

1304427 [2013] RRTA 689 (11 October 2013)

DECISION RECORD

RRT CASE NUMBER: 1304427
DIAC REFERENCE(S): CLF2012/212353
COUNTRY OF REFERENCE: Sri Lanka
TRIBUNAL MEMBER: Suhad Kamand
DATE: 11 October 2013
PLACE OF DECISION: Sydney
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. The applicant, a citizen of Sri Lanka, entered Australia as an Unauthorised Maritime Arrival (UMA) [in] June 2012. He applied to the Department of Immigration (the Department) for the visa on 13 November 2012. The delegate refused to grant the visa on 19 March 2013 and the applicant applied to the Tribunal for review of that decision. On the basis of all the evidence before it, and for the cumulative reasons given below, the Tribunal has concluded that the applicant is not a person in respect of whom Australia has protection obligations and affirms the delegate's decision.
2. Relevant law has been included at Appendix 1.

CONSIDERATION OF CLAIMS AND EVIDENCE

3. The applicant is a [age deleted] Hindu Tamil male. He is a national of Sri Lanka and of no other country.
4. His express claims and those arising on the evidence are that he faces harm in Sri Lanka for reason of: his Tamil race; his imputed political opinions in support of the Liberation Tigers of Tamil Eelam (LTTE) and in opposition to the Sri Lankan authorities; his membership of particular social groups characterised by his representative as "illegal emigrant from Sri Lanka" and/or "failed asylum seeker returned to Sri Lanka". He claims that his risk profile is heightened by the "enmity of his former Sinhalese (sic) employer, [Mr A]", who it is claimed has connections within the Sri Lankan Army.

Delegate's decision

5. The delegate was not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention or under complementary protection. A copy of the delegate's decision record was provided to the Tribunal by the applicant's representative.

Issues before the Tribunal

6. The Tribunal must assess whether: it is satisfied of the credibility and truth of relevant aspects of the applicant's claims and evidence; on the evidence before it, it is satisfied that the applicant faces a well-founded fear, based on a real chance, of persecution involving serious harm for a Convention reason, if he returns to Sri Lanka. If the Tribunal is not satisfied that he is owed Australia's protection under the Refugees Convention, it must then consider whether he is owed complementary protection. That involves an assessment of whether there are substantial grounds for believing that he faces a real risk of significant harm in Sri Lanka for any of the reasons claimed or arising on the evidence.
7. The Tribunal's assessment is informed by information including: the Department's file relating to the applicant which includes the record of his entry interview conducted through a Tamil interpreter on 27 August 2012; the audio recording of his Department interview held on 30 January 2013, conducted through a Tamil interpreter, which the Tribunal has listened to; a copy of his Protection visa application form and documents provided in support of that application and the review application. The Tribunal's assessment is also informed by its

detailed exploration of the applicant's claims when he appeared in person before it on 3 October 2013. During that appearance he communicated with the assistance of a Tamil interpreter. The applicant's representative was also present. Neither the applicant or his representative identified any limitations in the applicant's capacity to communicate with the Tribunal or participate in the review. An audio recording of the applicant's Tribunal hearing is available. The Tribunal has had regard to the above as well as to other material available to it from a range of sources, referred to, where relevant, in its considerations below.

Assessment of the applicant's claimed circumstances – credibility

8. The Tribunal notes that there has been some variance in the details recorded regarding the applicant's past employment in Sri Lanka. The Tribunal attempted to clarify the applicant's employment in Sri Lanka when he appeared before it. His evidence impressed the Tribunal consistent in some respects, and the Tribunal is satisfied that he: worked primarily as a fisherman from [Village 1]; he worked for multiple employers in various locations within Sri Lanka, specifically in Jaffna, [Town 2] and Mullaithivu. Beyond that, for the reasons detailed below, the Tribunal is not satisfied that his employment circumstances, particularly in respect of his claimed work for a Sinhalese person named [Mr A], are as he has claimed. ;
9. Regarding his family in Sri Lanka, the Tribunal is satisfied that his father, mother and [siblings] continue to reside in the same house in [Village 1] in which the applicant resided when he was living there, and that his [brother] was working in [Town 2] for several months after the applicant left Sri Lanka for Australia, but that brother is currently living with relatives in Colombo waiting for his passport to be issued. The applicant indicated that he is not sure of his brother's travel plans.
10. The applicant said and the Tribunal accepts that his father was also a fisherman but that he stopped doing that work not long before the applicant left Sri Lanka for Australia, and that his family unit has been supported financially by relatives of the applicant's mother, including relatives in Colombo and his mother's sister who lives with them in [Village 1] and is working. The Tribunal is satisfied that the applicant's family is at least partially supported financially by his maternal relatives.
11. The applicant also told the Tribunal that his Sri Lankan passport was issued to him in 2012. While he could not recall exactly when he applied for that passport he told the Tribunal that he had done so before he went to work for [Mr A] in February 2012. He told the Tribunal that his mother's brother was intending to source work for him in Malaysia but this did not eventuate. His passport is in Sri Lanka with his family. The Tribunal accepts the above as true.

Claims of past harm

12. In support of his claims to fear harm in Sri Lanka in the future the applicant claims to have had past adverse experiences. Specifically, he claims that he: was detained at a Sri Lankan Army (SLA) camp in 2008 during a round up of Tamils in his village and held at the camp for two hours, where he was questioned about any links to the LTTE and threatened with being beaten if he didn't tell the truth; he was mistreated by a Sinhalese employer named [Mr A] and mistreated by [Mr A]'s connections within the SLA, including being taken to an SLA camp in [Town 2] in 2012. He has also been questioned and required to show his ID to the Sri Lankan authorities on many occasions.

Claims relating to his former employer, [Mr A]

13. The applicant's claims that he experienced harm in Sri Lanka in connection with his employment by an influential Sinhalese man named [Mr A] impress the Tribunal as highly problematic for several reasons.
14. Firstly, the claims set out in his statutory declaration, sworn on 30 October 2012 and containing an interpreter's declaration, are that "In January 2012 I started a three month fishing contract in Mullaithivu for a Sinhalese fisherman [[Mr A]] After three months this man said I needed to stay and work for a further period of time. I said I could not do this as my contract was only for three months and I had fulfilled my work agreement." His statutory declaration goes on to state that: [Mr A] took the applicant's belongings to stop him leaving; [Mr A] contacted people he knew in the SLA who took the applicant to a local SLA camp and made him "load a sack with sand and then empty it and then refill it", making him "do this continuously from morning until the evening" before making him return to [Mr A]'s employment.
15. However, his evidence to the Tribunal differed significantly regarding the above claimed circumstances. In particular, he initially told the Tribunal that he had spent six months in [Mr A]'s employment in total, the entirety of that employment being in [Town 2]. He added that generally a fisherman has to stay in an area for six months for a fishing contract as this is the "rule" He then said that he commenced work for [Mr A] in [Town 2 in] February 2012 and returned to [Village 1 in] June 2012. The Tribunal asked whether he went to [Town 2 in] February 2012 intending to work there for six months To this he responded that: [Mr A] had pre-paid him for five months work; the applicant had signed a contract to that effect and understood at the time he commenced work for [Mr A] that he had contracted to complete five months of work in [Town 2]; his family had received payment in advance for that work within around five days of the applicant's arrival in [Town 2] in February 2012. The Tribunal considers the above variations from his written claims that he had a three months fishing contract with [Mr A] to be significant and concerning.
16. When the Tribunal asked the applicant why he left [Town 2 in] June 2012, having completed only around four months-worth of work when he had contracted to complete five months work, which his family had already been paid for, he responded initially that he didn't leave after four months. When the Tribunal reminded him that he had just said that he worked for [Mr A] in [Town 2] from [a date in] February 2012 until [a date in] June 2012 which is around four months, he then responded "yes" When the Tribunal again asked why he returned home to [Village 1] before completing his five month contract with [Mr A] given that he knew his family had already been paid for that work he said that the situation at work was not good. When asked to elaborate he referred to being "overloaded" with work by the Sinhalese who were in a "gang" and asked him to carry fish and break ice. He also felt he was working hard and was physically tired and had not had a day off. When the Tribunal put to him that this sounds like ordinary work of a fisherman he offered that there were many fishermen and not everyone had to do this type of thing. That: he initially challenged the Tribunal's observation that he seems to have returned to his family before completing the five months work he was contracted to do; he then changed his evidence to say that he left that employment after four months due to poor work conditions; he then demonstrated difficulty substantiating how his work conditions were "not good", cumulatively raise concerns regarding the truth of his claimed work for a person named [Mr A].

17. Compounding these concerns, when asked if there were any other reasons he left [Mr A]'s employment after only four months he said that he found out that other workers were being paid around Rs 10,000 per month and he had only been paid Rs 30,000, and even though he understood that he had signed a contract to work for five months for Rs30,000, from what the other people told him he believed the money paid to him should only cover three months work. However, that explanation does not explain why his evidence suggests he worked for [Mr A] for four months rather than three or five, or why he initially challenged the Tribunal's observation that he seems to have returned to his family before completing the five months work he contracted to do.
18. He then stated that when he insisted to [Mr A] that he wanted to go home [Mr A] beat him. He repeated this more than once but later told the Tribunal that [Mr A] did not beat him, the SLA officers beat him and [Mr A] only pushed him when he insisted on going home, before [Mr A] then went and got the SLA to further intimidate the applicant. This change in evidence on such a central aspect of the applicant's claims compounds the significant concerns discussed in the balance of the Tribunal's considerations.
19. When the Tribunal asked the applicant to detail what happened when the SLA arrived on [Mr A]'s request, his account provided further cause for concern. Contrary to his statutory declaration in which he refers to a singular soldier who arrived and took him to the SLA camp and made him undertake physical labour there¹, his oral evidence to the Tribunal was that [Mr A] returned with two soldiers who both escorted him to the SLA camp at gunpoint.
20. Also, in his statutory declaration he states that he was made to fill sand bags at the SLA camp from morning until evening, however he told the Tribunal that he was only at the SLA camp for around 3 hours, from around 3pm to 6pm. In response he offered that he was misinterpreted. He later offered that he didn't have a watch. However, in the context of the balance of the Tribunal's concerns the Tribunal is unconvinced by those explanations.
21. He also indicated that he was threatened with being shot on that occasion, but informed the Tribunal that he had never mentioned that before. The Tribunal considers that if the applicant had been threatened with being shot he would have made mention of such a relevant detail earlier. On his own evidence he did not, leaving the Tribunal unsatisfied that he was threatened with being shot at any time and compounding the Tribunal's doubts regarding the reliability and truth of his evidence more generally.
22. Of further concern, as put to the applicant under section 424AA of the Act, regarding his claimed experiences in connection with [Mr A], he is recorded, during his department interview on 30 January 2013 as: initially saying that when the soldiers took him from [Mr A]'s he had to walk six hours to the SLA camp; later telling the delegate he had to walk only 30 minutes to get to the SLA camp; in attempting to address this discrepancy when the delegate put it to him he claimed that he didn't say he had to walk for six hours, but that he had to stay at the SLA bunker for six hours. However, in his entry interview on 27 August 2012 he is recorded as saying that he was kept at the SLA bunker from 9am until 6pm, which totals around 9 hours, and in his statutory declaration he has claimed that he was kept at the SLA camp from morning until evening. To the Tribunal he had said that he was only at the SLA camp from 3pm until 6pm.

¹In paragraph 13 of his statutory declaration he says that "this soldier took me by force to a small Army camp. This soldier made me load a sack..." (department folio 39b)

23. Relevantly, the above information suggests that the accounts he has provided regarding his claimed experiences with the SLA in connection with [Mr A] have changed over time in significant respects, which suggests that those claimed experiences have not really occurred. In response to the Tribunal's concerns he offered that the incidents did occur and the discrepancies in terms of times may be because he didn't carry a watch. While the Tribunal accepts that the applicant did not carry a watch and that this may explain small discrepancies in time, the Tribunal does not consider the discrepancies put to him and identified above to be small discrepancies, and considers that a person who has been detained would be able to tell the difference between being taken in the morning or the afternoon, and between being held and made to fill and empty sand bags for three, six or nine hours.
24. The Tribunal's concerns regarding the reliability of the applicant's claims and evidence above as well as more generally are further compounded by the following. While telling the Tribunal expressly that he applied for his Sri Lankan passport from Colombo before he went to work for [Mr A] in February 2012, when asked why he applied for the passport at that time he told the Tribunal that it was because of his problems, including his problems with [Mr A]. When asked how his claimed problems with [Mr A] could have informed his decision to apply for a passport given that he had just told the Tribunal that he had applied for his passport before having any adverse experiences connected to [Mr A], he responded only "yes", and added that he had had bad experiences with the Sinhalese in the past
25. Based on the totality of the evidence before it, including the significant and cumulative concerns detailed above, the Tribunal is not satisfied of the truth of significant aspects of the applicant's claimed circumstances in Sri Lanka. In particular, the Tribunal is not satisfied that he has fallen out or attracted adverse interest from a former employer by the name of [Mr A] or anyone else, or that he has been mistreated in the past by that employer or the SLA in connection with that claimed employment.

Past round ups

26. In his statutory declaration the applicant claims that, after the SLA took control of his village in 2008 he would be called for SLA inquiries and was "caught in many round ups and asked whether I had any involvement with the LTTE".
27. As put to the applicant under section 424AA of the Act, however, in his entry interview with the department on 27 August 2012 he mentions that the SLA did round ups and took people for questioning in his area, but he is recorded as expressly saying that he was never personally taken in those round ups. That information contradicts and undermines his subsequent claim to have been personally rounded up by the SLA. In response he offered the Tribunal that he had said that the SLA took him and that he was questioned on other occasions, and also mentioned that some other boys were taken in the round ups.
28. However, in the context of the overwhelming and cumulative concerns identified in the Tribunal's considerations regarding the applicant's general reliability as a witness, the Tribunal is not satisfied that he mentioned being personally involved in any SLA roundups during his entry interview, and is not satisfied on the totality of the evidence before it that the applicant was personally rounded up by the SLA at any time.
29. Based on the totality of the evidence before it, including the significant and cumulative concerns identified above, the Tribunal is not satisfied that the applicant, at the time he left Sri Lanka for Australia in June 2012, had an adverse profile with anyone there, including [Mr

A] and/or any member of the SLA which gave rise to a real chance of serious harm as contemplated by sections 91R(1)(b) or 91R(2) of the Act, or significant harm as contemplated by section 36(2A) of the Act.

Profile in the reasonably foreseeable future

30. While the Tribunal is not satisfied, as reasoned above, that the applicant had any adverse profile at the time he left Sri Lanka for Australia, the Tribunal must consider his risks of harm in Sri Lanka on his return and in the reasonably foreseeable future. Relevant to that assessment is the following.

Tamil race

31. The Tribunal has assessed the applicants risks of future harm in Sri Lanka with specific reference to his Tamil race and the claims made regarding a general lack of respect in Sri Lanka towards the Tamil race and culture. Specifically, the Tribunal has considered whether the applicant's Tamil race creates and/or compounds his risk profile and gives him an imputed political opinion in support of or linked to the LTTE and opposed to the Sri Lankan authorities, or any profile which gives rise to a real chance of serious harm in the reasonably foreseeable future, both singularly and cumulatively with what is accepted of the balance of his circumstances. The Tribunal has also considered this in the context of the applicant being a fisherman from [Village 1] who has travelled to other areas of Sri Lanka, including former LTTE stronghold locations, in connection with his employment.
32. The Tribunal is mindful of the comments and submissions made by or for the applicant regarding ongoing concerns facing Tamils in Sri Lanka. However, the Tribunal assessment must necessarily be informed by what is accepted of the applicant's own claimed circumstances.
33. Relevant to this, what the Tribunal accepts of the applicant's evidence reveals that, despite always being a Tamil male from [Village 1] who lived in Sri Lanka almost all of his life until coming to Australia in 2012, he has been able to live and work in [Village 1], where his family continues to live, without any demonstrated harm, even during the peak of the civil conflict. He has also given evidence of having travelled and worked in other parts of Sri Lanka including Mullaithivu, [Town 2] and Jaffna, without demonstrated harm. While the Tribunal is satisfied that, in the course of those travels, the applicant has been asked questions by the Sri Lankan authorities as to the purpose of his travels and what he knows of the LTTE, the Tribunal is not satisfied that such questioning went beyond verbal enquires. While the Tribunal accepts that such questions could be irritating and at times intimidating, the Tribunal is not satisfied that the questioning the applicant experienced in Sri Lanka involved or amounted to serious harm as contemplated by sections 91R(1)(b) and 91R(2) of the Act, or significant harm as contemplated by section 36(2A) of the Act.
34. The applicant also indicated that two of his [siblings], as well as his mother and father continue to live at the same home he resided in in [Village 1], which he said is owned by his family. While he referred to ongoing inquiries made by the authorities about any information his mother or her family members may have about the LTTE in Mullaithivu, from where her family originates, he expressly stated that beyond such enquires, which he described only as verbal, his family has not experienced anything more. His evidence in its totality indicates that, while living in Sri Lanka for some 20 years, he has never come to any harm in connection with his Tamil ethnicity or being a Tamil or a Tamil fisherman from [Village 1].

His evidence regarding his own claimed circumstances in Sri Lanka and the circumstances of his family members in Sri Lanka do not impress the Tribunal as supporting his claims to face a real chance of serious harm in connection with his Tamil ethnicity or for being a Tamil male or Tamil male fisherman from [Village 1] in the reasonably foreseeable future.

35. The Tribunal also notes the 2010 and 2012 UNHCR Guidelines excerpted at Appendix 2, which remove any presumption of international protection being needed on a collective basis for reason of being a Tamil, or being a Tamil from an area formerly under LTTE control. Of course, while ethnicity and a range of other factors may contribute to an applicant's risk profile and must be taken into account, this must be done in the context of what is accepted of the applicant's circumstances. In the applicant's circumstances, the Tribunal is not satisfied that being of Tamil ethnicity and/or being a Tamil male from [Village 1] and/or being a Tamil fisherman who routinely travels to a range of locations in Sri Lanka, singularly or cumulatively, give the applicant any actual or imputed political opinion linked to the LTTE or opposed to the Sri Lankan authorities, or otherwise give rise to a real chance of serious harm in Sri Lanka in the reasonably foreseeable future.

Political opinion

36. The applicant informed the Tribunal that neither he nor any of his family members on his mother or father's side have ever had any involvement with the LTTE or any paramilitary or political movement in Sri Lanka. The Tribunal accepts that evidence.
37. He claims, however, that he will be imputed with political opinions linked to the LTTE and/or opposed to the Sri Lankan authorities for a number of cumulative reasons, including his mother's family connections to Mullaithivu. However, while the Tribunal accepts that the applicant's mother has family connections in areas of Sri Lanka which were under strong influence from the LTTE, as considered under "Tamil race", the Tribunal is not satisfied that, without more, and in the context of what is accepted of the applicant's claimed circumstances, this imputes the applicant with any political opinion linked to the LTTE or opposed to the Sri Lankan authorities or gives rise to a real chance of serious harm in the reasonably foreseeable future in connection with any actual or imputed political opinion.
38. Regarding the suggestion that the applicant will be imputed with political opinions linked to the LTTE and/or opposed to the Sri Lankan authorities because he has travelled illegally to Australia and sought asylum here, which may expose him to suspicion of having come into contact with the Tamil diaspora and/or elements of the LTTE or organisers of trafficking operations undermining the Sri Lankan state en-route to or within Australia, this is considered under the headings "failed asylum claims" and "illegal departure" below. As reasoned below, the Tribunal is not satisfied that the applicant's unsuccessful attempt to seek asylum in Australia, or his illegal departure from Sri Lanka, or his travel to Australia by boat, singularly or cumulatively impute the applicant with any political opinions linked to the LTTE or opposed to the Sri Lankan authorities which give rise to a real chance of serious harm in Sri Lanka in the reasonably foreseeable future.
39. Based on all the evidence before it, including cumulatively, the Tribunal is not satisfied that the applicant has or will have any actual or imputed political opinions or profile which would give rise to a real chance of serious harm in Sri Lanka in the reasonably foreseeable future.

Particular social group - failed Tamil asylum seekers

40. It is claimed that the applicant is also owed protection under the Refugees Convention for reason of the harm he is claimed to face for reason of his membership of a particular social groups characterized as “failed asylum seekers returned to Sri Lanka” and/or “illegal emigrants from Sri Lanka”. It is argued by his representative that the processes he will face on his return to Sri Lanka, even if ultimately cleared as being an organizer of people smuggling operations, may involve extensive questioning and harm which gives rise to a need for Australia’s protection. Specifically, his representative submitted that returnees who departed Sri Lanka illegally can be held at length by the Sri Lankan authorities in circumstances amounting to persecution “for doing little more than pitching in with operations on the boat during the journey”. Reference is also made by the applicant’s representative to Sri Lankan High Commissioner Samarasinghe’s public comments linking illegal boat movements to international drug/human trafficking rackets and to international terrorism. His representative does, however, also note that High Commissioner Samarasinghe has also publicly referred to those who pay the smugglers for such a journey as “victims”. The Tribunal accepts that High Commissioner Samarasinghe has made both comments.
41. While bearing in mind the evidence and information advanced in support of the applicant’s claims, regarding what may await the applicant on his return to Sri Lanka as a Tamil male who has unsuccessfully sought asylum in Australia, the Tribunal notes that this has been considered in detail by a range of entities including DFAT² and the Immigration and Refugee Board of Canada (IRBC). The IRBC reported, in August 2011, on the treatment of Tamils returning to Sri Lanka, including failed asylum seekers, citing information from the Canadian High Commission in Colombo to the effect that “[t]he screening process is the same for all persons returning to Sri Lanka – whether voluntary or by escort. The process is not impacted by ethnicity”³ The Canadian High Commissioner was also quoted in respect of the process involving persons removed to Sri Lanka, to the effect:
- The process for persons removed to Sri Lanka begins with verification of the person’s citizenship by Sri Lankan Immigration. Once a person’s right to enter has been established, clients are then interviewed at the airport by Criminal Investigations Division (CID), followed by an interview by the State Intelligence Service (SIS). Sri Lankan State Intelligence Service’s questions are often in regards to how a client departed the country. They are seeking information about human trafficking and smuggling from the country.
- The CID conducts criminal background check[s] of returnees by contacting police stations in all districts that a client may have lived. As criminal records are not accessible through a national databank, the final criminal checks may take 24-48 hours to complete depending on the day of the week a person arrives in Colombo. Generally, police record checks may be completed in a few hours, but if a client arrives on a Saturday or Sunday it may take a bit longer to contact appropriate offices. Following this admission process deported Sri Lankan Nationals are free to enter the country.⁴
42. Recent advice from the Australian Department of Foreign Affairs has provided a consistent account of the process involving returnees, including failed asylum seekers, to Sri Lanka.⁵ The information set out under “Unlawful departure” below addresses additional procedures applicable to returnees considered to have departed Sri Lanka illegally.

² DFAT Country Information Report: Sri Lanka, 31 July 2013

³ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

⁴ *ibid*

⁵ DFAT Country Information Report: Sri Lanka, 31 July 2013; CX234989 of 14 October 2009; CX234202 of 29 September 2009; CX 249694, CX297471 of 19 October 2012, CX299951 of 29 November 2012, CX304258 of 27 February 2013 and DFAT report 1479 of 4 March 2013

43. The IRBC also cited information jointly provided by various human rights organisations and lawyers to the effect that: Sri Lankan immigration authorities are alerted about the impending arrival of failed returned asylum seekers; such people are also identifiable by the fact that they travel on temporary travel documents; these individuals are taken out of immigration queues and subjected to special questioning by the Police and members of the Terrorist Investigation Department [TID] and are almost always detained, sometimes for a few hours, and sometimes for months, until security clearance is obtained.⁶ However, additional information from the Canadian High Commission in August 2011 noted that:

[t]here have been only four cases of persons having been detained upon arrival of which the Canadian High Commission is aware. Each of these cases involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity. Persons of all ethnic backgrounds are returned either under escort or voluntarily to Sri Lanka daily, and the screening and admission process for all these persons remains the same.⁷

44. The Tribunal is mindful that a number of human rights groups including Amnesty International, Human Rights Watch (HRW) and Freedom From Torture⁸ have provided alternative information regarding the treatment of returnees to Sri Lanka, including failed Tamil asylum seekers, suggesting that they are at risk of serious or significant harm on their return for reason of having sought asylum abroad⁹
45. Of significance, however, is an October 2012 report by the UK Home Office which contests the findings of these reports, noting in particular concerns to the effect that: the allegations in the HRW report were anonymous and provided insufficient evidence; the Immigration and Asylum Chamber, Upper Tribunal noted that the details of the Freedom from Torture, Amnesty International and HRW allegations “leaves much to be desired” and “raise even more unanswered questions about their own efficacy”; upon receipt of further information from HRW, the UK Home Office concluded that “only two of the 13 individuals alleged that they suffered mistreatment following return from the UK and in one of these cases, the alleged mistreatment did not occur until six months after return when the individual was stopped at a checkpoint”; in response to a series of Amnesty International reports claiming

⁶ *ibid*

⁷ Immigration and Refugee Board of Canada 2011, *Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August

⁸ Of particular note, see Amnesty International 2011, *Sri Lanka: Briefing to Committee against Torture*, October, p.9 <<http://www.amnesty.org/en/library/asset/ASA37/016/2011/en/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf>> Accessed 18 September 2012, Human Rights Watch 2012, *Sri Lanka: UK: Halt Deportations of Tamils to Sri Lanka*, 25 February <<http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>> Accessed 10 August 2012; ⁸ Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>> Accessed 17 September 2012; Freedom from Torture 2012, *Sri Lankan Tamils tortured on return from the UK*, 13 September, pp.1-2 <http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf> Accessed 17 September 2012

⁹ According to Tamils Against Genocide, “failed asylum seekers are at risk of persecution upon return simply by virtue of the fact that they sought asylum abroad and also because of imputed political opinion regarding involvement with or sympathy for the LTTE” The group’s May 2012 report on the treatment of failed asylum seekers cited reports from Human Rights Watch, the UK Home Office, Amnesty International, as well as media and other reporting, purportedly providing evidence that “failed asylum seekers are at a heightened risk of torture and arbitrary detention immediately upon return simply on the basis of their status as failed asylum seekers”: Tamils Against Genocide 2012, *Treatment of Failed Asylum Seekers: An Overview of the Persecution Faced by Failed Asylum Seekers Returning to Sri Lanka*, TamilNet, May <http://www.tamilnet.com/img/publish/2012/05/Failed_Asylum_Seekers_SL_May_2012.pdf>

that failed Sri Lankan asylum seekers faced harm upon return, the Upper Tribunal concluded that “they lacked substance”; the report noted an April 2012 UNHCR press release which stated that they “had assisted the voluntary return of 1,728 Tamils in 2011 and 408 in the first quarter of 2012”; an earlier UNHCR press release noted that “UNHCR carries out regular monitoring in these areas and seeks to ensure that returnees receive mine risk education and are included in the food ration lists and become considered as beneficiaries to the many government, UN and other projects taking place to re-establish the lives of Sri Lankans in the North and East of the country”.¹⁰ The concerns of the UK Border Policy Bulletin of October 2012 are also referred to in the more recent report of the IRBC dated 12 February 2013.¹¹

46. While the Tribunal notes the absence of systematic monitoring by the UNHCR of involuntary returnees to Sri Lanka and acknowledges that this places limits on transparency and accountability, that this can be said to support the existence of a real chance of serious harm for a particular reason impresses the Tribunal as highly speculative.
47. On balance, while the Tribunal accepts that the applicant will, as a returnee to Sri Lanka, go through a process which will bring him into contact with the Sri Lankan authorities, the Tribunal is not satisfied, on the evidence before it, that being a returned Tamil failed asylum seeker, singularly or in combination with what is accepted of the balance of the applicant’s personal and family profile, would give rise to differential treatment for a Convention reason, or that the process he faces on returning to Sri Lanka as a failed Tamil asylum seeker involves, amounts to, reveals or gives rise to a real chance of serious harm, either at the airport in Sri Lanka or on the applicant’s return to his home, or at any point in the reasonably foreseeable future in Sri Lanka. The Tribunal notes the UK Home Office observations (see paragraph 46 above) that two of thirteen reported returnees “alleged” that they suffered mistreatment, however the evidence before it is unclear as to the veracity of testing of such allegations as well as the reason or reasons for any mistreatment suffered in the alleged cases, making such alleged cases of little assistance in assessing the risk of harm faced by a returned Tamil failed asylum seeker in the applicant’s circumstances. On balance, based on the totality of the evidence before it, the Tribunal is not satisfied that the evidence reveals a real chance of persecution involving serious harm in connection with the applicant’s unsuccessful application for asylum, either singularly or cumulatively with what is accepted of the balance of his circumstances, in Sri Lanka in the reasonably foreseeable future.

Illegal departure from Sri Lanka

48. The Tribunal has also considered whether the applicant faces Convention linked serious harm in Sri Lanka in the reasonably foreseeable future in connection with his illegal departure from Sri Lanka, ie, departing Sri Lanka for Australia by boat and without a passport, which the Tribunal accepts he has done.

¹⁰ UK Home Office 2012, *Country Policy Bulletin – Sri Lanka*, October, pp1-8

¹¹ ¹¹ Immigration and Refugee Board of Canada, *Sri Lanka: Treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; information on specific asylum cases, including the Tamil asylum-seeker boat that stopped in Togo, the return of Sri Lankan asylum seekers from Australia in 2012, and any cases of voluntary repatriation (August 2011-January 2013)*, 12 February 2013, LKA104245.E, available at: <http://www.refworld.org/docid/51346a1f2.html> [accessed 9 May 2013]

49. Recent information from the Australian Department of Foreign Affairs and Trade (DFAT)¹² appears consistent with reporting from other governments¹³ as well as independent news sources¹⁴, and indicates, in summary, that under standardised procedures which apply to all cases, regardless of a person's ethnicity or the circumstances in which they left the country, returnees are routinely interviewed at the airport on arrival by the Immigration and Emigration Department, the State Intelligence Service (SIS) and the airport Criminal Investigation Department (CID). These processes involve police and security clearances, including checks with the person's local police station and may take some hours. If they reveal outstanding arrest warrants for prior criminal offences, or if there are alerts against the person's name in immigration watch-lists, they may be subject to further questioning. Additional questioning would also be involved if the person were of security interest or if there were evidence of involvement in people smuggling.
50. Under recently tightened procedures those returnees who are believed to have left the country in breach of Sri Lanka's laws on immigration and emigration are arrested at the airport and brought before a court to apply for bail. Bail is routinely given on the accused's own recognisance although a family member is also required to provide surety. If the arrival occurs over a weekend or on a public holiday the returnee is placed in the remand section of Negombo prison and may remain there for some days until a bail hearing is available. Conditions in remand have been described in media reports¹⁵ as being overcrowded, although there have not been reports that returnees held there awaiting bail hearings have been subjected to torture or other forms of deliberate mistreatment. The penalties eventually imposed on returnees by the courts for illegal departure have involved fines ranging up to Rs 100,000.
51. Having considered the information before it, the Tribunal is not satisfied that the treatment faced by Sri Lankan returnees who have departed Sri Lanka unlawfully, either at the airport on arrival, on remand awaiting a bail hearing or when they are later dealt with by the courts, amounts to persecution involving serious harm or gives rise to a real chance of such harm in the reasonably foreseeable future, even when assessed cumulatively with what is accepted of the applicant's personal profile and circumstances in Sri Lanka. Nor is the Tribunal satisfied that the process involves or gives rise to differential treatment for a Convention reason.

¹² DFAT Country Information Report: Sri Lanka, 31 July 2013; (CX234989 of 14 October 2009; CX234202 of 29 September 2009; CX 249694, CX297471 of 19 October 2012, CX304258 of 27 February 2013 and DFAT report 1479 of 4 March 2013)

¹³ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011. A Canadian High Commission official stated that the High Commission was aware of "only four cases" of persons being detained upon arrival. The official indicated that these cases "involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity" (ibid). An article from the *Sunday Leader*, published on 26 June 2011, included the transcript of an interview with Chris Dix, South Asia Regional Director of the UK Border Agency. This interview took place in the immediate aftermath of 26 failed asylum seekers from Sri Lanka being returned from the United Kingdom. In response to a question regarding the monitoring that was conducted by British authorities of persons deported to Sri Lanka, Dix expressed the view that there was no evidence of safety issues on return for deportees: Rutnam, E 2011, 'UK satisfied with Lankan deportation', *The Sunday Leader*, 26 June <<http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/>> Accessed 18 November 2011

¹⁴ See, for example, 'Asylum denied, a penalty waits at home,' Ben Doherty, *Sydney Morning Herald*, 8 December 2012, <http://www.smh.com.au/world/asylum-denied-a-penalty-waits-at-home-20121207-2b0qi.html>

¹⁵ ibid

Conclusions regarding the Refugees Convention

52. Based on all the evidence before it, including the applicant's claimed past circumstances and what is accepted of his current personal and family circumstances and profile in Sri Lanka, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for any of the reasons claimed or arising on the evidence, either singularly or cumulatively. It follows that the Tribunal is not satisfied that the applicant faces a well-founded fear of persecution for a Convention reason in Sri Lanka now or in the reasonably foreseeable future and that the Tribunal is not satisfied that the applicant is a refugee under section 36(2)(a) of the Act.

Complementary Protection

53. It is submitted that, if the applicant is not found to be a refugee, he is eligible for complementary protection. The written submissions made by his representative excerpt an array of general country information including in respect of: prison conditions in Sri Lanka; the treatment of failed asylum seekers and returnees; and Sri Lanka's laws regarding illegal departure and prevention of terrorism.
54. To the extent that the applicant's claims to be eligible for Complimentary Protection in connection with the claimed treatment of failed asylum seekers returned to Sri Lanka, on the basis of the information referred to under "Particular Social Group – Failed asylum seekers and illegal departure from Sri Lanka", including the concerns cited regarding the reliability and detail of reports of harm faced by returnees to Sri Lanka including failed asylum seekers, and the limited insight such reports provide regarding what awaits a person in the applicant's circumstances, the Tribunal is not satisfied that there are substantial grounds for believing that the treatment faced by returned failed asylum seekers, including those who are Tamil males with connections to former LTTE stronghold locations, gives rise to a real risk of significant harm as contemplated by section 36(2A) of the Act.
55. Further, on the basis of independent sources referred to under "Illegal departure", and on the basis that the Tribunal accepts that the applicant will be viewed by the Sri Lankan authorities to be a person who departed Sri Lanka illegally (by boat and without a passport), the Tribunal is also satisfied that he will be questioned by the Sri Lankan authorities at the airport and in consultation with his local police authorities. The Tribunal is not satisfied that he has any adverse profile which will be revealed throughout or in connection with that process. The Tribunal accepts that the applicant may be remanded in prison for a few days in conditions which are cramped, uncomfortable and unpleasant. The Tribunal accepts that returnees are only reported to be held in remand if they illegally departed Sri Lanka and for a short duration of a few days while waiting to be brought before a court to apply for bail, which is routinely given. The weight of country information also indicates the applicant will be subject to a fine but not a custodial sentence for his illegal departure from Sri Lanka, and on that basis the Tribunal considers that the prospect of the applicant being detained for a prolonged period of time to be remote. Further, the Tribunal notes that, despite the large numbers of reported involuntary returnees to Sri Lanka, including Tamils males from Australia and including a large number who departed Sri Lanka illegally by boat, and despite the high level media interest in those returnees, there has been no reporting of such returnees being arbitrarily deprived of their life or the death penalty being carried out on them, or of being subjected to mistreatment including intentional mistreatment involving torture or cruel or inhuman treatment or punishment or the extreme humiliation required for an act or omission to be degrading treatment or punishment amounting to significant harm as contemplated by section 36(2A) of the Act.

56. On balance, on the information before it, the Tribunal is not satisfied that, being a person who has left Sri Lanka illegally, even when considered cumulatively with what is accepted of the applicant's claimed risk profile and the independent sources excerpted by the applicant's representative, involves or creates a real risk of treatment amounting to significant harm as contemplated by section 36(2A) of the Act. Specifically, the Tribunal is not satisfied on the information before it that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, he faces a real risk of: being arbitrarily deprived of his life; the death penalty being carried out on him; being subjected to torture; being subjected to cruel or inhuman treatment or punishment; or being subjected to degrading treatment or punishment for any reason claimed or arising on the evidence, including cumulatively.

CONCLUSIONS

57. 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).
58. 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).
59. There is no suggestion that the applicant satisfies s36(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

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

RELEVANT LAW

61. 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

62. 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 Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
63. 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.
64. 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.
65. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
66. 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.
67. 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.
68. 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.

69. 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.
70. 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.
71. 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

72. 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').
73. '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.
74. 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

75. 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 – to the extent that they are relevant to the decision under consideration.

Independent sources

76. The UNHCR's July 2010 report 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka'¹⁶ states, in part:

These Guidelines are issued in the context of the improved human rights and security situation following the end of the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, and are intended for the use of UNHCR and State adjudicators in the assessment of claims by Sri Lankan asylum-seekers. They supersede the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka and the subsequent Note on the Applicability of the 2009 Sri Lanka Guidelines. The Guidelines contain information on the particular profiles for which international protection needs may arise in the current context. Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. It is important to bear in mind that the situation is still evolving, which has made the drafting of these Guidelines particularly complex...".

77. The most recent version of the Guidelines, issued on 21 December 2012 states in part:

UNHCR has carefully analysed the relevant developments in Sri Lanka since the publication of the 2010 Guidelines, as well as newly available information on the conflict period. All claims lodged by asylum-seekers need to be considered on their merits, according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. UNHCR considers that the risks facing individuals with the profiles outlined below require particularly careful examination, and that they are likely to be in need of international refugee protection, depending on the individual circumstances of the case. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Therefore, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified below. Certain claims by asylum-seekers from Sri Lanka may require examination for possible exclusion from refugee status.

Recent reports have been published detailing exposure to serious violence directed against people from several of the risk profiles listed below, including in some cases mistreatment amounting to torture.

The psychological and physical consequences of past exposure to such experiences in an environment of past prolonged armed conflict, serious human rights violations and military occupation, needs to be appropriately taken into account in the assessment of a claim¹⁷.

... At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the northern and eastern provinces of Sri Lanka.¹⁸⁰ Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection in the sense of the 1951 Convention and its 1967 Protocol.

However, previous (real or perceived) links that go beyond prior residency within an area controlled

¹⁶ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 5 July 2010, <http://www.refworld.org/docid/4c31a5b82.html>

¹⁷ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 21 December 2012, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=50d1a08e2>, p25

by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
- 2) Former LTTE combatants or “cadres”;
- 3) Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;
- 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.¹⁸

78. The 2012 version of the Guidelines identifies a list of general risk profiles which may give rise to a need for protection. That list is not exhaustive:

- (i) persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE); (ii) certain opposition politicians and political activists; (iii) certain journalists and other media professionals; (iv) certain human rights activists; (v) certain witnesses of human rights violations and victims of human rights violations seeking justice; (vi) women in certain circumstances; (vii) children in certain circumstances; and (viii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in certain circumstances.¹⁹

79. Those Guidelines caution that ethnicity and geographical origin may still have some significance:

Within each of the risk profiles described, there is an ethnic dimension to their vulnerability. Whereas persons belonging to the Sinhalese majority may fall within the risk profiles, generally members of the minority Tamil and, to a lesser extent, Muslim communities are reportedly more often subjected to arbitrary detention, abductions or enforced disappearances. Other human rights issues, such as sexual and gender-based violence and violations of housing, land and property rights, also disproportionately affect members of ethnic minorities. In addition to a person’s ethnicity, the place of origin may also be a relevant factor in the assessment of risk.²⁰

¹⁸ Ibid p26-27

¹⁹ Ibid, p5

²⁰ Ibid p26