

1012015 [2011] RRTA 245 (1 April 2011)

DECISION RECORD

RRT CASE NUMBER: 1012015

DIAC REFERENCE(S): CLF2010/119766

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Nicole Burns

DATE: 1 April 2011

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

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

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to her visa application the applicant was born in Jaffna, Sri Lanka in [year deleted]. She is a Hindu of Tamil ethnicity. She was married in [Country 1] in April 2008 to a Sri Lankan Tamil from the Vanni region. The applicant arrived in Australia in July 2010 on a visitor's visa issued to her in [Country 1] in October 2009.
21. In a statement accompanying her application the applicant details her background and specific claims for protection, referring to country information where relevant. She outlines a history of being pressured to join the Liberation Tigers of Tamil Eelam (LTTE) on the one hand, and being suspected of being an LTTE supporter and being harassed by the authorities and paramilitaries as a result on the other hand. The applicant's siblings faced similar problems, which is why her mother arranged to have them leave Sri Lanka.
22. It is stated that the applicant was abducted by paramilitaries in August 2007 and released after her mother paid them. Shortly after she moved to [Country 2] where she stayed with her sister until her husband was able to sponsor her to [Country 1]. Following problems with the applicant's husband's [business] in [Country 1], the applicant returned to Sri Lanka in mid-2010 but was detained at the airport and released two weeks later; again once payment was made. Around the middle of 2010 the applicant's husband went to America in search of work and the applicant came to Australia to stay with her sister.
23. In support of her visa application the applicant submitted a number of *Tamilnet* articles and various documents indicating that she was born in Jaffna (i.e. birth certificate, passport, ID card and marriage certificate).
24. The delegate refused to grant the applicant a visa [in] December 2010 because she was not satisfied that the applicant's fear of persecution was well-founded. She also found that the applicant could reside in a safe third country; that is the US based on her husband's five year multiple entry visa to the US. The delegate considered that the applicant's fear of harm was not for Convention reasons but rather associated with extortion attempts related to the applicant's perceived wealth.

The Tribunal hearing

25. The applicant appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.
26. The applicant's [age deleted] son was with her at the hearing.
27. The applicant confirmed that she was born and grew up in Jaffna, in Sri Lanka's north. In 2001, when she was [age deleted], she moved to Tamil Nadu, India with her mother for two years out of concerns for their safety. That is, in Jaffna Tamil groups (including the LTTE and paramilitary groups) were bothering them for money and in the LTTE's case, for the applicant to join them. They returned to Jaffna in mid-2003 after the ceasefire agreement was in place. When asked why her older siblings did not go to India with them, the applicant said because her mother had already sent them abroad: one brother to [Country 3] (between 1987 and 1989), a brother (in 2000) and sister to [Country 2] (in 1996), and a sister to Australia (in 1999). With the exception of her sister from Australia who visited Sri Lanka in 2006, none of the applicant's siblings have returned to Sri Lanka, even temporarily. When asked why her mother sent her siblings away from Sri Lanka, the applicant said because they were constantly facing problems. She explained how her eldest brother had problems with the LTTE and was detained by the army in the late eighties and how her other siblings were constantly being harassed to join the LTTE or provide support.
28. The applicant was asked why her sister visited Sri Lanka in 2006, given this was a very tense period for Tamils. She said because her mother was unwell. Her sister visited them in Jaffna but returned to Colombo after a couple of weeks following shelling and explosions.
29. The applicant said because it was known that her siblings sent money to her and her mother from abroad, they were constantly being hassled for funds from the LTTE and other Tamil paramilitary groups such as the Eelam People's Democratic Party (EPDP) when they lived in Jaffna. The latter would threaten to inform the military if they did not comply.
30. The applicant was asked how her father died. She said in 1995 when returning to Jaffna her mother and second brother were temporarily taken by the army. Her father witnessed their abduction and suffered a fatal heart attack.
31. The applicant said she and her mother lived in Jaffna from mid-2003 until August 2006 when they were forced to move to Colombo because of the regular bombings and deteriorating security situation. During the period in Jaffna leading up to that time the applicant said she faced problems from all Tamil groups. The LTTE moved around Jaffna a lot more openly than before the ceasefire and their members harassed her daily to undergo training in the Vanni. Members of the ex-LTTE Karuna faction and Pillayan faction also tried to extort money from her and made threats. The applicant was asked how she resisted the LTTE who wanted her to join. She said her mother would give them money and plead that she needed someone to look after her, given her maladies.

32. In Colombo the applicant rented a place in [suburb deleted] with her mother until October 2007 when she went to [Country 2] to stay with her sister. She said it had not been easy living in Colombo, with Tamil groups harassing her and frequent police checks. She said around August/September 2007 she was abducted by a group of men she considers were members of EPDP and taken to a forest area with other girls. There army officers tried to get them to agree to undergo training. The applicant refused and told them her mother could pay to have her released. Three or four days later the applicant was released after her mother paid her captors 10 lakh rupees (SLR 1,000,000).
33. The applicant said she married a Sri Lankan Tamil (from Kilinochchi) in [Country 1] in April 2008. She returned to Kuwait shortly after, because she did not have a visa to stay in [Country 1] permanently. She had met her husband at a [class] in Colombo around 2006/2007 at the time; it was a “love marriage” Her husband was studying and working part time as a [vocation deleted] in Colombo, [details relating to employment deleted]. When asked, the applicant said her husband had a lot of problems when in Sri Lanka. He escaped Kilinochchi, an LTTE stronghold at the time, to avoid being recruited. Other Tamil groups wanted to use his [skills] and even though he refused, others suspected him of doing so.
34. The applicant’s husband moved to [Country 1] in November 2007 on a student visa and later set up a [company name and details deleted]. Around February 2009 he was granted an employment visa and in July that year sponsored the applicant as his dependent to [Country 1]. She became a partner in his business and helped them out with their accounts. They made [business details deleted]. The business was going well initially, however a proposal to develop [details deleted] was rejected by [Country 1 authorities] in May 2010. They did not have a backup project and their business was in jeopardy. Following advice from a friend, the applicant’s husband decided to try and find similar work in the US. He knew that it was unsafe for him to return to Sri Lanka, as a Tamil male from Kilinochchi involved in [vocation deleted]. The plan – following advice from a migration agent - was for him to go to the US, find work, get a visa then apply to sponsor the applicant to join him. The applicant’s husband went to the US in July 2010, on a business visitor visa, valid for five years. He suggested that the applicant stay with her mother in Jaffna in the meantime.
35. The applicant was asked where her husband is now. She said she has had no contact with him since January 2011. The last time she spoke with him he was upset because he had not been able to find work and his visa was valid for six months only, not five years as he had thought. When their son was born the applicant tried desperately to contact her husband, to no avail. The applicant was asked if she is upset because she thinks something has happened to her husband or because she thinks he may have left her. She said both. When asked, she said his family live in refugee camps in India and she has not contacted them because they did not approve of their “love marriage”.
36. The applicant was asked why she returned to Sri Lanka in June 2010 given her mistreatment in the past and the fact that she was pregnant. She said as her husband was planning to go to America she had to go somewhere. She spoke to her mother who said that the situation was not too bad if she stayed in Colombo. She also talked to her brothers. However when she returned to Sri Lanka she did not even make it out of the airport. Whilst waiting for her mother to arrive she was approached by two Tamil men who asked what she was doing and touched her gold chain, which shows she is married.

She did not answer any questions so they called over a couple of police officers who asked to see her passport. When the police realised that she had visited [Country 2], [Country 1] and Australia (for a [festival] the previous year) they became suspicious and took her in a vehicle to a building. There she was beaten and repeatedly asked if she was an LTTE supporter. When she told them about her husband's [work], they accused him being a publicist for the LTTE. They arrested the applicant and talked about getting her into 'training' to help identify an LTTE re-emergence, including in places like India. After a while a Tamil officer came and said he knew the applicant – she thinks he was one of the people who detained her in August 2007 – and said if she was willing to provide financial support again they would release her. The applicant said she was detained for two weeks before being released after her mother and husband paid 20 lakh rupees (SLR 2,000,000). She departed Sri Lanka shortly after, helped by her husband's Sinhalese-speaking friend.

37. After her detention for the second time the applicant returned to [Country 1] for about five days before coming to Australia. She saw her husband during that period. The applicant was asked why she left her husband so soon after being mistreated and detained. She said because she could not stay in [Country 1] and her husband had already made plans to go to America. Her visa to [Country 2] had expired. She had a valid visa to Australia because she had visited the year before.
38. The applicant said her mother returned to Jaffna after the applicant was detained because she was worried that she would be constantly harassed for money in Colombo. It was not easy in Jaffna also, but her mother knows the place and has friends and relatives there. She was also concerned about looking after her property.
39. The applicant said if she had to return to Sri Lanka now she fears for her life; the authorities already know about her. She is more fearful now that she has a baby. She said that the situation remains bad for Tamils in Sri Lanka

Country Information

40. The Sri Lankan Government formally withdrew from a ceasefire with the Liberation Tigers of Tamil Eelam (LTTE) on 16 January 2008. Following months of intense fighting, and rights abuses from both sides, the Government declared victory on 18 May 2009. There have been consequent improvements in the security and human rights situation, but some concerns remain, as follows.
41. On 5 July 2010 UNHCR issued updated eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka. The guidelines indicate that the security situation post-war has significantly stabilised, with a relaxation of the Emergency Regulations, and an ease on restrictions on freedom of movement, for example. However, UNHCR cautioned that the situation is evolving and drew particular attention to the following potential risk profiles: **persons suspected of having links with the Liberation Tigers of Tamil Eelam (LTTE); journalists and other media professionals;** civil society and human rights activists; **women and children with certain profiles;** and lesbian, gay bisexual and transgender individuals. (Tribunal emphasis of risk profiles identified by UNHCR relevant to this case) (UNHCR *Guidelines for Assessing the International Protection Needs for Asylum-Seekers from Sri Lanka*, 5 July 2010, HRC/EG/SLK/10/03)

42. In December 2010 the International Crisis Group's (ICG) Sri Lanka Project Director, Alan Keenan, briefed a subcommittee in the European Parliament about the human rights situation in Sri Lanka in the post-conflict period which included the following assessment:

Since the end of the war and the active counter-insurgency campaign, there have been much fewer reports of extrajudicial killings and enforced disappearances. This is a positive change. Nonetheless, reports of abductions, disappearances and politically motivated killings do continue to be received, and the terror machine established to destroy the LTTE remains in place. There have still been no proper investigations, much less prosecutions, in any of the thousands of disappearances or more high profile political killings from the last years of the war. The country continues to be governed under a state of emergency more than eighteen months after war's end. Emergency regulations and the Prevention of Terrorism Act (PTA) continue to be used to detain LTTE suspects without trial and to harass and jail the Rajapaksa regime's political opponents – whether retired general Sarath Fonseka or student activists linked to the leftist-nationalist JVP party. Many of the emergency powers the government proudly proclaimed to have removed when negotiating with the EU over GSP+ in fact continue to be applied through the PTA. Sri Lanka's human rights crisis thus continues to affect all communities: Sinhalese, Muslim and Tamil. (Submission to the Subcommittee on Human Rights of the European Parliament, Meeting of 6 December 2010 – Agenda Item 5: "Exchange of views on Human Rights in Sri Lanka in the post-conflict period", by Alan Keenan, Senior Analyst and Sri Lanka Project Director, International Crisis Group)

43. The UK's Operational Guidance Note on Sri Lanka issued in March 2011 makes the following comments about freedom of movement for Tamils in post-conflict Sri Lanka:

Sri Lankan law grants every citizen freedom of movement but in practice has severely restricted this right on occasion, particularly for Tamils. Restrictions have eased as a consequence of improvements in the security situation although military/police checkpoints along the main roads and a highly visible military presence continue to be maintained throughout the country. In Colombo/Gampaha district, people unable to speak Sinhala who either lack ID or had ID cards from Jaffna or northern districts are likely to be detained briefly and released once checks on identity have been confirmed. (UK: Home Office, Operational Guidance Note: Sri Lanka, March 2011, p3, http://www.ecoi.net/file_upload/1226_1300894900_ognsrilankaogn.pdf)

44. The same guidelines go on to state:

The UNHCR reported in its Guidelines that military/police checkpoints along the main roads and a highly visible military presence continue to be maintained throughout the country, to prevent the re-establishment of the LTTE by cadres still at large. The ICG reports a high level of militarization in the north and east. In the Jaffna peninsula there are reported to be 40,000 army officers, a ratio of approximately 1:11. On nearly every major road there are military checkpoints or the presence of soldiers. In the Vanni, the ratio of military personnel to civilians is believed to be 1:3 or 4. (p.6)

Targeting of suspected LTTE supporters

45. Several reports indicate that authorities still target people suspected of involvement in the LTTE. DFAT stated in a September 2010 report that in the North and the East "individuals with suspected LTTE links are the most likely targets for abduction and interrogation". Some released former LTTE cadres had been re-arrested and DFAT was aware of a few reports of kidnappings. The targeting was not restricted to those suspected of being former combatants, but also those who may have acted for the LTTE

in a civilian capacity. (Department of Foreign Affairs and Trade 2010, *DFAT Report No. LKA10612 – Sri Lanka: Treatment of Tamils*, 21 September)

46. One of the main risks facing persons suspected of LTTE links is that of detention. Security forces and paramilitaries carried out documented and undocumented detentions of civilians suspected of LTTE connections. The US DOS reported that detainees had allegedly been released with warnings not to reveal information about their detention. It also spoke of reports of “secret government facilities where suspected LTTE sympathizers were taken, tortured, and often killed”. (US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Sri Lanka*, 11 March, Section 1c.)

Paramilitary groups

47. The UK’s operational guidance note cited above explains the current status of paramilitary groups (and rival political factions) in Sri Lanka as follows:

The main Tamil groups with paramilitary elements are the Tamil Makkal Viduthalai Pullika (TMVP) – Karuna or Pillayan factions, Eelam People’s Democratic Party (EPDP) or People’s Liberation Organisation of Tamil Eelam (PLOTE). Some groups are formally allied to the Government. Both Karuna and the leader of the EPDP, Douglas Devananda, are members of the national parliament and have ministerial responsibilities. Pillayan is Chief Minister of the Eastern Provincial Council. Paramilitary activity has been linked to incidents of enforced disappearances and hostage-taking for ransom, criminal activities, unlawful killings, torture, recruitment of child soldiers and accusations that such groups act with impunity. In March 2010, TMVP were reported to be active in the east; PLOTE in IDP camps in Vavuniya; and the EPDP in Jaffna. (Country of Origin Report Sri Lanka 11 November 2010 (Section 10))

48. Minority Rights Group International reported in January 2011 that former members of the EPDP “have been responsible for a spate of recent extrajudicial killings, disappearances and abductions. Some are still armed, even if they do not carry weapons publicly. They also work closely with the military as informants” (Minority Rights Group International (UK), *No war, no peace: the denial of minority rights and Justice in Sri Lanka*, 19 January 2011, www.minorityrights.org)

FINDINGS AND REASONS

49. Based on a copy of her passport on file the Tribunal finds that the applicant is a Sri Lankan citizen.

Safe third country – USA

50. The delegate made a finding that the applicant has a right to enter and reside in a safe third country: i.e. the United States. The delegate formed this view because her husband had purportedly entered the United States on a five-year multiple entry business visa in 2010 and was to sponsor her at a later date.
51. The Full Federal Court has held that the term ‘right’ in s.36(3) refers to a legally enforceable right: *MIMA v Applicant C* (2001) FCR 154. Gummow J has suggested in obiter dicta that the ‘right’ referred to in s.36(3) is a right in the Hohfeldian sense, with a correlative duty of the relevant country, owed under its municipal law to the applicant

personally, which must be shown to exist by acceptable evidence: see *MIMIA v Al Khafaji* (2004) 208 ALR 201 at [19]-[20].

52. Although the applicant may be able to attain a visa on the basis of her marriage to her husband who is in the US, she has not yet exercised that right; it is something that she would need to attain in the future. This would be difficult, given the applicant has lost contact with her husband, for reasons unclear to herself and the Tribunal. The applicant said at the hearing that the actual status of her husband's visa is also unclear. Therefore whether that entitles the applicant as his spouse to a visa is uncertain. As such, the Tribunal cannot be satisfied that the applicant has, at the time of this decision, a legally enforceable right (i.e. an existing right) to enter and reside in the US.
53. Accordingly, the Tribunal finds that s.36(3) does not apply to the applicant with respect to the United States of America.

Protection claims – Sri Lanka

54. The Tribunal found the applicant to be a credible witness at the hearing. Her evidence was detailed and consistent with her written claims and country information available.
55. The applicant claims to fear persecution on return to Sri Lanka from the authorities or Tamil paramilitaries due to her imputed political opinion; that is imputed support for the LTTE. Specifically the applicant fears that she will be arrested and seriously harmed on return to Sri Lanka because she is a Tamil from Jaffna who has been suspected of helping the LTTE in the past and detained twice as a result and because of her husband's profile as a Tamil male from the Vanni who works in [vocation deleted].
56. For reasons discussed below the Tribunal finds that the applicant has a well-founded fear of persecution for reasons of her imputed political opinion. Therefore, it has not been necessary to consider her claims for protection on other grounds.
57. Independent country information cited above indicates that those perceived to support the LTTE, or perceived to be sympathetic to the LTTE, irrespective of whether they had a choice or not, have been arrested and harmed by the authorities (or their Tamil proxies) in the past. Based on this country information, coupled with the applicant's consistent evidence, the Tribunal accepts her claims to have come to the adverse attention of the authorities in Sri Lanka in the past on suspicion of being an LTTE supporter. It accepts that she has been detained and mistreated twice as a consequence, the last time in mid-2010.
58. The Tribunal accepts that the authorities and their proxies targeted the applicant *because* they suspected her of being an LTTE supporter (and, in the most recent incident, her husband too). The Tribunal considers these incidences had a definite political flavour and involved the imputation of an anti-government/pro-LTTE political opinion to the applicant and her husband. The Tribunal therefore finds that the applicant was targeted by the authorities in the past for the essential and significant reason of her imputed political opinion.
59. The Tribunal has taken into account independent country information cited above when considering whether the applicant has a real chance of persecution for reasons of her imputed political opinion if she returns to Sri Lanka now or in the reasonably

foreseeable future. Whilst such country information clearly indicates that the human rights situation has improved in Sri Lanka since the cessation of open hostilities, several reports (for example from ICG, the UK Home Office) indicate that authorities still target people suspected of supporting the LTTE. UNHCR, in its July 2010 guidelines, identifies 'persons suspected of having links with the LTTE' as the first in five potential risk profiles. The Tribunal accepts that the applicant falls within this group (among others). Country information indicates that incidences of abductions have lessened, but they do still occur. The Emergency Regulations, whilst relaxed somewhat, are still maintained under which the government has extensive counter-terrorism powers. The north of Sri Lanka also remains heavily militarised. These factors indicate that the government shows no sign of relaxing control over the population, particularly those suspected of having links with the LTTE, such as the applicant and her husband.

60. On the basis of country information indicating that the situation for Tamils in Sri Lanka remains unstable and human rights violations against Tamils suspected of having LTTE links continue, albeit in lesser numbers, the Tribunal finds that anyone perceived to be linked in any way to the LTTE will face a real chance of persecution by the authorities on return to Sri Lanka.
61. The applicant returned to Sri Lanka in mid-2010 which indicates that her subjective fear of harm was not overly strong at that point in time. However, the Tribunal accepts the applicant's contention that she was still fearful to some degree but, based on advice from her mother and brothers, thought the situation had improved. She also admitted that she had few options, given she and her husband were not able to work in [Country 1]. Despite these concerns, the Tribunal accepts that the applicant was detained on return to Sri Lanka and only released after her mother paid a large sum of money to government proxies.
62. Therefore the Tribunal considers the applicant, who it accepts has previously come to the adverse attention of the authorities and comes from the North is vulnerable to being identified by the authorities on return. If so, the Tribunal finds that there is a real chance that she would suffer serious harm, as per s.91R(2) amounting to persecution if she were to return to Sri Lanka now or in the reasonably foreseeable future. It finds that the essential and significant reason is the Convention reason of her imputed political opinion and that the conduct the applicant fears would be systematic and discriminatory.
63. As the applicant fears persecution from the authorities (or proxies of the government), the Tribunal finds that the applicant would not be afforded adequate state protection from the harm she fears. Nor would she be able to avoid the harm she fears by relocating elsewhere in Sri Lanka.
64. Accordingly, the Tribunal finds that the applicant has a well-founded fear of persecution for a Convention reason (i.e. due to her imputed political opinion) in Sri Lanka in the reasonably foreseeable future.

CONCLUSIONS

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

DECISION

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