

0909898 [2010] RRTA 434 (31 May 2010)

DECISION RECORD

RRT CASE NUMBER: 0909898

DIAC REFERENCE(S): CLF2009/58053

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Sydelle Muling

DATE: 31 May 2010

PLACE OF DECISION: Melbourne

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia [in] July 2005 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] May 2009. The delegate decided to refuse to grant the visa [in] December 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] December 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the protection visa application, the applicant is a Tamil Christian male who was born on [date of birth deleted: s.431(2)] in Colombo, Sri Lanka. He lived in [Suburb A], Colombo [in] June 2003 to May 2009, however from June 2003 to April 2005 he was residing in [City 1] in [Country A]. He received thirteen years education and is fluent in English and Sinhala and can speak and read Tamil. The applicant described his occupation before coming to Australia as [Profession 1/Profession 2]. He worked as a lecturer at [Education Provider A] in Colombo [in] March 2002 to May 2003 and from June 2003 to August 2004 he worked [in Profession 1] in [City 1], in [Country A]. The applicant departed Sri Lanka legally [in] June 2003. He began a de facto relationship in Australia [in] February 2006 and his de facto partner was initially included in his protection visa application as a member of his family unit. At the time of making the protection visa application, the applicant's mother and father were residing in Sri Lanka.
21. In a statement attached to the protection visa application, the applicant claimed that he had a well founded fear of returning to Sri Lanka on the basis of his ethnic and racial background and because of the political conflict and stresses in that country.
22. The applicant claimed that he was the older of two sons born to his Sri Lankan parents who reside in Colombo and who are Tamil in ethnic origin. He claimed that his family was certain that his brother was kidnapped, captured or otherwise dealt with by Liberation Tigers of Tamil Eelam (LTTE) agitators and activists in Colombo. His family resided in [Suburb A], a Colombo suburb which is a largely Tamil area. The applicant discussed his family's experience of being a Tamil family living in Colombo. He detailed the decision to leave Sri Lanka and to work in [City 1] and discussed his one trip back to Sri Lanka in July 2004 to celebrate a 25th wedding anniversary. The applicant claimed that at this time he learnt that his father had been subjected to threats and demands. His father was seen to be a successful business man who could and should support the LTTE with money and also contribute his oldest son to the movement. His father received fairly regular and routine demands usually by anonymous phone calls. The applicant claimed that his father reported these demands to various police stations without any success and encountered what appeared to be indifference, or racism in those formal organisations when his reports were made to the official Sinhalese authorities. This was one reason why he could not expect any protection or any security from such official organisations despite the propaganda. The applicant discussed the decision for him to come to Australia to study.
23. The applicant claimed [in] June 2006 his younger brother went missing when he went to a nearby supermarket and has never been seen since. Informal searches were conducted for a few days after he went missing but his family knew that their worst fears had eventuated. His

father told him he had spent whatever money he could to try and find ways to locate and rescue his brother including a review of his brother's mobile phone which he had left when he went out that day but no useful information or leads ever turned up. The applicant claimed that the police suggested they had no information and at that time there were many young men being abducted and going missing so they could not conduct reliable or useful investigations. He claimed that after his brother went missing his father still received calls as to his whereabouts. People would call his father and demand from him information as to where his eldest son lived. The applicant claimed that his family, including close relatives, still conduct a prayer meeting each week at their home for the safe return of his brother although the hope of finding him is extremely slim.

24. Also attached to the protection visa application was a statement made by the applicant's father in which he reiterated many of the details included in the applicant's statement; a letter from Reverend [name deleted: s.431(2)] from [Education Provider B] dated [in] April 2009 stating that the applicant's brother stopped attending school after [a date in] June 2006 and that he had been advised by the applicant's parents that his brother had been abducted [in] June 2006 while shopping for groceries in the [Suburb A] area; a letter from Pastor [name deleted: s.431(2)] dated [in] March 2009, declaring that he was a witness of the applicant's family's loss of the applicant's brother [in] June 2006 and that since his brother's abduction, whom they suspect the LTTE of being responsible for, he has gathered with the applicant's family every Thursday at their home; and two photographs of the applicant with his brother and parents. The applicant also provided a number of documents relevant to his de facto relationship.
25. [In] February 2010, the Tribunal received a submission from the applicant's adviser which included the following detailed statement made by the applicant:

In providing details, I would like to request the tribunal to give serious consideration to my claims and assess them according as the outcome of this application will significantly change my life and my future forever whether it be for the best or the worst.

The decision-maker did not give appropriate consideration to the main fact that my fear is because of my race and not because of membership to a particular social group. My claims are relevant as I fear abduction and/or harassment or being persecuted simply because I belonged to the Tamil race I would not be running away from my home country leaving my parents and fearing my life for any other reason but for the only fact that I am a Tamil. As through the conflict in the country for decades the common factor of my fear is that since I am of Tamil descent and as a Tamil as my race has been subject to over the years. I now fear persecution for this reason.

My brother was abducted also because of being a Tamil youth and I don't want to end up in the same way. I would also like to elaborate that in consideration with my brother's abduction, our family is unsure as to what happened to him. My parents are also receiving constant threats to reveal my whereabouts. Young Tamil men are still being reported missing despite the end of the war and defeat of the LTTE. These are being carried out by the Sri Lankan military with the authority of the government as there is no action taken no explanation given for the detention of Tamil men gone missing nor given answers as to whether they are taken in for questioning or whether they are alive. The government says that these are being looked into, but the state of emergency is still being extended in order to facilitate this nature of abductions and to

keep detainees/suspects without explanation and maintaining power to arrest, question and detain anyone under these laws.

After my brother disappeared, during the time the clearing of LTTE members both in LTTE strongholds and in Colombo, my parents have been visited by the police about myself and my brother despite our constant appeals to the police that my brother may have been abducted by the LTTE, they came to take him and myself in for questioning with connection to involvement with the LTTE. This was very frightening for my parents as they were given the impression that we are involved with the LTTE. Later there were constant unknown threats about my whereabouts which kept coming to my parents from about end last year, my parents have been pleading with me not to return back to Sri Lanka owing to the fear of having to face the agony and trauma of losing me too. I have not revealed these threats and suspects of my involvement with the LTTE as I am scared of being targeted by the LTTE members and supporters in Australia and this is the reason I have not revealed this to the Case officer who interviewed me at the Departmental Interview. Later my current migration agent asked me to reveal everything without hiding as my life depends on this application and that the members are protected by the privacy act and that all information will be kept confidential. I have not said this to anyone because I feared that I will be captured by the Sri Lankan authorities here from Australia and taken to Sri Lanka as they did arrest an LTTE leader (K.P) at Thailand Although the Sri Lankan government says that K.P was arrested with the assistance of the Thai police, the Thai authorities deny this. This reveals how the Sri Lankan authorities can arrest people overseas and I even fear that they would come and take me. I understand that KY was a very corrupted and most wanted person by Interpol. Although, I fear that and dread to even digest whether my younger brothers disappearance and the constant harassment to my family is because my younger brother did or had any involvement with the LTTE or had any friends who was involved with the LTTE and gave his name or had his name involved. This is very disturbing even to assume whether he had anything to do with the LTTE as to my knowledge there was nothing I could gather to put him in such a situation. My parents can't live to see my life taken away. Whilst to others who haven't experienced such a horrifying ordeal, it is just abduction and a statistic, but for my parents it is unbearable and for one, it is the denial of my life and a future. The agony and heartbreak is so hard to bear that my mother prefers not to have me living with her than not knowing whether I am dead or alive.

My parents received constant threats since end last year asking for me and questioning them as to why I haven't returned back after finishing my studies. (Because they always say that I have gone overseas to study) Also threatening my arrest and making suggestions that I am involved in LTTE activities overseas. This is not true and I have not been involved in any LTTE activities in Australia.

Our family was constantly harassed and intimidated by the Sinhalese and we were constantly stopped at checkpoints and thoroughly searched because we were Tamils. I understand this as authorities suspected us of being involved with the LTTE as being a Tamil. We were subject to constant investigation and interrogation by the government authorities as it is hard to identify a LTTE supporter because all LTTE persons are Tamils but all Tamils are not LTTE supporters. It gives me shivers to think that my brother may have been subject to the military interrogation and may have lost his life ending up in a pile of burnt tyres or thrown in a river as they do after being questioned and interrogated by the police. Also, if the suspect is not cooperating or be outspoken, (even if he is genuinely not a LTTE member and believes that his arrest is unnecessary) whether they find anything on him or not, he gets harassed or dealt with the harsh way. This is a common nature of the conduct with the

powerful authorities in a country with government and political corruption with state emergency regulations protecting them.

Given the recent so called "end of war" defeating the LTTE by the Sri Lankan government. my life would be significantly in danger at this point of time with the corruption going on with the recent elections and the opposition leaders arrest and the political violence that has taken place in the country.

Our family has faced significant and constant harassment and have been subject to threats from the LTTE as my father is a businessman and whilst active the LTTE demanded funds as they did over the years from the Tamil population in Colombo and other countries especially from those Tamil persons who had relatives in Sri Lanka by threatening and harassing the relatives living in Sri Lanka. On the other hand, any involvement or suspicion with the LTTE amounted to significant consequences being subject to investigation or interrogation by the authorities and the police.

I would also bring the kind attention of the tribunal to consider recent reports of the political violence in the country that has brought significant personal revenge, un-investigated violence, disappearances and human rights violations that has been ignored with no justice to the victims. A large number of human rights violations are not investigated as not only because of the lack of resources and manpower to deal with a large number of complaints but largely also because of the corruption by higher authorities.

Another reason I fear to return back to Sri Lanka is that even if I survive to live in Sri Lanka given the fact that we are left alone without harassment by the LTTE (Since officially defeated), and if the government authorities don't arrest me for questioning or interrogation for suspicion to have links or involvement with the LTTE because I am a Tamil. I am very fearful for the following reasons.

It would be very impossible or extremely difficult for me to find employment because I am a Tamil, given the fact that I would be subject to discrimination of being a Tamil and suspicions as to concerns of identifying me of being an LTTE member as I have no continuous employment history in Sri Lanka and the denial of a normal life without fear as many young Tamil men face at this time of cleansing of any left over LTTE members in order that the LTTE would not rise up again.

I will be under constant harassment by fellow Sinhalese anti-LTTE civilians for being a Tamil as I would be suspicious for being a LTTE member.

I cannot go about living a normal life as my parents would be under tremendous stress as they have faced in the past not knowing whether I would come back home every time I leave the house as they have had experience in the past.

Also another reason I would like to mention is that I have been living together with my partner [name] for a period of 4 years and we have started life together in Australia as she has finished her studies and is making application to stay in Australia permanently to join her only [sibling] who is an Australian citizen having lived here for a significant time. I would have to leave her and go back to Sri Lanka and my relationship cannot continue. We plan to have a family and settle down in Australia My partner and I would be very devastated to have a separation as she cannot go to Sri Lanka and live with me in fear. This is another problem that I would be facing as I care for my partner very much and upon refusal of my application by the tribunal our lives would be devastated.

I request consideration to the above all facts and the attached documents before a decision is made on my application as the outcome of this application determines my life and my future.

26. Also provided with the submission was country information in support of the applicant's claims, including Human Rights Watch, 2007, *Recurring Nightmare*, August, Section V and VII; Human Rights Watch World Report, *Sri Lanka*; UK Home Office, 2009, Country of Origin Information Bulletin, *Sri Lanka*, 13 October, p7; Human Rights Watch, 2009, *Sri Lanka: Tigers under the bed*, 18 June; Amnesty International, 2010, *Sri Lanka: Time for a new start – An appeal to Sri Lanka's presidential candidates*, 18 January; and a number of articles from BBC online and Yahoo news.
27. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments.
28. The applicant was represented in relation to the review by his registered migration agent.
29. The applicant stated that he was born on [date of birth deleted: s.431(2)] in Colombo. He lived at [Address 1], in Colombo 13 for a period of over ten years. He did not live anywhere else in Sri Lanka; he always lived in [Suburb A]. He received approximately twelve years education, completing both his GCE O levels and A levels. He finished studying in 1999. He is fluent in English, Sinhala and Tamil. He worked as a trainee lecturer at [Education Provider A] in [City 2] from 2001 for one and a half years and he continued as a lecturer for another one year. After working as a lecturer, the applicant claimed that he did [Profession 1] at home and was also studying [Profession 2]. For work, he gave private classes in various places in [Suburb A]. The applicant confirmed that he worked in [region deleted: s.431(2)], in [City 1], doing [Profession 1]. He went in 2003 but could not remember when. He worked there for a period of one and a half years, finishing work in February 2005. The applicant stated that he lived in [City 1] until February 2005 and then went back to Sri Lanka to complete the IELTS test to come to Australia. The applicant stated that he returned to Sri Lanka only once whilst working in [City 1], in June 2004, to attend his parents' 25th wedding anniversary. He stayed in Sri Lanka for only three days on that occasion. When he returned to Sri Lanka in February 2005 he was there until he departed the country for Australia in June 2005. The applicant confirmed that he departed Sri Lanka legally. The applicant stated that his parents were living in Sri Lanka. They lived at [Address 2]. He stated that his brother was abducted in June 2006. His grandmother lives in [Suburb A]. His father has two younger brothers living in Sri Lanka also in [Suburb A]. He has two cousins living in Sri Lanka and two studying in [Country B]. His mother has one sister who sometimes lives with his parents and sometimes with her daughter. The applicant stated that he calls his parents once a week. The applicant confirmed he was in a de facto relationship in Australia and had been in this relationship for nearly four years now.
30. The Tribunal asked the applicant when his father first started receiving threats. The applicant stated it was in 2005, towards October or November. This was the first time. When asked if his father had ever received any threats before this, the applicant stated that his father had received a few phone calls but they were not very serious. They would just ask his father about his two sons but no direct threats were made. The Tribunal asked the applicant when his father received these not so serious phone calls. He stated in August or September 2005; a few months before he received the serious threat. The Tribunal asked the applicant if his father received any threats in 1999. He stated no. From his knowledge the first time his father received threatening phone calls was in 2005. His father did not tell him anything until the

first serious phone call. His father did not really tell him what happened because he was in Australia and concentrating on his studies so his father did not want to concern him or put any pressure on him.

31. The Tribunal asked the applicant if he recalled his father receiving any threats before he went to [City 1] The applicant stated that he did. There were some people calling and asking his father for money but he did not respond to any of those demands His father just thought that someone was trying to scare him off so he did not take the threats very seriously. When asked if his father knew who was calling, the applicant stated that his father never got a name from the person who called. First, they asked his father for money because his father had a business and then they were enquiring about him and his brother specifically because he was in Australia. The applicant stated that he could not remember when his father was asked to pay this money.
32. The Tribunal asked the applicant what happened in October 2005 when his father received the serious threat. The applicant stated by that time his father had received a few phone calls asking about him and his brother; they would ask where they were and what they were doing and threaten that his father would never see his sons again unless he paid money. His father did not take much notice of these phone calls because although they were Tamil they were not LTTE supporters so his father believed they were not in danger His father reported these threats to the police. The police just made a report about it but did not follow it up. The police did come to their home a couple of times but there was nothing they could do. The Tribunal asked the applicant how often his father received these calls. He stated every other day and sometimes every day. This went on from October 2005, becoming worse in December 2005, and until early May 2006 his father received these calls. The applicant stated that the calls were not received on a consistent basis. They would receive a call one day and then not receive another one until three days later or a week. The applicant stated that his father had mentioned to him once that he was asked to pay 150,000 rupees in October 2005. His father did not know who these calls were from.
33. The Tribunal asked the applicant what happened after his father did not pay the money in October 2005. The applicant stated that after that, whoever was calling his father started making threats in relation to him and his brother. They would ask about the whereabouts of him and his brother. The Tribunal noted that his brother was living with his parents at this time so why would the caller be asking about his whereabouts. The applicant stated that the person wanted to speak to his brother sometimes and his father would say his brother was not at home but at class or tuition and they would want to know where the class was. The applicant confirmed that these calls continued until about May 2006. The caller would ask about him and his brother and would threaten that his father would lose his sons They would ask his father where his elder son was and what he was doing. When his father would ask who was calling and why they wanted this information, the caller would just hang up and not say anything.
34. The Tribunal asked the applicant if anything else happened between October 2005, when his father was asked for the money, and May 2006, apart from the calls. The applicant stated as far as he could remember a stone was thrown through the front window of his parents home. He could not recall when it happened but it was between October 2005 and December 2005. His parents were home at the time as it occurred during the night. His parents rang the [Suburb A] police and the police came to their home and made a report. The police said they would follow it up but nothing was done about it. The Tribunal asked the applicant if his

father went back to the police to find out if they had investigated the matter. He stated always but the police in Sri Lanka always told his father they had bigger matters to deal with.

35. The Tribunal asked the applicant what happened in May 2006. The applicant stated that at the start of May threats were made not to send his brother out of the house and to give him up. His father did not know who was calling, from where or for what reason they wanted his brother to be given up. When asked if anything else happened in May, the applicant stated that was as far as he could recall.
36. The Tribunal asked the applicant if his father received any further requests for money after receiving the demand for 150,000 rupees in October 2005. The applicant stated that he could recall his father told him once that there was a note slipped under the door saying that we called you for money and this was another demand that he pay the money Whenever his father tried to find out who they were so he could lead the police to them, they never gave him the information. The Tribunal asked the applicant when the letter was left under the door. He stated that he could not remember exactly but it should have been in December 2005 The letter asked for between 250,000 and 500,000 rupees but he was not sure. His father took this letter to the police. He did not pay the money.
37. The Tribunal asked the applicant what happened after his father received the threats in May 2006 that his brother should not go out of the house. The applicant stated that he remembered his parents stated that his brother would not be sent to school or even to the shops because of the threat that his brother may be abducted. At the time a lot of Tamil youth were going missing so for that reason his brother was kept indoors all the time. Although his father had not shown his brother threats in the past, in May 2006 his brother was told that he could not go out because of these serious matters. The applicant confirmed that his brother was aware of what was going on from May 2006.
38. The Tribunal asked the applicant about the circumstances surrounding his brother's disappearance. The applicant stated that they still did not know up to today who or for what reason his brother was abducted [in] June 2006. His brother was not supposed to go out but [in] June 2006 he slipped out of the house to go to the shops. His family believed that there was someone watching and waiting. The Tribunal noted that in his father's statement he claimed that he did not allow his brother to go anywhere unless accompanied by him and assumedly his mother. Given that he had claimed that in May 2006 his brother was told about the threats made, why would his brother have walked to the shops by himself. The applicant stated that his brother was under a lot of pressure and sometimes when he spoke to him his brother would say that he was like a prisoner at home and he always advised his brother that they did not know who was threatening him and for what reason they wanted him. Unfortunately [in] June 2006 his brother decided by himself to walk to the shops and after that he did not return home.
39. The Tribunal asked the applicant what his parents did once his brother did not return from the shops. The applicant stated that they waited until that night and went straight to the police station to report him missing. The police filed a report and came to his parents home. The police told his father there were a lot of youths going missing at the moment so they would have to investigate. The Tribunal asked the applicant about the efforts made by his parents or anyone else to find his brother. The applicant stated that they went to the surrounding areas of [Suburb A] with a photo of his brother and asked people if they had seen his brother. They had gone to the shops and questioned them but no-one had seen him. His parents believed that his brother had been abducted by a certain group, maybe the LTTE, because they were

Tamil and at that time they were abducting Tamil youth to fight. Otherwise it could have been government officials who harassed Tamils.

40. The Tribunal asked the applicant if anything happened to his family after his brother went missing. The applicant stated that his mother became very ill and was close to breaking down. After his brother went missing, his father did not receive any phone calls for a month or two but after that his father received calls enquiring about him and his whereabouts. This was around August 2006. His father would receive calls once in two weeks and the caller would ask to speak to him. His father would tell them he was not home and when asked where he was, his father would tell them he did not know. His father did not know who these calls were from. The calls had been continuing for every month until now. The applicant explained that he was supposed to return to Sri Lanka once he finished his studies so there was someone who knew he was due to go back and they would call and ask where he is and what he is doing. The last time his father received a call about his whereabouts was a couple of weeks ago.
41. The Tribunal asked the applicant if he or his family had had any issues with the authorities or the police. The applicant stated no. When asked if the police had come to his home in the past looking for either him or his brother, the applicant stated no. The Tribunal noted that in his most recent statement, he claimed that following his brother's disappearance the police had been looking for him and his brother in order to question them about their involvement with the LTTE. The applicant stated that the police would come home and try to help find his brother but they can not locate or give an answer as to what had happened to him. Whenever his parents get these threatening call they are supposed to report them to the police. They go and report and the police just write the details but nothing is done about it. The Tribunal put to the applicant that in his recent statement to the Tribunal he suggests that the police are interested in him and his brother because they believe they are LTTE. The applicant stated that this is correct. The Tribunal asked the applicant when this happened given that he had not previously claimed any past interest in either him or his family from the authorities because of the LTTE. The applicant stated that once his brother disappeared and his parents persisted going to the police station to report the calls about him and his brother's disappearance, the police thought that because they are Tamil they have some link to the LTTE and because his father is a businessman he was supporting the LTTE with money. The Tribunal put to the applicant that this did not make any sense; if his father was associated with the LTTE why would he continually present himself to the police about the threats he received for years and the abduction of his son. The applicant stated that the police in Sri Lanka handled things very differently. The Tribunal asked the applicant what the police had done since his brother's disappearance. He stated that they would come to his parents' home and ask questions about what time his father received the call, what the person said and what it was regarding and make a useless report. The police had questioned his father once or twice about the phone calls for money and why his younger son had disappeared. This happened two or three months after his brother was abducted. They suggested that maybe he had some links but his father denied this.
42. The Tribunal asked the applicant why he failed to mention in his statement attached to his protection visa application or in the interview with the delegate that the police had been questioning his father about association with the LTTE or had been looking for him and his brother to question them about their involvement with the LTTE. The applicant stated that he was scared about the entire scenario after what happened to his brother. The Tribunal noted that in the interview with the delegate he had specifically stated that his family had no

attention from the security forces and asked him why he would say this when he was now claiming that the police had actually been looking for him and his brother and had questioned his father. The applicant stated that he was very scared. The applicant confirmed that he had assistance with making his protection visa application. He stated that his former adviser did not explain properly to him the process or the importance of providing all his claims. The Tribunal noted that his father had also failed to mention in his statement the visits from the police which he had mentioned in his statement to the Tribunal. The Tribunal put to the applicant the fact that his father had failed to mention this raises doubts about the veracity of these claims. The applicant stated that his father was a very reserved person and since the loss of his brother, his parents were scared to speak out. The Tribunal put to the applicant that given the loss of his brother and the continuing phone calls and enquiries about his whereabouts it can be assumed that his father would try to provide all relevant information to make the strongest case possible for him to say in Australia.

43. The Tribunal put to the applicant the fact he delayed in raising this claim regarding attention from the authorities until after receiving the decision refusing his protection visa application raises serious questions about the genuineness of this claim. The applicant stated that he did not say anything because he was still scared that if he goes back the same thing that happened to his brother will happen to him. They did not know if it was the LTTE. He stated that Tamils are stopped at checkpoints without any question when the war was going on. Tamils would be put to the side and other people would be allowed to go. The LTTE are Tamil but not all Tamils, like his family, are LTTE but this frame of mind was always with the Sri Lankan police. If a person is Tamil they are always branded as LTTE or an LTTE supporter. The Tribunal noted that the information provided from his father and the letters of support provided from the school and a pastor all identify the LTTE as being responsible. The applicant stated at that time there was a lot of news that the LTTE was abducting people and that they wanted Tamils to join their movement.
44. The Tribunal noted that in his recent statement he mentioned the constant harassment and intimidation he was subjected to by the Sinhalese and authorities because he was Tamil and asked the applicant what sort of intimidation and harassment he was subjected to. The applicant stated as he explained before if a person is Tamil they are assumed to be LTTE. The Tribunal asked the applicant how he was harassed and intimidated because he is Tamil. He stated at any checkpoint “they” went through “they” would be asked if “they” had any siblings and if “they” said yes “they” would be asked where they were, and if “they” did not know the police would think “they” were supporting the LTTE. The applicant stated that he was never investigated by the authorities. When he was asked if he had ever been interrogated by the authorities, the applicant stated at checkpoints or when travelling on buses people would be stopped and asked for their identification. As the war was happening and they were angry with the Tamils the authorities classed all Tamils as LTTE. The Tribunal asked the applicant about the harassment and intimidation he was subjected to by Sinhalese people. The applicant stated that at the time in the news there would be reports of how many people were killed by LTTE bomb blasts and it was like all Tamils were responsible even though they did not have any involvement with the LTTE
45. The Tribunal asked the applicant why, if his brother went missing in June 2006 and he claims his father continued to receive threats from these people and inquiries about his whereabouts, he waited until May 2009, two and a half years after he ceased studying, to apply for protection. The applicant stated that his family’s best hope was that some day, in a couple of months or years, that his brother will turn up or some news of him will be received. He

thought if he returned to Sri Lanka the same thing will happen to him and his mother begged him not to come back because they did not want to lose another son.

46. The Tribunal asked the applicant his brother's name. The applicant provided the Tribunal with his brother's full name and confirmed that he did not know anyone else with his brother's name. The Tribunal put to the applicant that it had found a person by the same name as his brother on Facebook and that he (the applicant) was listed as friend on this person's Facebook page and similarly this person with the exact name as his brother was listed on his (the applicant's) Facebook page as a friend. The Tribunal also noted that the Facebook photograph looked similar to the photograph of his brother taken at his parent's 25th anniversary, which he submitted to the Department. The Tribunal presented the applicant with the photographs, in addition to a photograph of the applicant and his de facto partner taken from this person's Facebook page. The Tribunal also gave to the applicant documents from Facebook which showed that this person with the exact name as his allegedly missing brother was chatting on his Facebook page [in] March 2010. The Tribunal put to the applicant in light of this information the Tribunal had serious doubts about his claims that his brother has been kidnapped. Rather, it looked like his brother is living and working in [region deleted: s.431(2)] and recently attended a barbeque in [City 3]. The applicant stated that he had not gone into Facebook, however confirmed that the picture from this person's Facebook page was of him and his de facto partner. The Tribunal put to the applicant that it was clear that he was a friend of this person and this person was a friend of his and given that he had told the Tribunal that he did not know anyone else with the same name as his brother, the Tribunal had serious doubts that this person was not his brother. The applicant stated that he would have added his brother as a friend but had not had contact with him since he went missing. The Tribunal put to the applicant that Facebook was not available to everyone before June 2006 when his brother went missing. The applicant agreed. The Tribunal noted the fact was that they were on each other's pages and this person has the same name as his brother. The Tribunal noted that this information clearly raised serious concerns regarding his overall credibility and doubts about the veracity of the claims that he has made. The applicant stated that he just knows that his brother went missing. The Tribunal put to the applicant this information suggested that his brother was not missing as claimed. The applicant reiterated that his brother went missing in 2006 and after that he has not had any contact with him. The Tribunal explained to the applicant that it would send this information to him following the hearing to respond to, as well as a number of inconsistencies in his evidence in the hearing and evidence provided by him earlier in the process. For example, in relation to the claim that a stone was thrown through the window of his parents' home, the Tribunal noted that according to his father's statement this incident occurred in October 2003 and no-one was home at the time because they were attending a prayer meeting, whereas he had claimed in the hearing that this incident took place some time between October 2005 and December 2005 and his parents were home at the time. The Tribunal noted that his father had claimed in his statement that there were a number of other threats made over the years and that he had been receiving phone calls since 1999. In addition his father claimed he was asked to pay 200,000 rupees in 1999 and that the family moved to [Address 2] in 2000, however he had not claimed to have lived at this address at the beginning of the hearing. The applicant stated that his family lived in [Address 1] and then moved to [Address 2] but he could not recall when. He confirmed that he also lived at [Address 2]. The Tribunal reiterated that there were a number of inconsistencies in his evidence in the hearing and earlier evidence provided by him and his father in his statement and that it will write to him and ask for his comment if the Tribunal was to rely on this information.

47. The Tribunal asked the applicant why he believed he would be unable to find employment if he returned to Sri Lanka. The applicant stated that the job situation in Sri Lanka was not very good. When asked if there was a particular reason why he believed he would be unable to find employment, the applicant stated “once a person says they are Tamil... the opportunities were given to the Sinhalese and Burghers”. The Tribunal noted that he had worked in Sri Lanka in the past and his father is a successful businessman which suggests neither he or his family have been denied employment because of their Tamil ethnicity. The applicant stated that he got the job at [Education Provider A] through a friend of his father, who was the Director of [Education Provider A] The Tribunal put to the applicant it had some difficulty accepting that he would be denied employment in Sri Lanka because of his ethnicity. As he himself had stated, [Suburb A] is a predominantly Tamil area and there is a large population of Tamils living in Colombo and there is no information available to suggest that Tamils are denied employment because of their ethnicity. The applicant did not respond.
48. The Tribunal put to the applicant in terms of the claims made in his statement attached to his protection visa application and in the interview with the Department, which was a fear of being abducted by the LTTE or remnants of the LTTE, according to the latest country assessment of 11 January 2010 by International Crisis Group, there has been no evidence of recent LTTE militant activity since they were defeated by the government forces in 2009. The same report also provides that disappearances and abductions – whether for ransom or to target those suspected of working with the LTTE – are much less frequent than in 2006-2008 though there have been reports of such cases since the wars end primarily from the Northern and Eastern provinces. The Tribunal noted that given the situation has changed in Sri Lanka, that is the war is ended and there has been no LTTE militant activity since the end of the war, his fear of being abducted by the LTTE now, if he returned to Sri Lanka, does not appear likely. The applicant stated that the LTTE or the government takes people and interrogates them. The government has underworld people who are sent out to capture Tamil people and interrogate them for LTTE information.
49. The Tribunal put to the applicant the independent sources suggest that the most likely people to come to the adverse attention of the Sri Lankan authorities are young Tamil males originating from the north and east of the country. The Tribunal noted that he was born and raised in Colombo, his family are well established in Colombo and he has not had any problems with the authorities in the past so it is difficult to accept he would be of any interest to the authorities on his return to Sri Lanka in the way he suggested. The applicant stated if a person is Tamil and they have been overseas, if they return there will be someone waiting. The Tribunal noted that he had been absent from Sri Lanka since 2005 but he had left the country to work in [region deleted: s.431(2)], as many Sri Lankans do, and he subsequently came to Australia to study, as many Sri Lankans do and as his cousins are currently doing in [Country B]. The Tribunal put to the applicant that the country information does not suggest that working or studying overseas and returning to Sri Lanka would result in him being of adverse interest to the authorities. The applicant stated after his brother was gone, the next person is him so whoever was calling home will know when he touches down in Sri Lanka.
50. The Tribunal asked the applicant if there are any other reasons why he fears returning to Sri Lanka apart from what he has already discussed with the Tribunal. The applicant stated that the only reason, the way his mother has told him, is that there is still someone who has interest in him and his parents do not want to lose another child. He believes if he goes back, whoever is interested in him will come into action straight away and he does not know what will happen to him.

51. The applicant's adviser referred to her written submission and suggested that there was no evidence to prove the applicant's claims apart from his parents calls to him. She submitted the applicant's claims have become more severe recently because of the shut down of the LTTE. She did not think that earlier there was a threat to the applicant personally but of recent, his mother has been receiving phone calls and it is time for the applicant to return, so if his brother was involved in anything, the authorities might be looking for the applicant now because of the clean up of the LTTE.
52. [In] May 2010, the Tribunal wrote to the applicant inviting him to comment on the following information which the Tribunal considered would be the reason or part of the reason for affirming the decision under review:

- In the hearing you claimed that your father first started receiving threats in 2005 in October or November. Prior to this, you claimed, your father had received a few phone calls in August or September 2005 but these were not very serious. When asked if your father had received threats in 1999 you said no, from your knowledge the first time your father received threatening calls was in 2005. In contrast, in your father's statement which was attached to your protection visa application, your father claimed that he first received calls in February 1999 and on [date] March 1999 he was asked to pay 200,000 rupees and threatened that a member of his family would be abducted. He also claimed that by the end of 2000 he and your mother were at the brink of falling apart because of the nuisance calls and that as a result you were intimidated if someone even came up and spoke to you.

This information is relevant because the inconsistency in the evidence you provided in the hearing as to when your father first started receiving threatening calls and your father's evidence in his written statement raises doubts that your father ever received such calls in the past either enquiring about you and your brother, requesting payment of money or threatening your family and subject to your comments, could lead the Tribunal to find that you do not face a real chance of persecution if you returned to Sri Lanka for reason of your Tamil ethnicity or any other Convention reason.

- In the hearing you discussed with the Tribunal the serious threat received by your father in October 2005 and the demand that he pay 150,000 rupees. In the statement made by your father which was attached to your protection visa application, your father claimed that he was asked to pay 200,000 rupees on [date] March 1999 and 500,000 rupees on [date] May 2006. Your father made no mention in his statement of any threat or demand for money made in October 2005.

This information is relevant because the difference in your evidence as to when your father was asked to pay money by these alleged unknown people and when this alleged "serious threat" was received by your father raises serious doubts that your father in fact received such demands for money from unknown callers or that any threats were made against him or your family as claimed and subject to your comments, could lead the Tribunal to find that you do not face a real chance of persecution if you returned to Sri Lanka for reason of your Tamil ethnicity or any other Convention reason.

- In the hearing with the Tribunal you claimed that a stone was thrown through the front window of your parents home sometime between October 2005 and December 2005 and your parents were home at the time. However in your father's statement attached to your protection visa application he claimed that this particular incident occurred on [date] October 2003 and no-one was home at the time because they were attending a prayer meeting.

This information is relevant because the discrepancies in your evidence as to when the stone was thrown through the window of your parents home and your father's evidence in his written statement raises doubts that this incident did in fact occur and subject to your comments, could lead the Tribunal to find that you do not face a real chance of persecution if you returned to Sri Lanka for reason of your Tamil ethnicity or any other Convention reason.

- In the hearing you were asked what happened in May 2006 and you claimed that your father received threats not to send your brother out of the house and to give him up, and that was all you could recall. However, in your father's statement attached to your protection visa application he claimed that on [date] May 2006 he received a call requesting 500,000 rupees. In contrast, you told the Tribunal that your father received a request for between 250,000 and 500,000 rupees in a letter slipped under the door sometime in December 2005.

This information is relevant because the inconsistency in your evidence and your father's evidence in his written statement as to what occurred in 2006 in regard to the request for money from these unknown people raises concerns about the credibility of your claim that your father received such threats and demands for money and subject to your comments, could lead the Tribunal to doubt these claims.

- In your protection visa application and in the interview you failed to mention that the police had questioned your father about his association with the LTTE or that the police were looking for you and your brother to question them about your involvement with the LTTE. In fact, in the interview with the delegate you specifically stated that your family had no attention from security forces. Your father also did not discuss any interest the authorities had in either him or you and your brother in his written statement attached to your protection visa application.

This information is relevant because the discrepancy in the statement you submitted to the Tribunal prior to the hearing and your earlier evidence provided in your application and interview with the Department regarding the authorities interest in you and your family because of suspected links with the LTTE raises serious doubts that there have been any enquiries made by the authorities either regarding you or any member of your family as you claimed.

- In the statement you submitted to the Tribunal prior to the hearing you claimed that you were subjected to constant harassment and intimidation by Sinhalese and the authorities because you are Tamil. However, you failed to mention this in your protection visa application and neither did your father raise this issue in his written statement attached to your protection visa application.

This information is relevant because the delay in raising these claims of constant harassment and intimidation because of your ethnicity raises serious doubts that you were in fact subjected to such treatment by either the authorities or the Sinhalese population.

- The Tribunal located on the internet the Facebook page of [Mr A]. The photograph of [Mr A] which appears on the Facebook page bears a striking resemblance to the photograph of your brother taken at your parent's 25th wedding anniversary which you submitted to the Department. Your name and a photograph of you with your de facto partner also appears on [Mr A]'s Facebook page as one of his friends and similarly, [Mr A]'s photograph appears on your Facebook page on your list of friends. Information on the Facebook page of [Mr A] suggests he is living in [Country]

C] and currently working at [company]. (Relevant Facebook pages are attached for your information)

This information is relevant because given you confirmed in the hearing that you do not know another person with the same name as your brother, the Tribunal finds the existence of this Facebook page and the fact your name and picture (with your de facto partner) appears as a friend of [Mr A], and vice versa, raises serious doubts that your brother was abducted on [date] June 2006 and has been missing since then. This information also raises serious concerns about your overall credibility and subject to your comments, could lead the Tribunal to doubt your claims.

53. [In] May 2010, the Tribunal received the following response from the applicant to the Tribunal's s424A letter:

Firstly whilst I do believe that relying on information, statements and oral evidence in regards to my claims are the only ways the tribunal member has to understand my situation and consider as to whether my claims are genuine and realistic to be considered as a refugee, I would like to state that in response to the latter dated [date] May 2010, for invitation to comment and respond to information, I would most humbly request that the tribunal consider granting me another opportunity to appear before the Tribunal in person.

I make this request understanding that the Tribunal is under no obligation to do so but I request this given the complex explanation I will have to provide to the tribunal in regards to the contradicting statements and the issue of my credibility that has come as a matter of attention.

Nevertheless, I would like to still make some explanations below as to the reasons behind the contradicting information within my claims.

Responding to the differences between the dates and timeframes of the threats my father received and the amounts of money he was demanded, actually I still have no exact idea of these timeframes as my father did not tell us about these incidents in the first and most of the information came out as it was crucial and we were hit by both sides, the LTTE demands because my family had money and they wanted us to support them with their war. This is a well known fact that fellow Tamils were supposed to support the LTTE at the time of the conflict or we were threatened. We were scared of both parties as the government was not only very harsh on LTTE supporters and sympathisers but had and still have its own gangs and thugs so called special task forces that are responsible for abductions and disappearances.

We were so scared of this situation and I honestly don't specifically remember the demands and threats in detail as our parents kept as much as information away from us. Although I got the statement from my father, I honestly did not study the contents therein as I had my own fears and I did not think that it would make a big difference.

In regards to the information I gave at the hearing at the department, I would say that at that time I was not confident to say much as I was not certain as to whether I still could be detained and handed over to the Sri Lankan authorities.

No matter what the government portrait to the world of its building up the country and safety for all Sri Lankans including Tamils, as it is evident, some Tamils risk their lives coming here paying thousands of money to get on a boat to come to Australia because of the harm they can face from the authorities just because of their ethnicity. No one understands the fear of having to be at the receiving end of the

authorities or its task forces as we are well aware on a day to day basis of the military and so called task forces tortures and inhumane treatment to their suspects.

Further, In respond to my claim of my brothers disappearance, I would like to say and confess that because of the significant fear my parents had of losing him to the LTTE or the authorities at the time, he were sent away to [Country C] and he was asked not to come back. As a matter of fact my travel to Australia was also purely to be away from home so that no harm can come to me from the LTTE or the authorities.

I take responsibility for the serious claims about my brother being abducted and the false information provided leading to verify that claim. Please do understand my desperate reasons as I fear for my life returning back to Sri Lanka.

Whilst I do understand that my credibility is questioned in this regards, Please do try to understand the reason behind as to why I would go to this lengths to stay away from Sri Lanka. I trust that this should not be held against me but in favour of the well founded fear.

Please consider that my brother or I have never gone back to Sri Lanka after we left the country which would bring explanation as to the extent of our fear of returning back.

Finally, I would like to once again request for another hearing by the tribunal to provide further evidence in this regards and I trust this request be considered in the light of my desperation.

COUNTRY INFORMATION

Tamils in Colombo

54. Sources indicate that those most likely Tamils to come to the adverse attention of the Sri Lankan forces and authorities are young Tamil males originating from the north and east of the country. However, according to UNHCR, “Tamils who were born in the North or the East and are outside of the region, in particular those who reside in or seek to enter Colombo”, are also among those most likely to be suspected of LTTE affiliations, and are, therefore, at significant risk of suffering serious human rights violations (p. 22). UNHCR further states: “Given the wide range of profiles of the victims of reported incidents, it is not possible to identify particular categories of Tamils from the North who would not have a reasonable possibility of experiencing serious harm” (p. 29). UNHCR notes that human rights violations against Tamils in and from the North have affected men and women of all ages (p. 28).
55. The UK Home Office fact-finding mission report indicates that in general young male Tamils originating from the north and east of the country are most likely to come to the adverse attention of Sri Lankan authorities. (UN High Commissioner for Refugees 2009, ‘UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka’, UNHCR website, April <http://www.unhcr.org/refworld/docid/49de0b6b2.html>; UK Home Office 2009, *Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009*, August, p. 6 – Attachment 2).
56. The country of origin information that UNHCR has considered indicates that Tamils from the North of Sri Lanka continue to face a significant risk of suffering serious human rights violations in the region (and elsewhere in the country) because of their race (ethnicity) or

(imputed) political opinion (UN High Commissioner for Refugees 2009, *Note on the Applicability of the 2009 Sri Lanka Guidelines*, UNHCR Refworld website, July <http://www.unhcr.org/refworld/docid/4a6817e22.html>)

While the occasional arrest of LTTE suspects and the monitoring, by police, of Colombo's Tamil residents continues to be reported ('Household checking by police in Colombo reimposed' 2009, SriLankaTruth.com website, source Tamil Net, 10 November http://srilankatruth.com/news/newspublish/news.php?news_id=4815&start=0&category_id=23&parent_id=23&arcyear=&arcmonth) there have been no reports in 2010 of the mass arrest of Tamils in Colombo as a consequence of cordon and search operations of the kind that were being reported a year ago. ('SLA arrests 66 Tamils in Colombo, Ampaa'rai, Vavuniyaa' 2009, SriLankaTruth.com website, source Tamil Net, 11 April http://www.srilankatruth.com/news/newspublish/news.php?news_id=3386) The most recent Colombo cordon and search operation to be noted in the reporting of Tamil advocacy groups occurred in December 2009 in the Maligawatte Housing Scheme; and while residents complained about the inconvenience caused by the operation there were no reports of arrests or of harassment. ('SLA, Police cordon, search Maligawatte housing schemes' 2009, SriLankaTruth.com website, source Tamil Net, 24 December http://srilankatruth.com/news/newspublish/news.php?news_id=5211&start=0&category_id=23&parent_id=23&arcyear=&arcmonth)

57. In August 2009 the UK Foreign and Commonwealth Office (FCO) undertook a substantial survey of the views of a number of commentators of the situation on Sri Lanka in a number of regards; consulting with representatives from the Sri Lankan government, UNHCR, human rights groups, other western embassies, and a member of the opposition United National Party (UNP), Mano Ganesan MP. With regard to Colombo most of the sources consulted by the UK FCO reported an improvement in the security situation of Tamils while also noting that Tamils originally from the north could face some problems in finding residence in Colombo as well as some inconvenience at checkpoints and the possibility of some harassment and/or extortion. With regard to cordon and search operations during the period June to August 2009, the following comments are worth noting:

2.8 The representative from Centre for Policy Alternatives (CPA) had not heard of any arrests. However, they were aware that in some areas of low-income Tamil residence, such as Wellawatte and Kotahena, there were operations once or twice a week. In other areas, such operations were less frequent; but every day, somewhere in Colombo was raided. In general, cordon and search operations were 'easing off' but still happened.

...2.12 Professor Wijesinha said that recently there had been no complaints about cordon and search operations, but there were some in the past. He was not aware of the total number of people arrested/detained in such operations. In the past, the evidence suggested that a lot of people were questioned during such operations, but released on the day itself or shortly thereafter. He said they used to keep track of such incidents in the past when there had been some large-scale operations (e.g. 2007) and had to look into complaints related to those. Such large-scale operations had not been seen in recent years.

...2.13 Mano Ganesan MP thought that around 50 persons had been detained by TID since June 2009. (UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p,20)

58. With regard to problems faced by Tamils at checkpoints during the period June to August 2009, the following comments are pertinent:

4.39 The representative of the Swiss Embassy in Colombo said that people, who could not identify themselves, lacked an ID card or had ID cards from Jaffna or northern districts, were likely to be detained briefly and then released after checks on their identity had been carried out. However there had been examples when applicants[1] who applied with the Embassy stated, mostly with proof, that they were arrested at checkpoints, detained with detention orders (under ER and to a lesser extent under PTA) and some even sent to Boosa. However, the Swiss representative added that since the end of the war the Embassy had not received any asylum applications[1] where a person had been arrested at checkpoints and sent to Boosa. However, the official thought it was far too soon to look at trends.

...4.42 Staff of a non-governmental organisation stated that Tamils felt they got worse treatment at checkpoints and feel discriminated against. However, they received brusque treatment but not necessarily harassment. An ability to communicate with police made a difference. Some Tamils from Colombo were tri-lingual (Tamil, Sinhala and English) and speaking fluent Sinhalese helped. Tamils from the north were vulnerable at checkpoints, especially those seeking employment and/or staying in Colombo on a temporary basis. (UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.35)

59. An overall decline in abductions, in recent months, *was* noted by the International Crisis Group in a previous January 2010 report:

The human rights situation has slightly improved since the end of the war, with very few reports of extrajudicial killings, abductions and enforced disappearances received in the final months of 2009. Nonetheless, the structures that enable violations and impunity – chiefly the anti-terrorism regulations promulgated under the state of emergency and the Prevention of Terrorism Act – remain in place.

...Disappearances and abductions – whether for ransom or to target those suspected of working with the LTTE – are much less frequent than in 2006-2008, though there have been reports of such cases since the war's end, primarily from the Northern and Eastern Provinces. To date, no one has been prosecuted for any of the thousands of enforced disappearances and extrajudicial killings known to have taken place from late 2005 onwards. In addition to the 11,000 or more alleged LTTE members held in special camps in the north, another 1500-2000 suspects continue to be held under emergency detention orders or other anti-terrorism legislation, some for years without charges. (International Crisis Group 2010, *Sri Lanka: A Bitter Peace*, Asia Briefing no.99, 11 January, p.18.)

Returnees to Colombo

60. In August 2009 the Australian High Commission in Colombo advised the UK Foreign and Commonwealth Office (FCO) that “there were no procedures in place to identify failed asylum seekers”; and that: “The only way that the authorities were alerted to a failed asylum seeker returning was if the airlines or IOM notified them that a person was a deportee or was being escorted”. (UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, pp.8-18.) A Tamil returned to Colombo after seeking asylum in Australia would therefore be under no more scrutiny than any other Tamil returning to Colombo and would be subject to the same screening procedures with the same risk criteria for being perceived as having an LTTE association (for a list of these criteria see the paragraphs below). In August 2009 an officer of the Colombo office of UNHCR replied that while UNHCR had “little involvement with this type of issue”, “they were aware that some returned failed asylum seekers were interviewed with CID. If there was any suspicion there would be a quick, and usually non-problematic, interview with CID who would ask things like why they left and how long they were away

for. High profile cases, such as those suspected of having involvement with the LTTE, would be taken away for further questioning, usually by the police”, see: UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.9.)

FINDINGS AND REASONS

61. The applicant travelled to Australia on a valid Sri Lankan passport and state that he is a national of Sri Lanka Therefore, for the purposes of the Convention the Tribunal has assessed his claims against Sri Lanka as his country of nationality.
62. In order to satisfy the Convention definition of a refugee, the applicant must have a well-founded fear of persecution. He must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicant will be persecuted for a Convention reason if he returns to Sri Lanka The Tribunal accepts the applicant does not want to return to his own country. The question for the Tribunal is whether the applicant’s fear of persecution is objectively well-founded within the criteria of the Refugees Convention.
63. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pan Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

64. In the decision of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, the High Court also made comments on the correct approach to determining findings on credibility. Kirby J said at 39:

First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of an administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the “real chance” of persecution required by *Chan*.

With these points in mind the Tribunal now turns to an assessment of the applicant’s claims.

65. The Tribunal does not accept the applicant’s brother was kidnapped, captured or otherwise dealt with by the LTTE, the authorities or anyone else in June 2006 and has been missing since. The Tribunal has taken into consideration the information it located from the internet site “Facebook”, namely the Facebook page of a person with the exact same name as the applicant’s brother. The Tribunal notes that the applicant’s name appears as a friend on this persons Facebook page and there is a picture of him with his de facto partner confirming the applicant’s identity. Similarly, the person with the same name as the applicant’s brother is listed as a friend on the applicant’s Facebook page. On the basis of the applicant’s confirmation in the hearing that he did not know anyone else with the same name as his

brother and the fact the photograph of this person bears a striking resemblance to the photograph of the applicant's brother with him and his parents during his parents' 25th wedding anniversary in 2004, the Tribunal finds that this particular Facebook page is in fact the applicant's brother's Facebook page. The Tribunal notes that in the applicant's response to the Tribunal's s424A letter, dated [in] May 2010, the applicant confessed that he had provided false information regarding the disappearance of his brother and that in fact his brother was sent away to [Country C] by his parents. The Tribunal therefore does not accept that the applicant's brother has been missing, feared abducted since 2006, as the applicant claimed. As a result of the applicant's admission, the Tribunal places no weight on the documentary evidence the applicant submitted in support of this claim, namely the letter from Reverend [name deleted: s.431(2)] of [Education Provider B] and the letter from Pastor [name deleted: s.431(2)].

66. The Tribunal does not accept that the applicant's father has been subjected to threats and demands from unknown person in the past. The Tribunal notes that the applicant claimed in the hearing that his father first started receiving threats in 2005, around August or September. However, in his father's statement attached to his protection visa application, his father claimed to first receiving calls in February 1999 and being asked to pay 200,000 rupees in March 1999. Although the applicant indicated in his response to the Tribunal's s424A letter dated [in] May 2010 that his father did not tell him about these incidents, the Tribunal notes that the applicant's father suggested in his statement that the applicant was aware in at least the end of 2000 that he was receiving these threats as the applicant was intimidated if someone even came up and spoke to him. However, the applicant claimed in the hearing, that from his knowledge the first time his father received threatening calls was in 2005.
67. The applicant also raised with the Tribunal a serious threat made against his father in October 2005 and a demand made for his father to pay 150,000 rupees. However, the applicant's father's detailed statement does not mention any threat or demand being made of him in October 2005. In regard to extortion demands, the applicant's father claimed in his statement that he received two, the first for 200,000 rupees [in] March 1999 and the second for 500,000 rupees [in] May 2006. Yet the applicant claimed that his father received a letter, as opposed to a call as his father claimed, demanding 500,000 rupees sometime in December 2005.
68. The applicant also claimed in the hearing that a stone was thrown through the front window of his parents' home sometime between October 2005 and December 2005 and that his parents were home at the time. However, the applicant's father claimed in his statement attached to the protection visa application that this particular incident occurred [in] October 2003 and that no-one was at home at the time because they were attending prayer meetings.
69. Given the numerous discrepancies between the applicant's oral evidence to the Tribunal and the written evidence he submitted from his father with his protection visa application, the Tribunal does not accept that the applicant's father received the regular and routine threats and demand for money or alcohol between 1999 and 2006 which were claimed by either the applicant or his father. The Tribunal has taken into consideration the applicant's response to the Tribunal's s424A letter but does not accept the applicant's explanation for the inconsistency in his evidence was due to the fact much of the information regarding these incidents was kept from him. The Tribunal notes that the applicant submitted to the Department a detailed statement made by his father and although it does not expect the applicant to have studied the contents of this document, it does not consider it unreasonable that the applicant would be familiar with these alleged important events.

70. As the Tribunal does not accept that the applicant's father has been threatened or extorted in the past and does not accept the applicant's brother was abducted in 2004 as claimed, the Tribunal does not accept that the applicant's father has continued to receive unknown threats and calls inquiring about the applicant's whereabouts until present.
71. Given the Tribunal does not accept the applicant's brother was abducted as claimed in 2004, the Tribunal does not accept the applicant's contention or that of his adviser, that the authorities were anyway involved in his alleged disappearance because his brother was suspected of being associated with the LTTE. The Tribunal does not accept the applicant's claim made in his statement to the Tribunal that the police had questioned his father about his association with the LTTE or that the police were looking for him and his brother to question them about their involvement with the LTTE. The Tribunal notes that the applicant failed to mention this in his interview with the Department and instead specifically stated that his family had no attention from the security forces. The Tribunal does not accept the applicant's explanation that he failed to mention this earlier because he was scared. Nor does the Tribunal accept the applicant's explanation provided in his response to the Tribunal's s424A letter, that he was not confident to say much in his interview because he was fearful of being detained and handed over to the Sri Lankan authorities. The Tribunal notes that the applicant had an adviser assisting him throughout the process and would have been aware of the importance of providing relevant and reliable evidence. The Tribunal also finds that the applicant's fear of being handed over to the Sri Lankan authorities to be far fetched and implausible given his profile. The applicant also claimed initially in the hearing, when asked if he or his family had any issues with the authorities or the police, that they did not. It was only after the Tribunal expressly put to the applicant his recent claims regarding the authorities interest in him and his family that the applicant claimed when investigating the alleged abduction of his brother, the authorities suggested his father and brother may have some links to the LTTE. Given the vague, confusing and contradictory nature of the applicant's claims regarding the authorities interest in him and his family because of their Tamil ethnicity and the lateness in which this issue was raised, the Tribunal does not accept that the applicant's father has been questioned by the authorities either about his own involvement with the LTTE or the applicant and his brother's association with the LTTE.
72. The Tribunal does not accept that the applicant or his family were subjected to constant harassment and intimidation from Sinhalese people and the authorities because they are Tamil. The Tribunal found the applicant's evidence in respect to this claim to be vague and lacking in detail. The applicant was unable to articulate what sort of harassment or intimidation he was subjected to by Sinhalese people. In regard to the authorities, the applicant discussed Tamils being stopped and asked for identification at checkpoints. Although the Tribunal accepts that this may have occurred to the applicant in the past, the Tribunal does not accept that being asked to show identification constitutes interrogation, let alone persecution. The Tribunal notes that the applicant claimed in the hearing he was never investigated by the authorities. Based on the applicant's evidence, the Tribunal does not accept that either the applicant or his family were constantly harassed, intimidated, investigated or interrogated by the authorities or Sinhalese people because of their Tamil ethnicity.
73. The Tribunal does not accept that if the applicant returns to Sri Lanka he would be of interest to the authorities because of his Tamil ethnicity. The Tribunal notes that the applicant was born and raised in Colombo and is the son of a successful Colombo businessman. The country information suggests that the most likely people to come to the adverse attention of

the Sri Lankan authorities are young Tamil males originating from the north and east of the country. The Tribunal finds that the applicant has not had any problems in the past with the authorities and given that he hails from a family that is well established in Colombo, the Tribunal does not accept on the basis of the country information, that the applicant would be of any interest to the authorities if he returned to Sri Lanka because of his Tamil ethnicity. Nor does the Tribunal accept that the applicant's absence from the country would result in him being targeted by the authorities on his return. As the Tribunal noted in the hearing, the applicant left Sri Lanka in 2003 to work in [region deleted: s.431(2)] and then again in 2005 to study in Australia, as many other Sri Lankans do and the country information cited above does not suggest that working or studying overseas would result in the applicant being of adverse interest to the authorities on return.

74. The applicant also raised a fear of being abducted by the LTTE or remnants of LTTE. As the Tribunal does not accept that the applicant's father has been threatened or extorted in the past or that his brother was abducted in 2006, the Tribunal finds the applicant's fears to be fanciful. The Tribunal also notes that the situation in the country has changed considerably since the applicant departed, with the war ending in 2009. The Tribunal notes the latest country assessment of 11 January 2010 by International Crisis Group, which stated that there had been no evidence of recent LTTE militant activity since they were defeated by the government forces in 2009 and that disappearances and abductions, whether for ransom or to target those suspected of working with the LTTE, were much less frequent than in 2006-2008. In light of this information and the fact that the Tribunal finds that the applicant's family have not been targeted by the LTTE in the past, the Tribunal finds that the applicant's fear of being abducted by the LTTE to be far-fetched.
75. The applicant also raised in his statement to the Tribunal his belief that he would be unable to find employment if he returned to Sri Lanka because of his Tamil ethnicity. The Tribunal notes that the applicant worked in Sri Lanka prior to coming to Australia and that his father is a successful businessman in Colombo. Even if the Tribunal accepts that the applicant obtained his position at [Education Provider B] through a friend of his father, the Tribunal does not accept that the applicant would be denied employment because of his Tamil ethnicity on his return to the country. As the Tribunal noted in the hearing, there is a large Tamil population living in Colombo, particularly in the area which the applicant's family are living, and there is no independent information available to suggest that Tamils in Sri Lanka are denied employment because of their ethnicity.
76. The Tribunal finds the applicant is not a credible witness and that he has intentionally and blatantly provided false information in an effort to establish a claim for refugee status. For the reasons provided above, the Tribunal does not accept that the applicant or his family have been threatened and his father extorted in the past by the LTTE because of their Tamil ethnicity. Nor does the Tribunal accept that the applicant or his family have been targeted by the authorities or investigated and interrogated because of their Tamil ethnicity. The Tribunal does not accept that the applicant or his family have been constantly harassed by Sinhalese civilians. The Tribunal is satisfied that the applicant has never experienced any problems in Sri Lanka in the past because of his Tamil ethnicity. Based on the country information before it, the Tribunal does not accept that if the applicant returns to Sri Lanka he would face any difficulties, let alone a real chance of serious harm amounting to persecution, either from the authorities or the LTTE or anyone else, because of his Tamil ethnicity or any other Convention reason. The Tribunal therefore finds that the applicant's fear of persecution is not well-founded.

77. The Tribunal notes that the applicant requested the opportunity to attend a further hearing with the Tribunal in his response to the Tribunal's s424A letter. The Tribunal finds that the s424A letter which was sent to the applicant after the hearing did not raise any new issue requiring a further hearing. In such circumstances, the Tribunal does not accept that it is obliged to hold a further hearing.

CONCLUSIONS

78. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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