

060929663 [2007] RRTA 72 (26 March 2007)

DECISION RECORD

CASE NUMBER:	060929663
COUNTRY OF REFERENCE:	Sri Lanka
TRIBUNAL MEMBER:	Louise Spieler
DATE DECISION SIGNED:	26 March 2007
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA visa).

In accordance with s.431 of the *Migration Act 1958*, the Refugee Review Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the then Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa.

The applicant applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa. 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 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.

Section 36(2) of the Act relevantly 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. '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.

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now 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 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.

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 files relating to the applicant. The applicant attended a hearing in the company of her migration representative. She gave evidence with the assistance of an interpreter. The Tribunal also took oral evidence from Person A.

The visa application: In her visa application the applicant stated that she is a Sri Lankan who was born in Jaffna. She is widowed with several children. She indicated that between the mid-1990s and the early 2000s she had lived at a number of different addresses in Colombo. She stated that she fears harm from both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan security forces.

In a statement submitted with her application, the applicant stated that she lived in Place G, for many years where she worked. During the early 1980s she supported the groups who were fighting for freedom. Around 1990s her relative was "brainwashed" into joining the LTTE. At that time her relative was living with her. After being injured in the war, her relative was allowed to return to the applicant's home for higher education. However, some time later the LTTE returned and took her relative to their camp in Place H. The applicant pleaded with them to release her and a few days later she heard that a young person had been killed and was lying near the cemetery. To her horror, it was the body of her relative. Following the death of her relative the applicant was angry with the LTTE and she organised a protest. The LTTE sent her a letter stating that she should stop these activities. The LTTE warned her again and because she was scared she applied for retirement in the mid-1990s. She advised some people that they should not get involved with the LTTE.

Suddenly, around the first anniversary of her relative's death, a few LTTE members came to her house and told her to report to their camp in a few days time. The applicant was scared and with the assistance of a friend went to Colombo in the mid-1990s.

After many years, in the early 2000s, the applicant bought a flat in Place I where she was living "bit comfortably and peacefully for couple of years". As there was a spare room in her flat, a few years later, she decided to rent it out to some persons from Place G. Many of their friends came to visit them.

In August 2005 following the assassination of Minister Lakshman Kathirgamar, the whole of Colombo was brought under tight security and Sri Lankan security forces started searching the Tamil's houses for suspected LTTE members. The Sri Lankan forces came to her house. They asked about some persons and told her that when they returned home she should bring them to the police station. It was only then that she became suspicious that they could be LTTE members. Although the persons never returned home, the police came to her house for checking quite often and harassed her. On a few occasions they took her to the police station to identify some persons. When the applicant said that she did not know them the police accused her of lying and supporting the LTTE by assisting their members. One day, she was kept at the police station overnight and was questioned and "mentally tortured".

The applicant said that she was afraid that if she identified any of the persons she would be killed by the LTTE. In the early 2000s she took the opportunity to visit Country T. When she returned to Sri Lanka she heard that a relative of her late husband had been killed in Place G. The security forces came to her house again and as their harassment did not seem to stop she sold her house in Place I and rented another house in Place J.

While in Place J, following the bomb blast of government buildings, the security forces came to all Tamil houses in her area. They came to her house as well and questioned her. In the early 2000s she was granted a visitor visa for Australia but as she was not confident of travelling alone she was waiting for her child to come to Sri Lanka to pick her up.

Meanwhile, in the early 2000s she was at a public place where she saw one of the persons who had boarded in her house. This person asked for assistance. The applicant was scared and anxiously waiting to get out of the country. She left Sri Lanka for Australia.

The Tribunal application: In a submission provided in support of the review application, the applicant's representative stated, in summary, that:

[information about application amended in accordance with s.431]

The applicant relies on and reiterates all material previously provided in support of her application for refugee status;

She fears persecution from both the LTTE and the Sri Lankan security forces;

In respect of the LTTE, the applicant was forced to co-operate with them for many years, she later opposed them and as a result has become a target due to her imputed anti-LTTE political opinion including her refusal to provide their members with money and accommodation;

In respect of the Sri Lanka security forces, she has been arrested and questioned in the past due to her suspected links with the LTTE and there is a real chance she will be persecuted by them given her imputed political profile as an LTTE supporter; and

Her child who was living in Place K went missing a few months ago.

In a statement the applicant stated that her child went missing from Place K where that child had relocated in the early 2000s following the search of her home by the police and security services. She stated that one of her relatives had recently been killed in Colombo and another relative had been killed in Place G. The son of a friend (who was a government official) was also killed. The applicant also stated that the police had been making inquiries about her from her child and they had taken her relative and "beat and tortured my relative and demanded that my relative provide details about me".

Also provided to the Tribunal was information about the current situation in Sri Lanka including articles from TamilNet and a report by Hotham Mission, a copy of an undated letter (with English translation) from the applicant's child describing how her relative was taken away and beaten and that one of her children is still missing, and a copy of a letter from a doctor stating that the applicant is suffering from depression.

In a further statement the applicant stated that another relative had been missing in Colombo, and as he is the one who argues with the police on her behalf she wonders whether that may be the reason for his disappearance.

The Tribunal hearing: The applicant said that immediately prior to arriving in Australia she was living at an address in Place J. Before that she lived in Place I. She bought the house in Place I in the early 2000s and sold it a few years later. While in Place I her children were

living with her, but her child left for Place K when the problems started in the early 2000s. She sent her child to be with relatives.

The applicant told the Tribunal about problems she experienced while living in Jaffna. She was working but had to resign in the mid-1990s. Her relative (who was living with her) was taken away to an LTTE camp. She went to the camp and begged to see her relative but her pleading was futile. A few days later she heard that somebody was killed and she found out that it was her relative. The applicant said that following her relative's death she participated in a protest. She was in the forefront of the protest. Following the protest the LTTE gave her a warning. They said that if this occurs again we will have to kill you.

A few months after her relative's death there was a gathering. She stood up and asked some questions. A person who was seated next to her talked to her and took her to a room and told her that if she continued to protest she would suffer the same fate as her relative. The person pointed a gun at her throat as a warning.

The applicant said that following her retirement she worked at home. She told some people not to join the LTTE. As the one year anniversary of her relative's death was approaching, the LTTE sent word that they wanted to meet with her in a few days. She was terrified and made arrangements to go to Colombo.

The applicant was unclear as to her living arrangements when she arrived in Colombo. She said that she rented a room. Although her children were by that time living in Colombo she did not reconnect with them for a few months. The Tribunal enquired whether the applicant had any contact or communication with LTTE members after her arrival in Colombo. She said that she was living in fear and lying low and they had no chance to meet her.

The applicant said that in the early 2000s she was approached by some persons for assistance. She was short of money and had mentioned to a few people that she was looking for lodgers. These persons came from Jaffna and she felt sorry for them. Following the death of the politician in the early 2000s the police came to her house. The lodgers were not home and the police told her to bring them to the station when they came back. The police returned to her house a few days later and accompanied her to the police station. She was terrified. There were lots of people there and she was asked if she could identify some people. She said that she could not. She was shown some photos and asked some questions. She had to stay for an hour, sometimes longer.

The applicant said that she was taken to the police station "so many times". She can't remember how often. One day she was there all day. They said that they knew what she did in Place G. The applicant said that they threatened her and hit her on the left shoulder. She said that her left shoulder does not function and she cannot hook her bra. The applicant said that she was pushed down on the floor and water was poured on her face. She did not have food or medicine. She emptied her bladder.

The applicant said that she sold her house in Place I because she couldn't stand the constant visits from the authorities. Her child moved away because she was afraid. The applicant said that after the early 2000s she had no further contact with the police. She said that in the early 2000s she was approached in a public place by one of the Tamil boys who wanted her assistance.

The Tribunal observed that the applicant was granted a visitor visa in the early 2000s but she did not leave Sri Lanka until later. The applicant said that she was fearful and not capable of doing anything by herself. She was waiting for her youngest child to come from Australia to pick her up.

Person A said that he arrived in Australia in the early 2000s. He knew the applicant in Colombo because she used to come to the shop where he worked. Following the murder of the politician there were lots of roundups and he was taken to the police station. A few days later while he was still at the police station he saw the applicant. She was distressed and crying. At that time he did not know why she was there but he found out later.

Following the hearing the Tribunal received further documentation including a copy of a sale agreement in respect of the applicant's home in Place I and documentation from a charitable organisation addressed to the applicant's child in relation to an enquiry about her sibling.

Request for comment pursuant to s.424A : [information amended in accordance with s.431]
The Tribunal wrote to the review applicant seeking her comments on information which indicated that she had not suffered serious harm by the LTTE since her arrival in Colombo in the mid-1990s and she would not suffer serious harm by the LTTE if she were to return to Colombo. While accepting that the applicant may have been questioned by the Sri Lankan security forces on a number of occasions, the Tribunal had doubts that she had suffered serious harm from them. The Tribunal noted, in particular, that despite the applicant's claim that she had suffered a shoulder injury during questioning, in a medical examination conducted in the early 2000s the applicant stated that she had never had pain in the back, neck and joint and that she had never had any injury or medical condition lasting more than two weeks other than hyperthyroidism. The evidence suggested that the applicant was not of interest to the Sri Lankan authorities in the months prior to her departure from (sic) Australia, and despite her child's claim to the contrary, she was not of ongoing interest to them.

In a statement the applicant stated that there are "strong reasons for the LTTE to get rid of [her] at the right moment and the right place" due to her experiences in Jaffna, and the fact that she "unknowingly" assisted LTTE members. In addition she was approached in a public place in the early 2000s by the suspected LTTE member who insisted she should provide assistance from time to time. The applicant reiterated that she was questioned by the security forces on many occasions and hit by a gun. The killing of her relatives has reinforced her fear for her life. In respect of her shoulder injury, the applicant said that she was not severely injured physically and when she first came to Australia she attended a doctor who gave her painkillers. The pain settled and she did not think it was serious for long term treatment. The applicant stated that she was last questioned by security forces in the early 2000s and that later her home was also searched but it was not a search specifically targeted at her. She stated that having moved to a different area the security forces did not know her, but they continued looking for her at her old house. The applicant stated that she waited a few months to leave Sri Lanka after she obtained her visa because she was unable to travel to Colombo on her own.

Also submitted were a number of documents including:

- A report by Dr Y. Dr Y stated that the review applicant is distressed and grieving over recent disappearances and deaths of family members which has rekindled her distress over the death of her relative many years ago in Jaffna;

- A statement by Dr Z stating that “the applicant was suffering from chronic left shoulder pain for long time, she was given mobic tablets for pain”; and
- A copy of a UNHCR position paper on the International Protection Needs of Asylum Seekers from Sri Lanka.

FINDINGS AND REASONS

Country information

According to the International Crisis Group Sri Lanka is experiencing a worsening humanitarian crisis, it is particularly critical in the north and east, with more than 200,000 people internally displaced as a result of the fighting. They claim that both sides are guilty of human rights violations and political killings, and act with impunity (CX165940).

Return to armed conflict – Ceasefire Agreement (CFA) breaks down

The 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 Liberation Tigers of Tamil Eelam (LTTE) have returned to armed conflict – there is no ceasefire (CX166444 and CX166477).

According to Department of Foreign Affairs and Trade (DFAT), there is ongoing civil unrest, the security situation is volatile, and there is a very high risk of terrorist attacks anytime, anywhere, including the south and including civilian targets such as hospitals. Tensions between GoSL and LTTE are high, and there has been a significant increase in politically motivated violence, including the centre and south of the country (DFAT travel advice 4/12/2006).

It is the view of the United Nations High Commissioner for Refugees (UNHCR) that the situation can be characterized as one of generalized violence and events seriously disturbing public order. All three ethnic groups, Sinhalese, Muslims and Tamils are affected by the situation of generalized violence and armed conflict. The analysis has shown that many...may be specifically targeted by state and non-state agents. In Colombo, Tamils have been targeted while those with certain profiles are liable to suffer serious human rights transgressions (*UNHCR Position on the International Protection Needs of Asylum Seekers from Sri Lanka*, December 2006).

State of Emergency

Sri Lanka has been in a continual State of Emergency since August 2005 when the Foreign Minister was assassinated. This means that the security forces have additional powers, including non-accountable detentions for up to 12 months. Road blocks, check points, increased identity checks, heightened suspicions by authorities of Tamils, and household registrations are features of the emergency (CX165918).

On 6 December 2006, GoSL decided to introduce tough emergency regulations by reinforcing the Prevention of Terrorism Act. The legislation gives police and security forces increased powers to arrest, interrogate and detain suspects (CX166529).

Human Rights Situation

According to recent information from the UNHCR the human rights situation in respect of particular groups is as follows:

Tamils from the North and East

In addition to the situation of widespread insecurity and the impact of the armed conflict in the North and East, Tamils in and from these regions are at risk of targeted violations of their human rights from all parties to the armed conflict. Harassment, intimidation, arrest, detention, torture, abduction and killing at the hands of government forces, the LTTE and paramilitary or armed groups are frequently reported to be inflicted on Tamils from the North and East.

Individuals suspected of having LTTE affiliations are at risk of human rights abuses by the authorities or allegedly government sponsored paramilitary groups. In the same manner, those who refuse to support the LTTE and those who are perceived as supporters or sympathizers of the Government, risk serious violations of human rights from the LTTE.

Tamils from Colombo

Tamils in Colombo and its outskirts, where there are large Tamil communities, are at heightened risk of security checks, arbitrary personal and house to house searches, harassment, restrictions on freedom of movement, and other forms of abuse since the imposition of new security regulations in April and December 2006.

Under emergency regulations, the police are empowered to register all persons within the jurisdiction of each police station. These regulations, which were enacted during the height of the conflict in the 1990s, remain in place and require all residents to register with their local police station. Such registration, which is taking place in Colombo, enables the police to have accurate information on the ethnicity and location of all inhabitants of Colombo (*UNHCR Position on the International Protection Needs of Asylum Seekers from Sri Lanka*, December 2006).

FINDINGS AND REASONS

Based on the information before it, that is a copy of the applicant's Sri Lankan passport and her national identity card, the Tribunal finds that the applicant is a Sri Lankan national of Tamil race/ethnicity.

While the applicant claims fear of persecution from both the LTTE and the Sri Lankan security forces, the mere fact that a person claims fear of persecution for a particular reason does not establish the genuineness of the claim or that it is "well founded" or that it is for the reason claimed. The Tribunal is not required to accept uncritically the assertions made by the applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596) and it remains for the applicant to satisfy the Tribunal that the statutory elements are made out.

The Tribunal has considered, firstly, the applicant's claim of persecution by reason of her opposition to the LTTE. The Tribunal accepts the applicant's claims that her relative became involved with the LTTE in the 1990's and that her relative was killed. The applicant's various accounts of the circumstances surrounding the death of her relative were reasonably clear and consistent. It is apparent that she remains distressed by this incident. The Tribunal also accepts that following the death of her relative the applicant expressed her opposition to the

LTTE and was subsequently warned to desist. The Tribunal accepts that the main reason the applicant left Jaffna for Colombo in the mid-1990s was to escape the attention of the LTTE.

The evidence indicates, however, that the applicant lived an undisturbed life in Colombo for several years. According to the applicant's evidence to the Tribunal, she had no contact at all with the LTTE during this period. While the applicant claimed to be "lying low", she purchased a house in the early 2000s and according to her own evidence she lived "comfortably and peacefully" for a number of years. Later she decided to assist some people from her home town in Jaffna. There is no evidence to suggest that the applicant was forced to provide assistance to these people, and it was only in the early 2000s that she first suspected they might be LTTE members but by that time they had disappeared. The applicant claims that she met one of them again later at a public place when the person requested that she provide assistance.

Having regard to this evidence, the Tribunal is not satisfied that the applicant faces a real chance of persecution by the LTTE due to her political opinion (either actual or imputed). While it appears that the applicant came to the attention of the LTTE in the 1990's while living in Jaffna, the Tribunal is not satisfied that since relocating to Colombo in the mid-1990s the LTTE has made any effort to seek her out or that she has otherwise been of any interest to them. While the applicant may well be fearful of the LTTE due to her past experiences, the Tribunal must consider whether there is, at the present time, an objective basis for her claimed fear. In this case, the Tribunal finds that the applicant's fear of the LTTE is not well-founded. In particular, the Tribunal is not satisfied that a single request to provide assistance by a person who may or may not be a member of the LTTE and whom the applicant met by chance at a public place constitutes a threat of serious harm.

The Tribunal has considered, secondly, the applicant's claim of persecution by the Sri Lankan security forces by reason of her race/ethnicity and her suspected links with and/or support of the LTTE. Country information indicates that in the days and weeks following the assassination of Foreign Minister Lakshman Kadirgamar in August 2005 (attributed by the authorities to the LTTE) that Tamils were under heightened suspicion and subject to increased security checks, house - to - house searches and questioning by the police. The Tribunal accepts that the police came to the applicant's house looking for her lodgers and that she was subsequently taken (sic) the police station for questioning. The Tribunal accepts the evidence of Person A that he saw her at the police station, and considers it likely that the applicant, an elderly woman, found this a distressing experience. While the Tribunal accepts that the applicant may have been questioned on more than one occasion, it does not accept her evidence that she was physically and mentally tortured in the course of her questioning. Nor does the Tribunal accept that she was "constantly" taken to the police station for questioning.

In reaching this conclusion, the Tribunal notes that the applicant's evidence in respect of her claimed physical injury has been inconsistent. While the applicant told the Tribunal that her left shoulder does not function as a result of a (sic) being hit by a gun, in a medical examination undertaken in the early 2000s she did not mention any shoulder injury or sequelae. In her s.424A response, [information amended in accordance with s.431] the applicant stated that she was not severely injured and did not think it was serious (a statement which is clearly contradictory to that given in oral evidence). In her report in the early 2000s Dr Z stated that the applicant was given pain medication for a shoulder injury. Having regard to these inconsistencies, the Tribunal does not accept that the applicant sustained a shoulder injury as a result of being physically beaten in the course of questioning by the Sri Lankan

authorities. Nor does the Tribunal accept that the applicant was threatened with death if she did not provide the authorities with the requested information.

The applicant told the Tribunal that she was last questioned by the Sri Lankan authorities in the early 2000s, several months prior to her departure from the country. She attributed this to the fact that she moved house in the early 2000s and as a result the security forces were unable to locate her. The Tribunal finds this explanation implausible, and does not accept that the applicant was able to escape the attention of the authorities by the simple act of moving house. This is particularly so in the climate of heightened suspicion which has existed in Colombo. In this context, the applicant stated that following the bombing of the army camp in Colombo, the security forces searched “all Tamil houses” in Place J including her own. While this search was not specifically targeted at the applicant, it is apparent that the authorities were aware of her identity and knew of her whereabouts. Had they wanted to question her in respect of other matters, they could have done so. The Tribunal is satisfied that the security forces did not question the applicant after the early 2000s because they did not have any particular interest in her.

In view of their apparent disinterest in the applicant in the months prior to her departure from Sri Lanka, the Tribunal does not accept that the authorities have any ongoing interest in her. Consequently, the Tribunal does not accept the applicant’s claims that the security forces have returned to her old home on numerous occasions looking for her. The Tribunal does not accept that the applicant’s relative was beaten and tortured in an attempt to gain information about her whereabouts. Nor does the Tribunal accept that the disappearance of her other relative was in any way related to the applicant’s activities. While there is evidence to suggest that the applicant’s child has recently disappeared from Place K, there is nothing to indicate that the relative’s disappearance is linked in any way to the applicant’s actual or alleged activities.

While the Tribunal accepts that the applicant was questioned by the security forces on more than one occasion in the early 2000s the Tribunal does not accept that such questioning, even if conducted in what might be described as a robust manner, constitutes serious harm. The applicant concedes that she was not questioned by the authorities after that time, other than during a general search of all Tamil houses. While acknowledging recent country information which indicates that the circumstances of Tamils in Sri Lanka have continued to deteriorate, the Tribunal is not satisfied that the applicant would be specifically targeted by the authorities for further questioning were she to return to Sri Lanka.

On the basis of the evidence before it the Tribunal does not accept that the applicant suffered serious harm in Sri Lanka because of her race/ethnicity or because of her actual or imputed political opinion. The Tribunal is not satisfied that the applicant faces a real chance of persecution in Sri Lanka were she to return there now or in the reasonably foreseeable future. Consequently, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution within the meaning of the Convention.

Humanitarian considerations

The role of the Tribunal is limited to determining whether the applicant satisfies the criteria for the grant of a protection visa. Consideration of the applicant’s circumstances on other grounds is a matter solely for the Minister pursuant to s.417 of the Act.

CONCLUSION

Having considered the evidence as a whole, the Tribunal is not 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 does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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

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 ID: jpindi