

060872826 [2006] RRTA 226 (29 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060872826

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Wendy Boddison

DATE DECISION SIGNED: 29 December 2006

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Sri Lanka, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter which was posted to her on the same day.

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.

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

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol (together, the Convention). 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Whether under s.36(2)(a) Australia has protection obligations depends upon whether a person satisfies the definition of a refugee in Article 1A(2) of the Convention, in the context of other provisions of Article 1.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *MIMIA v QAAH of 2004* [2006] HCA 53.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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 earn a livelihood, where such hardship or denial threatens the applicant’s capacity 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.

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.

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.

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.

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.

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

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. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's child, Person A. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.

The applicant is aged in her fifties and was born in Suburb P, Jaffna. She is a Hindu Tamil. She received a number of years of education in Sri Lanka and had never been in paid employment. The applicant claimed that she left Sri Lanka for fear of the Sri Lankan Army and other paramilitary forces of the LTTE (Liberation Tigers of Tamil Eelam).

The applicant is a widow and has several children. She claimed that she and her family endured severe hardship caused by both the Sri Lankan forces and the LTTE. In addition, in the late 1980s her house was targeted for destruction by the IPKF. A bomb exploded near her home and she was beaten by the IPKF and subjected to inhumane treatment. After the departure of the IPKF, there was peace for a brief period, but in the mid-1990s there was fresh fighting between the LTTE and the Sri Lankan forces. The applicant was forced to do domestic duties for LTTE cadres and also gave assets to them. The LTTE harassed and extorted money from her and compelled her to participate in their activities. In most instances the applicant avoided direct participation by paying money and doing domestic duties for their cadres.

In around mid-1990s the LTTE ordered the population in the area to vacate and move to Location D as the Sri Lankan Army was about to advance into Jaffna. The applicant, her husband and some of their children all fled to City U, where the applicant's husband passed away. After his death, the applicant and her family lived in various places in Location D, assisted by the UNHCR, Red Cross, TRO and other NGO organisations. Eventually the applicant moved to her sibling's house in Town G.

In the late 1990s, while living with her sibling, the applicant arranged a marriage for one of her children and accompanied her child to Country J to be given in marriage. The applicant remained in Country J unlawfully until the early 2000s. During this period, some of her children attempted to leave Sri Lanka and were detained by the army in City V. Eventually one of her children was able to leave to Country K whilst one of her other children was living in Town H, near City V. One of the applicant's children came to Country J in the early 2000s to be given in marriage. Not long after the applicant returned from Country J to Sri Lanka, accompanied by one of her children. They stayed briefly in Town H and then returned to

Town G and remained there until the early 2000s. Around the early 2000s they moved to Jaffna, after the ceasefire agreement between the Sri Lankan government and the LTTE.

The applicant became aware that the adjoining house had been converted to an army camp and the army freely used her house for fetching water, washing clothes, etcetera. In the beginning the applicant did not have problems with the army, except for the use of her property. However, the LTTE demanded money as they assumed her children were earning lots of money overseas. They also demanded food.

Around the early 2000s there were changes in the behaviour of the army and they started being aggressive. They removed the fence separating their camp from the applicant's home and began hurling abuse at them and behaving in an offensive manner. They restricted the applicant's movements and often came inside their home demanding money and engaged in stealing. They threatened to kill the applicant and her child if the LTTE attacked them. However, they allowed the applicant and her child to travel to City V via Town G in the mid-2000s to apply for an Australian visa. The applicant and her child returned some time later back to Jaffna. In the early 2000s the army soldiers came inside the applicant's room and molested her child. The applicant's child was traumatised, but they did not tell anyone because it would result in shame on her child and make it hard for her child to find a family.

In the early 2000s, the applicant told the army that she was accompanying her child to City V to give her child in marriage and left Jaffna with her child. The applicant stayed in Town G for a few days. The LTTE refused to allow her child to leave and so the applicant left for City V and went on to Country J alone on the instructions of her children. Some time later she returned to City V and then to Town G to be with her child. The LTTE demanded money from her, which she gave them. They then allowed her to travel to Jaffna so that she could collect her belongings.

When the applicant returned to Jaffna, the army came and inquired about her child. She informed them that she was in Town G, in the LTTE-controlled area. They were furious with the applicant and demanded to know why she had taken her child there. She told them the whole story and they said that she was telling lies and her child had joined the LTTE. They brought a Tamil cadre, who the applicant believed was an EPDP cadre, and he wrote a lengthy letter which the applicant believed was about exonerating them from any blame and forced her to sign it. The army allowed the applicant to collect her personal belongings and allowed her to leave her house. The applicant came to Town G and spoke with her children. They told her that her Australian visa was approved and instructed her to come to City V. She left City V and flew out of Sri Lanka with the help of an agent. The applicant was fearful of both the Sri Lankan forces and the LTTE.

The applicant's advisers submitted that the ceasefire agreement signed between the government of Sri Lanka and the LTTE was now under severe strain and there was consensus that war may emerge. It was well documented that the LTTE in the past had committed serious human rights abuses. Equally, the disappearances at the hands of the security forces continued in the north and east. A typical profile of persons who fall under the scrutiny of the security forces continued to be Tamils from the north and east, particularly those from the Jaffna peninsular or LTTE-controlled mainland areas, known as Location D (DFAT Table CL463, 24 January 1997). The applicant was a widow who had been displaced many times due to the military actions by the warring parties and had never lived anywhere other than the northern part of Sri Lanka.

The Tribunal received a letter from the applicant's agent in which the agent submitted that the applicant had well-founded fear of persecution for reasons of, her ethnicity, (Tamil) her political opinions, real and imputed and for her membership of the particular social group of family suspected of being active members and or supporters of the LTTE and/or the particular social group of elderly Tamil females perceived to be in a position to pay money to the LTTE. Enclosed were RRT decision N06/53166 dated 28 March 2006 and a number of newspaper reports regarding the current situation in Sri Lanka.

Evidence At the hearing

The applicant had several children living in Country K, one child living in Australia, and one child remaining in Sri Lanka. The child in Sri Lanka lived in Location D. The applicant was in regular contact with her child, once every several weeks, over the phone. Her child telephoned her as her child did not have a telephone in Sri Lanka. Her child was currently undertaking tertiary studies. She said that when she came to Australia, she took her child to Location D and left her child with her relative's child. Her child never applied for a visa to come to Australia because they believed that a visa would not be granted.

The applicant had one child who was living in City V, or actually Town H. This child left City V to go to Country K in the mid-2000s. The applicant was still in Sri Lanka at the time her child left. Before her child left Sri Lanka her child was living in City V with his relatives. The applicant did not have any close relatives in City V. When she was residing in City V she lived at a lodge, as her child was not living there. She was asked why she waited some time after her visa was issued to leave Sri Lanka, and she said that she did not have anyone to accompany her to Australia so she put it off. A distant relative accompanied her. Just before the applicant came to Australia she was living in Town G with her sibling's child.

The applicant described the problems she had when she went back to Jaffna to visit her home. Her home had been vacant for a number of years and then was occupied by the army. When she returned it was no longer occupied, they had vacated it, but they had a sentry post opposite the house. When her child was in the late teens, soldiers harassed her child. They also removed a fence between the army sentry post and her house. The applicant stated she never returned to Jaffna to collect her belongings before she came to Australia. The applicant was extensively asked by the Tribunal about whether there was any incident between the soldiers and her child that would cause her child shame or cause her child to scream, but she did not disclose any incident. The applicant claimed that the LTTE would not allow her child to leave Town G. The applicant confirmed that there was a time when she went to Jaffna without her child and the soldiers were asking her where her child was and where had she gone. She said they never accused her child of having joined the LTTE. She said she was never forced to sign any statement by the army or any sort of militia in the area. She described how she had problems with both the government security officers and the Tamil Tigers when she was living in Jaffna. The applicant was asked why she didn't remain in Town G and why she came to Australia, and she said she came to visit her child in Australia. The applicant also said that her child was abducted in the early 2000s. She stated it was not safe to stay in Town G. Everywhere there were problems in Sri Lanka. The applicant claimed she could not return to Sri Lanka as she had nobody to live with. There was no way that she could get to Jaffna to her home and she had nobody to look after her or support her. She was afraid to go to Jaffna as she would be shot.

The applicant's child Person A, gave evidence that he had been in Australia for a few years and he was a permanent resident. He obtained his permanent residence by marrying an

Australian citizen. He had siblings who were granted refugee status in Country K. The elder sibling left Sri Lanka in the early 1990s and the youngest sibling not long after. He claimed that his younger sibling had a problem with the LTTE. He had been a member of the LTTE and left the LTTE and went to City V. The security forces arrested him in Town H and beat him and held him for a number of days until they paid a bribe for his release. The LTTE were also looking for him for having deserted. The applicant's son also said that he had been arrested once in Town H, in the late 1990's or early 2000's. He was arrested because he was Tamil and he was held for a week and paid a bribe to be released. He explained that his father died during the displacement. He claimed that the family had had no contact with his sibling in Sri Lanka since the beginning of the year. They believed that his sibling had joined the Tamil Tigers at this time. He claimed that after his sibling was arrested by the Sri Lankan Army, his sibling joined the Tigers. He claimed his sibling was assaulted in the early 2000s and his sibling joined the Tigers after that. Shortly after they lost contact with his sibling.

The applicant's agent provided to the Tribunal a letter from Health Services Australia which indicated that the applicant was suffering from a number of medical conditions.

FINDINGS AND REASONS

The applicant arrived in Australia on a validly issued Sri Lankan passport and the Tribunal finds that she is a national of Sri Lanka. Her passport indicated that she was born in Jaffna. The Tribunal accepts that the applicant is a Tamil woman from Jaffna. It accepts the account of the difficulties she experienced in the 1980s and 1990s and with the LTTE, the SLA and the IPKF.

In relation to more recent events her evidence to the Tribunal was somewhat vague and contradicted some of the material in her written claims and the evidence of her child. The Tribunal accepts that the applicant suffers from a number of health problems which may affect her ability to recall matters and may account for some of the discrepancies in her evidence.

The Tribunal accepts that at some point the applicant was living in Jaffna with her child where there was an army camp in close proximity to her home. At this time her child was at the very least harassed by the SLA soldiers. The Tribunal accepts that after this time the applicant was living for a short period in Jaffna without her child and was harassed by the soldiers.

Based on the applicant's evidence the Tribunal finds that her child is currently living and studying in Location D and that she is in contact with her child. The applicant was very clear in relation to this point and the Tribunal finds that her son had exaggerated his evidence in an attempt to bolster his mother's claims when he claimed that they had no contact from his sibling and assumed his sibling had joined the LTTE. The Tribunal does not accept that her child has joined the LTTE as claimed by the son.

The Tribunal accepts that the applicant has some children who are currently residing in Country K and that at least one of those children was accused of having connections with the LTTE.

The Tribunal acknowledges that there has been a return to armed conflict in Sri Lanka and that the ceasefire agreement between the LTTE and the government of Sri Lanka has broken down.

The Cease Fire Agreement (CFA) of 2002, which helped to start peace negotiations after more than two decades of violent ethnic conflict, is defunct although it remains in force for public relations reasons. The two parties to the CFA, the Government of Sri Lanka (GoSL) and the LTTE have returned to armed conflict – there is no ceasefire. There are reports of almost daily fighting between GoSL and the LTTE in the north and east of the country, with the result that GoSL have reclaimed LTTE controlled territory recognised under the CFA. There are now too many breaches of the CFA for the approximately 30 member international monitoring body (now including only Norway), the Sri Lankan Monitoring Mission (SLMM), to handle and investigate (CX166444 and CX166477).

There are varying reports of between 2,500 and 3,300 people killed, many civilians, during 2006. International human rights organisations and governments hold serious concerns for the safety of vulnerable ethnic, religious and social groups. The closure of the A9 road linking the south with the north has contributed to the humanitarian crisis, meaning that supplies for civilians need to be brought in from the sea in the north. There are reports of food and fuel being scarce in Jaffna, and Vanni, particularly Mullaativu, where there is a lack of essential supplies such as medicines and medical equipment. There are reports of forced returns of internally displaced people back into unsafe situations and conflict zones, and fears that more people will be forced to return. Grave poverty (80,000 people) and malnutrition are serious concerns in Vanni, and the situation is expected to get worse (CX166329, CX166353, CX166444, and CX165940).

The Hotham Mission Report Field trip to Sri Lanka October 2006 identifies (amongst others) the following people and groups at risk of refugee convention related harm, including for imputed reasons:

- Tamils in the north and east of Sri Lanka in LTTE controlled territory and GoSL controlled territory;
- “Maaveerar family” – meaning a family in which one family member is/was an LTTE recruit;
- Tamils in internally displaced camps (used as human shields by LTTE & subject to indiscriminate bombing);
- All other Tamils, when GoSL responds to a violent incident, such as an ethnic riot, or suicide attack.

The findings of the field trip illustrate a bleak picture for returnees, highlighting that “protection needs of Tamils are extremely high, with no ability to live in the safer areas of Colombo, Kandy or elsewhere”. The pertinent extracts follow in detail:

Lack of state protection and implications for asylum seekers

The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission (SLMM), and the United Nations High Commission for Refugees (UNHCR), as well as all other groups we met, outlined a range of serious protection concerns that directly affect the safety of refused asylum seekers being returned at this time, including the high likelihood of targeting of individuals with certain past affiliations or histories of arrest, the lack of effective state protection, particularly for Tamils, as well as a large range of human rights and humanitarian concerns affecting return. A lack of protection exists for Tamils throughout the country that are experiencing persecution

based on their ethnicity. The SLMM clearly stated, 'There are absolute protection needs. People are trying to get out, not in.'

This has been noted in the high number of Tamils and some Muslims fleeing the country into India, now reaching more than 16,000 since the beginning of 2006. All groups interviewed stated the protection needs of Tamils are extremely high, with no ability to live in the safer areas of Colombo, Kandy or elsewhere, highlighted throughout the paper. As one human rights worker stated, 'If people can live in Colombo, why are they crossing the border into India, travelling through hostile terrain and risking their lives on a boat to live in restricted camp environments?'

...Colombo

Since the assassination of the Foreign Minister last August, the introduction of the ongoing state of emergency the same month and the April 25 terrorist attack, the city has returned to previous experiences of random checkpoints and house searches and the general removal of civil rights of much of the population in Colombo. Groups indicated that Colombo was seeing the highest level of civil restrictions since the late 80s, including checkpoints not only in the outer suburbs but throughout the city, manned by STF, police, army, navy and air force. As highlighted earlier, previously unseen restrictions now exist relating the household registration, particularly targeted in Tamil suburbs.

The city remains on high alert for terrorist attacks, with a bomb found on a railway line in the city during our visit. The team had visited the popular site near the seafront the day before. In this atmosphere of fear and paranoia about the possibility of terrorist attacks, mass arrests and torture are widespread as highlighted previously. The SLMM noted that 'people taken into custody in the district, no matter if it is a petty crime, are sent to Colombo. They can then be in custody for many months – and will most likely be beaten or more.'

One human rights group reported the case of a Tamil woman who had moved to Colombo 10 years ago, and bought her own home, living as a permanent resident there. However her ID card said that she is from Jaffna. She was caught in a generalised round up and taken to station with many others. All were scrutinised person by person. Eventually all of the Tamils caught were kept in custody, the others released. The woman's family (including children) did not know where she was when she did not return home as expected, as they were not informed by police of her arrest as is the regulation. The woman's sister, brother and children went looking for her at a number of police stations, asking if Tamil people had been rounded up there. The brother explained that the woman was a permanent resident. The police continued to suspect her because she was from an LTTE area.

The UNHCR and other human rights groups were quite clear to state that Colombo was not a viable safe relocation options for Tamils fleeing the conflict in the north or east, explored in more detail in the Protection Implications section (page 47).

... Protection implications for returnees

Protection relates to the provision of state protection as defined by the 1951 Refugee Convention and human rights related obligations. The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission, and the UNHCR, as well as all other groups we met, outlined a range of serious protection concerns that directly affect the safety of returnees at this time.

Previous affiliation

In relation to returning asylum seekers, the SLMM stated, 'If a person has had any affiliation in the past and returns they will face danger'. This was mentioned in relation to both perceived connections with the LTTE, thus concerns about being targeted by the police or armed forces, and also affiliations to certain parties or individuals which may make a person a target of the LTTE. They mentioned for example that PLOTE members 10 years ago are still targeted today. 'People returning from overseas may be a target'. They also mentioned widows in Vavuniya whose husbands were in the army 9 years ago and long dead being hunted down. This was also noted in that one Sinhalese refused asylum seeker returned was in hiding after receiving death threats one week after his return to Sri Lanka in relation his past political connections, as highlighted earlier.

People with previous problems with the GoSL or LTTE

The team were told by multiple sources that the National Intelligence Bureau has records dating back 10 years and earlier, with a national computer database being used for the past 2 years. People with a previous incident of arrest or questioning are likely to be arrested and under the state of emergency and level of conflict, may face further human rights violations such as torture. One group stated, 'They will know people's history.' Another stated, 'The NIB will have a record of past interrogations, and can cause further charges if returned.'

In relation to the treatment of Tamils in Colombo while most of the current fighting is taking place in the north and east of the country, murders and abductions are also occurring in Colombo. A number of sources indicate that Tamils in Colombo are more likely to be targeted by security forces for being suspected LTTE members, rather than forcibly recruited by the LTTE. Tamils living in Colombo have recently been subjected to a number of security operations conducted by police/military generally referred to as "Strangers Night" operations. Several sources reported that security forces conducted "cordon and search" operations of Tamil households in Colombo. Sri Lankan authorities claimed that the operations were aimed at ordinary criminals. However, according to the British High Commission in Colombo, the "ethnic balance of the suspects show it was a security operation i.e. most arrested were Tamil". During the largest reported operation, "Strangers Night III" conducted in December 2005, about 1000 Tamil people were allegedly arrested on suspicion of being involved in terrorist activity. Most of the arrested were released soon after their arrest ('Tamils in Colombo harassed by "Strangers Night" operation' 2006, Transcurrents.com website, 5 January <http://transcurrents.com/tamiliana/archives/32> – Accessed 30 November 2006

Advice published by the Immigration and Refugee Board of Canada (IRBC) in 2006 indicates that Tamils are required to produce their national identity card to Sri Lankan security forces when requested and face arrest if they fail to do so. The advice also describes

the search operations conducted by security forces in Colombo and the current extensive powers held by security forces as a result of the state of emergency imposed in August 2005:

Sources consulted by the Research Directorate, however, indicate that Tamils may be asked by Sri Lankan security forces to produce their national identity cards (AI 29 June 2006; AP 31 Dec. 2005). In a December 2005 door-to-door search for LTTE members in Colombo, Sri Lankan security forces detained over 900 people for failing to produce their national identity cards or for not having a valid reason for staying in the city (AP 31 Dec. 2005). Security forces later released 867 of the detainees, but kept the others for further questioning (ibid.).

A state of emergency imposed in August 2005 and still in effect as of September 2006 (Australia 20 Sept. 2006), reportedly gives Sri Lankan security forces the authority to close roads without notice, set up road blocks and impose curfews (ibid. 1 Sept. 2006), as well as make arrests without warrants and detain individuals for up to 12 months without trial (US 8 Mar. 2006, Introduction) (Immigration and Refugee Board of Canada 2006, LKA101784.E – Sri Lanka: Security measures in place to control the movement of Tamils between northern and southern regions of the country (August 2005 – September 2006), 22 September).

Although the applicant is an older woman with health problems she is still from the groups that have been identified by the various reports at being at risk. The Tribunal is of the view that the risk to her would be less than that to a young male but nonetheless it is satisfied that it is not a remote or far fetched possibility that she could be questioned and ill-treated in the reasonably foreseeable future because she is a Tamil woman from Jaffna whose family members have associations with the LTTE and she herself maybe accused of associations with the LTTE. The Tribunal is satisfied that this treatment would amount to serious harm and is persecution within the meaning of Convention. The Tribunal finds that the applicant has a well-founded fear of persecution for reasons of her ethnicity and imputed political opinion of supporting or having associations with the LTTE. The Tribunal is satisfied that her fear of persecution is for Convention reasons.

Based on the country information set out above it would not be reasonable, or indeed possible, for the applicant to relocate to avoid the risk of persecution. Travel in Sri Lanka is restricted. The situation in Colombo is not safe for persons in the applicant's position and the applicant has no relatives who could assist her in Sri Lanka.

The Tribunal finds that the applicant does have well-founded fear that she would be persecuted in the reasonably foreseeable future for a Convention reason and that she is a refugee.

CONCLUSIONS

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

DECISION

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

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 *Migration Act 1958*.

Sealing Officer's I.D. Inward