

1214918 [2013] RRTA 650 (18 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1214918
DIAC REFERENCE(S): CLF2012/174542
COUNTRY OF REFERENCE: Sri Lanka
TRIBUNAL MEMBER: Hilary Lovibond
DATE: 18 September 2013
PLACE OF DECISION: Melbourne
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, a citizen of Sri Lanka, applied to the Department of Immigration for the visa [in] August 2012 and the delegate refused to grant the visa on [in] September 2012.
3. The applicant is a Tamil Hindu from [Village 1] in [District 2] of North-Western Province. He had a successful business as a [merchant] for almost ten years, buying [produce] from the market in [Village 1] and selling it in [Town 3] but his business brought him into conflict with others including police who owed him money. He claims to have left Sri Lanka because of business problems which started when he began to accumulate debts as a result of money owed to him by a Sinhalese man who threatened to report him to the authorities as an LTTE supporter. He claims that he owed money to others including local [businessmen] and his creditors reported him to the police who came to his house and beat him. He claims his father has disappeared since he left Sri Lanka and his mother and [sibling] no longer sleep at home. He fears harm as a returned asylum-seeker, because of his illegal departure from Sri Lanka, because he is Tamil and at the hands of corrupt CID members, the [military] or police as a suspected LTTE member. Submissions made by his representative indicate he also fears harm because of his membership of the particular social groups of Sri Lankan Tamils and Tamils from the North or East of Sri Lanka and his real or imputed political opinion.
4. The delegate refused the application because although he found the applicant credible and accepted his claims he found there was no convention reason for the harm he feared from his creditors. He found that there was not a real risk of significant harm to the applicant because other than a demand the money be repaid, no reprisal against him or his family had occurred and he had not taken any action to make the payments.
5. The applicant appeared before the Tribunal on 29 November 2012 and 2 May 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil (Sri Lankan) and English languages.
6. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

RELEVANT LAW

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

Refugee criterion

8. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
9. 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.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
13. 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.
14. 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.
15. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched

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

16. 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.
17. 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

18. 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').
19. '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.
20. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

21. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

22. The issue in this case is whether the applicant has a well-founded fear of persecution for a convention reason, or whether there is a real risk the applicant will face significant harm as a necessary and foreseeable consequence of his return to Sri Lanka. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Has the applicant established his identity and background?

23. The applicant's evidence in relation to his identity and background has been consistent throughout. The spelling of his family name has varied and his given name appears to have been erroneously recorded on his Protection visa application but the Tribunal is satisfied that this is an administrative error and that other variations relate to transliteration. A copy of a Sri Lankan passport in the applicant's name showing his [date of birth] and his place of birth as [Village 1] is at f.65 of the applicant's Departmental file. On the evidence before it the Tribunal accepts that the applicant's identity is as stated and that he was born and lived in [Village 1].
24. The applicant has provided detailed evidence about his business as a [merchant], buying from local [businessmen] and selling at markets in [Town 3] and [Town 4]. At hearing, he was able to describe his business activities fluently and coherently and the Tribunal accepts that he worked in this capacity for almost ten years. Based on this evidence, the Tribunal also accepts his claims that his business was successful by local standards.
25. On the basis the applicant's evidence and copies of documents on his file, the Tribunal accepts that the applicant is a national of Sri Lanka. There is no evidence before the Tribunal to indicate that the applicant has the right to enter and reside in a third country and the Tribunal finds that s.36(3) does not apply. Accordingly, the Tribunal has considered his claims against Sri Lanka as his country of reference and receiving country for the purposes of complementary protection.

Has the applicant given credible evidence about his business problems?

26. The Tribunal has accepted above that the applicant had a successful business as a [merchant] for close to ten years. The applicant has claimed that he began to experience business problems [before] his departure from Sri Lanka, describing two issues he claims started [in] 2012, namely debts which arose because of money owed to him by a Sinhalese man and conflict with his [relative] over a [structure] the applicant built, which led to the [military] coming to harass and beat him. He has also claimed that his business success gave rise to animosity against him and that he was threatened and harassed by a number of different people as a result of each of these problems.
27. The most basic aspects of the applicant's claims have been more or less consistent. As set out below, the Tribunal accepts that the applicant was owed money by a person called [Mr A]. The Tribunal accepts that in [2012] he accumulated debts to local [businessmen] and to a man in [Town 4] called [Mr B]. The Tribunal accepts that the applicant's business was successful by local standards and that there was some animosity towards him among the people from his village and surrounding villages. The Tribunal also accepts that local police took [produce] from him without paying, as this is consistent with the evidence of many Tamil [businessmen] from [Village 1]. The Tribunal accepts that the applicant built a [structure] and accepts that he may have come into conflict with his [relative] about this.

28. However, as discussed with the applicant at hearing, the Tribunal has a number of concerns about the credibility of his evidence in relation to the harm he claims occurred in the past and that he claims to fear should he return to Sri Lanka. As indicated by the evidence discussed below, his claims regarding his business problems and the threats and harm he claims to have faced as a result are complex, interlinked and at times confused. As set out below, his responses at hearing were rambling and indirect and in some cases appeared deliberately evasive. He introduced a number of new claims at hearing and claimed that he had mentioned these things before, but that they had not been interpreted correctly. As the applicant was asked at the start of the first Tribunal hearing whether the claims included in his Protection visa application were correct and he said yes, and as he did not mention until asked directly about the late introduction of specific evidence that there were problems with the interpreting, the Tribunal does not accept that problems with interpreting caused the omission of claims from his Protection visa application. The applicant's claims regarding the harm to members of his family after his departure have also become progressively more elaborate and as discussed with the applicant, the Tribunal has concerns that the scale of the claimed harm to his family is out of proportion to the problems from which he claims it resulted. Specific difficulties are discussed in more detail below.

Black magic

29. The applicant claimed at hearing that when he went home after asking [Mr A] for the money, the people in the village with whom he did business did *sooniam*¹ because he was doing very well compared with others. They were jealous so one night unknown people beat [him]. Police came to his work place and [beat him] and the [military] [beat him]. Asked to explain what *sooniam* is, he said if he is doing very well in his business, other people can do *sooniam* for him. Asked if this was something physical, like attacking him, the applicant said no. He is a wealthy man there; he has business problems and some people are jealous so they can beat him up with other people or pick him up in a white van. In his village they killed people for this money problem. Asked who killed [those] people and which money problem he meant, he said if he wants to give ten lakhs to someone they would give 50 thousand rupees to someone else to kill him. Asked who "they" are he said they are related to politicians or some other underground group.
30. The Tribunal accepts that the applicant may believe black magic to have been involved but finds on the applicant's own evidence that there are objective and factual reasons which account for the financial difficulties he has claimed. The Tribunal accepts that the applicant fears some form of retribution relating to his financial difficulties but finds that his willingness to attribute possible harm to supernatural causes and non-specific groupings such as "politicians or other underground groups" relies on vague and ambiguous claims and detracts from the credibility of his claims in relation to the debts, their causes and the harm he fears he will suffer on return to Sri Lanka.

Debts and losses

31. In his Protection visa statement and at hearing the applicant claimed that he started to accumulate debts [in] 2012 and at the same time, incurred serious business losses due mainly to money owed to him by a Sinhalese man called [Mr A]; when the applicant asked him for

¹ According to the online dictionary *babylon.com*, the term *sooniam* is "used by certain tribes ... of the Indian peninsula to describe a specific form of black magical practice; "a magical ceremony for the purpose of removing a sickness from one person to another".

the money [Mr A] threatened to report him to the police as an LTTE supporter. He claimed that other Sinhalese clients were also threatening to report him to the authorities as an LTTE supporter because he couldn't pay his debts.

32. Asked at hearing when his problem started with [Mr A], the applicant replied that he had to give some money to a [Town 4] person and he told the [Town 4] man that another person in [another town] had to give him money, and when he got that, he would give it to the [Town 4] man. Asked again when this happened, he said it was at [a certain time]. The applicant's evidence with respect to the money owed to him by [Mr A] has been inconsistent. He claimed initially that [Mr A] owed him 15 lakhs; later, at the Tribunal hearing of 2 August he stated that [Mr A] owed him 10 lakhs and also that he owed him 20 lakhs. He described at the first Tribunal hearing how he would settle his accounts for the [produce] he bought in the village once a week and [Mr A] would settle his account once a week. Asked whether [Mr A] owed him 15 lakhs for just one week, the applicant said yes; it had never happened like that before. Asked if he knew why [Mr A] would not pay him, the applicant replied that he asked for the money and [Mr A] said he would give it later. He told [Mr A] the [Town 4] person was making trouble for him and asked him again for the money.
33. Asked what his business was with the person from [Town 4], the applicant said he bought [something] from him to give to [Mr A]. The [Town 4] man reported him to the police and the police came and beat him. So he told the [Town 4] man the other person wouldn't give him the money and asked him to wait. When the police beat him he complained to the chief of police and the police were even more angry. The [Town 4] man told him if he didn't pay he would arrange a white van for him. His own [relative] had MP support and with that support he organised the [military] to attack him. So he left his village to save his life and his mother and his [sibling] left.
34. The Tribunal also has some concerns, which it discussed with the applicant, about the steps he claims to have taken to resolve the debts. The applicant has claimed that he owed around thirteen lakhs in total to [a number of] people. Asked what steps he had taken to repay the monies he owed, the applicant said he was paying some back weekly. Asked what efforts he made to raise money to pay the debts, he did not respond directly, stating instead that [Mr A] owed him 20 lakhs; he could hire someone to kill him. He told [Mr A] he owed money to other people; one night [Mr A] came in a white van.
35. Asked about the claim in his Protection visa statement that his girlfriend had paid half of his debts he said she had not; she had paid for him to leave. Asked how much he paid for his travel to Australia, he said it was 8 lakhs. Asked why he didn't use that money to pay off some of the debts he owed, he said he felt unsafe and was worried he would be killed. The Tribunal explained to the applicant that it found it difficult to accept that if he was genuinely fearful that people would harm him, he would not have done everything he could to fix the problems that were causing them to want to harm him; in other words, to pay the money he owed. The applicant responded that it wasn't just one person; it was the [military], the police, the CID; they get [produce] and don't pay. He has also claimed that the police came to his house demanding that he pay the remainder of the money he owed and that if he didn't, they would arrange for him to be kidnapped and killed. The Tribunal finds that the applicant's failure to use all the monies at his disposal to pay his debts and thus resolve some of the threats he claims to have faced detracts from the credibility of his claims regarding the threats made against him and his fear of further reprisal. The Tribunal also has some concerns about his straight contradiction of his own earlier evidence that his girlfriend paid some of his debts. In the context of his varied claims regarding the amount he was owed by

[Mr A] and his confused response to questions regarding why he had not attempted to clear as much of the debt as possible, the Tribunal finds that his earlier claim that his girlfriend paid half his debts casts doubt on his claims regarding the amount of money he owes.

Harassment by the [military]

36. The applicant also claimed in his Protection visa statement that his mother had a dispute arising from [land] which she owned jointly with [a relative] and on which the applicant wanted to build a [certain thing]. His [relative] objected and told the local [military] personnel with whom he had connections; they came to his house and beat him on the head with their gun butts. Asked at hearing what his first business problem was, he said he built a [certain thing]; his [relative] and other people he did business with complained to the [military] and as a result of his [relative]'s connections to a local MP, the [military] came and beat him with the butts of their guns. Asked whether he had actually built the [certain thing], as his Protection visa statement said that he wanted to build it, the applicant said that was what he said but the interpreter didn't say that. Asked why his [relative] complained to the [military] he said because he was successful and they were jealous. Asked how his [relative] was connected to the [military] he said it was through the local MP, the government MP for [District 2]. It is a woman but he can't remember her name. This happened in [a certain month].
37. Asked whether the [military] attack happened first, the applicant said when the police came and beat him he complained to the chief of police and after that the policeman who beat him was transferred. His [relative] complained to the [military] and he had a problem with the [military]. In his village people were angry with him because of the business problems and they beat [him].

Harassment by local villagers and the police

38. At hearing, the Tribunal asked whether the other people in his village he had said were angry with him were Tamil or Sinhalese. The applicant did not respond directly but said they were Christian. He went on to say that there is a Sinhalese village [some] kilometres from his village; they also do business. Around his village are mostly Sinhalese and his village are mostly Tamils. There is a [military] camp and a police camp in [the district]; the police come to buy [produce] from him and say they will pay later. Asked if there were local people who owed him money the applicant said he owes them money. Asked who these people are he said it is the people he buys [produce] from, other Tamil people in the village. Asked if he also owed money to Sinhalese people from other villages the applicant said he only owed money to the man from [Town 4] and the [businessmen] in his village. Asked how much he owed altogether he said about twelve or thirteen lakhs. Asked how much he owed the man in [Town 4], he said four lakhs. Asked to how many other people he owed money he said five. Asked over what period the debt accumulated, he said around a month, [month deleted].
39. The applicant stated further at hearing that the people from his village complained to the police. The police were buying [produce] from him. Asked if there was any connection between the complaints made by the villagers and the police refusing to pay him, he said no. Asked if he was threatened directly by other people in the village, the applicant said one night he was riding his motorcycle and they beat [him]. When he was transporting [produce] to his vehicle, they threw stones and broke the windows. Asked if he went to the police about that or about [Mr A] refusing to pay him, he said someone complained and they called him, then he went to the police. He complained to the chief of police and two policemen came and beat

him. Asked what that complaint was about, he said the policeman came to his home because he owed someone money; they beat him so he complained to the OIC. After he complained the first two policemen were transferred and he had a problem with two other police also. One night a white van came to his house and they knocked at the door; his mother looked and there were people with weapons and they called “[a certain name]” in Sinhala.

Threats

40. Asked about the threats he mentioned in his Protection visa statement from the people to whom he owed money, the applicant said this is underground people; they given them 50 thousand dollars and kill them. The Tribunal asked the applicant what threats were made to him, what they said and who made the threats and the applicant replied that one was from the village people to whom he owed money, the police who were transferred, the [military] and [Mr A]. Asked what the people in the village said to threaten him, he said one night they arranged some people to beat him on his bike. Asked if they said something bad would happen to him, the applicant replied that people are against him in the village because of his business. His neighbouring village [people] are also against him. When he comes through the cemetery there is a dark place which is where they stopped his bike and beat him. So he came by boat with a bandaged leg but he didn't mention it on the first day on Christmas Island because it would have been a problem for him. Asked why it would have been a problem he said he didn't know what would happen. Asked if he had told his adviser, he said no. Asked why not, he said they went to his home and asked his mother where he was and came to beat his father also. The Tribunal noted that he had claimed previously that he didn't know who they were and the applicant responded that when they came in the night he didn't know who they were.
41. Asked whether anyone had threatened to report him to the authorities as a member or supporter of the LTTE, the applicant said yes, [Mr A] did. Asked if any people in the village threatened to do that, he said no. The Tribunal read the applicant the contents of paragraph 21 of his Protection visa statement which reads in part “I owe money to other Sinhalese people in [Town 4] and many other people around the village. I was receiving threats constantly from these people who I owed money to. They were all threatening to report me to the authorities as an LTTE member.” The applicant did not address the inconsistency directly, responding instead that he is Tamil and [Mr A] can complain he is LTTE because he is Sinhala. He has a vehicle and he is transporting [produce]; they can complain to the police and he can have a problem from that. So he has that fear and the other thing is that a white van came to his village. When the white van came to his home, he vanished from home with his wounded leg.
42. The applicant claimed in his Protection visa statement that his Sinhalese creditors threatened to report him as a supporter of the LTTE because they knew this would make it likely he would be kidnapped by the authorities, would possibly be tortured and might disappear. Asked why people to whom he owed money would want him killed, the applicant replied that they were big businessmen and if he was killed there would be no problem for them, but they would have good business and get more contracts. Asked which of the people with whom he did business wanted him killed, he replied that the person he was selling [produce] to wouldn't give him the money and he owed money to local people, who threatened him and threatened to go to the police. The Tribunal finds that this conflicts with his earlier claim to have been threatened by multiple Sinhalese creditors and thus detracts from the credibility of this claim. The Tribunal finds further that the applicant has conflated his claims regarding conflict with local [businessmen] and the police and threats to report him as an LTTE

sympathiser, and that this also detracts from the credibility of these claims. The Tribunal also finds that it is implausible that his creditors would want him kidnapped, tortured or killed as this would make it less likely that they would recover their money. For the reasons set out above, the Tribunal does not accept that the applicant was threatened by the people to whom he owed money that they would report him to the authorities as a member or supporter of the LTTE.

43. The Tribunal noted that his Protection visa statement did not mention that a white van came to his house. The applicant said he told immigration but when he told the lawyer the interpreter couldn't pronounce it in Tamil properly. The Tribunal noted that when asked at the start of the hearing whether everything in his application was correct or whether there were any mistakes he wanted to point out he did not mention these omissions, although it seemed he was aware of them. The applicant said he can only read English a little so he thought only the dates were different. The Tribunal finds that the late introduction of these claims detracts from their credibility.
44. The applicant has claimed to fear that [Mr A], who owed him money, would pay someone to kill him. On the applicant's evidence, the Tribunal has significant reservations about the plausibility of this claim, noting that the applicant claims to have been doing business with [Mr A] for some time, when [Mr A] settled his account each week and that the applicant claims this situation arose suddenly and unexpectedly but has proffered no explanation for it, stating only that when he asked for the money [Mr A] said he would pay later. The Tribunal asked at hearing why, if he was intent on having him killed, [Mr A] would not have done so before he left Sri Lanka. The applicant said that he hid in [Town 4] for twenty days, changed his phone number and stayed inside the hotel. The applicant said there is so much corruption there they can do anything they want. The Tribunal suggested to the applicant that if as he had claimed he was also being pursued by corrupt police, it might be reasonable to think that this would make it easier for him to be found. The applicant responded that no-one knew he was there and he left within a month.

Harassment of the applicant's family

45. As discussed with the applicant at hearing, the Tribunal also has some concerns with the claimed scale of the harassment of his family in relation to his business problems and the progressive elaboration of his claims in relation to this issue. Asked at the first Tribunal hearing whether anything had happened to harm his family either before or after he left Sri Lanka, the applicant said his mother and [sibling] are not there; his father was there and they came and asked for him and they beat his father. So his father moved and his mother moved. Asked when this happened, the applicant said it was in July, after the lawyer interviewed him. The Tribunal noted that the lawyer had interviewed him in August. The applicant said he is confused and has lots of worries. Asked where his parents were living now, he said at home. Now they have no worries.
46. In a statutory declaration submitted prior to the second Tribunal hearing, the applicant claimed that since he left Sri Lanka, the CID went to his house demanding to know his whereabouts, took his father by force and later returned to the house and beat his mother and [sibling] and that his father was beaten and dumped away from the village. He has claimed that three policemen went to his girlfriend's house, asked where he was and threatened her. He has claimed that he does not know where his father is and that his mother and [sibling] have left their home and his girlfriend does not sleep at home at night. When the Tribunal

explained that it was concerned that this seemed out of proportion to the problems he claimed had caused it, the applicant insisted that this was what had happened and it was all true.

47. Asked why the police would be so interested in finding out where he was and so ready to harm his parents when he was not there, the applicant said there was a problem because he had been doing business with Sinhalese people and in Sri Lanka it is common for enmity to occur in relation to business issues in such a situation. He said that money is the main problem and if he is not there his family are the next source of money; next they will hit his family. The Tribunal discussed with the applicant its concern about the fact that his evidence did not indicate that his family members had been asked for money and the applicant did not reply directly, responding instead that they come asking for him when his mother and [sibling] are alone; he is telling the truth and he could have been killed; if he did not have problems he would not have made the dangerous voyage to Australia.
48. The Tribunal has significant reservations about the applicant's claims with respect to the events he claims occurred as a result of his business problems. The Tribunal finds that his inability to articulate coherently how these claims related to each other or the sequence in which the claimed events took place, the progressive escalation of the claims regarding what had happened to him and to his family and his failure to give direct or apposite responses when questioned by the Tribunal about its concerns in relation to the logic or plausibility of certain events make the applicant a less than credible witness in respect of these claims.
49. For the reasons set out above, the Tribunal does not accept that the applicant was attacked by villagers, injuring his leg or that villagers broke the windows on his van. The Tribunal does not accept that the applicant's [relative] arranged via a local MP for [military] personnel to come and beat him, or that [military] personnel beat him with gun butts. The Tribunal does not accept that [Mr B] from [Town 4] reported him to the police and that the police beat him as a result. The Tribunal does not accept that the applicant was beaten by local police with motorcycle helmets or that he complained to the local police chief and that the police concerned were transferred as a result. The Tribunal does not accept that local police came to his house demanding that he pay the money he owed and threatening to have him kidnapped or killed if he did not. The Tribunal does not accept that [Mr A] will pay someone to kill him. The Tribunal does not accept that a white van came to his house or that he escaped through the back door. The Tribunal does not accept that the applicant hid for twenty days in a hotel in [Town 4] without going out.
50. The Tribunal accepts that the police or other local authorities may have gone to his house and to his girlfriend's house after he left Sri Lanka to ask where he was, as this is consistent with evidence given by many Tamil asylum-seekers from Sri Lanka and may be explained by local authorities conducting checks in relation to residential and/or electoral registration requirements. However, for the reasons outlined above, the Tribunal does not accept that the CID took away, beat and dumped his father and returned later to beat his mother and [sibling]; nor does the Tribunal accept that the CID threatened his girlfriend. For the same reasons, the Tribunal does not accept that the applicant's father has disappeared.

Is there a real chance the applicant would be persecuted if he returned to Sri Lanka?

Business problems

51. The Tribunal accepts that if he returns to Sri Lanka the applicant will still owe money. The applicant has not claimed that he would be unable to pay back the money he owes in the

future and the Tribunal finds on the evidence before it that it is reasonable to expect that the applicant, who has a successful ten years as a business operator behind him, could return to work and repay the money he owes. In any event, the Tribunal finds that it is a normal state of affairs for a business operator to owe and be owed money at any given point in time. The Tribunal accepts that if the applicant was unable to repay that money, he may be subjected to threats or demands for payment but having regard to its findings above, is not satisfied that his failure to pay the money will result in physical harm. The Tribunal does not accept that such threats or demands would amount to serious harm of a type envisaged in s.91R.

52. The Tribunal has found that the applicant has not previously been physically attacked, reported to the police, threatened by the police or threatened with being reported as an LTTE supporter. The Tribunal has found that the applicant's creditors would not harm or kill him as it would not be in their interests to do so. The Tribunal does not accept that [Mr A] would pay someone to have him killed. The Tribunal finds also that it is reasonable to expect that if the applicant was genuinely fearful that this would occur he could minimise or eliminate the chance of this by not seeking to recover the money owed to him. The Tribunal is satisfied that contemplating that the applicant might elect not to recover money owed to him to avoid particular dangers he envisages from [Mr A] does not amount to an impermissible requirement that the applicant change something fundamental to his identity or beliefs to avoid persecution.
53. As put to the applicant at hearing, the Tribunal accepts that he experienced business troubles and that he had some conflict with local people and police. However, the Tribunal is not satisfied on the evidence before it that any harm he has faced in the past or would face on return would amount to serious harm as envisaged by s.91R or significant harm within the meaning of s.36(2A).
54. The Tribunal has found that the applicant was not beaten up by the police or the [military]. On the evidence before it, the Tribunal does not accept that his business problems have escalated as the applicant has claimed. For the reasons outlined above, the Tribunal does not accept on the evidence before it that there is a real chance the applicant would be subjected to serious harm as a result of his business problems from the local people in his village, local [businessmen], the Sinhalese people in neighbouring villages, the local police, the [military], the CID, [Mr A], [Mr B] from [Town 4], politicians, underground people or as a result of black magic.

Tamil race/ethnicity

55. When asked whether the harm he feared related to his business, the applicant replied that it was a business problem. However, he has also claimed that part of the reason for the problems he experienced was that he was dealing with Sinhalese people who owed him money, and that Sinhalese people can create all sorts of problems. Asked what he feared would happen if he returned to Sri Lanka, he said because of his business problems, anyone can harm him because he is Tamil. As discussed above, the Tribunal does not accept that the applicant has previously been attacked, harassed or threatened; nor does the Tribunal accept that Sinhalese creditors have threatened to report the applicant to the authorities as an LTTE supporter. He has also claimed that because he comes from a Tamil village surrounded by mostly Sinhalese villages, the people from the neighbouring Sinhalese village are against him as well. However, asked whether he owed money to Sinhalese people, he said he only owed money to the Tamil people in his village from whom he bought [produce] and to the man from [Town 4]. The applicant has not elaborated on his claim that the Sinhalese people from

the neighbouring village are against him and on the evidence before it, the Tribunal does not accept this claim.

56. As explicitly articulated by the applicant, his claims to fear harm as a result of his Tamil race and his membership of the particular social group of Sri Lankan Tamils are linked to his claim to fear harm as a result of his business problems and his illegal departure from Sri Lanka and return as a failed asylum-seeker. Asked at hearing what he feared would happen to him if he returned to Sri Lanka, he said that because of his business problems, anyone could catch him because he is Tamil; he has a problem with the police, the [military], the people in his village, [Mr A] and the people from the nearest Sinhalese village. The Tribunal has found above that the applicant does not face a real chance of serious harm arising from his business problems. For the same reasons, the Tribunal does not accept there is a real chance he will be seriously harmed as a result of his business problems because he is Tamil.
57. The applicant has also claimed to fear harm for reason of his Tamil race and his membership of the particular social groups of Sri Lankan Tamils and Tamils from the North and East of Sri Lanka. As the applicant comes from [Village 1], in [District 2] in North-Western Province, the Tribunal does not accept that the applicant is a member of the particular social group of Tamils from the North and East of Sri Lanka. Having regard to the country information noted in the delegate's decision, the Tribunal does not accept, on the evidence before it, that the applicant faces a real chance of serious harm for reason of his Tamil race or ethnicity if he returns to Sri Lanka now or in the reasonably foreseeable future.

Real or imputed political opinion

58. The applicant has claimed to fear harm for reason of his real and imputed political opinion arising from his race and former residence in a predominantly Tamil region. The applicant has stated that [his village] is mainly Tamil but is surrounded by mostly Sinhalese villages. This is supported by information contained in the Population Atlas of Sri Lanka which indicates that [District 2] is almost [number] percent Sinhalese and less than [number] percent Tamil, while the [Divisional Secretariat Division], in which [Village 1] lies, is approximately [number] percent Sinhalese, [number] percent Tamil and around [number] percent Muslim.[source] On the evidence before it, the Tribunal does not accept that the applicant was formerly resident in a predominantly Tamil region.
59. The applicant has not claimed to have any connection to the LTTE, nor has he claimed to sympathise with their aims and ideals. The Tribunal has found above that the applicant has not been reported to the authorities as an LTTE supporter. The Tribunal does not accept that every Tamil in Sri Lanka is imputed with pro-LTTE or anti-government opinion. The applicant has advanced no specific reasons why his race would cause him to be imputed with political opinions which would cause him to be harmed. The Tribunal does not accept on the evidence before it that there is a real chance the applicant will be persecuted for reason of his real or imputed political opinion.

Illegal departure from Sri Lanka and failed asylum-seekers

60. The applicant has claimed that his fear he will be harmed for the reasons set out above is exacerbated by the fact he has claimed asylum in Australia. The Tribunal notes that implicit in the claim to fear harm as a failed asylum-seeker is the possibility that a returnee will be imputed with anti-government sentiment. The Tribunal notes that the delegate dealt with this claim and found that as the applicant's profile did not indicate that he would be of interest to

the authorities, the country information did not support a finding that the applicant's fear of persecution for this reason was well-founded. The Tribunal has found above that there is not a real chance the applicant would be persecuted for reason of his real or imputed political opinion as he has not claimed to have any connection with or sympathy for the LTTE, has not been reported to the authorities as an LTTE member or supporter and was not resident in a predominantly Tamil region. The Tribunal has accepted above that it is possible government representatives have come to his house looking for him, as this is consistent with evidence from other asylum-seekers regarding checks undertaken with their families and also with evidence regarding routine checking for residential and electoral registration purposes. The Tribunal notes that the UNHCR *Guidelines* refer to monitoring visits to returned asylum-seekers. For the same reasons as set out previously, the Tribunal finds that previous visits to his home by the government do not indicate that there is a real chance that he will be seriously harmed should he return to Sri Lanka in the reasonably foreseeable future. On the evidence before it and having regard to the country information before the delegate, the Tribunal finds that there is not a real chance the applicant will be persecuted because he is a returned asylum-seeker or a failed asylum-seeker.

61. The applicant has also claimed that he fears he will be arrested at the airport as a failed asylum-seeker because he left the country illegally. At hearing, the Tribunal outlined to the applicant the re-entry processing arrangements and the criminal charges, bail and remand procedures and penalties on conviction, including a fine and a prison term of between one and five years described in the most recent country information concerning returned asylum-seekers who departed Sri Lanka illegally from the Department of Foreign Affairs and Trade.^{2,3} The Tribunal explained that the country information also indicates that the courts have discretion and a prison term may not be imposed and additionally, that the country information does not suggest that the Sri Lanka authorities would actually seek to convict and imprison potentially thousands of returned asylum-seekers.
62. The Tribunal notes information contained in a *Sydney Morning Herald* article of December 2012 cited by the applicant's representative in his submission of 1 May which indicates that those remanded pending a bail decision may spend several days in jail and then, according to a lawyer "...who regularly represents asylum seekers..." in the Sri Lankan courts, are released to reappear in court in several months, when they will likely be fined between 50,000 and 100,000 Sri Lankan rupees (AUD880-1760).⁴
63. The Tribunal has also considered independent evidence indicating that returned asylum-seekers, in particular from the UK, have reported being tortured on return; according to the September 2012 *Freedom from Torture* report, the majority of those affected were Tamil.⁵ As discussed with the applicant, the Tribunal considers that the country information, including the UNHCR 2012 *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*⁶, indicates on balance that those singled out for

² DFAT Report 1478, 2013, MRT/RRT Information Request LKA41452, 28 February

³ DFAT Report 1479, 2013, MRT/RRT Information Request LKA41452, 4 March

⁴ *Sydney Morning Herald* 2012, "Asylum denied, a penalty awaits at home", 8 December, <http://www.smh.com.au/world/asylum-denied-a-penalty-waits-at-home-20121207-2b0qi.html>, Accessed 2 May 2013

⁵ Freedom from Torture 2012, *Sri Lankan Tamils tortured on return from the UK*, 13 September, http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf Accessed 4 April 2013

⁶ UN High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December, <http://www.unhcr.org.refworld/docid/50dla08e2.html>, accessed 3 January 2013

adverse treatment on or after return have to date been predominantly Tamils suspected of having links to the LTTE or those wanted for other reasons including outstanding criminal charges. The Tribunal has found above that there is not a real chance that the applicant would be imputed with a pro-LTTE opinion. The Tribunal does not accept on the evidence before it that the applicant would be suspected of having connections to the LTTE.

64. The Tribunal accepts that the information provided in the DFAT reports of February and March 2013, together with media reports indicates that as an asylum-seeker who departed Sri Lanka illegally, the applicant will be questioned at the airport on his return, where he may be held for up to 24 hours while investigations take place. The Tribunal notes that this information was referred to in the July 2013 DFAT *Country Information Report* for Sri Lanka. The Tribunal outlined this information for the applicant at hearing. The applicant's representative has submitted that it is during the on-arrival series of interrogations or the period of remand that the applicant is at risk of convention-related persecution or other significant harm and suggests that the recent Human Rights Watch report *We will teach you a lesson: Sexual Violence against Tamils by Sri Lankan Security Forces* illustrates the treatment likely to be afforded Tamil returnees. The Tribunal acknowledges that this report documents horrific and systematic sexual violence against individuals suspected of involvement with the LTTE. However, as the Tribunal has found that there is not a real chance the applicant would be suspected of involvement with the LTTE, the Tribunal does not accept that there is a real chance that the applicant would be seriously harmed in this way in the course of his re-entry processing or after his return. The Tribunal finds on the evidence before it that the applicant's background or profile does not suggest that he would come to adverse attention for any other reason in the course of this re-entry processing.
65. The Tribunal accepts that on the evidence available, the applicant will be arrested by the CID and charged under the *Immigrants and Emigrants Act* (the I&E Act) with the offences of leaving from other than a proclaimed port and leaving without a valid passport.⁷ Section 47A(2) of the I&E Act (as amended in 2006) stipulates that bail shall be granted by a Magistrate where there is no express provision made in respect of the granting of bail for an offence under the I&E Act. As explained to the applicant at hearing, other evidence before the Tribunal, including the DFAT advice and the *Sydney Morning Herald* article also indicates that these are bailable charges and that unless suspected of people smuggling or of being a repeat offender, returned asylum-seekers who departed illegally are being bailed on personal recognisance and without any requirement that bail monies be paid. As the applicant does not fall within the profiles of the persons of interest outlined in the DFAT and SMH articles, the Tribunal finds that the applicant's circumstances are such that he will be released on bail.
66. The applicant's representative has also submitted that DFAT does not monitor court processes or outcomes and that this would reasonably account for their not receiving any allegations of mistreatment. The representative submitted that DFAT appeared dismissive of reports of human rights abuses by agencies such as Human Rights Watch and quoted at length the February 2013 Human Rights Watch Report *We will teach you a lesson: Sexual Violence against Tamils by Sri Lankan Security Forces*. It was submitted further that having regard to this evidence, the Tribunal "cannot rule out as insubstantial or remote the likelihood that the applicant will be subjected to serious penalties for his illegal departure from Sri Lanka". The Tribunal has found that the applicant has not had any connections to the LTTE

⁷ Sri Lankan *Immigrants and Emigrants Act*, <http://www.lawnet.lk/process.php?st=1981Y10V245C&hword=&path=5> Accessed 1 May 2013

and has not been reported as a member or supporter of the LTTE. On the evidence before it, and as discussed in more detail below, the Tribunal finds that there is no indication the applicant would be suspected of being a people smuggling organiser or a “repeat offender” On the evidence before it, the Tribunal finds the applicant is not wanted for outstanding offences. The Tribunal does not accept, on the evidence before it, that the applicant will be subjected to serious penalties for his illegal departure from Sri Lanka.

67. The applicant’s representative has submitted that the relevant provisions of the I&E Act have only been implemented since November 2012 and as far as is known, no-one has been charged, meaning that it is not possible to conclude that no-one will be prosecuted in the future. It was submitted further that the fact they have decided to implement the law means it is more likely than not, or that there is a real chance that people who breach the law are likely to be sentenced to jail because that is what the law provides for. The Tribunal considers that it may also be concluded that this decision was intended rather as a deterrent, and that it was taken in the context of increasing international and diplomatic concerns about the growing exodus from Sri Lanka. The Tribunal considers that in the face of a grossly overcrowded and under-resourced prison system,⁸ the Sri Lanka authorities would not imprison every person found to have breached the law. The Tribunal does not accept that the relatively recent move to start implementing this provision leads to a real chance that people who breach the law will be imprisoned.
68. The applicant’s representative also submitted that it is not known who may be suspected of people smuggling and that it may be reasonable to assume that everyone on the boat may be thought to be one of the organisers or connected with the organiser. The Tribunal finds that this contention by the representative is no more than speculative, and on the evidence before it, the Tribunal does not accept there is anything about the applicant’s circumstances to indicate he will be suspected of being a people smuggling organiser or a repeat offender. The Tribunal does not accept that the Sri Lanka authorities are likely to assume that everyone on a boat was one of the organisers. The Tribunal finds on the evidence before it that the applicant has not been convicted of any other offences in Sri Lanka and has no outstanding charges against him. The applicant has stated that he was not a member of the LTTE and the Tribunal has found above that there is not a real chance that he would be suspected of involvement with the LTTE or persecuted for reason of his real or imputed political opinion. The applicant has also stated that he has family members still living in Sri Lanka. Having regard to the information referred to above from the lawyer who represents returned asylum-seekers, the Tribunal finds that the applicant would be eligible to be bailed on personal recognisance and finds that his family members would be able to facilitate his release on bail.
69. The applicant’s representative has submitted that if convicted under the I&E Act the applicant would be subject to imprisonment and a fine, stating that these are not alternative sanctions, and that he would therefore face at least one year in prison. The Tribunal accepts on the evidence before it that the offences with which the applicant would be charged carry penalties of a fine and imprisonment, as provided by s.45(1)(o) of the I&E Act (as amended in 2006). However, the Tribunal notes that the lawyer cited in the *Sydney Morning Herald* article of December 2012 stated that those convicted of such charges would likely be fined.

⁸ US Department of State 2012, *Country Reports on Human Rights Practices in 2011 – Sri Lanka*, 24 May, Section 1, <http://www.state.gov/documents/organization/186687.pdf>, Accessed 27 June 2013; UK Foreign and Commonwealth Office 2011, *Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report – Sri Lanka*, 31 March <http://www.unhcr.org/refworld/country,,,LKA,,4d99aa7e5 a,0.html> Accessed 27 June 2013

As discussed at hearing, it is the view of the Tribunal that the 2006 amendments to the I&E Act indicate that the courts have discretion and a custodial sentence may not be imposed; additionally, on the evidence before it, the Tribunal is not satisfied that the Sri Lankan authorities would actually seek to convict and imprison thousands of returned asylum-seekers. The Tribunal finds that if convicted of the I&E Act offences, the applicant, whose circumstances do not indicate previous links to the LTTE, outstanding offences or a history as a people smuggling organiser or repeat asylum-seeker, would be fined but not imprisoned.

70. The applicant's representative has submitted that if imprisoned, the applicant is likely to be mistreated, particularly because he is Tamil and that together with the poor prison conditions in Sri Lanka this would lead to a real risk he would be subjected to significant harm. While this claim has not been advanced specifically in relation to the applicant's claims under the Convention, the Tribunal considers that it arises on the facts and has therefore considered it accordingly. As above, the Tribunal accepts that the prison system in Sri Lanka is overcrowded and under-resourced. However, the Tribunal has found above that the applicant would be bailed after his initial charging with the I&E Act offences discussed above and that if convicted, he would be fined but not imprisoned. Therefore, the Tribunal finds that the applicant would spend a weekend, at most, within the prison system while on remand. The Tribunal does not accept, on the evidence before it and having regard in particular to the Tribunal's earlier findings with respect to his circumstances, that this would give rise to a real chance that the applicant would be mistreated to the extent that his treatment would amount to serious harm within the meaning of s.91R.
71. As discussed with the applicant at hearing, the country information indicates that one of the penalties available to the courts if he is convicted of the I&E Act offences is a fine. On the evidence before it, the Tribunal finds that as the applicant has a strong work and business history, notwithstanding the problems he experienced immediately prior to his departure from Sri Lanka, and he was able to raise sufficient funds to pay for his passage to Australia, he would be able to pay any fine imposed. While the processes involved may well be stressful and difficult for him, the Tribunal finds that if he returned to Sri Lanka now or in the reasonably foreseeable future there is not a real chance that the applicant would face serious harm as a result of his illegal departure from Sri Lanka.

Are there any other reasons the applicant would be persecuted if he returned to Sri Lanka?

72. Late in the first Tribunal hearing the Tribunal asked the applicant if there were any other reasons he had not already mentioned he thought he would be harmed if he returned to Sri Lanka. The applicant said he has mentioned everything. Asked again if there was anything he wanted to tell the Tribunal about why he feared returning, he said he had a problem with the [military], the police, [Mr A] and the Sinhalese people.
73. The Tribunal explained to the applicant at the second Tribunal hearing that a key issue in his case would be whether there was a real chance he would face serious harm, or a real risk he would face significant harm for the purposes of the complementary protection provisions if he returned to Sri Lanka. It explained that on his evidence, it was satisfied that he had some business troubles and that this caused some conflict with local people and the police, but that it may not be satisfied on his evidence that what had happened to him in the past amounted to persecution for a convention reason. The Tribunal explained that it accepted Tamils may still be subjected to discrimination in Sri Lanka and that discrimination may be demonstrated by

the police or other agents of the state⁹, but that what it would need to consider was whether his circumstances meant that he would be subjected to harm in the future. Asked if he would like to make any comment in relation to this, the applicant said that there were the recent problems with his mum and dad and he left the country illegally and will face problems with the CID if he goes back.

Does the applicant have a well-founded fear of persecution for a Convention reason if he returns to Sri Lanka?

74. The Tribunal has considered the applicant's claims both individually and cumulatively. The Tribunal finds that if returned to Sri Lanka, the applicant would not face a real chance of serious harm amounting to persecution for a convention reason now or in the reasonably foreseeable future. Accordingly, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution should he return to Sri Lanka now or in the reasonably foreseeable future.

Is the applicant owed complementary protection?

75. As discussed with the applicant at hearing, the Tribunal must consider whether there is a real risk that if returned to Sri Lanka he will be subjected to significant harm as envisaged by s.36(2)(aa). The Tribunal has found above that the applicant will still owe money if he returns to Sri Lanka and that if he is unable to repay it he may be subjected to demands and threats but will not be subjected to physical harm. The Tribunal does not consider that those demands or threats in themselves would amount to significant harm as that term is defined. Having considered the applicant's evidence in totality, the Tribunal is not satisfied that there is a real risk that if returned to Sri Lanka the applicant would be subjected to significant harm as defined at s.36(2)(aa).
76. The applicant's representative has submitted that if imprisoned, the applicant is likely to be mistreated as indicated by reports of mistreatment of Tamil prisoners, and that Sri Lankan prison conditions are such that together, there would be a real risk the applicant would be subjected to significant harm. For the same reasons the Tribunal has found above that there is not a real chance the applicant will be seriously harmed for reason of his illegal departure from Sri Lanka, and that there is not a real chance he will be seriously harmed while held on remand, the Tribunal is not satisfied there is a real risk the applicant will be significantly harmed. As set out above, the Tribunal is not satisfied that he will be held for an extended period and is not satisfied on the evidence before it that imprisonment for the short period for which he will be held would amount to significant harm; it follows that the Tribunal is not satisfied there are substantial grounds for believing there is a real risk the applicant will be subjected to significant harm occasioned by poor prison conditions or torture.
77. The applicant has advanced no additional reasons to those considered above for fearing that he would suffer significant harm if returned to Sri Lanka. The Tribunal has found for multiple reasons that there is not a real chance the applicant will be seriously harmed for reason of his Tamil ethnicity, his real or imputed political opinion or his membership of the particular social groups of Sri Lankan Tamils or Tamils from the north and east. The Tribunal has found there is not a real chance the applicant will be seriously harmed as a

⁹ See for example *IRIN Asia*, 2012, "Analysis: Bridging the language divide in Sri Lanka", 23 July, <http://www.irinnews.org/report/95931/analysis-bridging-the-language-divide-in-sri-lanka>, Accessed 9 July 2103 Minority Rights Group International, 2011, *No war, No Peace: The denial of minority rights and justice in Sri Lanka*, "Discrimination against Tamil speakers", p.27

returned, failed asylum-seeker. The Tribunal has found that there is not a real chance the applicant will be seriously harmed for reason of his illegal departure from Sri Lanka. The Tribunal has also found that there is not a real chance that the applicant will be seriously harmed because of his business problems or because he is associated with or would be suspected of being associated with the LTTE. For the same reasons set out above in relation to each of these claims, the Tribunal is not satisfied that there are substantial grounds for believing the applicant will be subjected to significant harm as defined by s.36(2)(aa).

78. The Tribunal notes the explanation of the 'risk threshold' in the Complementary Protection Guidelines. However, in considering s.36(2)(aa) it has proceeded on the basis that the 'real risk' test imposes the same standard as the 'real chance' test applicable in the context of assessment of the Refugee Convention definition following the Full Federal Court decision in *MIAC v SZQRB* [2013] FCAFC 33. The Tribunal finds that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to a receiving country that there would be a real risk of the applicant suffering significant harm.

Conclusion

79. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
80. 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).
81. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Hilary Lovibond
Member