

**1214187 [2012] RRTA 1103 (19 December 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1214187

**DIAC REFERENCE(S):** CLF2012/109595

**COUNTRY OF REFERENCE:** Sri Lanka

**TRIBUNAL MEMBER:** Gina Towney

**DATE:** 19 December 2012

**PLACE OF DECISION:** Sydney

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Sri Lanka, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2012.
3. The delegate refused to grant the visa [in] August 2012, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. 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 Refugees Convention.
6. 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

### **Complementary protection criterion**

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

### **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.

#### **Protection Visa Application**

20. In the applicant's written application he recorded the following: [personal details deleted: s.431(2)]. The applicant was deported from Dubai to Sri Lanka [in] 2007. The applicant can speak, read and write in Tamil and Sinhalese, his ethnicity is Tamil and his religion is Hindu; his travel documents were taken by the people smuggler in India; he speaks with his family as often as he can.

#### **Delegate Interview**

21. During the interview the applicant said that he is married and has one child, he also has his brother living with him. He has [brothers] and [sisters], and one of his brothers is in Saudi. When asked why he fled to Australia, the applicant said that he needed to leave Sri Lanka, but that he couldn't travel through the airport because his name was on a list at the airport. The applicant said that he was told about his name being on the airport list by an agent, after he approached the agent. The applicant found the agent through his brother's friend. The

applicant said that the CID and the Army are searching for him in Sri Lanka, and they keep coming to his home after he had the grease man issue.

22. When asked about the grease man issue that he had, the applicant said that [in] September 2011 a grease man came to his home and wife and sister in law were screaming. The applicant then pushed and chased the grease man with an iron rod, and then his problems started. When the applicant was chasing the grease man, army people saw him and asked him to come to the army base the next day, which he did. On a later day the applicant was returning from his mother's house and a white van tried to abduct him, but he jumped fences and ran away. After this the applicant stayed at his wife's aunt's house; and then spent two months at his niece's house. When asked what would happen if he returned, the applicant said he will be caught, maybe coming through the airport, and he may be killed.
23. The applicant said that he was questioned by the Sri Lankan Army about any connection to the LTTE. The applicant also said that since he left people have come to his house asking after him. As far as the applicant knows there is no warrant for his arrest. The applicant has been deported from Dubai, but said he did not know that he was travelling on a fake visa (his cousin obtained his visa through a Sri Lankan agent). When asked why he did not flee to Dubai, where his brother is, the applicant said it was because it is difficult to enter Dubai.
24. The applicant said that his sister in law was forcibly recruited to the LTTE, but that she now lives with the applicant and his family, and she was targeted by the grease man. When asked why the army would have a continued interest in him, the applicant said that former LTTE are being targeted by grease men. The delegate raised that attacks seem to be random/opportunist.
25. The applicant said that the day after the attack he was held for one and a half hours and questioned regarding any links to the LTTE, and whether he had sent money from overseas. The applicant said that he was threatened. When asked for details, the applicant said that he was told he was suspected of being LTTE, because he is from an area previously controlled by the LTTE. The applicant said that he and other people patrolled their area at night with iron bars and they burnt tires on the side of the road.
26. The applicant purchased a visa to India through an agent, but then the agent advised the applicant that he could not travel through the Sri Lankan airport, and advised him to travel to Australia via boat.
27. During the three and half months that the applicant was with his brother's daughter (his niece) he stayed inside, and only went outside to the open well to wash at night. The applicant said that his wife came to visit him sometimes, and she sometimes stayed with her mother. When asked about relocation, the applicant said that he cannot relocate without registering.
28. The delegate raised concerns regarding the submission that the applicant would be arrested regarding holding an iron bar and/or that he would not be arrested on the spot. In response the applicant said that there were many people there, and that he couldn't be arrested for no reason in front of other people. The applicant also said that they could not arrest him the next day because his wife would have witnessed it, and that is why they tried to arrest him when he was alone on the way home.

29. The applicant appeared before the Tribunal [in] October 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. The applicant was represented in relation to the review by his registered [migration agent].
30. At the commencement of the hearing the applicant confirmed that he had completed his own application form and statement, and that they had been read back to him in his own language. The applicant said that there was nothing that he needed to change in his application or statement.
31. The applicant confirmed that he feared persecution for the following reasons: his imputed association with the LTTE due to being from an area which was formerly controlled by the LTTE; and secondly, because of his closer imputed association with the LTTE due to accusations made by the Sri Lankan Army after they saw the applicant chasing a grease devil holding an iron rod in his hands. The applicant confirmed that these were the only reasons that he feared persecution or serious harm, and these were the only reasons that he left Sri Lanka. The applicant also said that unidentified people had been searching for him since he left Sri Lanka. When asked who was searching to him, the applicant said the CID and also unidentified people in civilian clothes. The applicant confirmed that he had a genuine Sri Lankan passport, and said it was with his wife in Sri Lanka.
32. When asked to describe who grease devils were, the applicant said they are part of the Sri Lankan Army or the police, and that one party comes in first and then another party replaces them. When asked for further information on grease devils the applicant then said that when he was chasing a grease devil, the Sri Lankan army jeep stopped him. When asked to describe what grease devils actually did, the applicant said that they concentrate on women and they cut their chests. When asked to provide further information, the applicant said grease devils go from suburb to suburb and take revenge on the Tamil people.
33. When asked if he had actually seen the grease devil that came to his house, the applicant said yes. The applicant said he hit the grease devil with an iron rod and the grease devil fell, then the grease devil started to running and the applicant chased him. When asked to give a description of the grease devil, the applicant started to describe the injuries that he suspected that the grease devil would have had. The Tribunal said it would like more of a physical description of the grease devil. The applicant said that the grease devil was dressed all in black and his whole body was covered with grease, and he had small knives into his hands or connected to his hands. When asked to provide more information, the applicant said the grease devil's whole body was covered in grease so that people cannot grab him, and he was only wearing underwear, black shoes and the small knives on his hands.
34. The Tribunal raised that the applicant has previously said that he and other people patrolled their area at night with iron bars and they also burnt tires on the side of the road. The applicant confirmed that this was his evidence. The Tribunal then asked why the grease devil would come to that area, and why he would not go somewhere where the area was not patrolled. The applicant responded by saying the grease devils did come on and off, and he and other people then decided to make a patrol of the area. However the Sri Lankan army had then come and told them to stop patrolling. The applicant said after this time he stopped patrolling and the grease devil came to his house. The Tribunal raised that the applicant has previously submitted that he was patrolling on the night the grease devil came. The applicant said he wasn't patrolling, he was outside his house on the road, outside the gate. The Tribunal asked the applicant what he was doing on the road. The applicant said he was seated in his

gate watching, and his neighbour was sitting at the front of his house. The applicant later submitted that when the grease devil came to his house he was patrolling the street.

35. The Tribunal asked the applicant what happened when his wife screamed and he chased the grease devil. The applicant said his wife's sister and mother also started to scream and he then confronted the grease devil. However, when he started running after the grease devil the Sri Lankan army came. The Tribunal asked the applicant if the neighbour followed the grease devil with him. The applicant said no, his neighbour was probably tired and stayed back when he was. The Tribunal asked the applicant if anyone else chased the grease devil with him. The applicant said he was the only person chasing the grease devil, and then the Sri Lankan army came because they have communication with the grease devil. The Tribunal raised that the applicant had already submitted that the grease devil was wearing underpants shoes and knives, and asked how he would be able to communicate with the Sri Lankan army. The applicant said he would have something inside his pants, maybe he could press a button and it goes straight to the Sri Lankan Army, and the grease devil was wearing half pants, and maybe it has pockets.
36. The Tribunal asked the applicant where his wife and daughter were living at the moment. The applicant said that they had moved to [Amparai District] in the Eastern Province, and that they were living with the wife's father's relatives. The applicant also provided a photocopied letter in a foreign language that had not been translated, that he read it out to say that his wife and daughter had been living in this area.
37. The Tribunal asked the applicant if people had continued to search for him during his time in Australia. The applicant said some fellows had come and this had caused his wife to move. When asked who these people were, the applicant said he did not know. Asked whether they could have been business associates, or people that he owed money to, the applicant said there was no such thing. Asked whether he had a debt to the people smuggler, the applicant said he had sold some fields [location deleted: s.431(2)] and paid for his trip.
38. When asked about his address in Sri Lanka, the applicant said that he had been living in the property at [Amparai District] when the grease devil came to his house. The applicant said that his wife and daughter had to leave his property because people kept coming to the house searching for him. He said at the moment his wife's mother and father and younger sister were living at this house. When asked who owned the house, the applicant said his wife owned it, and it had been passed in dowry from her mother to her. Asked how his parents-in-law and sister-in-law had continued to live in the house at [Amparai District], the applicant said that people were not searching for them, they were searching for him and his wife.
39. The Tribunal raised that the applicant had entered and exited Sri Lanka legally several times, and asked whether he had had any incidents in any of the entries or exits. The applicant said he had not had any problems. The Tribunal raised that [in] 2007 the applicant was deported from Dubai for holding a fraudulent visa. The Tribunal raised that this was at the time of the Civil War, and that his passport listed his place of origin. The applicant confirmed that he did not have any problems re-entering Sri Lanka at this time. The applicant also confirmed that he is fluent in Tamil, and can colloquially speak Sinhalese, but is not fluent. Asked whether he could be easily identified as a Tamil on entering Sri Lanka, the applicant said as soon as people see his passport it will be obvious that he is Tamil, because he has Tamil name and other particulars. The Tribunal raised that the applicant then exited Sri Lanka legally at the end of 2008 to go to Iraq. The applicant confirmed he did not have any trouble exiting or entering Sri Lanka in 2008 or re-entering Sri Lanka in 2009.

40. The Tribunal asked the applicant, citing his travel history, why it would be a problem for him now if he was deported from Australia or returned as a failed asylum seeker. The applicant said it would be as a result of his interaction with the grease devil, and this was the starting point and where people started to search for him, and he fears that they will harbour a grudge. The Tribunal asked the applicant whether he feared problems during entry to Sri Lanka, or whether he feared problems in his own area only. The applicant responded by saying it is possible that his name is on the airport list and that he may be arrested at the airport, but if not, two or three days after he goes to his village people will arrest him. Asked why he would be targeted, the applicant said because of the incident with the grease devil, and he thinks they are connected to the Sri Lankan army.
41. Asked why he did not travel to India after he was granted a visa in late 2011, the applicant said because he feared his name was on the airport watch list in Sri Lanka. Asked why he had applied for the visa to India, the applicant said because of his fear in Sri Lanka and he thought it was better if he went to India. The applicant said he had applied for the visa when he was in [town deleted: s.431(2)]. The applicant said that it was a genuine visa, but that people would normally pay 500 rupees but he paid almost 5000 rupees. The applicant said he then paid 1.2 million Sri Lankan rupees to travel to Australia. Asked how he had obtained the money, the applicant said that he sold the fields that he had mentioned earlier.
42. The Tribunal asked the applicant if he had been pursued by the CID or the unidentified people during his time in [town deleted: s.431(2)]. The applicant said no, because they didn't know that he was there. Asked if he could relocate to this area, or live with his wife in her current residence, the applicant said he couldn't live anywhere in Sri Lanka because the Sri Lankan Army is going about, and as a male he must register. [A break was then called.]
43. The Tribunal raised that the applicant had been able to enter and exit Sri Lanka through legal channels, despite the fact that his area was listed on his passport and that he had said he could be easily identified as Tamil. The Tribunal raised that this may lead it to reject his general claim that he feared persecution due to his imputed association with the LTTE because he is from an area previously controlled by the LTTE. In response the applicant said in the period that he travelled outside Sri Lanka legally he had had no trouble as such, and although there may have been general incidents, he had not had any.
44. Asked if he would like to make any general submissions, the applicant said that Tamils are surrounded by the Sri Lankan Army, and his area was earlier controlled by the LTTE, and now the Sri Lankan army think that all Tamil youths are supporters of the LTTE. The applicant also said that the LTTE had forcibly recruited people and trained them, so the Sri Lankan Army thinks that all Tamil youths went to training. The applicant said after the grease devil incident, when he went to the Sri Lankan army camp, they told him he must be a LTTE supporter. The applicant said subsequent to the grease devil incident the Sri Lankan Army and unidentified people were searching for him and because of fear he had to leave. The applicant also said wherever he was to go in Sri Lanka the Sri Lankan army would always be there. The applicant said Tamil youths like him can't live anywhere in Sri Lanka. The applicant also said the Sri Lankan government falsely publishes that there are no problems in Sri Lanka, and what is being done in Sri Lanka is not known to the outside world. The applicant said many Tamil youths had been abducted and killed during the period 2008 to 2010, and their whereabouts was unknown. The applicant said at least 100 people in his area and surrounding areas are still missing and that he too would have been caught if he was found. The applicant said if he is caught he would be killed.



45. The Tribunal raised that there was information before it that would be the reason, or part of the reason, subject to the applicant's response, for affirming the decision under the review. The Tribunal said that it would invite the applicant to comment on or respond to the information either orally, after an adjournment, or in writing, or any way that the applicant wished. The Tribunal raised that the information was the difference between the comments made by the applicant during the entry interview, and the submissions made by the applicant at a later date. The Tribunal raised that the evidence to support a finding of contradictory evidence was as follows: that the applicant had said in his entry interview that grease devils stab women to find out where LTTE are; that the grease devil had entered his house by removing tiles; that grease devils were covered in paint (as opposed to grease); and that when the applicant had been asked why these people were called grease devils he had responded that he didn't know.
46. In response the applicant said that during his entry interview his state of mind was very different, and he had not had food or water in three days, and that he could have been confused in his words. The applicant also raised that he had said grease, but the interpreter had mixed it up and said paint. [The Tribunal raised that the interpreter had said grease devils in other areas and in this context and this did not support that they had mixed up the words paint and grease.] In response the applicant also confirmed that his evidence was that grease devils did stab women to find out where the LTTE are. The applicant also said that he did not say tiles had been removed, he said that they had jumped from the rear side of the house to access his house.
47. The Tribunal also raised that it had difficulty believing the applicant's submissions. The Tribunal raised one reason for this was that his description of the grease devils seemed fanciful. The Tribunal raised that the applicant had said the grease devils had knives on their fingers, and that they had a button or a system to alert the Sri Lankan Army, and that they may have it within their underwear. The Tribunal raised that this was difficult to accept as realistic. The applicant confirmed that this was his evidence. The Tribunal also raised that the applicant seemed to have increased his knowledge of grease devils since his time in Australia, and that under section 91R(3) of the Migration Act it must disregard any behaviour that has been undertaken for the sole purpose of furthering his refugee claims.
48. The Tribunal also raised that the UNHCR guidelines to Sri Lanka, dated July 2010, had said that there was no longer a need for group based protection for Sri Lankan Tamils from north of the country. The Tribunal asked the applicant if he would like to comment. The applicant said that he has mentioned what his problems are.
49. The agent made oral submissions on the applicant's behalf, and agreed to provide references in relation to the submission that the High Commissioner to Australia from Sri Lanka which said that former members and supporters and family members of the LTTE and travelling by boat to Australia. The applicant also agreed to provide supporting documents for the quote that 100 people from Sri Lanka had had their Protection Visas to Australia rejected due to security concerns. The agent also said that overall the main risk to the applicant was that on return to Sri Lanka he would be questioned by the CID about himself and other people on the boat, and that country of origin information suggested that CID would use torture to obtain information, and there was therefore a risk of harm to the applicant and he would be covered either under the real risk or complementary protection. [The Tribunal notes that no written submissions were received after the hearing.]

## **COUNTRY OF ORIGIN INFORMATION**

50. There is a multitude of country of origin information regarding Sri Lanka since the end of the Civil War in May 2009. The information presents a varied picture of what is actually occurring in the country at this time. The Tribunal has taken account of many sources, and has focused its energies on information from reputable sources including the United Nations High Commissioner for Refugees (UNHCR), legislation, Canadian, British and Australian governments and the Australian Department of Foreign Affairs and Trade (DFAT).

United Nations High Commissioner for Refugees (UNHCR) 5 July 2010

51. The UNHCR released a report titled 'Eligibility guidelines for accessing the international protection needs of asylum seekers from Sri Lanka', dated 5 July 2010. This report noted that there had been an improvement in the human rights and security situation in Sri Lanka following the end of the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tigers of Eelam (LTTE) in May 2009. The guidelines noted that, given the cessation of hostilities, Sri Lankans originating from the north of the country were no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. The report also noted that in light of the improved human rights and security situation in Sri Lanka, there was no longer a need for group based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. However the guidelines also noticed that it was important to bear in mind that the situation was evolving.

People Existing Sri Lanka through Unofficial Channels

52. Primary legislative sources indicate that the departure of a Sri Lankan national from Sri Lanka via unofficial channels is illegal and punishable by imprisonment. Section 34 of the *Immigrants and Emigrants Act* of 2006 (the Act) declares that Sri Lankan nationals are required to depart Sri Lanka from "an approved port of departure" Further, under sub sections 45(1)(b) and 45(1)(o) of the Act, any person who leaves Sri Lanka in contravention of any provision of the Act is guilty of an offence and is liable, upon conviction, to imprisonment for a term not less than one year and not more than five years<sup>1</sup>.
53. Limited information was located, however, regarding the frequency at which offenders are prosecuted and convicted. A number of conflicting reports were also located regarding the treatment of Tamil returnees who have departed via unofficial channels and are returned with the assistance of another country.

Treatment of Tamil Returnees

54. Recent information published by the Canadian, British and Australian governments' states that all Sri Lankan nationals are treated in the same manner with regard to entry procedures into Sri Lanka. This information also indicates that failed asylum seekers and Tamils are not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry.<sup>2</sup> Australian government information does indicate that non-voluntary returnees to Sri

---

<sup>1</sup> Sri Lanka Police 2008, *Arrests for Immigration / Emigration violations by Citizenship and Year (2005 – 2008)* <<http://www.statistics.gov.lk/NCMS/RepNTab/Tables/SLPD/tbl2.pdf>> Accessed 18 September 2012

<sup>2</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011; Rutnam, E. 2011, 'UK satisfied with Lankan deportation', *The Sunday Leader*, 26 June

Lanka, however, are likely to be interviewed by the police, the State Intelligence Service (SIS), or both<sup>3</sup> Conversely, there is alternative information available from NGOs, academics and media reports indicating that failed asylum seekers are specifically held for questioning, detained and arrested at the airport on return to Sri Lanka.<sup>4</sup>

55. In September 2010, DFAT provided information to DIAC regarding the checks that were being undertaken at that time on Tamils returning to Sri Lanka. DFAT stated that Tamils were subject to the same entry procedures as other Sri Lankan citizens. It was noted, however, that non-voluntary returnees would be likely to be interviewed by the police, the State Intelligence Service (SIS), or both<sup>5</sup>.
56. There is alternative information available which indicates that Tamils and failed asylum seekers face detention and arrest on their return to that country. For example, according to a September 2011 *BBC Sinhala* report, Amnesty International reportedly stated that “deportees face arrest and detention upon their return” although they were not able to monitor the returnees to confirm or refute this.<sup>6</sup>
57. In August 2011, the Research Directorate of the Immigration and Refugee Board of Canada (IRB) published a research response which provided information from a number of sources on the treatment of Tamil returnees, including failed asylum seekers, on their return to Sri Lanka.<sup>7</sup> The Canadian High Commission in Sri Lanka compiled the response after seeking information “from Sri Lankan government officials, mission staff and other in-country stakeholders” The information indicated that all Sri Lankan nationals are subject to the same screening process on their return to Sri Lanka, regardless of their ethnicity. It was noted that persons removed to Sri Lanka are interviewed at the airport by security forces to obtain information in relation to human trafficking and smuggling. In addition, it was stated that criminal background checks of returnees are also conducted which may take 24 to 48 hours to complete.<sup>8</sup>

---

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

<sup>3</sup> DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September

<sup>4</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011; ‘Tamils heavily victimised at Colombo airport’ 2011, *Sri Lanka Guardian*, 5 January

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

<[http://www.erc.org.au/index.php?module=documents&JAS\\_DocumentManager\\_op=viewDocument&JAS\\_Document\\_id=260](http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=260)> Accessed 18 November 2011

<sup>5</sup> DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September

<sup>6</sup> ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September

<[http://www.bbc.co.uk/sinhala/news/story/2011/09/110929\\_returnees.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml)> Accessed 18 November 2011

<sup>7</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011

<sup>8</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government*

58. The Canadian High Commission official stated that the High Commission was aware of “only four cases” of persons being detained upon arrival. The official indicated that these cases “involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity”. It was also stated that “[p]ersons of all ethnic backgrounds are returned either under escort or voluntarily to Sri Lanka daily, and the screening and admission process for all these persons remains the same”.<sup>9</sup>
59. In its aforementioned August 2011 research response, the IRB indicated that a joint submission had been prepared for its Research Directorate which provided information regarding the treatment of deportees and failed asylum seekers on their arrival in Sri Lanka. The joint submission, dated 18 July 2011, was prepared by four parties: the Law and Society Trust,<sup>10</sup> the INFORM Human Rights Documentation Centre,<sup>11</sup> Networking for Rights in Sri Lanka,<sup>12</sup> and “a human rights lawyer in the United Kingdom”.<sup>13</sup> The submission indicated that persons who were deported to Sri Lanka or returned as failed asylum seekers were subjected to “special questioning” at the airport on arrival. Such persons were “almost always detained” for varying periods “until security clearance is obtained” The submission also indicated that Tamil returnees were particularly vulnerable if they arrived individually and no one knew they were arriving. The relevant information from this submission regarding “security procedures at the Colombo airport for failed Tamil refugee claimants” is provided below:

[i]mmigration authorities are alerted about the impending arrival of those who are deported or who are ‘returned’ as a result of failed asylum processes. They are also identifiable by the fact that they travel on temporary travel documents. These individuals are taken out of immigration queues and subjected to special questioning by the Police, and by members of the Terrorist Investigation Department [TID]. They are almost always detained, sometimes for few hours [*sic*], and sometimes for months, until security clearance is obtained. In situations in which most families of the deported/returned persons have been displaced due to the war, are not contactable by telephone, and in which Police records that could attest to their legitimate address and non-involvement in criminal or terrorist activity have often been misplaced due to the constant cycles of displacement undergone by the entire community of the North and East in the past years, obtaining the required security clearance may take months. If

---

*authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011

<sup>9</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011

<sup>10</sup> The Law and Society Trust is “a non-profit organization based in Colombo that is “conducting human rights documentation, research and advocacy” work

<sup>11</sup> The INFORM Human Rights Documentation Centre is “a “Sri Lankan human rights organization” that has been active since 1989 and that focuses on “monitoring, documentation and networking”

<sup>12</sup> Networking for Rights in Sri Lanka is “a group creating a national and international network of Sri Lankan human rights defenders”

<sup>13</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011

there is no family member to follow up, this may lead to indefinite detention. (Law and Society Trust et al. 18 July 2011, 5).<sup>14</sup>

60. Recent reports were located which refer to specific examples of both failed asylum seekers from Sri Lanka and Tamils being detained at the airport on arrival in that country. For example, a report from *BBC Sinhala*, published on 29 September 2011, makes reference to the case of 50 Sri Lankan nationals who had been deported back to Sri Lanka from the United Kingdom. It was stated in this report that most of the deportees were “ethnic Tamil asylum seekers”,<sup>15</sup> while a report from *The Island* stated that all 50 of the deportees had been “denied political asylum”.<sup>16</sup> On their return to Sri Lanka, the deportees were reportedly “initially detained by the police at Colombo international airport”, but were then released after questioning.<sup>17</sup> The latest information available to the Tribunal reports that almost 600 people have been forcibly deported to Sri Lanka in the four months since August 2012, Information from the Website for Daily FT, titled ‘From Down Under to Land Like No Other’ dated December 1, 2012, and accessed at <http://www.ft.lk/2012/12/01/from-down-under-to-land-like-no-other>].

#### Grease Devils

61. The following information was found regarding grease devils in Sri Lanka, and the community fear and reaction that has resulted. The article quoted from is CX296496: titled ‘Grease Devil panic grips rural Sri Lanka, at least three dead’, dated 12 August, 2012,

Panic over nighttime assaults blamed on grease devils has struck across rural Sri Lanka, leading to the deaths of at least three people this week, prompting women to stay indoors and men to arm themselves, police and local media said.

Historically, a grease devil was a thief who wore only underwear and covered his body in grease to make himself difficult to grab if chased. But lately, the grease devils has become a nighttime prowler who frightens and attacks women.

"The story we hear is he comes and bites young women's necks and breasts. Despite several complaints, the police have failed to act on that and in fact in two places have released the culprits," a 36-year-old airline ticketing agent from the Hill Country district of Matale said, speaking on condition of anonymity for fear of upsetting authorities.

On Friday, police said they fired tear gas to disperse dozens of people who besieged a police station in the eastern town of Potuvil, demanding the release of four men who had captured and planned to lynch a suspected grease devils.

Police had arrested the four after they beat officers who rescued the suspect from the mob.

---

<sup>14</sup> Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453562&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e)> Accessed 18 November 2011

<sup>15</sup> ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September <[http://www.bbc.co.uk/sinhala/news/story/2011/09/110929\\_returnees.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml)> Accessed 18 November 2011

<sup>16</sup> Gunasekara L & Nivunhella S 2011, ‘Fifty deportees arrive from UK’, *The Island*, 29 September <[http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=35789](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=35789)> Accessed 18 November 2011

<sup>17</sup> ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September <[http://www.bbc.co.uk/sinhala/news/story/2011/09/110929\\_returnees.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml)> Accessed 18 November 2011

Two men whom villagers identified as grease devils were hacked to death on Wednesday by a mob in the central Sri Lankan village of Kotagala, in a tea-growing area, police said.

...

At least 30 incidents have been reported across seven districts from Sri Lanka's east coast and across its tea-growing regions in the central Hill Country. Police have arrested 47 people since last month.

"There is no grease devil as such. It is a human among us with an ulterior motive of stealing or to engage in some illegal activities," police spokesman Prashantha Jayakody said.

Jayakody also said some people with "mental disorders" were posing as grease devils: "In one instance, a person was arrested wearing more than 20 (pairs of) women's undergarments."

The panic has nonetheless been enough to prompt men to arm themselves with clubs and sticks to stand guard at night, and women to stay at home.

On Tuesday in the eastern village of Ottamavadi, six people including two police officers were injured in a melee after angry residents stormed a police station after the release of a suspected grease devil.

Traditional Sri Lankan beliefs about spirits and devils remain strong in some areas, where invocations upon them to cure illnesses or curse enemies are common. Traditional devil masks remain favourite tourist souvenirs...

62. The following information was sources from CX296404: SRI LANKA: The mystery of Sri Lanka's grease devils, British Broadcasting Corporation (BBC), 29 August, 2011. The article is quoted from below:

...Over the last few weeks large swathes of the country have been gripped by a fear of nocturnal prowlers who have frequented rural areas assaulting women at night.

The media and the public were swift to dub the intruders grease devils. This is an old caricature referring to malevolent men who smear themselves in grease to avoid being caught.

But this wave of violence has spawned a series of brutal retaliatory vigilante attacks. People have been killed, there have been arrests by the hundred and tanks have been deployed.

There are conspiracy theories: villagers blame the security forces for launching and even fostering the grease devil assaults. They deny the charges, but violence has continued unabated.

It is a confusing situation in a febrile atmosphere - and no-one has got closer to working out who is actually behind the wave of assaults.

And there appears to be an ethnic dimension too: almost always, those reporting attacks from grease devil have been Muslim or Tamil rather than from the majority Sinhalese community.

...A male neighbour said there had been 12 such incidents within the past week. "To catch them, you'd need springs on your feet," he said.

There is ambiguity about the nature of these intruders. Mrs Faris says she is afraid because of stories that some criminals are seeking female blood for ritual purposes. A government minister says that in some places people attribute "bionic" or superhuman powers to the intruders.

...

### Lynching and vigilantes

People have tended to blame the security forces for sheltering those they insist are criminals. Typically they say the intruder is seen running to a military or police compound for refuge.

In the central highlands, two outsiders have been lynched. On Friday a 16-year-old boy was shot dead "over alleged suspicious behaviour", according to a local website. In the north, 95 people accused of vigilantism were arrested and some - reportedly - so badly beaten that they were sent to hospital. In the east many people say they have been stabbed, nearly strangled, sexually assaulted or otherwise injured by the devils.

Campaigners for women's rights told a meeting in Colombo that in the east, women and girls have been attacked outdoors. They are now afraid to stay out late and some men, not wanting to leave them alone, have stopped going out to work.

...The grease devils affair remains a mystery. Some insist it is some kind of government plot; others believe it is a spike in crime - or a figment of people's imagination.

But it has soured social relations.

At the funeral of the lynched policeman black smoke billows as tyres are burnt. A military helicopter hovers overhead as crowds of Sinhalese mourners demonstrate against the police's failure to protect one of their own. Some chant anti-Muslim slogans.

But back in Mrs Faris's village, the atmosphere is different - sympathy across the ethnic divide.

A lot of the arrested youths come from there. One of the few people we see is a young carpenter, T Premasiri, whose family is one of only five Sinhalese ones with more than 300 Muslim families as neighbours.

He is sympathetic to his Muslim friends: "The Muslim people have left - they're afraid." ...

## FINDINGS AND REASONS

63. The Tribunal finds that the applicant is a national of Sri Lanka. This finding is based on his evidence to the Tribunal, including the copies of identity documents. In the absence of any evidence to the contrary the Tribunal finds that the applicant does not have the legally enforceable right to enter or reside in a third country. In making this finding the Tribunal acknowledges that the applicant has submitted that he applied for and was granted a visa to India. However, the copy of the visa on file appears to have expired, and there is nothing before the Tribunal to suggest that the applicant has the legally enforceable right to enter and reside in India.
64. The Tribunal acknowledges that the applicant has made claims for protection based on two grounds, the first being his general imputed association with the LTTE due to being a young Tamil male from an area previously controlled by the LTTE; and secondly, an imputed closer association with the LTTE due to the Sri Lanka army apprehending him when he was armed and chasing a grease devil. The Tribunal has also considered the further claims, as a failed asylum seeker returning to Sri Lanka from Australia, and/or a person who exited Sri Lanka illegally in travelling to Australia; and a person of specific interest to the Sri Lankan authorities, as the applicant has submitted that the CID, the Sri Lankan army and unidentified persons have been searching for him since his encounter with the grease devil and since he exited Sri Lanka. The Tribunal will deal with each of these claims separately below.
65. In relation to the applicant's general imputed association with the LTTE due to being a young Tamil male from an area previously controlled by the LTTE, the Tribunal notes that the applicant has entered and exited Sri Lanka several times during the period 1999 to 2007. In addition, on one of these occasions the applicant was deported from Dubai to Sri Lanka after being denied entry due to holding a fraudulent visa. During the hearing the applicant gave evidence that he could easily and immediately be identified as a Tamil, due to his name and other particulars on his passport, and that his area of origin was listed on his passport, and that he had not encountered any difficulties with authorities on exiting or entering Sri Lanka legally on any of these occasions. Also, several times during the hearing the applicant said that he did not have issues until his interaction with the grease devil. When asked why he would have problems if he was deported from Australia or returned to Sri Lanka as a failed asylum seeker, the applicant said it would be as a result of his interaction with the grease devil, and this was the starting point and where people started to search for him, and he fears that they will harbour a grudge. The culmination of this evidence as led the Tribunal to find that the applicant does not have a general imputed association with the LTTE due to being a young Tamil male from an area previously controlled by the LTTE. It has also led the Tribunal to find that the applicant does not have a well-founded fear of persecution in the foreseeable future due to a general imputed association with the LTTE due to being a young Tamil male from an area previously controlled by the LTTE.
66. The Tribunal then considered the applicant's claim that he has an imputed association with the LTTE due to the Sri Lanka army apprehending him when he was armed and chasing a grease devil. The Tribunal has concerns as to the credibility of this claim, as raised with the applicant during the hearing. This is because of the following reasons; during the entry interview the applicant described his wife's attacker as a 'grease man', but then said that he was covered in paint; he also said that he did not know why they were called grease men. This information shows a general lack of knowledge, as country of origin information states that grease devils are referred to as such because they are covered in grease, making it



difficult for people to grab and capture them. This suggests that the applicant had limited knowledge of grease men, and their physical appearance, and raises doubts as to his having physically seen and interacted with a grease man. Also, during the hearing the applicant said that the grease devil he saw had attached knives to his nails and was about to stab everyone. However, country of origin information describes grease devils as attacking women, and even biting women, but does not refer to knives attached to fingers. By contrast, the applicant's description is fanciful and is not supported by either country of origin information or common sense. The applicant also said that grease men were able to alert the Sri Lanka Army to their whereabouts by something they were carrying, despite wearing only underwear and shoes and knives on their hands. This description is again fanciful. In addition, when asked to describe who they were or what grease devils actually did, the applicant said they concentrate on women and they cut their chests. When asked to provide further information, the applicant said grease devils go from suburb to suburb and take revenge on the Tamil people. Added to this, the applicant's knowledge regarding grease devils appears to have improved since arriving in Australia, as during the hearing the applicant said that the grease devils whole body is covered in grease. This has led the Tribunal to conclude that the applicant has pursued information regarding grease devils during his time in Australia in order to strengthen his claims, and this in turn reflects poorly on his claims being genuine.

67. In relation to the alleged events the night that the applicant confronted the grease devil, the Tribunal found the applicant's evidence to be fanciful and contradictory. In his written statement the applicant said that people had been attacked and they had organised street patrols between villagers, and that he was patrolling the street when his wife was attacked. However, during the hearing the applicant contradicted this evidence and said that they were not allowed to patrol and he was not patrolling. Later in the hearing he amended his evidence again to say he was patrolling. In addition, when asked if his neighbour had chased the grease devil with him, the applicant said no, and that his neighbour was probably tired. This response is fanciful, considering that the applicant's evidence was that he and his neighbour were both sitting at the front of their houses to guard against grease devils, so the idea that his neighbour would not give chase is unrealistic.
68. The combination of these factors has led the Tribunal to find that the applicant did not have an interaction with a grease devil as claimed. As a consequence, the Tribunal finds that the applicant did not come to the attention of the Sri Lanka authorities due to his chasing a grease devil. The Tribunal also finds that the applicant has not suffered any consequences as a result of this alleged event, such as being questioned by the Sri Lankan army on the night of the alleged interaction and/or the next day, and/or being pursued by the Sri Lankan authorities, including the CID and/or the Sri Lankan army due to his alleged interaction with the grease devil. As a result the Tribunal finds that the applicant does not have a well-founded fear of persecution in the foreseeable future due to his having an actual or imputed association with the LTTE due to the Sri Lanka army apprehending him when he was armed and chasing a grease devil, and/or the Sri Lankan authorities, including the CID and/or the Sri Lanka army pursuing him since he left Sri Lanka due to his alleged interaction with the grease devil.
69. In relation to the submissions that the CID, the Sri Lankan army and unidentified persons have been searching for him since his encounter with the grease devil and since he exited Sri Lanka, the Tribunal finds that these submissions lack credibility. That is because, as noted above, the Tribunal does not accept that the applicant had any interaction with a grease devil as claimed. In addition, although claiming that his pursuers had caused his wife and child to move, his wife's family, being her mother, father and sister, remained at the same address.

This does not support a finding that the applicant or his wife were being pursued at this address, and that this led to a well-founded fear of serious harm or persecution. This is because the Tribunal finds if there was such a fear, the applicant's wife's family would have been at risk, and also would have relocated. In addition, in relation to the claim that unidentified people were also searching for him, even if the Tribunal was to give the applicant the benefit of the doubt, and find that people had asked after him, it finds that, on the evidence before it, it cannot connect these alleged pursuers to a Convention reason. Instead the Tribunal finds that they could have been business associates, or people that he owed money to. The Tribunal acknowledges that the applicant rejected these suggestions, but again notes that he does not know who the unidentified people were, and therefore the Tribunal finds that he is unable to definitively suggest that they were looking for him for a Convention reason. As such the Tribunal finds that the applicant does not have a well-founded fear of persecution in the recently foreseeable future if he was to return to Sri Lanka due to unidentified people searching for him, and/or members of the CID searching for him and/or the Sri Lankan army searching for his and/or the Sri Lankan authorities searching for him.

70. In relation to the applicant's submission that he had to pay an additional amount for his visa to India, and that he was unable to leave to travel to India via the Sri Lankan airport because he was advised that he was on the airport watch list, the Tribunal finds that these submissions lacked credibility. This is again because the applicant's reasoning relied on his being of interest to the Sri Lankan authorities due to his interaction with the grease devil. As noted above the Tribunal has rejected the applicant's admission that he had any interaction with the grease devil, or is of interest to any of the Sri Lankan authorities due to such interaction. As such the Tribunal finds that the applicant does not have a well-founded fear of persecution in the foreseeable future if returned to Sri Lanka due to being listed on the airport watch list in Sri Lanka or a being of interest to the Sri Lankan authorities.
71. The Tribunal then considered the agent's submission that the applicant's main risk was in returning to Sri Lanka where he would be questioned by the CID, and/or questioned regarding his illegal departure and the people on the boat, and by implication a possible imputation as LTTE. As noted above the applicant has exited and entered Sri Lanka several times through legal channels and has not encountered any problems. The Tribunal considered the submission that the current situation is distinguishable because the applicant left Sri Lanka illegally on the last departure. In considering this submission the Tribunal considered the most recent country of origin information on returnees to Sri Lanka from Australia, with almost 600 people being returned involuntarily in the four months since August 2012. The Tribunal also had regard to the country of origin information that all returnees are questioned by the authorities upon return, and all but a relatively small number or released soon after. The Tribunal also had regard to the information that people with outstanding criminal matters may be detained, and that those who return without the knowledge of their families may be at risk. Based on the information before the Tribunal none of these factors apply to the applicant. The combination of this information has led the Tribunal to conclude that people are not subject to persecution or serious harm due to their illegal departure, and/or subsequent questioning by the authorities upon return to Sri Lanka. In addition, the Tribunal finds that people who depart Sri Lanka illegally are not imputed with LTTE association. As a result of these factors the Tribunal finds that the applicant does not have a well-founded fear persecution in the reasonably foreseeable future if returned to Sri Lanka due to being returned and question by the CID and/or other Sri Lankan authorities regarding his illegal departure and the people on the boat, and/or imputed as LTTE.

72. Overall the Tribunal finds that the applicant does not meet the refugee criterion (s.36(2)(a)). The Tribunal therefore considered complementary protection. The Tribunal has found that the applicant is a national of Sri Lanka, Tamil ethnicity, religion is Hindu, that he is married with one child. The Tribunal has also found that the applicant has exited and re-entered Sri Lanka via legal channels on several occasions, including one occasion when he was returned from Dubai after attempting to enter the country using a false visa during the time of the Civil War. The applicant has submitted that he is readily identifiable as the Tamil when returning through legal channels. The Tribunal has not found that the applicant would be imputed with LTTE association, either because he is from the north or because he left by boat, and rejected the applicant's claims to have had contact with a grease devil and consequences that flowed from this. The Tribunal has found that the applicant will be questioned upon return to Sri Lanka, as are all returnees, but that this would be part of normal processing. The Tribunal entertained the idea that people may be searching for the applicant and that his wife and child had to relocate for this reason. However, fact that the wife's extended family continue to reside in the same location does not support a finding that people were searching for the applicant. As the applicant has not satisfied the Tribunal that he has any outstanding matters with the Sri Lankan authorities, or that he is unable to contact his family, the Tribunal has found that there is not a real risk that he will suffer significant harm as a returnee. Considering the evidence before it, including more specifically the applicant's personal circumstances, and the country of origin information set out above, the Tribunal has found that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm.
73. As a result the Tribunal has found that the applicant does not meet the complementary protection criterion (s.36(2)(aa)).

## **CONCLUSIONS**

74. 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).
75. 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).
76. 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) for a protection visa.

## **DECISION**

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