

1400369 (Refugee) [2016] AATA 3244 (4 February 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1400369
<b>COUNTRY OF REFERENCE:</b>	Sri Lanka
<b>MEMBER:</b>	James Jolliffe
<b>DATE:</b>	4 February 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 04 February 2016 at 3:11pm

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Sri Lanka applied for the visa [in] December 2012 and the delegate refused to grant the visa [in] December 2013.
3. The applicant appeared before the Tribunal on 6 January and 19 January 2016 by video link to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil (Sri Lankan) and English languages.
4. The applicant was represented in relation to the review by his registered migration agent. The representative participated in the first Tribunal hearing on 6 January 2016 but was unavailable to participate in the further Tribunal hearing on 19 January 2016.

#### Relevant Law

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –

PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

## CLAIMS AND EVIDENCE

10. The Tribunal has before it the Department and Tribunal files relating to the applicant together with information from a variety of sources.
11. The issues in this case are the applicant claims to fear harm if he returned to Sri Lanka on the basis of his Tamil ethnic extraction and on the basis of an imputed political opinion that he is pro-LTTE. The applicant also claims to fear harm on the basis of an actual political opinion in that he was a supporter of the Akhila Ilankai Tamil United Front party (AITUF). The applicant also claims to fear harm if he returned to Sri Lanka because of his membership of a particular social group in that if he returned to Sri Lanka he would be a failed asylum seeker who left Sri Lanka illegally and sought asylum in a Western country. The applicant claims to fear harm from Sri Lankan authorities and including the police and the army and also claims to fear harm from paramilitary groups if he were to return to Sri Lanka.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
13. In his protection Visa application which was lodged with the Department [in] December 2012 the applicant claimed that he was born in Sri Lanka on [date]. This appears to be an error as his passport details on the Department file indicate that he was born on [same day, two years earlier] and his birth certificate which does contain some entries in the English language refers to a date of birth in [the earlier year]. The applicant claimed to have been born in Jaffna in Sri Lanka and he claimed to be of the Hindu faith. He claimed that he had never been married and that he had no right to enter or reside temporarily or permanently in any other country other than Sri Lanka. He claimed to have arrived in Australia [in] July 2012 as an "IMA". He claimed that he had been issued with a Sri Lankan passport in [2006]. He provided information in support of his protection Visa application and indicated that he had resided in [Country 1] between [2006] and [2009]. He claimed to have lived in a refugee camp in [Country 1] during that period. He claimed to have lived in [Town 1] after he returned from [Country 1]. He claimed to have been educated for [number] years in Sri Lanka between [year] and [year]. He claimed that his employment background had been as either [occupation] or [occupation] and that he had also been involved in [other work]. He claimed to have a mother and father in Sri Lanka and to have [siblings] in Sri Lanka. He provided a national identification card and a copy of his passport details to the Department.
14. He provided a statutory declaration in support of his protection Visa application. In that declaration he provided personal details and also referred to his three years in refugee camps in [Country 1]. He claimed that in [2009] after he and his family had returned from [Country 1] that the police had called at his home and told the family that they have to report and explain why some members of the family had gone to [Country 1]. He claimed that his mother told the police the reasons for the family going to [Country 1]. The applicant said that in [2009] he had been detained by the police because a person had told the police the applicant had worked for the "LTTE" (which the Tribunal believes is an incorrect reference to the LTTE). The applicant claimed that he had been arrested and interrogated at the police station and that he was beaten by the police and he was kept for a day before being released. The applicant then referred to having worked in 2010 for the "Akhila Ilankai Tamil United front party" and that he was involved in "promoting their candidates for chairman in



several local villagers. I organised public meetings in about [number] local villagers. However none of the candidates were successful, including myself". The applicant then referred to being aware that "the authorities send white fans around and people are taken and never seen again. Tamils are unable to get decent employment and never will get a job working for the government."

15. The applicant claimed that if he returned to Sri Lanka he would be persecuted and might lose his life and claimed that it was not safe to be a Tamil person in Sri Lanka. He claimed that even though the "LTTE" no longer existed that authorities in Sri Lanka believe the Tamil people supported them and that is why Tamil people were regularly rounded up and harassed. The applicant claimed that the army and or the police would arrest him if he returned to Sri Lanka because he had left illegally and he feared that he would never be released alive and that by leaving illegally he claimed that the authorities would believe that was "proof" that the applicant had disagreed with the government and must be a member or supporter of the "LTTE". He claimed that he would be harmed by the army or the police if he returned and he claimed that even though employment opportunities for Tamils in Sri Lanka were limited he had run away to save his life and not to seek a better life. He claimed that he could not relocate elsewhere in Sri Lanka to avoid harm and he would not be able to get effective state protection. He claimed that if he returned that there were many reasons why he would suffer imprisonment, torture or death and that if he was imprisoned he could be brutalised and degraded.
16. The applicant subsequently provided a further statutory declaration dated November 2013 which in summary referred to some errors contained in his original statement of claims and asked that written submissions forwarded with the further statutory declaration be accepted as "being a correct summary of my protection claims for the purposes of my application for a protection Visa". The three-page written submissions in summary referred to the applicant coming to Australia and having participated in an entry interview. The submissions briefly referred to the applicant having lived in a refugee camp in [Country 1] between 2006 and [2009]. The submissions refer to the applicant's claims that after the family returned to Sri Lanka they had been required to report to the police station and explain why they had gone to [Country 1]. The submissions also repeat the applicant's claims that he had been arrested and detained by police and accused of having been assisting the LTTE. The submissions refer to the applicant and state that he was "then arrested at his house by two police man, tied to a jeep and dragged to the police station". The submissions claim that the person who the applicant believes informed on him was at the police station and the applicant claims that he was beaten and questioned by the police and detained for a day and not released until about 6 PM that evening. The submissions say that the applicant maintained that he had never worked for the LTTE. The submissions also refer to the applicants claims of his work for the Akhila Ilankai Tamil United front party( "AITUF") ("All Ceylon Tamils front"). The submissions claim that the applicant's [siblings] were also involved in that work and the submissions claim that other opposing political parties in the area made life "hard" for the applicant after he left that work. The submissions refer to the applicant mentioning an occasion when he was in Jaffna and unknown people came to his family home looking for him. The submissions refer to the applicant saying "that he did not know them but could see that they were part of a gang as they were carrying weapons and not in uniform".
17. The submissions refer to the applicant's claims that if he returned to Sri Lanka he would be persecuted and be likely to lose his life and that is on the basis of his Tamil ethnic extraction and the submissions also refer to the claim that the authorities in Sri Lanka believe that Tamil people are supporters of the LTTE. The submissions refer to the applicant believing that the police in Sri Lanka would target him as would "un-known people" associated with the "All Ceylon Tamils front". He claims that he would be harmed and mistreated by those people and authorities because of "suspicions" about his involvement with the LTTE and his work with the political party which has been referred to elsewhere in these reasons. The

submissions suggest that life is “already dire” for Tamil people in relation to employment and daily life and that those issues further add to the applicant’s fears about his safety if he returned to Sri Lanka. The submissions refer to the applicant believing that he would not be safe anywhere in Sri Lanka and that he would not be able to be protected. The submissions also refer to the applicant claiming that if he returned he would “face degrading treatment, imprisonment or even death”. The submissions suggest that the applicant is entitled to protection in Australia.

18. Undated written submissions were provided after the applicant lodged his application for a review of the delegate’s decision. In summary those submissions referred to the applicant’s background and his claims for seeking protection and repeat some of the background material referred to previously in these reasons. The submissions refer to the applicant’s involvement with the AITUF. The submissions refer to a claim by the applicant that after the election he was “targeted” by opposing political parties and was questioned by some individuals who came looking for him at his family home and that the applicant believed that was because he had refused to assist a Sinhalese party and the Tamil National alliance. The submissions also refer to a claim by the applicant that he was stopped after the election by four or five individuals who attempted to assault him but he escaped. The submissions refer to the applicant’s claims that he fears persecution on the basis of his Tamil ethnic extraction and his membership of a particular social group and on the basis of an imputed political opinion and he also fears harm because of his unlawful departure and his status as a failed asylum seeker if he returned to Sri Lanka. The submissions in summary refer to the basis for the applicant’s claims to fear harm because of his Tamil ethnic extraction. The submissions in summary refer to the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka and refer to the claim that the applicant was previously accused of being “a spy” for the LTTE. In summary the submissions refer to various reports in relation to Tamils at risk in Sri Lanka and particularly in the context of claims of an LTTE connection. The submissions in summary refer to the applicant’s claims to fear harm on the basis of political opinion in the context of both a perceived imputed political opinion to support the LTTE and as well the applicant’s actual involvement with the AITUF. The submissions also in summary refer to the applicant’s claims to fear harm because of his membership of a particular social group in that he left Sri Lanka illegally and sought asylum in a Western country.
19. The submissions in summary also refer to the delegate’s decision and the delegate’s reasons to not accept the applicant’s claims for protection. The submissions refer to the applicant’s claims and suggest that the applicant would not be able to obtain protection from Sri Lankan authorities. The submissions in summary refer to the Refugees Convention and the applicant’s claims in the context of the Convention and also refer to various reports in relation to the situation for Tamil people in Sri Lanka and including in relation to those suspected of having LTTE connections. The submissions in summary also refer to various reports in relation to claimed human rights abuses in Sri Lanka and also refer to the activities of various paramilitary groups. In summary the submissions also refer to the applicant’s situation if he returned to Sri Lanka as a failed asylum seeker and again the submissions refer to various international reports in relation to that issue. In summary the submissions suggest that because the applicant has spent time in a Western country and sought protection that fact “dramatically increases the likelihood of the applicant being persecuted if returned, irrespective of whether the treatment the applicant endured before fleeing Sri Lanka amounted to persecution”. The submissions in summary refer to the risks of torture to the applicant upon return and again refer to various reports in relation to that aspect as well as referring to continued surveillance of returnees after their return to Sri Lanka. The submissions in summary refer to the perception that asylum seekers and refugees have an involvement with the LTTE and returnees are at risk on that basis. The submissions in summary refer to the difficulties for Tamil people in Sri Lanka and refer to various reports in relation to that aspect and in relation to claimed human rights abuses in Sri Lanka. In

summary the submissions refer to the applicant's claims both in terms of the Refugees Convention and in relation to the Complementary protection provisions of the Migration Act.

20. The applicant was interviewed by a Department delegate in relation to his protection Visa application and the delegate declined to grant the applicant a protection Visa. The delegate was not satisfied that the applicant was entitled to protection under the Refugees Convention or under the Complementary protection provisions of the Migration Act. A copy of the delegate's record of decision was provided with the application for a review.

#### TRIBUNAL HEARING

21. The applicant appeared before the Tribunal on 6 January 2016 and 19 January 2016 to give evidence and present arguments. The applicant appeared by video link. The applicant was represented by his registered migration agent on the first occasion but not on the second occasion.
22. The applicant confirmed his name and personal details. He told the Tribunal that his father had recently died in Sri Lanka. He confirmed that the grounds for claiming protection were his fears of harm based on his Tamil ethnic extraction and a perceived political opinion of being pro LTTE and an actual political opinion of supporting the AITUF. He also claimed to fear harm as a member of a particular social group in that if he returned to Sri Lanka he would be a failed asylum seeker who left illegally. He also claimed to fear harm on the basis of being perceived to be opposed to the Pillayan group in Sri Lanka. The Tribunal found that the applicant's claims to fear harm in relation to the Pillayan were very vague and the Tribunal had difficulty in getting clarification from the applicant about this claim. He claimed that the eastern province of Sri Lanka was under the control of the Pillayan Group and because he belonged to AITUF that he would be perceived as being in opposition to the Pillayan group. The Tribunal asked him if he had ever had any personal difficulties with the Pillayan group and he referred to an attempt to attack him before he had left Sri Lanka and he thought that might have been by the Pillayan group but was very vague when the Tribunal asked him about that claim. The Tribunal referred to the history of the split between the Karuna and Pillayan groups and referred to country information contained in a paper by the Immigration and Refugee Board of Canada 2012 (17 February LKA103950. E.) that referred to a split between those two groups in March 2009. The applicant told the Tribunal that he had not had any direct difficulties with the Pillayan group before he left Sri Lanka but claimed that he feared harm from the paramilitary groups. The applicant had claimed that because a student leader of the AITUF had gotten into some difficulties with the Pillayan group that those difficulties would essentially also taint the applicant because he belonged to the same political supporters group as the student leader. The Tribunal found the applicant's claims to fear harm on this basis to be very vague and unclear.
23. He claimed to fear harm if returned to Sri Lanka from the CID intelligence group and from the Army and from paramilitary groups and he referred to the Pillayan and Karuna groups in that context. He told the Tribunal that he had never been a member or supporter of the LTTE and nor had any members of his family.
24. He told the Tribunal that he and his mother and [some siblings] had gone to [Country 1] and that his father had remained in Sri Lanka and another [sibling] was in [another country] at that time. He said he had gone to [Country 2] in 2011 for [a short period] on his Sri Lankan passport and had not had any problems in travelling on that occasion. He told the Tribunal that he got his Sri Lankan passport in 2006 and had not had any difficulties in getting that passport. The applicant had returned from [Country 1] in [2009]. He said he and his family had returned because they thought it was safe to return to Sri Lanka. The Tribunal noted that the emergency travel document had been issued in [2008]. The applicant had a folder of documents with him during the Tribunal hearing. He told the Tribunal that he had not been



thinking of returning to Sri Lanka in 2008. The applicant and his family had lived in a refugee camp in [Country 1] between [2006] and [2009]. He told the Tribunal that he did not have any difficulties with authorities before he went to [Country 1] in 2006. He said the family were questioned at the airport when they arrived back from [Country 1] about the reasons for going to [Country 1] but were released and not charged. He told the Tribunal during the course of the hearing that he had never been charged with any offences in Sri Lanka and had never been imprisoned in Sri Lanka. He told the Tribunal about the claim that he had made in his statutory declaration that in [2009] police called at the family home and asked to report to the police station. The applicant said that the family had to register to get identification. He had claimed in his statutory declaration that the family had been asked why they had gone to [Country 1] and that his mother had explained the reasons for the family going to [Country 1] during the war in Sri Lanka. He told the Tribunal the police had questioned them but they had not been harmed or mistreated by the police.

25. The Tribunal asked the applicant about his claims in his statutory declaration that in [2009] a person had informed the police that the applicant worked for the LTTE. The Tribunal noted the incorrect references to the "LTTD" in the statutory declaration but understood that the reference should have been to the "LTTE". The Tribunal also noted that the statutory declaration was incorrect in that it referred to having been declared "[in] November 2011" (when the applicant was still in Sri Lanka) and the Tribunal understood that it had been declared [in] November 2012 after the applicant arrived in Australia. The applicant said that the informant worked as [occupation] and was a police informant. The applicant said he and his [sibling] were taken to the police station in [2009]. The Tribunal asked the applicant about the circumstances in which he was taken to the police station and the reference in the submissions that he was tied to a jeep and dragged to the police station. The applicant said that claim was wrong and he said he and his [sibling] were put in the Jeep and taken to the police station. He said he and his [sibling] were questioned in the same room at the police station and that the police informant was also present. He was asked about his claim that he had been beaten during the questioning. He said that his head had been placed on a table and he had been beaten on his back with a "pole" which in fact was a police baton. He said that he was asked about the LTTE and that he spent the whole day at the police station. The Tribunal asked the applicant about the details surrounding the questioning and the beating. The Tribunal found it difficult to get specific details from the applicant. He claimed that initially he was beaten by his questioners with their hands and he said his head was placed on a table and he was kicked as well and slapped and hit with the baton on his back. He said he and his [sibling] had been taken to the [police] station about 11 AM in the morning and remained there to 5 or 6 PM in the evening when they were released. He claimed only one police officer had been involved in beating he and his [sibling]. The Tribunal noted that there was no reference in the applicant's statutory declaration or in the submissions to his [sibling] being questioned and beaten on this occasion. The applicant said that he had told his lawyers about his [sibling's] involvement in these incidents. He told the Tribunal that apart from this incident involving his [sibling] none of his other [siblings] had been questioned by authorities about being involved with the LTTE.
26. He was asked about any medical treatment that he needed after this claimed beating and after he had been released. He said he had not attended at the hospital but had used herbal medicine and claimed that he'd suffered some internal pain but there were no external injuries. He said that was the same position for his [sibling]. The applicant told the Tribunal that he had not had any further difficulties after the incident in [2009].
27. He was asked about his activities for the AITUF. He said he had not undertaken any more work for the party after the February 2011 election and had not been involved in any other political activities since that time. He said he had not undertaken paid work for the party but was getting paid to do [other] work while also working for the party. He said he had never been a candidate for election for the party but had helped the party in the municipal elections

in 2011 in [Town 1]. He claimed that he had been nominated by the party for the possibility of election but was rejected and he thought the rejection had come from the electoral commission in Sri Lanka. He told the Tribunal that there were no elected representatives of the party in parliament or in councils in Sri Lanka. He told the Tribunal that a letter from a former member of Parliament that had been forwarded on his behalf in support of his protection Visa application had been obtained by his [sibling]. The applicant said that he had worked under the leadership of that former politician for the party. The brief letter from the former member of Parliament is dated [in] July 2012 and refers to the applicant and states he "has been under continuous harassment by the Sri Lankan State's intelligence organisations for quite some time". There is no reference in the letter to the applicant being engaged in any political activity. The applicant claimed that he had been a member of the party and had been involved in the 2011 election by putting up posters and arranging meetings on behalf of the party.

28. The applicant was asked about a "summons" document that had been forwarded in support of his protection Visa application and that was on the Department file. The applicant was unable to explain the relevance of that document to the applicant's claims.
29. He was asked by the Tribunal about his claims as to what occurred after the election. He told the Tribunal that he was in Jaffna and some men had come to the family home in [Town 1] looking for the applicant. He claimed the men spoke to his father and that they broke a [table] in the family home. He said about two or three men were involved and he did not remember when the incident occurred but it was in 2011 and he thought about two months after the election. He said he did not recall his father mentioning that the men were carrying weapons. The Tribunal found it difficult to get clear details from the applicant about this claim. The Tribunal also noted that there had been a reference made in the undated submissions made on the applicant's behalf that he had been questioned by men who had come to the family home. The Tribunal confirmed that the applicant had been in Jaffna in relation to the incident he claimed occurred after the 2011 election. He said the incident where he'd been questioned and that was referred to in the undated submissions had occurred before the election. The Tribunal noted that there had been no mention in the applicant's statutory declaration of this claimed incident at the family home after the election or that he had been questioned. The written submissions of November 2013 had also not referred to the applicant being questioned or having escaped from the claimed attempted assault. The Tribunal having regard to the applicant's evidence and his claims and the inconsistencies about those claims between his evidence to the Tribunal and claims in the undated submissions and the claims made in his statutory declaration and in the first written submissions (November 2013) made on his behalf raised its concerns about the significant inconsistencies.
30. The applicant claimed that the incident referred to on page 10 of the delegate's record of decision involving his claim that there was an attempt to assault him had occurred a few months before he came to Australia and he claimed occurred in April 2012. The Tribunal notes that the delegate's record of decision refers to the applicant claiming that the incident where he was stopped by four or five persons had occurred about two months after the 2011 election. The Tribunal found the applicant's evidence overall about these issues in terms of the visit to the family home and the claim that there was an attempt to assault him to be overall very vague and to an extent inconsistent in terms of details and dates. The Tribunal also noted that the applicant had claimed to the Tribunal that there had been no further incidents involving harm to him since mid-2011. The Tribunal had also questioned the applicant about his claims that the men who had visited the family home and questioned his father had been carrying weapons and were not in uniform. The applicant told the Tribunal that he had been in Jaffna at the time and had not seen the men.



31. The applicant told the Tribunal that the April 2012 incident had occurred when he was returning to his family home and he had been approached by five men who did not speak to him. He was asked by the Tribunal about this incident and in essence he speculated the men wanted to attack him because of his political activities. As noted the men did not speak to him. He said he escaped from the men by jumping into the river. The Tribunal noted that the undated written submissions and the delegate's record of decision suggested that this incident occurred shortly after the election in 2011 and not as the applicant claimed to the Tribunal that it had occurred shortly before he came to Australia in 2012. The Tribunal overall found that the applicant's evidence about this claimed incident was very vague. He told the Tribunal after this incident that he no longer worked and stayed at home and that there had been no other incidents before he came to Australia.
32. The applicant told the Tribunal that he had not read the delegate's reasons for refusing to grant him a protection Visa application and that the reasons had not been explained to him. He said that he had come to Australia because it was not safe for him to remain in Sri Lanka and he thought he might be tortured by the army and had tried to leave legally and get a Visa to [Country 1] but the possibility of coming to Australia had arisen. He told the Tribunal that after he had returned from [Country 2] he had lived in Colombo for about [number range] days but he claimed he could not relocate in Sri Lanka to avoid harm and claimed that Colombo was a Sinhalese area and that he would have difficulties getting registration there and he had no accommodation or family support elsewhere in Sri Lanka. The applicant had travelled briefly to [Country 2] for [a short period] in 2011 and had not had any problems in travelling on his Sri Lankan passport in terms of exiting or returning to Sri Lanka.
33. He told the Tribunal that he was not currently receiving any medical treatment and was not taking any medication.
34. He told the Tribunal that the inconsistencies in his claims that had been identified by the Tribunal during the first Tribunal hearing may have been caused by interpreter problems on earlier occasions during his protection Visa application process. He did not raise any further issues in support of his protection Visa application. A further Tribunal hearing was held on 19 January 2016 for the Tribunal to refer to information contained in DFAT reports relevant to Sri Lanka and also for the Tribunal to raise a number of concerns that it had regarding the applicant's claims and his evidence.
35. The Tribunal at the hearing on 19 January raised with the applicant relevant country information in relation to the applicant's claims. The applicant's representative was not available on that occasion. That information was contained in the DFAT country report for Sri Lanka dated December 2015 and the earlier country report dated February 2015 and in the DFAT Thematic report dated October 2014 for people with links to the LTTE. The Tribunal noted in relation to the country reports various issues relevant to the applicant's claims and including that the Sri Lankan government was publicly claiming that involvement of the military in civilian activities in the north of Sri Lanka had changed. Military governors in the northern and eastern provinces had been replaced with civilians. The reports indicated that a survey that had been undertaken by a group within the Australian National University found that an overwhelming majority of those who intended to leave Sri Lanka and travel to Australia by irregular means cited economic reasons for the decision. The reports also indicated that the security situation in Sri Lanka had greatly improved since the end of the conflict in 2009 and that this included in the north and east of the country which is the traditional Tamil homeland. The reports indicated that the department assessment was that there were no official laws or policies that discriminate on the basis of ethnic extraction or language in Sri Lanka and that there is only a low level of discrimination in the implementation of laws and policies.

36. The reports also indicated that historically many Tamil people had faced barriers to education and employment and that this had caused a sense of discrimination among Tamil people. However successive Sri Lankan governments had made some efforts to address these ethnic and linguistic tensions. The reports also referred to the difficulty that some Tamil speakers might have in communicating with Sinhalese authorities in terms of language problems but that those practical difficulties were not due to official discrimination as such. The reports also noted that many Tamils particularly in the north and east of Sri Lanka had expressed a fear of monitoring and harassment and arrest and detention by security forces and that this activity was largely due to LTTE members and supporters almost all being Tamil. However the reports noted that the cessation of the forced registration of Tamils suggested that the trend of monitoring and harassment of Tamils in day-to-day life had generally eased since the end of the conflict. The December 2015 country report indicates that the Department assessment is that the monitoring and harassment of Tamil people has decreased under the current government and that on a day-to-day basis the Tamil community feels more confident to refuse or question the motives of monitoring activities undertaken by authorities if such activities occur.
37. The reports also indicated that the Department assessment was that there were no official laws or policies that discriminated on the basis of political opinion or any systemic political discrimination against any particular group other than in relation to the proscription of banned organisations. The reports noted that the Sri Lankan Constitution guaranteed freedom of speech and expression but that the department assessment was that tolerance for political dissent in Sri Lanka can be limited. The reports also noted that the department assessment was that the number of incidents of extrajudicial killings and associated activity had fallen considerably since the end of the conflict. The reports also noted that the Department assessment was that there were credible reports of torture carried out by Sri Lankan security forces and the reports came from a wide range of actors and including political activists and suspects held on criminal charges and from people held on suspicion of LTTE connections. The reports indicated that the Department was aware of a small number of allegations of torture or mistreatment raised by asylum seekers who have returned to Sri Lanka but the department assessment overall is that the risk of torture or mistreatment for the great majority of returnees is low including for those suspected of offences under the Immigrants and Emigrants Act. The reports also indicated that in general prison conditions in Sri Lanka are poor and do not meet international standards.
38. The country reports noted that the Department assessment is that there is no law or government policy which hinders access to state protection on the basis of religion or ethnic extraction in Sri Lanka and also noted that the Constitution allows any citizen the freedom of movement in terms of internal relocation but that there may be some practical difficulties in relation to relocating because of family connections or a lack of financial resources. The reports noted that Sri Lankan security forces maintain effective control throughout Sri Lanka and therefore individuals seeking to relocate internally are unlikely to be able to do so effectively because of that control and remain anonymous to authorities. The reports referred to the treatment of returnees and the entry and exit procedures in Sri Lanka. The Immigrants and Emigrants Act provides for offences for people who have left Sri Lanka unlawfully and provides for sentences of up to 5 years in custody and fines of up to Rs.200,000. The December 2015 country report referred to a Department assessment that ordinary passengers are generally viewed as victims and penalties are more likely to be pursued against those suspected of being facilitators or organisers of people smuggling ventures.
39. The reports indicated that involuntary returnees returning to Sri Lanka are processed upon arrival by officers from the Department of Immigration and Emigration, the state intelligence service and the airport CID. Returnees are checked against a variety of databases. The Department assessment is that returnees are treated according to standard procedures regardless of ethnic extraction or religion and that detainees are not subject to mistreatment

during their processing at the airport. Persons who are suspected of having committed an offence of having left unlawfully are charged under the Immigrants and Emigrants Act and are processed at the airport and charged. People who are charged need to be taken before a court for consideration of issues such as bail determinations. If a magistrate or a court is not available it may be that people who are charged may spend up to several days in custody and be held in jail conditions. The reports indicates that the Department has been informed by Sri Lankan authorities that no returnee who was just a passenger on a people smuggling venture has been given a custodial sentence but had received a fine. The December 2015 country report indicates that the fines vary on a case-by-case basis and can be paid by instalment. The reports also indicated that most returnees have been granted bail on personal recognizance immediately by the magistrate with the requirement for a family member to act as a guarantor and in those circumstances on occasions returnees needed to wait until a family member could come to court to collect them. The Tribunal asked the applicant about this aspect. The applicant did not raise any difficulties in relation to these issues or suggest that he would have any difficulties in terms of a family member assisting in relation to bail issues or in collecting him from court. The applicant referred to the Prevention of Terrorism Act in Sri Lanka and claimed that anyone could be arrested under that legislation. The Tribunal asked the applicant why he claimed to fear harm in relation to that issue and noted the applicant had not been previously charged but had claimed to have been questioned about the LTTE after returning from [Country 1] and he had told the Tribunal that he had not been a member of the LTTE. He also said that even though there was a new government in Sri Lanka he claimed nothing had changed.

40. The Tribunal raised with the applicant that the Tribunal might take the view that the Immigrants and Emigrants Act is a law of general application applied for the legitimate state purpose of border control. The Tribunal noted the December 2015 DFAT country report referred to the parliamentary elections in August 2015 in Sri Lanka and that the current government has a more proactive approach to human rights and reconciliation than the previous government. The Tribunal also noted that the December report referred to the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka and that those guidelines link the level of risk to people who had real or perceived links to the LTTE. The Tribunal noted that Tamil people are not nominated as being at risk per se on the basis of their ethnic extraction in accordance with those guidelines. The country report also notes that the Sri Lankan security forces maintain a significant presence and a high level of awareness in the north and east of the country. The report also noted that the allegations of torture in Sri Lanka pertain to a relatively small number of cases compared to the total population.
41. The Tribunal referred to the DFAT Thematic report dated October 2014 in relation to people with links to the LTTE. The Tribunal noted that the report indicated that the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka indicated that people with real or perceived links to the LTTE may be at risk in Sri Lanka. As noted earlier those guidelines do not indicate that Tamil people are at risk per se in Sri Lanka on the basis of their Tamil ethnic extraction. That report also indicated the Sri Lankan authorities remain sensitive to the potential re emergence of the LTTE in Sri Lanka and that authorities collect and maintain sophisticated intelligence on former LTTE members and supporters and that the security services maintain watch lists for people of interest including for separatist or criminal activities. The report also refers to the rehabilitation camps that were set up after the conflict ended and where LTTE members were sent for rehabilitation. The report also refers to the department being aware of reports that some people released from rehabilitation centres have been rearrested but that despite the high level of monitoring of people released relatively few re arrests have occurred
42. The Tribunal raised with the applicant concerns that it had about the applicant's claims and about the applicant's evidence. The Tribunal noted that the applicant had been able to obtain his Sri Lankan passport without difficulty (and had been able to travel on that passport



without difficulty to [Country 2] in 2011). The Tribunal noted that the applicant was released in [2009] by the police after one days questioning about his involvement with the LTTE and did not claim that there had been any further incidents with the Sri Lankan authorities about that issue. The Tribunal indicated that it did not perceive the applicant as having a risk profile in Sri Lanka in accordance with the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka. Those guidelines did not nominate Tamil people as being at risk per se on that basis. The Tribunal believed that the applicant's evidence about his political activities indicated that he was engaged in low level political activity in Sri Lanka and that his overall political profile on that basis did not suggest to the Tribunal that he was at risk of harm on that basis. The Tribunal indicated that it had concerns about the applicant's claims and about his evidence because of inconsistencies in his evidence about a number of aspects of his claims. Those aspects had been referred to during the course of the Tribunal hearing. Those inconsistencies essentially related to his claims that he had been harassed after the 2011 election and the inconsistencies between his evidence and his claims in his statutory declaration and in some respects claims made in written submissions on his behalf. The Tribunal also raised concerns about vague evidence by the applicant in relation to some aspects of his claims. The Tribunal noted that the applicant in his evidence had not claimed that he had any further incidents of harm after mid July 2011 but then claimed that there had been an incident in April 2012. The Tribunal indicated that it had concerns that overall the applicant did not have a well-founded fear of harm in terms of his evidence and his claims and in the context of available and relevant country information. The Tribunal indicated that the DFAT reports that had been referred to did not support many of the applicant's claims regarding his fear of harm on the basis of his Tamil ethnic extraction and on the basis of him having left Sri Lanka illegally. The applicant said the because he was a Tamil his life would not be safe if he returned to Sri Lanka and said that there was still informants working in Sri Lanka and those people gave information to the government and he feared harm from informants. The Tribunal allowed until 2 February 2016 for any further submissions or comments or responses to be made in relation to the applicants claims.

43. The Tribunal received written submissions on 3 February 2016. In summary those submissions referred to concerns raised by the Tribunal during the hearing in relation to the applicant's credibility in relation to what the submissions referred to as "slight inconsistencies in his evidence" as well as the reference to vague evidence that had been made by the Tribunal. The submissions in summary refer to Australian legal authority in relation to the assessment of credibility as well as to the RRT's guidelines on the assessment of credibility. In summary the submissions suggest that the Tribunal should take a number of factors into account in assessing and considering the applicant's credibility and refers to those factors. The submissions in summary also refers to the persecution of returnees to Sri Lanka and to country information contained in the DFAT reports as well as information from the Human Rights Law Centre dated March 2014 in relation to the claimed treatment of returnees. The submissions suggest that in the light of the applicant's previous attempt "to flee the country" together with his Tamil race and his previous political affiliations and his absence for a long period of time place the applicant at a real chance of serious harm. The submissions in summary refer to the situation for Tamils in Sri Lanka and refer to various extracts from various reports in relation to the claimed treatment of Tamil people in Sri Lanka. Those reports include a Freedom from Torture report referring to various risks for returnees and particularly referring to those with real or perceived links to the LTTE. Another report referred to in the submissions suggest that despite the election of a new government in Sri Lanka the process of reconciliation is still greatly hindered by a long history of ethnic tension in that country and the submissions also suggest that torture and mistreatment has continued to be perpetrated by the Sri Lankan authorities. Overall the submissions suggest that the applicant's claims for protection should be accepted.

#### CONSIDERATION OF CLAIMS AND EVIDENCE

44. On the basis of the materials and information provided to the Department and to the Tribunal the Tribunal accepts that the applicant is a Sri Lankan citizen and that his identity is as he claims it to be. The Tribunal accepts on the basis of the information and materials provided to the Department and available to the Tribunal that the applicant does not have a right to enter or reside temporarily or permanently in any other country apart from Sri Lanka. The Tribunal accepts that Sri Lanka is the applicant's country of nationality for convention purposes and is the receiving country for Complementary protection purposes.
45. The Tribunal is not satisfied as to the applicant's claims that he has a well-founded fear of persecution if he returned to Sri Lanka based on his claims and his evidence to the Tribunal. The Tribunal is also not satisfied as to the applicant's credibility in relation to some aspects of his evidence and to some aspects of his claims.
46. The applicant's claims to fear harm are referred to elsewhere in these reasons. The Tribunal has considered the applicant's claims that he fears harm on the basis of his Tamil ethnic extraction. The Tribunal has considered the applicant's evidence and is also had regard to available and relevant country information and submissions made on the applicant's behalf. The Tribunal accepts that the recent DFAT reports that have been referred to in these reasons provide comparatively recent and credible country information relevant to a number of the applicant's claims. The Tribunal notes the country information that has been referred to and including the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka. Those guidelines as indicated do not nominate Tamil people as being at risk per se on that basis. They do link the risk to people to factors such as a real or perceived link to the LTTE. The Tribunal after considering the overall evidence does not accept that the evidence indicates that the applicant has a real or perceived link to the LTTE that could place him at risk if he returned to Sri Lanka. The applicant also said he had not been involved in any political activities since the municipal elections in early 2011. He told the Tribunal that apart from the one incident on one day in [2009] where he had been detained and questioned about the LTTE and mistreated by the authorities he had not had further difficulties with the authorities about any suspected LTTE connections or in connection to his Tamil ethnic extraction. The country information contained in the DFAT country reports indicates that successive Sri Lanka governments have made efforts to address ethnic and linguistic tensions in relation to historical conflict between Tamil and Sinhalese people and particularly in relation to education and employment. The December 2015 country report indicates that the current Sri Lankan government has a more proactive approach to human rights and reconciliation. The Tribunal notes that the country information that has been referred to also indicates that the cessation of the forced registration of Tamils suggests the trend of monitoring and harassment of Tamils in day-to-day life had generally eased since the end of the conflict. The Tribunal notes that the applicant was able to obtain his passport in 2006 and travel without difficulty to [Country 2] in 2011 and return without difficulty.
47. The Tribunal after considering the evidence and the country information and the submissions made on the applicant's behalf does not accept that the applicant has a well-founded fear of persecution if he returned to Sri Lanka either now or in the reasonably foreseeable future on the basis of his Tamil ethnic extraction. The Tribunal does not accept that the evidence and available and relevant country information that has been referred to supports the applicant's claims in relation to this issue. The Tribunal also does not accept that the DFAT country information indicates that Tamils are unable to get decent employment and would never get a job working for the government as claimed by the applicant.
48. The Tribunal has considered the applicant's claims that he fears harm because of a perceived political opinion that he could be perceived to be pro-LTTE. The Tribunal has referred to the applicant's evidence and his claims about this issue. The Tribunal after considering the applicant's evidence and the written submissions made on his behalf and available in relevant country information in the DFAT reports that have been referred to does

not accept that the applicant has a well-founded fear of persecution on the basis of this claim. The applicant told the Tribunal he had not been a member or supporter of the LTTE. He and other members of his family had lived in [Country 1] for about three years while the war in Sri Lanka was underway. He did not participate in the fighting in Sri Lanka. He claimed that in [2009] he and his [sibling] were detained and mistreated and questioned about supporting the LTTE. He said that occurred on one day and that he and his [sibling] were released and that there were no further incidents involving the authorities in relation to a suspicion that he was assisting or had assisted the LTTE. He was never charged with any offences in Sri Lanka. The Tribunal has also considered the applicant's credibility in relation to his claims and has referred in these reasons to its concerns about a number of inconsistencies. Those inconsistencies essentially related to claimed incidents that he said occurred before and after the 2011 municipal election. The Tribunal notes the written submissions made on the applicant's behalf after the Tribunal hearing but does not accept that the inconsistencies that have been referred to in these reasons are "slight" as suggested by those submissions.

49. The inconsistencies which have been referred to in these reasons relate to variations in the applicant's claims between his evidence to the Tribunal about claimed incidents and about his claims in his statutory declaration and in written submissions made on his behalf. The Tribunal has also referred to vague evidence that the applicant gave about certain aspects of his claims. The Tribunal's overall assessment of the applicant's credibility after considering the totality of the evidence is that the applicant is not a credible witness. The Tribunal believes that it is reasonable for it to assume that the applicant would have referred in his statutory declaration and in the November 2013 written submissions to the incidents that he claimed occurred both before the 2011 election and after the 2011 election had those incidents occurred as claimed by the applicant and that he would have referred to those incidents at an earlier time in his protection Visa application. The statutory declaration did not refer to the claimed incident of armed men coming to his home and questioning his father or to his claim that he had been questioned before the election. The declaration did not refer to his claim that there had been an attempt to assault him after the election. The November 2013 submissions referred to men coming to his home but did not refer to the claim that there had been an attempt to assault him or that he had been questioned by some men before the 2011 election as he claimed to the Tribunal in his evidence. The Tribunal does not accept that its assessment of the applicant's credibility is because of any claimed (and unspecified) interpreter problems that may have arisen at earlier stages of his protection Visa application. It is the totality of the evidence that causes the Tribunal to not accept the applicant is a credible witness.
50. The Tribunal, notwithstanding its overall assessment of the applicant's credibility, is prepared to give the applicant the benefit of the doubt in relation to his claim that he and one of his [siblings] were detained for one day in [2009] and questioned about supporting the LTTE and that they were mistreated on that occasion. The applicant's claim about this incident has been consistent throughout the protection Visa application process and his evidence to the Tribunal about the incident (apart from the notable admission that his [sibling] was also detained on that occasion and the incorrect claim that he was tied and dragged by the Jeep to the police station) was essentially consistent in terms of his overall claims about this incident. In those circumstances the Tribunal is prepared to accept that this incident occurred as claimed by the applicant. The Tribunal after considering the applicant's wider evidence about claimed incidents before and after the 2011 incident does not accept a number of the applicant's claims in relation to those incidents. The Tribunal notes that the applicant was neither a member or supporter of the LTTE and nor were members of his family. The Tribunal accepts that he was questioned and mistreated by authorities on one occasion in [2009] in relation to the LTTE but he was released after one day and not charged and not questioned again. He was able to use his passport to travel to [Country 2] in 2011 and return without incident to Sri Lanka after [a short period]. The Tribunal's overall



assessment of the applicant's evidence and his claims and the country information that has been referred to does not indicate to the Tribunal that the applicant is of any interest to Sri Lankan authorities on the basis of any perceived link to the LTTE. The Tribunal does not accept that the evidence or relevant country information indicates that the applicant has a well-founded fear of persecution on the basis of an imputed political opinion that he is pro-LTTE should he return to Sri Lanka either now or in the reasonably foreseeable future.

51. The Tribunal has considered the applicant's claims he fears harm if he returned to Sri Lanka on the basis of an actual political opinion because of his support for the AITUF. The applicant's evidence about his political activities in support of that party have been referred to elsewhere in these reasons. He claimed that he was interested in standing as a candidate for that party but his application had been rejected. The political activities that he said he was engaged in support of the party essentially consisted of putting up posters and organising some meetings. The party was not successful in those 2011 elections. He said he was a member of the party but had not undertaken any other political activities for the party since 2011 and had not been involved in any other political activities in Sri Lanka. He essentially claimed the difficulties he had before and after the 2011 election were caused by his political activities in support of the party. The brief letter from the former Member of Parliament which has been referred to elsewhere in these reasons did not refer to any political activities by the applicant and provided no details about the claim that the applicant had been under continuous harassment from the Sri Lankan State intelligence organisations. The applicant claimed in the November 2013 submissions that opposing political parties in the area had made it hard for him after the election. The Department delegate in the record of decision (see page 10 of the delegate's record of decision) referred to the applicant claiming that the Sinhalese party and the TNA had wanted assistance with promoting their parties in the election and that the applicant had refused and he was then threatened. He told the Tribunal in an effort to explain some inconsistent evidence that had been raised by the Tribunal that some men had questioned him before the election. He also said that after the election some armed men had attended at his family home and spoken to his father and asked for the applicant and broken a table. He was in Jaffna at the time of this claimed visit and gave some (in the Tribunal's view) vague and inconsistent evidence about his knowledge that the men were armed on that occasion and that they were not in uniform and he therefore believed they were part of a gang. He then claimed during his evidence to the Tribunal that there had been an incident in April 2012 when a group of men had approached him but not spoken to him and he had escaped on that occasion by jumping into the river. He thought those men were after him because of his political activities and were going to assault him. The Tribunal also noted the letter from a former member of Parliament that had been forwarded in support of the applicant's protection claim. As indicated much of the applicant's evidence about these incidents both before the 2011 election and after the 2011 election was vague and inconsistent. That aspect has been referred to elsewhere in these reasons.
52. The Tribunal after considering the overall evidence and its assessment of the applicant's credibility and the submissions that have been made on his behalf and the inconsistencies that have been referred to in relation to these claims does not accept that the applicant was spoken to by a group of men before the 2011 election and does not accept the applicant's claims that some armed men spoke to his father after the 2011 election and that they smashed a table at the family home on that occasion. The Tribunal in those circumstances and having regard to the evidence and its assessment of the applicant's credibility does not accept the applicant's claims that in April 2012 there was an incident where a group of men approached the applicant and he believed that they were going to assault him and he escaped on that occasion. In essence the applicant claims that these incidents involved members of paramilitary organisations and he claimed he feared harm from those organisations because of his support for AITUF. However when the Tribunal questioned the applicant about his claims to fear harm from these groups he said he had no direct

difficulties with the Pillayan group before he left Sri Lanka but he thought it may have been that group who he claimed had tried to assault him in April 2012 but was very vague in relation to his claim. He had claimed that he thought he was at risk of harm because of a student leader in the AITUF having some difficulties with the Pillayan group but was very vague and unconvincing when the Tribunal asked him about that issue. The Tribunal after considering the applicant's evidence and his claims about this issue does not accept that the evidence indicates or supports that the applicant has a well-founded fear of harm on the basis of an actual political opinion of supporting the AITUF should he return to Sri Lanka either now or in the reasonably foreseeable future. The brief letter from the former Member of Parliament does not overcome the Tribunal's concerns in relation to those claims.

53. The Tribunal also does not accept on its assessment of the evidence that has been considered and discussed and the Tribunal's assessment of the applicant's credibility that the applicant has a well-founded fear of harm from paramilitary groups in Sri Lanka if he returned to Sri Lanka either now or in the reasonably foreseeable future on the basis of his actual political support for the AITUF.
54. The Tribunal has considered the applicant's claims that he fears harm because of his membership of a particular social group in that if he returned to Sri Lanka he would be a failed asylum seeker who left illegally and sought asylum in a Western country. The Tribunal accepts that the applicant left Sri Lanka unlawfully and illegally to come to Australia and in those circumstances should he return to Sri Lanka it is highly likely that he will be charged with an offence of having left unlawfully under the Immigrants and Emigrants Act in Sri Lanka. The Tribunal also accepts that prison conditions in Sri Lanka are poor. The Tribunal has referred elsewhere in these reasons to information contained in the DFAT country report in relation to people returning to Sri Lanka and to their processing at the airport and their treatment during the processing. The Tribunal has also referred elsewhere in these reasons to the situation regarding people who are charged with an offence or offences of having left Sri Lanka illegally and unlawfully under the Immigrants and Emigrants act and to likely penalties for people who were only passengers on a people smuggling venture. That information indicates that there is judicial discretion in relation to the monetary penalties that have been imposed. There is no evidence before the Tribunal that indicates that the applicant was anything other than a passenger in coming to Australia. The Tribunal has referred to the issues surrounding the grant of bail and the circumstances surrounding a guarantor in that situation and to the country information in relation to that issue. As indicated elsewhere in these reasons the Tribunal specifically asked the applicant about a family member being available to act as guarantor and to collect the applicant if he returned to Sri Lanka and if he was charged with an offence and granted bail. As indicated the applicant's evidence to the Tribunal indicates that he would be assisted by a family member if this situation arose if he returned to Sri Lanka.
55. The Tribunal accepts that the enforcement of the Immigrants and Emigrants Act in Sri Lanka is the non-discriminatory enforcement of a law of general application intended for the legitimate state purpose of border control. The Tribunal after having considered the applicant's evidence and the country information and his claims does not accept that the likely questioning, detention and charging of the applicant and any likely short term jail/custody arrangements of perhaps several days and any likely penalty that might be imposed upon him would involve systematic and discriminatory conduct. As noted elsewhere in these reasons the applicant does not have a risk profile in accordance with the 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka. The DFAT country report for Sri Lanka dated December 2015 indicates that the Department assessment is that the risk of torture or mistreatment for the vast majority of returnees is low and the Tribunal is not satisfied that the applicant's membership of a particular social group of failed asylum seekers who left illegally and sought asylum in a Western country places him at a real chance of serious harm should he return to Sri Lanka either now or in the reasonably

foreseeable future. The Tribunal is not satisfied after considering the evidence and country information that there is a real chance of serious harm to the applicant on the basis of this claim.

56. The Tribunal accepts the DFAT reports that have been referred to elsewhere in these reasons in relation to Sri Lanka provide recent and credible information relevant to the applicant's claims. The 2012 UNHCR eligibility guidelines for people at risk in Sri Lanka do not indicate that Tamil people are at risk per se on that basis but link the risk of harm to other factors such as a real or perceived link to the LTTE. The applicant has no such risk profile. The Tribunal does not accept that the applicant because he left Sri Lanka unlawfully and sought asylum would if he returned to Sri Lanka either now or in the reasonably foreseeable future be perceived to have a political opinion of being pro LTTE and face a real chance of serious harm on that basis. The Tribunal accepts that the DFAT country report indicates that returnees are treated at the airport according to standard procedures regardless of ethnic extraction or religion and the assessment is that detainees are not subject to mistreatment during their processing at the airport.
57. The Tribunal after considering the applicant's claims both individually and cumulatively does not accept on the basis of the evidence and materials and information before it that the applicant faces a real chance of serious harm for a Convention based reason if he returned to Sri Lanka either now or in the reasonably foreseeable future.
58. The Tribunal has considered whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka that he faces a real risk of significant harm. The Tribunal has considered the applicant's claims and the evidence and available and relevant country information in relation to the applicant's claims. The Tribunal has referred elsewhere in these reasons to its assessment of the applicant's claims and the evidence and the available and relevant country information.
59. The Tribunal has considered the definition of significant harm contained in s.36(2A) of the Act as well as the relevant definitions contained in s.5(1) of the Act. The Tribunal considers that the conditions in which the applicant might be remanded in custody pending a bail determination would be poor but the Tribunal is not satisfied that these conditions would constitute significant harm. The Tribunal has had regard to the relevant PAM 3 refugee and humanitarian -complementary protection guidelines, including those dealing with prison conditions. The Tribunal accepts that there are circumstances in which an incident of imprisonment and the circumstances of the particular imprisonment may constitute degrading treatment or punishment. The Tribunal has considered the applicant's circumstances, and is not satisfied that a short period in detention on remand would involve a real risk of significant harm to the applicant. The Tribunal has also considered whether the likely detention and questioning of the applicant for having left unlawfully and illegally would expose the applicant to a real risk of significant harm.
60. The Tribunal has referred to available country information that indicates that returnees are not subject to mistreatment at the airport and that all returnees are processed according to standard procedures regardless of ethnic extraction or religion. The Tribunal also notes the DFAT country report assessment that the risk of torture for returnees is considered to be low. The Tribunal after considering the claims and submissions and the totality of the evidence and country information that has been referred to and discussed in these reasons is not satisfied that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka that there is a real risk that he will be subjected to any form of harm that would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs (a) to (e) of the definition of



torture in s.5(1) of the Act. The Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm that would involve the intentional infliction of severe pain or suffering, either physical or mental, or pain or suffering, whether physical or mental, intentionally inflicted on the person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature, such as that would meet the definition of cruel and inhuman treatment or punishment in s.5(1) of the Act. The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant would suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) of the Act which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty.

#### Overall Summary

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

#### DECISION

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

James Jolliffe