

0908537 [2010] RRTA 84 (3 February 2010)

DECISION RECORD

RRT CASE NUMBER: 0908537

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: David Dobell

DATE: 3 February 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa three weeks later. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter. 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.
3. The applicant applied to the Tribunal for review of the delegate's decision. 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

4. Under s.65(1) of the Act, of the Act 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.
5. 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).
6. 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'

7. 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.
8. 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.

9. 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.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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

17. 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.
18. From the protection visa application, the applicant is a Muslim who is a Tamil speaker and who also speaks English. He was married five years prior to his arrival in Australia. He was a businessman and was also involved in politics. He has had 13 years schooling.
19. The applicant's passport was issued two years prior to his arrival in Australia and he had no difficulties getting this passport. He left Sri Lanka from Colombo. He has a long history of travel overseas – to several countries and now Australia. The Tribunal notes he has never here before. Of particular relevance, he was in Country B on two occasions a year prior to his arrival in Australia. His passport shows he has a current right to enter Country B on a temporary visa which has not yet expired.
20. As to his family, he has a wife and children still in Sri Lanka. His mother and father still live in Sri Lanka. He has several siblings, none of whom are in Australia.
21. The applicant provided a number of documents with his protection visa application. These were:
 - His birth certificate
 - His marriage certificate
 - An identity card (untranslated)
 - A business card, showing his occupation and giving his license number
 - A Police Information sheet concerning the threatening phone calls received a year prior to his arrival in Australia (in English and Sinhalese)
 - A cash receipt (untranslated)
 - A certificate of Registration for his business (in English and Sinhalese)
 - A business authority license dated the year of his arrival in Australia
 - Financial documents for his company
 - Newspaper articles (online and print) concerning the situation in Sri Lanka (in English and Sinhalese)
 - A statement as to his claims of persecution (The Tribunal will not reproduce this statement here as its contents are much the same as a later Statutory Declaration)
22. The Department interviewed the applicant. The applicant provided a number of documents at this time:
 - A letter from Person A dated the month of the applicant's arrival in Australia, supporting the applicant's claims of death threats and an extortion incident in that same month

- A letter from Person C, the President of a Mosque dated the month of the applicant's arrival in Australia, supporting the applicant's claims of death threats and extortion
- An ultrascan of the applicant's shoulder, dated two months after the applicant's arrival in Australia
- A psychologist report from Person E, dated three months after the applicant's arrival in Australia, indicating PTSD, anxiety, stress and a genuine presentation
- On-line news articles concerning UNP candidates being killed, underworld figure killings, ransoms by abducted businessmen Muslims and election monitoring
- A STARTTS report dated two months after the applicant's arrival in Australia from Clinical Psychologist, Person F, regarding Red Cross assistance

23. From the *Decision Record*, this is what the applicant is recorded as having said at interview with the Department:

- He is a businessman selling to clients in Sri Lanka and abroad; the trade was dominated by Muslims but increasing numbers of Sinhalese are entering it.
- The threatening phone calls began without warning a year prior to his arrival in Australia to his business mobile phone; this number is on his business card and available to many people.
- While he was in Country B his wife received calls on his business phone which he left with her.
- When his parent was alone in the family home they were assaulted by men looking for money; the applicant does not know if there was any connection to the threatening phone calls.
- For eight months prior to his arrival in Australia he continued to receive phone calls demanding money; these were among the many business calls on his mobile. No follow-up action was taken after the demands.
- He did not lodge a complaint with the police until two months prior to his arrival in Australia - although the threatening calls had been going on since the year before - because he was worried about police connection to underworld gangs.
- During the attack when he was robbed two months prior to his arrival in Australia, there were bystanders in the street but none came forward to assist or intervene; apart from being robbed, the applicant was warned not to continue supporting the UNP. He identified both Sinhalese and Muslims among the attackers.
- Although in the same month he was robbed he had visas to Australia and Country B, he did not want to leave his children and his wife who was heavily pregnant at the time. His relative Person G lived in a Sinhalese neighbourhood and often gave money to the local people.
- After Person G was stabbed, the applicant later learned from his wife that Person G gave the names of his attackers to her before he died in hospital: Person G identified them as underworld figures but no action was taken against them.

- When the applicant was abducted he was told that a contract for his death had been given to his abductors; he changed their minds by promising money.
- Since he left Sri Lanka his family has been regularly moving houses to avoid the abductors who have not been paid the last quarter of his significant ransom.
- He fears to return as he and his family could be injured at any time by the abductors or other unknown agents.

24. The Department made its decision and the applicant sought a review with this Tribunal. The applicant's representative wrote to the Tribunal, making a detailed submission and attaching a Statutory Declaration from the applicant and number of newspaper articles on the situation in Sri Lanka.

25. The applicant's Statutory Declaration stated as follows:

1. My full name is [name]. I was born on [date] in Colombo, Sri Lanka. I am a citizen of Sri Lanka and do not have a right of residence elsewhere.

2. I am a Muslim by ethnicity. In Sri Lanka we are called 'Ceylon Moors'. I can read, speak and write in English and Tamil. I can speak Sinhala and read and write it a little.

Education and work

3. I am married. My wife's name is [name]. I have [number] children. They are [names]. My wife and children are in Sri Lanka, now with some of her relatives in [town], in the south of Sri Lanka. I have [number] sisters and [number] brothers.

4. I received my primary education at [College] in Colombo from [year] until [year]. In addition to my education I was also involved in extra-curricula activities and sports. I represented my college in [various sports].

5. After finishing my school I was employed at [company] in Colombo as a [job title] for imports and exports. I worked in this [company] for one and a half years and later on the request and advice of my father I began to help him in his business. My father was a [businessman] and I took over the family business from my father. My father then became a 'silent partner' in the business. My brother [name] is also involved in the business.

6. My father's business was well known and many foreigners used to buy [goods] from him. My father also used to sell [goods] to foreign merchants who came to Sri Lanka to buy [goods].

7. My father bought a house in [town], in Colombo, in [year]. We ran the [business] from an office, about a 30 minute drive from the house in [town].

My family's political involvement

8. My father and other relatives are supporters for the United National Party (UNP). This party has been in politics in Sri Lanka since the country gained independence from the British. UNP was very popular among minority groups such as the Muslims for its policies and secular approach.

9. From [year] until [year] I worked with my father. I had established many contacts with foreign businessmen who were interested in purchasing [goods] from Sri Lanka. In order to expand our business and to sell Sri Lankan [goods] abroad. I have travelled many times to countries such as [countries].

10. After [year] my father and I established a [company] called [name]. I was the managing partner in this business and held 40 percent of the shares. My father thought that he was getting old and it was time for me to take over his business from him and run it. The other 60% of shares are held by three partners, each with 20%. These are my father, my brother [name] and a friend [name].

11. For many years UNP ruled the country. UNP ruled the country from 1977 until 1994 when it lost the parliamentary elections and then the presidential elections in the same year. My father supported the UNP in several ways. He arranged for printing of posters for elections, he helped canvassing and he attended meetings of the party.

Threats against me because of my political activities and because I am a Muslim businessman

12. After the parliamentary elections in 1994, a group of people came to our house in Colombo and shouted things like "we are going to kill the UNP'ers in this house". These people were very drunk and were supporters of the opposition PA. My parents were very scared as they had many children including myself at the house. Whilst the thugs were still shouting in front of our house my father telephoned [name], who was a minister in the UNP government. When he came all the thugs ran away. [name] came with a person called [name].

13. I had first met [name] when I was at High School in [college]. This is a Muslim school in Colombo. [Name] is several years older than me but I remember him from school and we played [sport] together.

14. After the 1994 incident, [name] came to our house often and asked whether everything was ok. People in our neighborhood knew very well that my father and our family were strong supporters of the UNP because they would see [name] visiting the house. My father has also met the former UNP leader [name] several times. Whenever there were elections in Sri Lanka my father would print posters on his money and distribute to supporters of politicians. My father thought that this is a better way of supporting the UNP rather than simply giving money to the party.

15. [Information deleted under s.431]

16. UNP won the 2001 general elections and came to power. The UNP government made a peace accord with the LTTE with the assistance of the Norwegian government We welcomed the peace accord. However in the 2004 UNP lost elections. A new PA government came to power.

17. I remember that from 2006, there were reports that many Muslim businessmen were abducted and a number of them were killed. A very large ransom was also taken from these businessmen, even from those who were killed. It was suspected that some members of the security forces with the assistance of politicians from PA were involved in these killings and abductions.

Threatening telephone calls

18. After returning from [country] in the end [month, year] to Sri Lanka I received several threatening telephone calls. When I looked at the number on my mobile phone, it had the digits [number] at the start. This was commonly the code for calls from [country]. Sometimes there was no number and all it listed was 'private number'.

19. I remember on one call, a man spoke to me in Sinhalese. He said that I should pay [number] Million Rupees immediately. He said that I will be killed if I do not pay that money. I was very worried. I tried to ask him 'who are you' but did not allow me to speak. He hung up.

20. After that initial call, I received calls from that number quite often. When I answered that same voice said that my whole family will be killed. These telephone calls came frequently. When I told my wife about these phone calls she became very scared and told me that we all should go to her family's home area, [district], and live there for some time. Even after going to [district] I still received these threatening phone calls.

21. Later I tried to avoid answering these phone calls if I did not know the number calling me. While I was in [district] one day, my [parent] telephoned and said that a group of [number] men came to the house in search of me and verbally abused [them], assaulted [them] and then left the house. I asked [them] who these people were. My [parent] said that these people were not locals and it seemed that they had come from somewhere else. I asked my [parent] and family to come and live with us in [district].

22. In the meantime, in [month, year], I had to travel to [country] and [country] for business. After I left for [country], a group of [number] people came to our [district] house at the address [street, suburb, district], and threatened my wife, demanding she pay [number] Lakhs Rupees. She told them that I deal with the money and they should ask me. That group found out that my family was now living in [district]. They told my wife that they had known where I had gone to. When I rang from [country] my wife wanted me to come immediately. I finished my work and returned to Sri Lanka as soon as I could.

23. When I came from [country] I was very worried. The threatening phone calls continued. I became afraid to stay in [district] and moved back to Colombo with my family in [month, year].

24. I met with [name] I told him what had happened. He said that many Muslim businessmen who supported the UNP have been kidnapped and large sums of money have been taken from them. He said that some businessmen have even left Sri Lanka because of this problem. He said that I should work for him and this would give me more security.

25. I thought that if I worked for [name] I could be safer to some extent. I started meeting with him very often. I thought that if I go to him and work with him closely I will be safe. I was scared to go to police and inform about the incident. I feared that the people who extorted money might even have connections with the police. At that time there were rumors in the country that members of the security forces were also involved in this kind of abduction and extortion. There was also talk that some politicians were also involved.

26. In Colombo I received more threatening telephone calls. I was planning to travel to [country] and [country] but I could not travel as my wife was expecting a baby and I did not want to leave her at this time. As the threatening telephone calls continued, I became more fearful. I spoke to [name] about this. He asked me to make lodge an entry (complaint) with the police. I went to [place] police station and lodged a complaint on [date] I was very scared even though I had made a complaint to police. However the phone calls continued.

[Year] *elections and further threats*

27. [Name] was contesting the [year][district] elections in Colombo District. He came to our house very often. I helped donate money to support people in the area as part of the promotion for [name].

28. On [date] I was travelling home after work. It was night at about [time] A group of people at [town] junction stopped [me and stole] cash and there were [goods] worth about [a large number] rupees. They took them all. They said that if I support [name] or the UNP I will be killed. One of them very close to me and said: `Do not try to be very smart. This is our country and our area. There is no place for UNP here. If you do not stop working for the UNP

your family will not see your body. They said that I should be very careful and not to disregard their warning.

29. I was very upset when I came home that day. I did not want to tell my wife as she was pregnant. I went and saw [name] and told him. He said that I should be very careful and not to travel alone. During this time he was very busy and the [district] elections were approaching. The threatening phone calls continued to come to my hand-phone. Once when I was with [name] a phone call came and I handed the phone to [name]. He began to speak. From his face I realized that he was listening to threats.

30. Although I had the visa to travel to Australia I was not willing to leave my pregnant wife and children. With violence and threats against the UNP candidates and supporters the [district] elections took place. In the elections [name] won.

31. On [date], I was with a relative of mine, [name], who was a [businessman]. We were at his house in [town], near to [town]. His [relative] was married to my [relative's] sister. He was also a strong UNP supporter. Whilst I was there, a group of [number] people entered his house and asked for money. [Name] had an argument with them. Then one of them stabbed him to death. After stabbing him one of them tried to drag me by my collar. I became very fearful and ran away from his house. I managed to escape and ran to my house, which was close by, less than [number] km.

When I was kidnapped

32. After the elections I thought that the problems I had will be over. I was wrong. Very soon after the elections, on [date] I was abducted near my [town] house in the night by [number] men. They blindfolded me and took me into a house and kept me for [number] days. They beat me and verbally abused me. From what they spoke to me I realized that some of them were Tamil people. There were Sinhalese people also among them. They said that is never listened to what they warned me of and I am going to face the consequences. I really thought that this was my end. I did not think that I will be able to escape alive. I kept on begging them to release me.

33. They said that if they release me again would I work for the UNP. I said no and to please release me as I had a wife and children. Finally they agreed to release me if I paid [number] Lakhs Rupees ([number] crore). They said that they had warned me several times not to work for the UNP but I still did work for the UNP I was so afraid that I cried. To get this money I had to sell my house which I did not want to do. I cried and finally said that I will pay [number] Lakhs and the rest I will pay within [number] months. They agreed with this [number] month delay.

34. I contacted my wife and explained the situation I was in. My wife spoke to her father and he arranged the money to be collected from our [town] house. My wife's [relative] was wealthy and he and my relatives collected money from family and friends. Some of the kidnappers went my house and collected the money the next day. After that I was released as they drove me along and pushed me out of the van. They took the blindfold off before they pushed me out and the van drove off. I saw that I was near a [shop], maybe around [number] metres from my home.

35. After this incident I was very scared. I made up my mind to leave Sri Lanka I realized that my life was in grave danger and definitely they are going to kill me after taking all my money. My wife was also very scared. She decided to take the children to [town], south of [district], to her [relative's] house. I decided to flee Sri Lanka as my life was in danger.

36. My brother [name] also had problems. My brother had come with me to support [name] on the campaign. My brother also helped in the printing of the posters for the election.

37. I recently tried to call my father, then brother but no-one answered. I then spoke to my sister and she told me my brother is now in [country] and my parents had gone to [country]. My sister told me that on [day, month], late at night, several uniformed and armed men came to our house in [town] and asked for me. My [parent] answered the door and these men showed a photograph of me, asking where I was.

38. My [parent] said [they] did not know and one of the men pointed a gun at my [parent] and my [parent] fainted. My brother came and was questioned by these men who were asking for me but my brother said he did not know where I was. My brother was assaulted by these men and they said they would come back and made threats against my brother. After this happened, my brother arranged a visa to leave and he went to [country]. My parents arranged a visa for [country] with [number] of my [immediate family] but they could only stay there a short time and have now had to return to Sri Lanka.

Why I am afraid to return to Sri Lanka

39. I am seeking political asylum in Australia as my life is in danger in Sri Lanka because of the support and work I did for the UNP and for [name] I also fear I am targeted because I am a Muslim and a Muslim businessman. I do not believe I will be protected as some of those doing the kidnapping and threats are also involved in the security forces.

...

26. Six months after the applicant's arrival in Australia, the representative provided a psychologist report from a Psychological and Consultancy Service, dated two weeks prior.
27. From the statement and Statutory Declaration of the applicant, the Tribunal has made the following abbreviated history of his claims:

Year before applicant's arrival in Australia

- Applicant started getting calls regarding the payment of money and death threats were made
- The following month applicant travelled overseas – His home in District H was searched
- Six months later he moved back to Town D, Colombo
- The same month he got more threatening calls - was going to travel overseas but did not

Year of applicant's arrival in Australia

- Gets Australian visa
- Three days later reports extortion attempts from previous year to police
- One week later is robbed
- Same month he met and worked with Person A of the UNP Party
- Following month - stabbing /killing of relative
- Following month - his abduction
- Ten days later - his departure from Sri Lanka

28. The Tribunal notes from independent country information that the UNP was in power in Sri Lanka from 1977 to 1994 and then from 2001 to 2004. President Mahindra Rajapakse of the

United Freedom People's Alliance (UFPA) came to power in elections in November 2005. New presidential elections were scheduled for 26 January 2010.

29. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. The applicant was represented in relation to the review by his registered migration agent.
30. The Tribunal noted that the applicant had made a promise to tell the Tribunal the truth. The applicant was advised that in considering his evidence, the Tribunal must come to a conclusion as to whether he is being truthful in his claims of persecution. The Tribunal also advised the applicant that it was important that he was truthful in all aspects of his evidence and that, if the Tribunal did not believe him on one matter where he may have been untruthful, that may lead it to doubt him on other matters which may possibly be true.
31. The applicant said that he had no assistance in preparing his protection visa application. He said he sought assistance from a migration agent later. He confirmed that the contents of the attached statement were true and correct. He also confirmed that the contents of the Statutory Declaration prepared with the assistance of his migration agent were also true and correct. As to whether there was anything he wanted to modify or clarify in those statements, he said 'no'.
32. The Tribunal asked for an overview of the applicant's fear of harm. The applicant said that if he returned to Sri Lanka they will definitely kill him. They will catch him at the airport. As to who will do this to him, the applicant said it will be those people who were politically influential with officials at the airport, or the police. Once his passport is entered into 'the system' they will know that he has come back. He said that they are looking for him at present.
33. As to why they will do this to him, the applicant said that he helped the UNP in the Local District elections this year. He said he had gone distributing posters, working amongst the poor peasants, had helped with marriage ceremonies and with polio injections. He said that where he lives is full of opposition party members nearby. The applicant said that two months prior to his arrival in Australia those in power sent thugs to harass him and to make sure that they would not win the election.
34. As to whether there were any other reasons why he feared harm, the applicant said this was the main reason. The Tribunal said to the applicant that in his statements he had raised being a Muslim and also the fact that he was a Muslim businessman. He agreed but said it was mainly because of his support for the UNP.
35. The Tribunal asked the applicant whether he was just an ordinary member of the UNP. He said his grandfather had been involved as well as his father but they were supporters, not members of the party. If they had been members, they would have been killed long ago. The Tribunal said it was getting at whether he was a leader of the party. He said that his family are not officially but they are looked upon as leaders, given their long involvement and the respect they have.
36. The Tribunal asked whether he was suggesting that *every* UNP supporter was at risk. The applicant said that he was a member of a small group of people whom he gave great support to Person A.

37. The Tribunal asked the applicant how he knew that he was currently at risk of harm. He said that three months after his arrival in Australia the authorities came to his house to arrest him.
38. As to whether there were any other reasons he feared harm, he said a businessman in Sri Lanka cannot hide for very long.
39. The Tribunal then asked the applicant about his family in Sri Lanka. He said he had talked to his father, his brother and his sister since he left. It was his sister who told him of the events of the authorities visiting his house. She said that a small group of army people and other men came to his parent's house in District H.
40. The Tribunal asked the applicant when he last talked to his wife. He said this was five months after his arrival in Australia and that she was living in Town I at the time. He said she has lived in around 10 places since he left and is living 'on the run' with their children. He said that when she called him, she told him that people nearby had been taken away in a van and so she was moving to another town.
41. The Tribunal asked the applicant why his wife was at risk. He said that a large amount of money had been given by his wife to the kidnappers and he was not there and they are harassing her and want to take revenge and harm her. The Tribunal asked for clarification as to whether it was for revenge or for the money that they were looking for him. He said they want to harm her because they want to get him.
42. The applicant said that he had talked to his wife on two other occasions; the first just after he arrived here and the second was about two months ago. She does not have a phone and rings him. He said he gave his phone number to his brother, who then gave it to his wife.
43. The Tribunal asked when the applicant spoke to his brother. He said he only spoke to him once, 10 days after he arrived here. The Tribunal asked whether he had tried to ring his brother again since then. He said he had not. The Tribunal asked why not, given that his brother may be able to provide information about the welfare of his family. He said he was more worried about his children and didn't want to ring him and did not have that much money to be able to ring.
44. The Tribunal asked the applicant when he spoke to his father. He said he has spoken to him twice, a while ago. The applicant then mentioned that he spoke to his sister on a date three months after his arrival in Australia. The Tribunal asked the applicant to clarify this, as it understood that the event described occurred on the same date as well. He said that the event occurred on that date and he spoke to his sister later, some 10 days later.
45. As to whether he owns any property or assets now in Sri Lanka, the applicant said he owned nothing there. As to what happened to his house, he said he transferred this back to his father for his sisters. He said that it was to be given to his sisters when they married. As to the whereabouts of his brother, he said he had gone to Country J, but did not know where he was now.
46. As to when his brother was in Country J, the applicant said that when he spoke to his sister three months after his arrival in Australia, his brother was preparing to go to Country J. He does not know if he is still there but agreed that it was likely his brother would ring him if he was. As to why he went to Country J, he said he did not know. He thought it would be more likely that he would go to another country.

47. As to his parents going to Country K, the applicant said they went with his siblings but his mother got yellow fever and they had to come back to Sri Lanka. The Tribunal asked why they would return there if they were at such risk of harm. He said that the Country K government only let them stay there for a short while and his mother was not very stable mentally. He said that they were targeting him and his brother rather than his parents.
48. The Tribunal referred to the applicant's statements and said that it would appear that the risk to his brother was the same as to him. The applicant said that his brother came with him on the campaigns. He said that when the army came to his parent's house, they attacked his brother. It was only when his mother said that the other son would come back (him) that they spared his life, otherwise his brother would have been taken away.
49. The Tribunal said that this did not make sense to it. It said that if they were both involved in party activities it would expect that they would want to harm his brother in the same way that they wanted to harm the applicant. The applicant said that they came to the house to attack him. He clarified that he was living with his parents prior to leaving for Australia.
50. The Tribunal explored this point further with the applicant. The applicant said that he was the main supporter of the UNP and that his brother would only accompany him a few times and he was not the main target.
51. The Tribunal then asked the applicant about his business in Sri Lanka. He said that their business was going down and that he obtained his share of the business. The applicant confirmed he had a 40% share of the business and the Tribunal asked how the business was divided upon his exit. He said that he just took 40% of the goods. He said he converted the goods into money to pay the large ransom.
52. The applicant then referred to the event when he was robbed and goods were stolen including a large amount in cash. The Tribunal noted that this occurred two months prior to the applicant's arrival in Australia and asked whether he had already sold his business share by then. The applicant said that those goods stolen belonged to the business. The Tribunal said that this did not make sense to it. He then said that he gave the goods from his share of the business to a friend to keep in safety in Colombo.
53. The Tribunal asked the applicant when he made the decision to leave Sri Lanka permanently. He said this was a week prior to his arrival in Australia.
54. The Tribunal referred to the applicant's statement and noted that he had stated that he had sold his house to pay the large ransom, rather than getting this money from selling his business. He said this was what he had said he would do to the abductors to convince them to let him go.
55. The Tribunal asked the applicant when he received his share of the business. He said he could not remember. The Tribunal noted that he left for Australia on a specific date and he said that it was some time during the week before his departure.
56. As to the money that was given to the abductors, the Tribunal asked whether the applicant still owed them money. He said he had promised to give them a second significant amount within a few months of them getting the other money. He said he gave the first amount a week prior to his arrival in Australia. The Tribunal noted that he did not decide to leave Sri Lanka until that same day so would not have had his business share to pay the abductors by

then. He said that he actually borrowed this money from his wife's relative, who is rich, and repaid him. The applicant said that he did not pay the second amount. As to whether they tried to collect the money, he said he did not know and that it may have been what occurred during the incident three months after his arrival in Australia. As to where his wife was on that date he said in Town I. The Tribunal asked whether his wife had reported to him that those people had asked her for the money. He said she had not and that she was living in fear.

57. The Tribunal noted that all the events that occurred during the year of his arrival in Australia related to money and wealth -- the robbery, the death of his relative and his abduction and ransom. The Tribunal did not see how his UNP support was connected to this. The applicant said that when he was abducted, they showed him several photos of supporters of the UNP, who were all dead, and the last photo was of him. He said they told him they had been contracted to kill him and he knew that his life was at stake. He said they hit him and thrashed him and tied him to a chair and would not give him any water and made him drink his own urine. He said he was in pain such that they should kill him as he did not want to be in any more pain. He then pleaded with them and convinced them to let him go if he gave them the money. He said that some of them wanted to kill him straight away. He said that at this time, his newborn daughter was very young.
58. The Tribunal explored whether this abduction was for the purposes of obtaining money or for political purposes. The applicant said that he was a prominent businessman and was known to be a strong supporter of the UNP.
59. [Information deleted: s.431]
60. The Tribunal asked the applicant why he chose to come to Australia rather than go to Country B to seek protection, given that he also had a valid visa to enter there. He said that he had been to Country B a year prior to his arrival in Australia and on many occasions and he said he did good business there and there were many other Sri Lankans there also. He then gave an example of an incident where Sinhalese Sri Lankans were mad at him for allegedly taking their clients away. He said he feared that these Sinhalese may have him killed in Country B. He said that it was very easy to buy a gun there in Country B. He said he had never been to Australia so thought it might be safer from that point of view.
61. The Tribunal asked the applicant whether he had any difficulties leaving Colombo airport when departing for Australia. He said he had none. The Tribunal asked why he was now at risk on his return to the airport if he was not at risk there when he left. He said that they only knew three months after his arrival in Australia that he was still alive. He said they wouldn't have known that he was alive when he left the airport. The Tribunal said that, surely the officials would have known he was still alive when he left Colombo on his own passport. He again said that when he left, they would not have been aware that he was not killed as instructed.
62. The Tribunal suggested that if he had been placed on an airport 'watchlist' now, then surely he would have been placed on one when the order was given to kill him. He said that the contract to kill him was issued a week prior to his arrival in Australia and a couple of days later they would have thought that he was already dead and would have 'closed the chapter' on him. He said it was only a week later that he left and that the information would not have gone onto the computers so soon.

63. The Tribunal then explored the political aspects of the applicant's claim. The Tribunal noted first of all that there was a Sri Lankan presidential election in January 2010 and asked whether he would still be at risk, should the UNP candidate, General Fonseka, be successful. He said that the risk to him wouldn't change as he had already been targeted to be killed. The Tribunal asked why this would happen if he was a UNP supporter. He said he would be 'too distant' from the President to be helped by this.
64. The Tribunal said it was not a matter of 'distance'. The Tribunal said that independent country information suggested that police and other officials would follow and conform with the party in control at that time. He said that who is in power is immaterial.
65. The Tribunal noted that Parliamentary elections were also due in April 2010 and asked the applicant whether he was saying that even if the UNP won both elections that he would still be at risk. He said that those people who had been asked to kill him would not let him go free. The Tribunal said that it found it highly plausible that these people would still proceed to kill a prominent supporter of the party that is in power at that time. The applicant said that they had been given a direction and would carry it out and they are not concerned about who is in power, only about the contract to kill
66. The Tribunal then discussed the delay in the applicant reporting the harassment in the year prior to his arrival in Australia to the police. It noted that the harassment began early that year but he only reported it to the police two months before his arrival in Australia. He said he was not sure that he trusted the police and that they all worked hand-in-hand and he was not sure if they would harm him. As to why he did report it, he confirmed it was because Person A advised him to.
67. The Tribunal then asked why the applicant would place himself at greater risk by getting involved in the UNP and with Person A, if he had been told by Person A that many Muslim businessmen who were supporters of the UNP had already been abducted. The Tribunal noted that this was consistent with the independent country information which suggested that many Muslim businessmen were abducted in the years leading up to his arrival in Australia. The applicant said that his grandfather and father had been involved with the UNP and so he was also. The Tribunal said that this did not explain why he would place himself at greater risk at that time. He said that he thought he would be safer working closely with Person A and that Muslim businessmen did not have a choice in the party that they would support and would have to support the UNP.
68. The Tribunal then ask the applicant why, as a successful Muslim businessmen, he was not abducted in the years leading up to his arrival in Australia. He said that this was because he was only working for the UNP through his father and did not openly support the party until the year of his arrival in Australia. He said he had been involved with the party for over 15 years and that in the year of his arrival the opposition wanted to win and organised thugs against them.
69. The Tribunal asked the applicant to consider the logic of the following: the applicant was not an active supporter of the UNP before the year of his arrival in Australia, the applicant went to Person A for help with harassment problems he was having. Person A told him that prominent Muslim businessmen who were supporters of the UNP were being abducted, yet the applicant chose to place himself at greater risk by being an open and prominent supporter of Person A and the UNP. The applicant then said that Person A asked *him* for help with the campaign and also said that he would offer him protection.

70. The Tribunal referred to the applicant's statement and examined it to see whether it supported the applicant's present contention. The Tribunal noted that it said that the applicant went to Person A for help but it was not clear from the statement or Statutory Declaration as to whether he was asked, or offered to help, in the political campaign.
71. The Tribunal then referred to the letter from Person A dated the month of his arrival in Australia. The applicant said that he got this letter from Person A prior to leaving Sri Lanka. He explained to Person A that he was leaving Sri Lanka but could not remember whether he had told him he was going to Australia. The Tribunal asked the applicant whether it was all right to ring Person A on the number on the letterhead and he said it was alright. As to whether he had been in contact with Person A since he left Sri Lanka, he said 'no'.
72. The Tribunal had no further questions. The applicant had nothing further to say. The representative said that he would like to make a written submission within 14 days. The Tribunal granted this time to provide a submission.
73. The Tribunal also noted that if it was thinking of making an adverse decision it would write to the applicant about this.
74. After the hearing the applicant's representative wrote to the Tribunal as follows:

I refer to the above matter and make the following submissions. Early in the hearing, [the applicant] was asked about the reasons for his fears and he seemed to discount the issue of the fact he is a Muslim businessman as a ground. I am instructed that this was not his intention, as he viewed the political problems to also cover the claims on the basis as a Muslim and Muslim businessman because many Muslims support the UNP or other opposition parties.

This behaviour consistent with issues raised in the report of [name] of [date] where on the second last page she notes under heading 5 'Mood', that he 'was very tense at the beginning of the consultation, however he gradually relaxed.'

It is submitted that this is also how he presented at the RRT hearing and that is why he answered the question ambiguously. He later referred to problems for Muslim businessmen who were targeted, which is consistent with this claim being ongoing.

In relation to what may happen with a change of government at the forthcoming election, it is submitted that it is difficult to make submissions of what is really speculation as the country information is also speculative. In such a situation, it is submitted that the current information ought suffice to support the well-foundedness of the claims.

In the alternative, the following are comments about the forthcoming. The main candidates for the election of president are Mahinda Rajapaksa and Gardihewa Fonseca - both are Sinhalese and have relied on support from extremist Sinhalese groups such as JVP in the past. Any comments must be subject to the caveat that historically elections in Sri Lanka have been marred by violence and political recriminations.

The UNP has not been in political power since 2004 and in the last 5 years, the current government has secured its position as well as appointed its people to important positions. Even a change in government would not mean that there is an automatic change in the attitude of those who have used criminal gangs to target their political opponents, as such people may be at risk of prosecution and they are unlikely to willingly cede their power.

If Fonseca wins, this will be a new situation, a former general in charge politically. This has not happened before in Sri Lanka and it is not clear how the military will react and how those

who currently have power would be treated. Given the success of the military and the current government, it is unlikely that there will be much change in the political environment and as such, people in the position of the applicant will remain at significant risk. It is submitted that no significant adverse inferences can be drawn on such a speculative situation.

There are a number of reports of targeting of Muslims by Sinhalese extremists and lack of police protection for Muslims, as most of the police are Sinhalese.

This supports the fears of the applicant. He has experienced persecution in the past, and has a real chance of experiencing it again for any one or combinations of factors. These are due to:

- race/nationality/religion - Muslim
- Political opinion - UNP supporter
- Particular social group - Muslim businessmen

It is submitted he meets the refugee criteria for 'protection obligations' as required by s36(2).

...

75. After the January 2010 elections, the applicant's representative faxed to the Tribunal information showing that Mr Rajapakse had been returned as President of Sri Lanka. He also attached an Amnesty International Press Release dated 2 February 2010 concerning the elections.

INDEPENDENT COUNTRY INFORMATION

Summary

76. Sources indicate that Tamil businessmen, and later Muslim businessmen, were abducted for ransom especially in 2006 to 2008. A large number of Muslim businessmen were abducted for ransom on 2007. Recent information indicates that abductions for ransom have lessened since this time, but are still occurring.
77. Sources indicate that there have been both financially and politically motivated cases of abductions, and that sometimes the two elements are related. DFAT states that anecdotal evidence and media reporting suggest that the majority of abductions in Colombo are criminal based, sometimes on the instructions of politicians.
78. Political violence at a local level between supporters of different political parties is common in Sri Lanka, especially around election times. Sources indicate that, generally speaking, it is more likely that the police will side with the party in power and that supporters of the opposition party are particularly vulnerable to becoming victims of electoral violence.

Details

The abduction and ransom of businessmen

79. Over the period 23–29 August 2009 the UK Home Office undertook an advice gathering exercise on the situation for Tamils in Colombo since the conflict ended in May 2009. Sources include Sri Lankan government officials, NGOs, UNHCR, the Australian High Commission, the Embassy of Switzerland and the International Organization for Migration. The subsequent report provides information on, among other things, abductions and

disappearances since June 2009. In regard to whether there had been any reports of abductions or disappearances in Colombo since that time, the sources differed. Many said that there had been no recent reports, or at least no reliable reports. The representative of the Swiss Embassy in Colombo states that “there was an overall impression that abductions, especially in Colombo, had reduced significantly compared to [previous years]” It was noted by one source that there were fewer and fewer publicly reported cases. The sources did indicate that abductions for ransom were still occurring.

80. In March 2008 Human Rights Watch (HRW) released a report on disappearances and abductions in Sri Lanka. The report states that many of the victims of abductions in Colombo (and other districts) were Tamil business owners. Twelve were murdered, five released after the payment of large ransoms, and 51 were still missing at the time of the report. The report states that: “Initially business owners victimized in the abductions were predominantly Tamil, but in 2007 Muslim businessmen were also targeted. According to media reports, in May 2007 more than a dozen Muslim businessmen were abducted. Some were released after paying ransoms ranging from 30 to 100 million SLR (US\$ 300,000-1,000,000). These abductions have created an atmosphere of fear and panic among the Tamil and Muslim business communities”.
81. The 2007 USDOS human rights report likewise states that “In addition to politically motivated abductions, there were dozens of kidnappings for ransom, with payment demands ranging from \$20,000 (2.25 million rupees) to \$750,000 (60.6 million rupees). Although initially the problem appeared limited to the Tamil business community, in June and July dozens of Muslim businessmen were kidnapped for ransom, the vast majority of whom were released after ransom was paid. However, less than half of Tamil businessmen kidnapped for ransom were released after the ransom was paid.
82. The latest USDOS human rights report (for 2008) does not report any incidents of abductions of businessmen in Colombo or elsewhere.

Whether this is connected with political beliefs and or political parties

83. On 14 October 2009 the Colombo post of Australia’s Department of Foreign Affairs and Trade (DFAT) provided advice with regard to, among other things, the security situation in Colombo. According to DFAT, “Anecdotal evidence and newspaper reporting suggest that the majority of abductions in Colombo are criminal based, sometimes on the instructions of politicians”.
84. The August 2009 UK Home office fact-finding mission report also looks at the incidence of ‘politically motivated’ disappearances compared with abduction for ransom. The sources consulted generally concurred that there was often a combination of political and financial reasons. The representative of the Swiss Embassy in Colombo also said that “sometimes denouncement and personal revenge could also play a role” The UNHCR Protection Officer mentioned reports of cases of extortion faced by Muslims. The relevant extract follows:

What is the incidence of ‘politically motivated’ disappearances compared with abduction for ransom/money?

3.15 The senior intelligence official said that some abductions were for ransom and the police was taking action to curtail this. He could not comment on political motivation.

3.16 The Human Rights Activist said that it was either for political reasons or for ransom. He could not say exactly in what proportion, but had the impression that recent cases seem more related to 'commercial reasons', i.e. for ransom.

3.17 The representative of the Swiss Embassy in Colombo said there were cases where there seemed to be a strong political motive; where media, human rights or political activities were involved. But there often seemed to be a mixture of both elements. Sometimes denouncement and personal revenge could also play a role. As for Colombo, the Embassy knew only about a few cases that were reported. The Swiss Asylum Section had the impression that detentions resulting from regular checks and cordon operations were not always due to investigations against terrorism, but also driven by the security forces' desire to get money. Some inmates had told the Asylum Section that, for whatever reason, the number of suspects in the cells remained the same.

3.18 The UNHCR Protection Officer said there were some politically motivated cases such as the well-known cases of some journalists. Reports of cases of extortion faced by Muslims were also mentioned.

3.19 CPA said that there had been one of two cases of businessmen. Those in a particular form of work, media personnel are targeted, probably more than those abducted for ransom. In June 2009 there was a case of a media-related person who was abducted and later dumped somewhere in Colombo.

3.20 The former Chief Justice, Sarath Silva, stated that there had been both money related and politically motivated cases, sometimes the two elements were related.

3.21 Professor Wijesinha said that abductions for ransom still happened. Officials were sometimes found to be involved in such abductions and so were members of some paramilitary groups, but not necessarily acting officially or on instructions from such groups. More frequently they were acting in connection to criminal elements.

3.22 Mano Ganesan MP was of the view that most disappearances were politically motivated, adding that they did not occur in Colombo Ransom abductions occurred but it was more likely to be just intimidation, demanding protection money.

85. The 2008 HRW report states that there is evidence of involvement by non-state armed groups and local security forces in the abductions for ransom of Tamil and Muslim businessmen. The report states: "Particularly in Colombo, and in the eastern districts...the lines between politically motivated 'disappearances' and abductions for ransom have blurred since late 2006, with different groups taking advantage of the climate of impunity to engage in abductions as a way of extorting funds. While criminal gangs are likely behind some of the abductions, there is considerable evidence that the Karuna group and EPDP have taken up the practice to fund their forces, while the police look the other way".
86. A 2007 International Crisis Group report on the human rights crisis in Sri Lanka discusses the surge in abductions of Tamil and Muslim businessmen for ransom. The ICG report states that "there is widespread concern in minority communities that the abductions are part of a broader plan by Sinhalese extremists to drive Tamils and Muslims out of key economic sectors". The report also states that "the police have not followed up any leads provided to them". The relevant extract follows:

The reliance on paramilitaries to fight the government's war, while refusing to pay them for it, has blurred the lines between political and criminal violence. What may have started out as an attempt to establish an extra layer of militant taxation or undermine LTTE taxation

networks has descended into increasing lawlessness and insecurity for all minority businessmen. Any rich entrepreneur from the Tamil or Muslim communities is now a potential target. In May 2007 there were reports of more than a dozen Muslim businessmen abducted for ransom. Some were reportedly released after paying 50 million SLR (\$500,000).

Although this may indicate a general descent into criminality from earlier, more politically motivated abductions, there is widespread concern in minority communities that the abductions are part of a broader plan by Sinhalese extremists to drive Tamils and Muslims out of key economic sectors. A Tamil lawyer claims that “there is a more subtle targeting of Tamil business now than in 1983. Now they are snuffing out the economic lifeline. What they failed to do in the 1983 riots, the JHU and the JVP together, with the help of security forces, are succeeding in today.”

Certainly many Tamil businessmen have left the country, deciding it is too risky to remain in Colombo. There is no protection in these cases: the police have not followed up any leads provided to them.

Whether supporters of the UNP are treated as the applicant has claimed

87. As noted previously, sources indicate that there are a variety of motivations, both political and financial, behind the abductions occurring. Some recent media reports of the abduction of UNP supporters were found.

Political violence at a local level between supporters of different political parties is common in Sri Lanka, especially around election times. A paper on electoral violence in Sri Lanka was presented at the September 2008 conference of the Swedish Political Science Association (SWEPSA). The paper looked at general information on electoral violence in Sri Lanka and also presented a case study on a village in the Kandy area. The paper states that “[v]iolence has become a recurring phenomenon at election times in Sri Lanka” The paper made the following findings on electoral violence in Sri Lanka: “the main perpetrators of electoral violence have been the established parties, the SLFP and the UNP”; “generally speaking it is more likely that the police, judiciary and election commissioner or commission will side with the party in power”; “supporters of the opposition party are particularly vulnerable as to become victims of electoral violence”; and: “Local elites stand a better chance of protecting themselves from violence, than the common activists”.

Current situation

88. Media articles report that the UPFA government has been riding a high popularity wave in Sri Lanka following the defeat of the LTTE in May 2009. Currently the UPFA is in power at a local level in most of the country, following wins in eight provincial elections held since last year, including in the Western Provincial Council elections held in April 2009 (although in some Colombo electorates the UNP defeated the UPFA).
89. While there are continuing reports of election-related political violence between party supporters it is difficult to accurately assess the current treatment of UNP supporters generally. UNHCR notes that there is a “prevailing intolerance of dissent” However, recent human rights reports do not address the situation of opposition supporters generally.

2010 Presidential Election outcome

90. Presidential elections were scheduled for 26 January 2010. The united opposition, including the UNP, have chosen General Fonseka, the former chief of defense staff who resigned in November, as the Presidential Candidate to run against incumbent popular president Mahinda Rajapaksa.

91. As to the outcome, the following article comes from the ABC on-line news service:

Tension escalates after president wins Sri Lankan election
By South Asia correspondent Sally Sara

...

Political tension is escalating in Sri Lanka after incumbent president Mahinda Rajapakse was declared the winner of the country's bitterly-fought presidential election.

Opposition candidate General Sarath Fonseka has announced he will challenge the result and says members of the government are behaving like murderers.

General Fonseka spent almost 24 hours holed up in a hotel, surrounded by troops who claimed that he was being accompanied by army deserters.

He said it was time to "do or die" as he accused the government of attempting to take away his police security guards to clear the way for his assassination.

"There is no democracy here. The government is behaving like murderers, not taking responsibility for security," General Fonseka said.

While the troops prowled outside the Cinamon Lakeside hotel, foreign guests inside were almost oblivious to what was going on.

Upstairs, the general's wife and daughters were pleading for international help.

Eldest daughter Ansara Fonseka says the family is finding it hard to deal with the level of intimidation from the government.

"We have never been in this situation before. And we didn't think our own people would do this. I'm sorry, I'm sorry," Ansara Fonseka said.

She says she is not surprised by the intimidation: "Nothing is surprising in this country."

But the government says General Fonseka is being dramatic and his safety is guaranteed.

Foreign Affairs Minister Rohitha Bogollagama says the opposition candidate needs to accept the result of the election.

"It is the first time we have witnessed anyone trying to be inside a hotel and stage a drama," he said.

"I would term it a drama and trying to seek international attention."

Celebrations on the streets

Out on the streets, supporters of Mr Rajapakse were celebrating his election victory. The incumbent won 58 per cent of the vote compared to 40 per cent for General Fonseka.

Mr Rajapakse thanked the millions who voted for him and he promised to work for all Sri Lankans.

State television played tributes to the president throughout the evening, but the opposition has announced it will challenge the election result, accusing the government of violating the electoral laws.

In the short term, General Fonseka is considering leaving the country because he fears for his safety.

"If they take out my security and if I am being targeted, if they are going to assassinate me, to escape that I will take precautions if the best option is to leave the country," he said.

From: <http://www.abc.net.au/news/stories/2010/01/28/2803172.htm> accessed 3 February 2010

FINDINGS AND REASONS

92. Based on a copy of the applicant's passport provided at the hearing, the Tribunal accepts that the applicant is a national of Sri Lanka and is outside the country of his nationality.
93. The applicant's written claims are that he will be harmed, and most likely killed, should he return to Sri Lanka. He claims that the motivation for this is mainly political, because of his support for the UNP in recent provincial elections, and that his death has been contracted to thugs. He also suggests that the authorities are looking for him, as well as these thugs, because he was not killed as expected by the thugs.
94. The applicant also claims that he will be persecuted because of his religion, and because he is a Muslim businessman of some means. He indicated that he was abducted, held for ransom, and robbed for these reasons, but that these are also tied to his support of the UNP. He says that Muslims have little choice but to support the UNP. He notes that many Muslim businessmen were abducted in the years leading up to his arrival in Australia and that some were killed and others released on payment of ransoms.
95. The Tribunal considers that from the applicant's oral and written evidence, he is not clear about who is after him *now* or why, which might raise some doubts as to his truthfulness, but by the same token, it may be difficult for him to know now who exactly is after him and how far politically this extends.
96. The Tribunal accepts there is some difficulty in determining the extent of the risk to the applicant now and for what reason. From the independent country information, he may be at risk from people or groups who wish to kidnap him for purely financial purposes, unrelated to anything which may have happened in the past to the applicant. From his claims, he may be at risk of serious harm from individual politicians, whose thugs were hired to kill him, or he may be at risk just from the thugs, who want to honour their contract to kill him, or because he has not paid them all the money he promised to pay, or both. He has also claimed to be at risk of death from opposing politicians and the authorities generally, as evidenced by his claim that he will be picked up on re-entry to Sri Lanka at Colombo airport.
97. The Tribunal wishes to first address the independent country information. The information available to the Tribunal supports a view that there is a risk to political supporters of the UNP, as well as a risk of kidnap for ransom or murder to wealthy Muslim businessmen there. The Tribunal also accepts from the independent country information that the motives for the

abductions can be both political and financial. The previous Chief Justice of Sri Lanka, as noted in the independent country information, has acknowledged that in some cases, there are mixed motives- both political and financial.

98. Considering first the risk to wealthy Muslim businessmen, the independent country information notes that there were a large number of these abductions in the years leading up to the applicant's arrival in Australia. However, the independent country information suggests that these are still occurring, but not in such large numbers.
99. The Tribunal accepts from the independent country information that the authorities in Sri Lanka are unable, or unwilling, to prevent these kidnappings and in some cases, may well be behind them. Where opposition party supporters, or non-ruling minority groups such as Muslims, are abducted, the Tribunal considers there is not adequate State protection available in Sri Lanka. As to the relevance of the recent Presidential election, the Tribunal considers that as President Rajapakse has been returned to power, any risk to the applicant will remain the same as it was in the past and such inadequate protection will continue.
100. The Tribunal accepts from the documentary and financial evidence provided that the applicant is a Muslim, and a Muslim businessman of some wealth. The Tribunal thus concludes that by the applicant's membership of a particular social group, being Muslim businessmen, or alternatively wealthy Muslim businessmen, he is at risk of serious harm should he return to Sri Lanka. The question for the Tribunal is whether he faces a real chance of serious harm because of this. This will depend on whether there are other factors the Tribunal must take into account, and this will turn on whether the Tribunal considers the applicant to be truthful and his claims credible.
101. The Tribunal will thus put to one side the risk of serious harm the applicant may face *solely* because of any involvement with the UNP.
102. Returning to the applicant's credibility, the Tribunal found him to be sincere and open with the Tribunal, yet it did identify a number of inconsistencies and implausibilities in his evidence which caused the Tribunal to have some doubt as to his truthfulness.
103. The delegate found that it was not credible that the events described by the applicant occurred, co-incidentally, just after him being granted an Australia visa. Hence, the delegate did not accept that the applicant was telling the truth. Neither was he satisfied that the applicant had the political profile he claimed. Even if the applicant was telling the truth, he found that the matters raised by the applicant were criminal matters, not Convention matters, and that he would not be deprived of protection by the government.
104. The Tribunal acknowledges that the series of events as described by the applicant does raise some cause for concern, but not because of the timing of the grant of the Australian visa. The fact that the events happened after the applicant obtained an Australian visa ceases to have the significance it might otherwise have had when it is considered that the applicant had, and still has, a valid visa to enter Country B.
105. The applicant is not someone who has never been out of Sri Lanka before and has taken the first opportunity to seek asylum. On the contrary, his international travel record is extensive. He thus has had numerous opportunities in the past to seek asylum in various countries but he has not done this. He has a current Country B visa and could have gone to Country B at any time recently, both prior to, and before the grant of his Australian visa, but he has not. He

has provided the Tribunal with a plausible reason as to why he did not want to go Country B, being a fear of certain Sinhalese traders there, and the benefit of unknown here. He has provided the Tribunal with a plausible reason as to why he applied for an Australian visa, being to conduct some business here. Rather than detract from his credibility, the Tribunal puts significant weight on this in favour of the applicant being credible.

106. The Tribunal spoke to the applicant at length in relation to his claims, and some of its concerns were resolved by his evidence at hearing. The Tribunal also considered that his original statement, the Department interview, the later Statutory Declaration and his oral evidence were on the whole consistent. However, there were aspects of the applicant's claims over which concern remained and these were as follows:

- Why the applicant placed himself at greater risk of helping Person A of the UNP when he knew it was dangerous and, up until that time, had not faced any serious threats
- Why the abductors would not initially have carried out the job of murdering him, as they were contracted to do in the first place, rather than releasing him on payment of a ransom
- Why he, as a Muslim businessman, was not abducted in the years leading up to his arrival in Australia and why he would have been abducted in a later year or now, given that reported abductions are suggested to be low
- Why he did not leave Sri Lanka before the time he did
- Why his brother was not harmed when thugs came to his family's house after he had left Sri Lanka
- Why he would be at risk on return to Colombo airport and would be on a 'watchlist'
- Why he would be at risk as a UNP supporter but other prominent party members, candidates and politicians are not at such risk

107. As to the first issue, the Tribunal considered it looked as if he placed himself at greater risk when helping Person A and the UNP, despite being advised this would occur, which might seem to be implausible. However, the Tribunal can also accept that it was plausible that he would seek the protection of a sympathetic politician known to him, given the threats he and his family had faced. He may have concluded that it was in his family's best interests. He may also have felt obliged to help, as he stated that Person A asked him to help, given his family's long involvement with the UNP.

108. As to the second issue, the Tribunal considered it might be implausible that the thugs contracted to kill the applicant would suddenly change their instructions and release him for ransom. However, the Tribunal cannot conclude this with any confidence, as it is not privy to the arrangements and circumstances of these contracted killers.

109. As to the third issue, the Tribunal concluded that just because independent country information indicates that abductions were low in more recent years does not mean that this event did not occur. Thus the Tribunal could not conclude with any confidence that the applicant was not abducted as claimed.

110. As to the fourth issue, it must be remembered that the applicant's wife was pregnant and that he wished to be there to support his wife at the birth. The Tribunal can accept this as plausible, despite the risk it might involve. Further, he was not abducted until a week prior to his arrival in Australia, which would have been the most serious of the events to occur to him, and according to him, was the trigger for him to leave, and he did leave Sri Lanka fairly promptly after that. His child had been born by that time.
111. As to the fifth issue, the evidence was that the applicant's family had been prominent in helping the UNP in the past, and his brother had been involved in this election campaign. As to why his brother was not harmed, the applicant has stated that he was the main helper of the UNP in the elections, not his brother, and that the thugs had been contracted to harm him, not his brother. The Tribunal accepts this explanation as plausible in the circumstances of the case and could not conclude with any confidence that the event did not happen as the applicant claimed.
112. As to the last two issues, these go to the extent of any ruling political party threat of harm to the applicant. The applicant was not a politician, candidate or even a member of the UNP; he was just one of a number of supporters. This was a regional council election, not the presidential or parliamentary election. The Tribunal considers that any threat to the applicant's life arising from politics was specific to a small number of local politicians and hence localised and not likely to extend to him being seen as a threat by the ruling party as a whole. Thus the Tribunal considers the applicant's views that he would be picked up on return to Colombo airport as mere speculation or an assumption based on his general fears, and thus not a well-founded fear. .
113. After considering the above and all of the applicant's evidence, and the supporting documentary evidence of Person A and the Mosque president, and the supporting psychologists reports, the Tribunal accepts that, despite some doubts, the applicant's claims as to what happened to him in the past in Sri Lanka are truthful.
114. Returning to the question of whether the applicant would face a real chance of persecution should he return to Sri Lanka, the Tribunal has already found that the applicant, as a Muslim businessman of some wealth, would face a risk of serious harm.
115. The Tribunal now also accepts that he has had involvement with the UNP, which would increase the risk of serious harm to him. The Tribunal now also accepts that he has previously been threatened with harm and death, that he was robbed, that a close relative was murdered for money and he assaulted, and that he has previously been abducted and held for ransom at least partly because he is a wealthy Muslim businessman, which would also increase the risk of harm to him should he return
116. From this, the Tribunal concludes that the risk of harm to the applicant is such that there is a real chance of persecution should he return to his home in Sri Lanka and that the applicant's fears are well-founded in this respect.
117. Further, in the Tribunal's view, the real chance of serious harm extends to the entire country of Sri Lanka. The Tribunal does not consider there is any safe haven for minority groups in Sri Lanka at present. The persecution would also involve systematic and discriminatory conduct for the purposes of the Act: s.91R(1)(c).

118. There is no material which indicates that the applicant has a right of residence in any third country, being only a citizen of Sri Lanka and currently physically in Australia. While he has a temporary entry permit to Country B, this is not a right of residence.
119. It is thus the view of the Tribunal that the applicant has a well-founded fear of being persecuted for a Convention reason, being membership of a particular social group, either now or in the foreseeable future, and he is a person owed protection obligations by Australia.

CONCLUSIONS

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

DECISION

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: wbaker</p>
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