed to Sri Lanka because of any of those reasons.
100. The Tribunal does not accept the applicant would be targeted by authorities in Sri Lanka after he returned, or because they would want to interrogate him about possible LTTE supporters. Whilst the Tribunal has accepted he was subject to such interrogation in the past, it concludes the considerably changed security circumstances since cessation of hostilities in 2009 means he would no longer be of any real interest to authorities. The Tribunal accepts the December 2012 report from the UNHCR (above) that a significant percentage of persons returned to Sri Lanka and released after initial interview may be followed up with a further visit by authorities in their home locations. It does not however accept this demonstrates they were subjected to adverse treatment or harm in the course of such follow up. As a result the

Tribunal is not satisfied the applicant faces a real chance of serious harm sufficient to amount to persecution if returned to Sri Lanka now or in the reasonably foreseeable future because authorities would target him after return, or wish to find out about LTTE supporters. It therefore finds his claimed fear of persecution in Sri Lanka for such reasons is not well founded. The Tribunal is also not satisfied there is a real risk he would face significant harm as defined for the purposes of s.36(2)(aa) if removed to Sri Lanka because of those reasons.

101. Having considered the claims of the applicant both individually and cumulatively, the Tribunal is not satisfied he has a well-founded fear of persecution for reason of his own (actual or imputed) political opinion, his Tamil ethnicity, membership of a particular social group, (being failed asylum seekers or returnees who left Sri Lanka illegally), or any other Convention reason if returned to Sri Lanka now or in the reasonably foreseeable future. It is therefore not satisfied he is a person to whom Australia owes protection obligations under the Refugees Convention. This means he does not satisfy the refugee criterion in s.36(2)(a).

Complementary protection claims

102. Having concluded the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal considered the alternative (complementary protection) criterion in s.36(2)(aa). Having regard to its findings of fact above in respect to the factual basis on which he claimed to fear harm, and its assessment of his credibility, the Tribunal is not satisfied there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka, there is a real risk he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined.
103. In reaching this conclusion, the Tribunal has considered the various claims by the applicant, including his ethnicity, past activities in servicing [equipment] which may have been owned or used by the LTTE during the conflict between the LTTE and the government, his relationship by marriage to a person who worked in a [unit] of the LTTE during that conflict, and his status as a returnee or failed asylum seeker. It does not accept any of these factors give rise to substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka, there would be a real risk he would suffer significant harm as defined.
104. Accordingly the Tribunal does not accept there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk he will suffer significant harm as defined in subsection 36(2A) of the Act. The Tribunal is therefore not satisfied he is a person to whom Australia has protection obligations under s.36(2)(aa).

CONCLUSION

105. The Tribunal is not satisfied the applicant satisfies the criterion set out in s.36(2)(a) or (aa). There is also no suggestion he 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

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

Peter Murphy
Senior Member