COMPLEMENTARY PROTECTION IN AUSTRALIA

ADMINISTRATIVE APPEALS TRIBUNAL

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This table contains the relevant decisions of the AAT in 2016. Previous AAT decisions from July 2015 (when the Refugee Review Tribunal (RRT) was merged with the Administrative Appeals Tribunal (AAT)) are archived on the Kaldor Centre website. Previous RRT decisions can also be found in the separate RRT table (archived on the Kaldor Centre website). Pre-1 July 2015 AAT decisions (also archived on the Kaldor Centre website) relate to cases where a visa was cancelled or refused on character grounds (including exclusion cases).

Case	Decision date	Relevant paragraphs	Comments
FTYC and Minister for Immigration and Border Protection (Migration) [2016] AATA 1039 (Unsuccessful)	19 December 2016	1, 2, 51-55, and 62-63	It was accepted that the applicant had non-refoulement obligations owing to her but they did not outweigh other considerations, including the fact that a consequence of visa refusal is indefinite detention. 'The applicant is a 37 year old female citizen of Cambodia. The applicant arrived in Australia on 29 April 2010 as the holder of a Tourist (Class TR-676) visa.' (para 1). 'Upon arrival at Sydney International Airport, she was detained and interviewed by customs and immigration officials, and subsequently arrested by the Australian Federal Police on suspicion of smuggling drugs.' (para 2). 'A relevant factor for consideration in this matter is

			international non-refoulement obligations. There is no evidence about the impact of refusing the applicant's visa on any victims or Australian business interests, or on any immediate family members as desribed in cl 12.2(1).' (para 51). 'The applicant provided submissions about the impact on the applicant's partner and the applicant's health and well-being if her visa is refused. The Minister also made submissions about considering 'general deterrence' in making my decision. I address each of these other considerations below.' (para 52). 'The Minister has accepted that international non-refoulement obligations exist in relation to the applicant. The evidence before the Tribunal shows that the applicant may be at risk of harm or death if she were to return to Cambodia. The applicant's husband was killed in a motorcycle accident two weeks after she was convicted in February 2011; the applicant told the Tribunal that the motorcycle's brake-line was deliberately cut, which caused the accident and death of her husband.' (para 53). 'As there are non-refoulement obligations, the applicant cannot be forcibly returned, deported or expelled to a place where she will be at risk of harm (see cl 12.1(1) of the Direction). Furthermore, pursuant to cl 12.1(5), the only alternate visa the applicant will be able to apply for is a Bridging R (Class WR) visa. This means

			that the consequences for the applicant if her visa is refused are either she: (a) remains in detention for an indefinite period; or (b) is issued with a bridging visa; or (c) is removed to a country other than Cambodia.' (para 54). 'I note that the applicant is unlikely to be accepted by another country given her criminal offence, and she has previously applied for and been refused a Bridging E (Class WE) visa under s 73 of the Act.[15] Unfortunately for the applicant, if her current visa is refused, the likely outcome for her is that she will remain in detention. This consideration weighs heavily in favour of the applicant.' (para 61). 'In terms of the other considerations, Australia's international non-refoulement obligations and the applicant's current mental and physical health weigh in favour of applicant. The general deterrence of similar conduct weighs against the applicant. There is insufficient evidence to determine whether the potential reunion of the applicant with her children should be considered as a relevant factor. In balancing each of these other considerations, I am satisfied that they do not outweigh the primary considerations.' (para 62). 'In these circumstances, it is not appropriate for me to revoke the refusal of visa decision. The decision under

			review must therefore be affirmed.' (para 63).
1608294 (Refugee) [2016] AATA 4819 (Unsuccessful)	15 December 2016	11, 13-15, 36, and 56-61.	The case related to whether a short-term detention could amount to significant harm under the complementary protection provisions. The applicant was a citizen of Sri Lanka (para 11). 'The applicant claims to fear serious harm on return to Sri Lanka on imputed political opinion grounds at the hands of the authorities. Specifically he fears being imputed with a pro-Liberation Tigers of Tamil Eelam (LTTE) political opinion primarily because in 2008 his father helped an LTTE member obtain bail, who subsequently absconded. The applicant also claims to fear serious harm on return to Sri Lanka because of his Tamil ethnicity, as a failed asylum seeker and because he departed the country illegally, considered below (elsewhere).' (para 13). 'In a written submission to the first Tribunal[2] it is submitted that the applicant, as a member of his father's family (and who closely resembles his father) is at risk: that is as a member of a particular social group of persons whose close family members (i.e. his father) is sought after by the authorities for reason of his imputed political opinion (referring, among other things to the profiles listed in the 2012 UNHCR Eligibility Guidelines about persons with family links). This profile, it is argued, would expose the applicant to

			harm, on arrival or later, when combined with the fact that he is Tamil, has claimed asylum in a Western country, departed illegally and originated from the North Western province.' (para 14). 'The applicant initially set out his protection claims in a written statement that accompanied his protection visa application dated [in] October 2012. In it he described how his father helped a man called [Mr A] who was accused of murder and involved with the LTTE obtain bail; that his father had to pay the authorities Rs [amount] after [Mr A] disappeared once released from prison; and that in 2011 the CID (criminal investigation department) became interested in the applicant's father because of this matter. The CID allegedly visited the applicant's home once when their father was at work and a week later. The applicant's father moved to [District 1] in Eastern Sri Lanka after the first visit and has stayed there.' (para 15). 'Having regard to the evidence before it, the Tribunal accepts that Tamils in Sri Lanka faced a degree of harassment, discrimination and in some cases persecution during the time of conflict between the LTTE and the Sri Lankan authorities on account of their ethnicity. However, in light of the end of the war in May 2009 and the country information cited above that assesses that being of Tamil ethnicity does not on its own warrant international protection, the Tribunal finds that the applicant does not face a real chance of

			suffering serious harm (including being kidnapped as submitted) solely on account of his Tamil ethnicity from the Sinhalese majority nor the Sri Lankan authorities, nor in combination with what the Tribunal has found in respect of the applicant's imputed political opinion, as discussed. The Tribunal also does not find that the applicant faces a real chance of persecution on the basis of being a young Tamil male, in isolation, or from the north western province as submitted. The applicant's fear of persecution on this basis is not well founded.' (para 36). 'For reasons set out above, the Tribunal has not accepted there to be a real chance that the applicant will suffer serious harm if he returns to Sri Lanka now or in the foreseeable future on imputed or actual political opinion grounds, or as a Tamil, or as a young Tamil male form north western province. In MIAC v SZQRB, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition.[15] For the same reasons the Tribunal does not accept that there is a real risk the applicant will suffer significant harm for any of those reasons as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka.' (para 56). 'In terms of real risk of significant harm on return to Sri Lanka on account of his illegal departure from the

			country, for the reasons set out above, the Tribunal has accepted that the applicant will be questioned at the airport upon his return to Sri Lanka, that he will likely be charged with departing Sri Lanka illegally and that he could be held on remand for a brief period while awaiting a bail hearing. The Tribunal does not accept that the applicant is of ongoing adverse interest to the authorities. The Tribunal does not accept on the information before it there to be a real risk that the applicant will face torture, or other types of significant harm as set out in s.36(2A) of the Act, either during his questioning at the airport or during any period he spends on remand. The Tribunal considers that the applicant will be granted bail on his own recognisance or with family members as guarantor and that if convicted of charges under Sri Lanka's I&E Act, he will likely face a fine. The Tribunal does not accept that the applicant will be unable to pay such a fine if it is imposed upon him, given he has family members in Sri Lanka who have the capacity to earn an income (for example his father). Nor does it accept on the evidence before it that there is a real risk the applicant would be subjected to treatment constituting significant harm as that term is exhaustively defined in section 36(2A), either during his questioning at the airport or during the short period that he may spend on remand awaiting a bail hearing.' (para 57). 'The Tribunal accepts that prison conditions in Sri Lanka are generally poor and not up to international

			standards as submitted and notes the discussion of prison conditions in the relevant PAM3 provisions, but the Tribunal does not accept that there is the necessary intention on the part of the Sri Lankan authorities to inflict pain, suffering or extreme humiliation, given the Tribunal does not accept the applicant's claims that he (or his father) is of any ongoing adverse interest to the authorities. Further, as discussed, given the country information suggests that any period of detention the applicant may face would be for a short term, and as the Tribunal has found that the applicant is of no interest to anyone for any reason, the Tribunal does not accept that this would constitute significant harm as defined in s.36(2A). In regard to the penalty the applicant may face, based on the information cited above, the Tribunal does not accept that this will manifest itself in the mandatory imposition of a term of imprisonment or that the applicant would not be able to pay any fine that may be imposed on him as he would have the assistance of family members to meet such a financial penalty.' (para 58). 'The Tribunal does not accept that the process of questioning the applicant may be subjected to, the imposition of a fine as punishment and the applicant's charge and conviction under the I&E Act amounts to significant harm because there is no intention on the part of the Sri Lankan authorities to inflict pain, suffering or extreme humiliation in relation to these matters. Further, the Tribunal finds on the country

			information cited above, that any treatment the applicant may face upon return to Sri Lanka, including a fine and detention and poor prison conditions, would not amount to significant harm as this would apply to every person in Sri Lanka who breached the illegal departure law. As this is a real risk faced by the population generally and not the applicant personally, under s.36(2B)(c) there is taken not to be a real risk that the applicant will suffer significant harm.' (para 59). 'The Tribunal is also not satisfied on the country information that there is a real risk the applicant will face significant harm on arrival in Sri Lanka as a person who has failed to obtain protection in Australia. As discussed above, the Tribunal accepts that the applicant as a failed asylum seeker may be subjected to a process of questioning by the Sri Lankan authorities immediately on his return to Sri Lanka. However, based on the country information and the Tribunal's earlier reasoning, the Tribunal does not accept that the process of questioning amounts to arbitrary deprivation of his life, being subject to the death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. The Tribunal is therefore not satisfied that as a necessary and foreseeable consequence of the applicant's return to Sri Lanka there is a real risk he would suffer significant harm at the hands of the Sri Lankan authorities as part of a process of questioning to which he may be subject to.' (para 60).

			'Having considered the applicant's claims individually and cumulatively, for these reasons the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal from Australia to Sri Lanka, there is a real risk that he will suffer significant harm. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa).' (para 61).
1602233 (Refugee) [2016] AATA 4777 (Unsuccessful)	1 December 2016	9, 10, 26, and 29-31	The Tribunal considered whether the separation of the applicant child from the father amounted to significant harm. 'The applicants' claims can be summarised as follows. The first named applicant (the applicant) was born in [Vietnam] in [year] and the second named applicant (the applicant child) was born in Australia in 2011. The applicant was [pregnant] with her second child when she arrived in Australia [in] June 2011. Her husband came to support her and the applicant child was born [in] 2011. [in] April 2012, she and her husband were located by Immigration officers. Her husband was removed from Australia in April 2012 which brought an end to their marriage. She started another relationship with another [man] and they moved into together [in] February 2013. In January 2015, they planned their wedding. They received advice that they needed to travel offshore to get married so they planned their travel.' (para 9).

			‘The applicant fears returning to Vietnam as a divorcee and single mother. She would struggle to find adequate employment and would suffer from financial hardship. She would also be exposed to discrimination. She is fearful of her ex-husband who is aggressive and would not be offered adequate protection by the state. She also suffers from severe psychological issues because of the lengthy period of detention.’ (para 10). ‘The applicant’s mother and her [adult] [siblings] are living in her home area and she has a spouse in Australia who is working who could assist her. When the substance of the country information and these matters were raised with the applicant at the hearing, she said her fear was from her husband and this would create an adverse effect on the family’s welfare; however I do not accept that she has such a fear or that he or anybody else will attempt to harm her or the applicant child. Considering the country information as a whole, whilst I accept that she may suffer discrimination, I do not accept that she will not be able to obtain employment. Considering the country information as whole and her individual circumstances, whilst I accept that she would face a level of discrimination and stigma because of her membership of particular social groups consisting of “women” and “single women” and divorced women”, I find that the chance or risk that she will be seriously harmed or significantly harmed on these bases is remote.’ (para

			26). ‘At the hearing, the applicant stated that the applicant child considers her husband to be her father and she did not want her [Child 1] to be deprived. I have taken into account that if the applicants do not have any other legal basis to stay in Australia they will have to return to their home country and this will lead to the applicant child being separated from the applicant’s father. However, I find that such separation would not constitute either serious harm or significant harm, given the presence of her mother and other family members. Furthermore, it would not constitute persecution as this would not be any element of motivation or discriminatory conduct on behalf of any actor in Vietnam. Nor would it constitute the arbitrary deprivation of life, the carrying out of the death penalty or torture. Nor would it constitute cruel or inhuman treatment or punishment or degrading treatment or punishment and it would not involve any element of being intentionally inflicted by any actor in Vietnam.’ (para 29). ‘Considering her individual circumstances, I find that the applicant child does not face a real chance of persecution in the reasonably foreseeable future from the Vietnamese state or anybody else on this basis.’ (para 30). ‘Considering her individual circumstances, I find that

			there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant child being removed from Australia to Vietnam that there is a real risk that she will suffer significant harm on this basis.' (para 31).
1507813 (Refugee) [2016] AATA 4739 (Unsuccessful)	14 November 2016	9, and 69-76	In this case the Tribunal assessed whether broad security, law and order problems, and general economic concerns qualified as significant harm, finding that it did not due to the operation of s.36(2B)(c) (that the risk was faced by all of the population generally). The applicant was a Bengali Muslim citizen of Bangladesh. (para 9). 'The Tribunal accepts that the applicant still favours the BNP. However, his involvement even prior to 2010 was only modest, and he has had minimal engagement or interest since then. In light of the findings above, the Tribunal does not accept that the applicant experienced any harm amounting to persecution in the past. The Tribunal does not accept that the applicant's already very low engagement and interest in the BNP or Bangladeshi politics generally will increase if he returns to that country. Nor does it accept that he has any political opinion that would motivate him to engage in political activities, but which he might need to refrain from or modify, in order to avoid persecutory harm.' (para 63).

			‘For the reasons set out above, the Tribunal does not accept that if the applicant returns to Bangladesh now or in the foreseeable future that there is a real chance he will face serious harm for reasons of his low-level support of the BNP or any past association he has with the party through his extended family. The Tribunal does not accept that he has a well-founded fear of persecution for reasons of political opinion or for any other Convention-related reason.’ (para 69). ‘The Tribunal finds that the applicant does not have a well-founded fear of persecution for reasons of political opinion or for any other Convention related reason, now or in the reasonably foreseeable future, if he returns to Bangladesh. It is therefore not satisfied that he meets s.36(2)(a).’ (para 70). ‘The Tribunal has considered whether on the evidence before it, there would be a real risk that the applicant will suffer significant harm as a necessary and foreseeable consequence of being removed from Australia to Bangladesh.’ (para 71). ‘Country information indicates that there are generally high levels of political violence in Bangladesh, both between and within the major parties. However, the findings above that the applicant’s political interests do not extend beyond a preference for the BNP, and that he has no other current or prospective profile, indicate that he does not face a real risk of significant harm arising

			from these circumstances.' (para 72). 'Country information also indicates high levels of corruption and criminal activity in Bangladesh. The applicant claims that he has already experienced corrupt activity, exacerbated (he claims) because of his allegiance to the BNP), but the Tribunal has found that he has both exaggerated and misconstrued such incidents, and that they did not involve significant harm. Sources indicate that thugs associated with the ruling AL are responsible for some of the general criminality and protection rackets, and that they can and do select their targets based on political allegiance, at least at a local level. However, for the reasons given above, the Tribunal does not accept that the applicant has in the past or will in the future face an elevated risk due to any political leanings. The Tribunal accepts that the applicant might experience further corrupt conduct if he returns to Bangladesh – including if he re-enters the [product 2] market – but it is not satisfied that this gives rise to a real risk of significant harm.' (para 73). 'The applicant's concerns also relate to the broader security, and law and order problems, in Bangladesh. Country information indicates that these are real issues in that country. In the Tribunal's view, these relate to the general security situation in Bangladesh, and associated economic concerns. Under s.36(2B)(c) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied

			that the real risk is one faced by the population generally and is not faced by the applicant personally. The Tribunal is satisfied that the lack of general security and instability that the applicant alluded to is faced by the population generally and not by him personally.' (para 74). 'For the above reasons, the Tribunal is not satisfied that the applicant's circumstances give rise to a real risk that he will be subjected to any form of harm which would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant, such as to meet the definition of torture; or the definition of cruel or inhuman treatment or punishment; or the definition of degrading treatment or punishment. It is also not satisfied that there is a real risk that he will suffer arbitrary deprivation of his life or the death penalty.' (para 75). 'Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm: s.36(2)(aa).' (para 76).
1610304 (Refugee) [2016] AATA 4690 (Unsuccessful)	4 November 2016	6, 8, 27-28 and 30	'The applicant was born in [year] in [Country 1] and is of [Country 2] and Japanese ethnicity. His mother is [from Country 2] and father Japanese. He is the holder of Japanese citizenship as a result of his father's

			Japanese citizenship' (para 6). 'The applicant claimed that he had never been harmed in Japan because he had never lived there. He fears that he would experience significant discrimination as he is of [Country 2] ethnicity and does not read and write Japanese. There is evidence that many people of [Country 2] origin have been mistreated and persecuted in Japan and they experience racial discrimination and discrimination in obtaining employment, despite the Japanese government's policies of non-discrimination' (para 8). The 'Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason' (para 27). 'The Tribunal accepts that the applicant will face difficulties as a Japanese citizen who has limited familiarity with Japanese mores and culture and who is functionally illiterate in Japanese. The Tribunal is not entirely satisfied that he would have no family support in Japan as he gave evidence that he has visited his father's family in Japan a number of times, albeit briefly. Nevertheless, the Tribunal is prepared to give him the benefit of the doubt and accept he has very little family support in Japan. Consequently he may suffer some hardship as he tries to find accommodation, earn an income and familiarise himself with the culture and the written language. However, the Tribunal is not

			satisfied that these hardships, even taken into account cumulatively, will result in a real risk that he will suffer "significant harm" as it is exhaustively defined in subsection 36(2A) of the Act' (para 28). The 'Tribunal was not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a) or s.36(2)(aa)' (para 30).
1502278 (Refugee) [2016] AATA 4656 (Unsuccessful)	1 November 2016	2, 52-54 and 57	The applicants were citizens of Fiji (para 2). The 'first named applicant has made claims for protection and the second named applicant makes no separate claims for protection but claims protection as a member of the same family unit as the first named applicant' (para 2). 'The Tribunal's overall assessment is that the applicant wishes to remain in Australia because he is "happy in Australia" and he has received good medical treatment in Australia. He also wants to work in Australia' (para 52). 'He told the Tribunal that he was concerned if he returned to Fiji that he would not be able to work and he may not be able to get medication for his medical conditions and he might be a burden on his [Adult child]. The Tribunal has referred to the information contained in the DFAT country report which indicates that Fiji has a comparatively high life expectancy and that reflects higher than average health outcomes. The

			report indicates that the government provides generous public health services and including free primary and secondary healthcare but other support services are not generally subsidised. The country report also indicates that there are four main hospitals in Fiji and three of those are state funded institutions. Report also indicates that Fiji spent approximately 3.8% of its GDP on health in 2011. The report also indicates that Fiji has high levels of youth unemployment and that the official unemployment rate was approximately 8.3% in 2012' (para 53). 'The applicant said that he feared that he may not be able to obtain work in Fiji and that he did not believe that he would be able to engage in [work] because of his medical difficulties. However the applicant also told the Tribunal that he would like to remain working if he is allowed to remain in Australia. That evidence indicates to the Tribunal that the applicant is keen to continue to work. As indicated the applicant had provided documentation to the Department to support being allowed to work in Australia. The Tribunal acknowledges the evidence that the applicant has had some difficulties related to [medical] conditions since been in Australia and he has received treatment for that/those condition/s' (para 54). 'However the Tribunal's overall assessment of the DFAT country report information that has been referred to is that it is reasonable on the basis of that information

			for the Tribunal to assume that both applicants health conditions could be appropriately addressed if they were to return to Fiji. The applicant told the Tribunal that if he had to return to Fiji he would live with his [Adult child]. That evidence and information indicates that it is reasonable for the Tribunal to assume the applicant would enjoy some family support if he and the second named applicant to return to Fiji. The Tribunal also believes on its assessment of the evidence and information before it that any risks that the applicants may face if they returned to Fiji would be risks faced by the Fijian population generally and not by the applicants personally' (para 54). The Tribunal was not satisfied that the applicants satisfied the criteria set out in s.36(2)(aa) (para 57).
1507684 (Refugee) [2016] AATA 4563 (Unsuccessful)	13 October 2016	2, 11-12 and 33-38	The applicant was a citizen of China (para 2). 'The applicant is a Uighur Muslim from Urumqi' (para 11). 'The applicant claims that she fears for her life if she returns to China and believes that she will be arrested, tortured and sentenced to death for discussing details in Australia of events that she witnessed in China in July 2009' (para 12). The Tribunal found 'the applicant does not have a well-founded fear of persecution in China for a Convention reason and is not a person in respect of whom Australia

			has protection obligations under the Refugees Convention' (para 33). 'The Tribunal does not accept that the applicant was of continuing adverse interest to the authorities at the time she left China, nor that she was required to sign an undertaking not to be involved in Uighur activities in Australia and not to discuss actions against Uighur people such as she had witnessed. The Tribunal does not accept that she was detained in 2013 for wearing a T-shirt which indicated that she belonged to a politically dissident group as she has claimed. The Tribunal does not accept that she suffered significant harm in the past because of her family background or her religious and ethnic identity nor does it accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to China, there is a real risk that she will suffer significant harm for these reasons' (para 34). 'The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that she will suffer significant harm as a result of her actual association, involvement and participation in pro-Uighur activities against the Chinese authorities and in other activities of the Uighur community in Australia. The Tribunal accepts that it cannot rule out the

			possibility that the applicant's involvement in these activities in Australia may have come to the attention of the Chinese authorities' (para 35). 'In this regard the Tribunal has considered country information from DFAT which indicated that the Chinese authorities might take an interest in a person returning to China who in Australia had been a high profile activist, or was someone known for publicly criticising the Chinese Government. A person with such a profile would be treated more harshly than a low profile person. Such a person could be subjected to administrative detention or long term surveillance. There is no evidence before the Tribunal to suggest or indicate that the applicant had or has such a role or profile' (para 36). 'On the applicant's own admission, she did not have a political profile in China, she was raised as an atheist and she did not recognise the offending T-shirt as bearing any relationship to East Turkestan. Given that the applicant left China legally travelling on her own passport, even accepting that her activities in Australia are known to the Chinese authorities, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to China, there is a real risk that she will be identified as a failed asylum seeker. Since the Tribunal does not accept that the applicant has any profile the Tribunal does not

			accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to China, there is a real risk that she will suffer significant harm, or specifically that she will be arrested, detained, interrogated, tortured or even killed, as a result of her activities in Australia' (para 37). 'The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa)' (para 38).
1612805 (Refugee) [2016] AATA 4555 (Unsuccessful)	30 September 2016	1, 64 and 66-70	The applicant was a citizen of Lebanon (para 1). The 'Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a)' (para 64) 'The findings of fact' in relation to s.36(2)(a) are relevant to the assessment of the application of s.36(2)(aa), 'in particular those about the applicant's degree of involvement with the Jehovah's Witnesses, his future conduct and relevant country information; and his prospects as Lebanese citizen who has spent almost all his life in Australia. Taking all these factors cumulatively, the Tribunal is not satisfied that there is a real risk that the applicant will suffer significant harm' (para 66). 'The applicant also expressed concern about the general security situation in Lebanon. The Australian

			Government's Smartraveller website conveys the sense of the broad security problems and outlook for the country in the following terms: "We strongly advise you to reconsider your need to travel to Lebanon at this time because of the unpredictable security situation as a result of the conflict in neighbouring Syria and ongoing political and sectarian tensions. The situation could deteriorate without warning." The Tribunal notes, though, that members of the applicant's family have visited there, and it is not satisfied that the applicant has any attributes that would put him at an elevated level of risk' (para 67). 'Moreover, under s.36(2B)(c) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. The Tribunal is satisfied that the lack of general security and instability that the applicant expressed concern about is faced by the population generally and not by him personally. According, the Tribunal finds that there is no real risk that the applicant will suffer significant harm in Lebanon as a result of the general security situation' (para 67). 'The applicant mentioned, in his oral evidence and in the documentation he submitted, other factors that cause him concern, such as his separation from family members in Australia, his lack of familiarity with

			Lebanon, and poor living conditions and services there. The Tribunal is not satisfied that any of these factors, individually or cumulatively, will result in significant harm, as defined in s.5(1), including cruel or inhuman treatment or punishment, or degrading treatment or punishment. Additionally, it notes that in SZRSN v MIAC the Federal Court confirmed that harm arising from the act of removal itself will not meet the definitions of 'significant harm' in s.36(2A)' (para 68). 'For the above reasons, the Tribunal is not satisfied that the applicant's circumstances give rise to a real risk that he will be subjected to any form of harm which would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflict on the applicant, such as to meet the definition of torture; or the definition of cruel or inhuman treatment or punishment; or the definition of degrading treatment or punishment. It is also not satisfied that there is a real risk that he will suffer arbitrary deprivation of his life or the death penalty' (para 69). 'Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm: s.36(2)(aa)' (para 70).
1502219 (Refugee) [2016] AATA 4551	26 September 2016	2, 46, 48-50	The applicants were citizens of India (para 2).

(Unsuccessful)			The Tribunal found that the applicants did not satisfy the criteria set out in s.36(2)(a)of the Act (para 46). 'Having regard to the findings made' in relation to the application of s.36(2)(a) 'rejecting the applicant's claims of demands for payment of money by his sponsor and threats of harm to him and his family upon return to India made by his sponsor, the Tribunal is also not satisfied that there are substantial grounds for believing there is a real risk the applicant will be arbitrarily deprived of his life; or the death penalty will be carried out on him; or that he will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment if he is returned to India' (para 48). 'The Tribunal has also considered the applicant's claim that he fears return to India because his [child] has been in Australia for over 6 years now and it will be difficult for [him/her] to go back to India now. The Tribunal accepts that the applicant's [child] has been in Australia for this period, and that given [the] young age and stage of education, a return to India may be difficult and disruptive for [him/her] and the family. However, it is not satisfied that such disruption, difficulties and challenges of reintegration, or any associated financial hardship amounts to significant harm for the purposes of this criteria. Therefore while sympathetic to the applicant's concerns for his [child]'s education and future prospects, and the disruption and challenges a

			return may cause for the family, it is not satisfied there are substantial grounds for believing that there is a real risk he or his [child] will suffer significant harm for this reason, if they returned to India' (para 49). 'The Tribunal is not satisfied that the applicant, or his wife or [child], are a person in respect of whom Australia has protection obligations under s.36(2)(aa)' (para 50).
1502907 (Refugee) [2016] AATA 4489 (Unsuccessful)	20 September 2016	1, 8, 9, 44 and 46-48	The applicant was a citizen of Nepal (para 1). The applicant claimed to fear harm based on his conversion from Hinduismto Christianity, after his arrival in Australia (paras 8 and 9). 'The Tribunal does not accept that if the applicant returned to Nepal now or in the reasonably foreseeable future, that there is a real chance that he will face serious harm for reasons of religion or any other Convention related reason' (para 44). 'An assessment of the relevant country information' 'indicates that a Christian convert would not face a real risk of being arbitrarily deprived of life, that the death penalty would be carried out on him, that he would be subjected to torture, that he would be subjected to cruel or inhuman treatment or punishment, or to degrading treatment or punishment. The Tribunal is satisfied that such a risk is remote and far-fetched only' (para 46).

			'The definitions of "torture" and "cruel or inhuman treatment or punishment" in subsection 5(1) of the Act require that pain or suffering be "intentionally inflicted" on a person, and the definition of "degrading treatment or punishment" requires that the relevant act or omission be intended to cause extreme humiliation. These expressions require a subjective intention on the part of the actor to bring about the victim's pain or suffering or extreme humiliation. The Tribunal is not satisfied that such an intention exists on the part of the state, given independent country information which indicates that Christians are free to worship and that conversion while illegal is not prosecuted' (para 47). 'The Tribunal is also not satisfied that such an intention exists within societal groups. Incidents of violence towards Christians instigated by extremist groups have been few and irregular. Although some ostracism or discrimination may exist, as outlined earlier, there does not appear to be an intention by societal groups to inflict torture, cruel or inhuman treatment or punishment or extreme humiliation amounting to degrading treatment or punishment. The Tribunal is also not satisfied that this low level discrimination or ostracism would amount to significant harm. The country information does not indicate that any such harm would involve death or torture, nor would it involve cruel or inhuman treatment or punishment or degrading treatment or punishment. In regards to cruel or inhuman treatment or punishment, on the basis of

			country sources discussed earlier, the Tribunal does not accept there would be an act or omission by which severe pain or suffering is intentionally inflicted, or pain or suffering which could reasonably be regarded as cruel or inhuman would be inflicted' (para 47). 'In regards to degrading treatment or punishment, the Tribunal does not accept that there would be an act or omission which would cause and be intended to cause, extreme humiliation which is unreasonable. The country information indicates that low level ostracism or discrimination may involve conduct such as difficulty registering religious organisations, burying the dead, obtaining positions in the senior civil service and some social discrimination. The Tribunal does not accept that this kind of ostracism or discrimination reaches the level of any of the types of significant harm defined in s.36(2A). The Tribunal has also taken into account the claim by the applicant that his father was village [local official] and he comes from a higher caste. The country information does not support a proposition that he would suffer significant harm on this basis' (para 47). 'The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal, that there is a real risk of significant harm' (para 48).
1605572 (Refugee) [2016]	9 September 2016	2-3, 6, 12, 37, 41, 44-45	The applicant was a citizen of Bangladesh (para 2).

AATA 4498 (Unsuccessful)		and 47	Following the application of *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71 to the applicant's case, 'the issue in this case is whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm: s 36(2)(aa) of the Act' (paras 3 and 6). The applicant claimed to fear harm based on his conversion from Islam to Christianity (para 12). 'The Tribunal does not accept that the applicant is a genuine Christian convert. The Tribunal accepts as plausible that the applicant does not practise Islam, however the Tribunal does not accept that this means that he has converted from Islam to any other faith, including but not limited to Christianity, or that he is a practitioner of any religious faith' (para 37). 'The Tribunal acknowledges that the fact that the applicant has lived in Australia for many years could mean that in the case of his return to Bangladesh, it is plausible that he could face difficulties in finding accommodation and employment. However, the Tribunal is of the view that those difficulties could be faced by any person moving to another area where they have not lived for some time and on the basis of the available information, the Tribunal is satisfied that any

			such difficulties that could be faced by the applicant do not amount to significant harm as contemplated by the Act' (para 41). 'The Tribunal is mindful that the applicant suffers from [medical condition] and other clinical conditions, and that it is possible that the clinical and medical services he would receive in Bangladesh are not the same as those available to him in Australia, however on the basis of the available information, the Tribunal is not satisfied that he would be denied access to adequate clinical services or that there is a real risk that he would face significant harm on this basis as contemplated by the Act' (para 41). 'In consideration of the evidence as a whole, the Tribunal is satisfied that if the applicant were to return to the Bangladesh, he would not practise Christianity not out of fear but because he is not genuinely interested in the Christian faith. His Christian related activities in Australia are limited and the Tribunal is satisfied that those activities including his baptism in 2010 have not given the applicant an adverse Christian or religious profile of significance. The Tribunal accepts as plausible that the applicant in Bangladesh and in Australia has not been a strict practitioner or adherent of Islam but this does not mean that he is a Christian. The applicant is not specifically claiming that he has suffered harm on the basis of his limited practice of Islam in Bangladesh' (para 44).

			'The Tribunal understands that past harm is not determinative of future harm but past harm is nevertheless a reasonable indicator. If he were to return to Bangladesh and chooses to maintain his lack of practice of Islam, the Tribunal is not satisfied that he would be considered apostate, or that he would suffer significant harm on the basis of his limited Islamic religious practice or Christian-related activities in Australia' (para 44). 'On the basis of the available information and in consideration of the evidence as a whole, the Tribunal finds that there is not a real risk of significant harm occurring to the applicant on his return to Bangladesh on the basis of his Christian related activities in Australia, or on any other basis. For the same reasons, the Tribunal does not accept that the applicant as a result of his Christian related activities in Australia (if discovered), would be imputed with anti-Islamic views, or anti-authorities views, which would mean that he would face significant harm as contemplated by the Act' (para 45). 'Therefore he does not satisfy the requirements of s.36(2)(aa)' (para 47).
1513167 (Refugee) [2016] AATA 4368 (Unsuccessful)	24 August 2016	4, 5, 10, 54, 60 and 62-68	The applicant was a citizen of Malaysia (para 4). The applicant claimed to fear harm from his previous employer in Malaysia. The applicant claimed that his

			previous employer forced him to sell illicit drugs and 'when he refused he was beaten' (paras 5 and 10). The Tribunal found that the applicant did'not satisfy the criterion set out in s.36(2)(a) of the Act' (para 54). 'The Tribunal has accepted that the applicant was a member of a gang and that he has been physically beaten and threatened with harm if he does not return to the gang. The Tribunal is satisfied that the applicant faces a real risk of significant harm which involves physical or mental pain or suffering or both which is intentionally inflicted on the applicant and this could reasonably be regarded as cruel or inhuman in nature. The Tribunal is therefore satisfied that the treatment that the applicant will be subjected to amounts to cruel or inhuman treatment or punishment or degrading treatment or punishment, as defined in s.5(1) of the Act' (para 60). 'The country information by DFAT suggests that although the authorities, in this case the police are considered reasonably professional and effective however the Government publicly acknowledged the existence of police corruption.According to a report by Freedom House, "Malaysia's police effectiveness has been compromised by low salaries and endemic corruption. The police allegedly provide protection for drug trafficking, prostitution, and loan sharking". More recently

			Freedom House reported in 2015 that government and law enforcement bodies have suffered a series of corruption scandals in recent years. Moreover, despite government reform efforts to improve the integrity of the RMP, public confidence remains limited. Police reform, including the establishment of an independent police complaints and misconduct commission, remains pending' (para 62). 'In this case the Tribunal accepts that corruption of police exists in Perak and accepts the applicant's evidence that his former boss in Perak has paid the police in the past to assist the applicant to avoid criminal charges and he has also paid money to the authorities to ensure the applicant did not receive a custodial sentence. This was done in order to facilitate ongoing criminal activities. The Tribunal has accepted the applicant evidence on this issue as it considered him to be quite open about his criminal activities and history. Therefore the applicant would not be afforded protection by the authorities in Perak. Further, because of the applicant's own criminal history, the Tribunal accepts as unlikely that he will be provided protection by the authorities in other parts of Malaysia' (para 63). 'On the basis of this country information, in particular concerns with corruption, the Tribunal is not satisfied that the general measure of state protection in Malaysia is sufficient in the applicant's case to remove the real risk of significant harm. The Tribunal finds that, for the

			purposes of s.36(2B)(b) of the Act that the applicant could not obtain, from an authority in Malaysia, protection such that there would not be a real risk that he will suffer significant harm' (para 64). 'The Tribunal finds that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there is a real risk that he will suffer significant harm' (para 65). 'In addition to the discussion above with respect to the issue relocation, the Tribunal accepts the applicant's evidence that members of his former particular gang are located in Perak. The Tribunal also accepts the applicant's evidence that he was able to relocate safely to Penang where he lived for a year and then to [City 1] where he was located, but only because of the applicant's having spoken to some local gang members in an effort to avoid paying protection money for his [business]. The Tribunal also accepts the applicant's evidence that the gang members do not know where his family live in [City 1]' (para 66). 'The Tribunal does not accept the applicant's claim that his former boss has circulated a photograph of him with a reward. The Tribunal does not accept this to be the case and considers the applicant added this evidence inorder to enhance his claims to not be able to relocate during the discussion with him about this issue. The

			applicant later added he could return to Malaysia if he saved enough money to be able to pay the gang members off. This was the first time the applicant raised this as an option for him and the Tribunal expressed some concern about this. The Tribunal does not accept this evidence as it appears to have been an afterthought as a means of strengthening his claims' (para 66). 'The Tribunal has concluded mainly on the basis of the applicant's own evidence that he would be able to relocate to an area of the country where there would not be a real risk he will suffer significant harm. The applicant therefore does not satisfy s.36(2B)(a) of the Act' (para 67). 'For the reasons given above the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations' (para 68).
1501066 (Refugee) [2016] AATA 4277 (Successful)	2 August 2016	3-4, 11, 17-20, 32-38 and 44-45	The applicants were citizens of Syria (11). 'Only the first named applicant has made claims for protection. The second named applicant applies as a member of the same family unit of the first named applicant in' (para 3). Following the application of *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235 to the applicant's case'the Tribunal has considered the first named applicant's claims for protection only in relation to s.36(2)(aa)' (para 4)

			‘The applicant fears significant harm should she return to Syria. She fears for her life and safety and has nowhere to live and no means of supporting herself. She also fears harm from Islamist extremists because of her ethnicity and religion’ (para 11). ‘On the basis of the DFAT Country Report assessment the Tribunal finds that there is a real risk that the applicant would face significant harm if she returns to Syria. The Tribunal further finds that given the level of civil unrest in Syria relocation within Syria is not a reasonable option for the applicant nor would the applicant be able to about protection from the authorities of the country such that there would not be a real risk that she would suffer significant harm on her return. The Tribunal also finds that the real risk that the applicant will suffer significant harm should she return to Syria is one that the applicant would face personally given her ethnicity and religion’ (para 17). ‘Accordingly the Tribunal is satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Syria there is a real risk that she will suffer significant harm’ (para 18). ‘The applicant has however resided outside of Syria since [year]. In [year] she married a [Country 1] citizen by whom she had [number] children and resided in

			[Country 1] until her arrival in Australia in 2011. In May 2011 she divorced her husband and in July 2011 she came to Australia with her [son] for the purpose of visiting her [relative] who resides in Australia' (para 19). 'The issue therefore arises as to whether the applicant has a right to enter and reside in a third country; the third country in this case being [Country 1]. The decision maker at first instance was satisfied that the first named applicant had a right to enter and reside in [Country 1]' (para 20). 'There appears to be some factual discrepancies between the country information provided by the applicant and that sourced by the Tribunal. The applicant references [a section] and a 12 month absence as the relevant time frame by which a residency permit is lapsed. The Tribunal's information references [a different section] and 2 years absence as the relevant time frame for the lapsing of a residency. Despite these inconsistencies the Tribunal accepts that the applicant no longer holds a residency permit in respect to [Country 1] and that this residency permit was lost by the applicant's absence from the country' (para 32). 'In terms of the applicant's ability to re-enliven her right to enter and reside in [Country 1] the Tribunal accepts the applicant's claim that her lack of adequate support and employment in [Country 1] would be a bar

			to her gaining re-entry to [Country 1]. The Tribunal accepts this claim as it is borne out by the country information set out above at paragraph 29' (para 33). 'Furthermore the country information set out at paragraph 28 and 30 indicates that having divorced her husband her residency permit is withdrawn and she is not entitled to an independent right of residence' (para 34). 'As such the Tribunal finds that whilst the applicant did have a past right to enter and reside in [Country 1] she does not have an existing right to enter and reside in [Country 1]. The Tribunal finds that s.36(3) does not apply to the applicant with respect to [Country 1]' (para 35). 'Accordingly the Tribunal is satisfied that the first named applicant is a person in respect of whom Australia has protection obligations as she satisfies the criterion set out in s.36(2)(aa)' (para 36). 'On the basis of his passport presented at the hearing the Tribunal finds that the second named applicant is a national of [Country 1]' (para 37). 'He is the son of the first named applicant. He arrived in Australia with his mother in 2011 and was a minor at the time. He is no longer a minor' (para 38).

			'However the second named applicant's evidence as to his psychological dependence on his mother was compelling. He indicated that he had arrived with his mother as a minor and although he was free to travel to [Country 1] he had not taken these steps because of the psychological dependency on his mother. The applicants indicated that the uncertainty and hardships they had endured over the years had solidified a strong relationship between them and a co-dependency. On the basis of the applicants oral evidence the Tribunal finds that the second named applicant is substantially reliant on the first named applicant for psychological support' (para 44). 'The Tribunal finds that the second named applicant is a dependent child of the first named applicant and qualifies as a member of the same family unit of the first named applicant. It follows that the second named applicant will be entitled to a protection visa provided the criterion in s.36(2)(c)(ii) and the remaining criteria for the visa are met' (para 45).
1502598 (Refugee) [2016] AATA 4164 (Unsuccessful)	13 July 2016	2, 11, 13, 35-39 and 53-56	The applicants (husband and wife) were citizens of the Republic of Korea (para 2). The applicant husband was the primary applicant (applicant) (para 11). The applicant wife claimed to be a member of the same family unit as the primary applicant and 'made no specific claims of her own' (para 11).

			The applicant claimed that 'due to violence and threats of death from organised crime gangs he had to run away from Korea' (para 13). The Tribunal 'concluded that any harm the applicant may encounter from the money lender on return to Korea is not for a Convention reason and nor is there evidence to support he would be denied state protection if it is required for a Convention reason' (para 35). Further, the 'Tribunal does not accept the applicant will encounter financial hardship on return to Korea on account of his age such that he will be unable to subsist or that he will suffer any other harm amounting to serious harm. Accordingly, the Tribunal finds there is not a real chance the applicants will suffer serious harm on return to Korea for a Convention reason' (para 35). The Tribunal put to the applicant that 'under the complementary protection provisions there is not a real risk of significant harm if a person can obtain protection from an authority such that there is not a real risk of him being harmed' (para 36). 'When asked if he had reported the threats and harm he experienced at the hands of the money lenders to the police the applicant stated that he did try to report the matter but was told it was a civil matter and therefore not something they could get involved in. Throughout

			the hearing the applicant insisted that his loan, which was provided on the basis of an IOU which was never provided to him, is between him and another unknown individual taken out through an intermediary organisation called [name]. He said that the money lender did this deliberately to ensure that the matter remains a private affair between two individuals' (para 37). 'Further, he insisted that without evidence of any harm there was nothing he could do. At one time during the hearing the applicant intimated that the original source of the loan might be from [another country] but the Tribunal considers this speculative and unsupported by any evidence before it' (para 37). 'The Tribunal pointed out that the applicant had previously advised that one of his [family members] [has contact with] with a high ranking police officer and indicated that this ought to have given him some advantage in seeking police protection. The applicant replied that he did discuss it with his [family member's contact] but he also said the police cannot get involved in problems between private individuals. The applicant and his wife both stated that involving their [family member's contact] would only have caused him problems as well' (para 38). 'Regarding protection from the authorities, the Tribunal discussed country information reports with the

			applicant' (para 39). 'It is the Tribunal's view that the independent country information' 'shows the Korean government has, in the years since the applicant departed Korea, been taking increasing measures to crack down on illegal money lenders and to provide support to victims. Together with the fact the applicant's [family member] has a [contact] in the police force, the Tribunal finds that if the applicant is removed from Australia to Korea he will be in a position to obtain protection from an authority such that there is not a real risk of him being significantly harmed if the money lenders continue to threaten or harm him' (para 53). 'Regarding the applicant's claim that he will be unable to secure employment in Korea due to his age', 'the Tribunal is not persuaded on the evidence before it that either he or his wife will be unable to find employment. In any event, the Tribunal put it to the applicant at hearing that economic hardship issues do not fall within the definition of significant harm except possibly in certain circumstances of extreme deprivation. As noted above, the applicants have family support they can rely upon in Korea and in addition the primary applicant appears eligible to receive a retirement pension at age 61' (para 54). 'The Tribunal considers that any difficulties encountered by the applicants in securing employment

			in Korea is a risk faced by the population generally and not by them individually. The Tribunal acknowledges the applicant may still be required to service his debt on return to Korea but the country information cited above indicates that there are support services available in Korea for people in these circumstances which include facilitation of long term loans and legal counselling. For these reasons the Tribunal finds there is no real risk of significant harm to the applicants arising from the primary applicant's age and/or economic circumstance on return to Korea' (para 54). 'Accordingly, the Tribunal finds there are not substantial grounds for believing there is a real risk the applicants will suffer significant harm if returned to Korea from Australia' (para 55). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) ors.36(2)(aa) of the Act (para 56).
1512314 (Refugee) [2016] AATA 4028 (Unsuccessful)	15 June 2016	2, 9, 23, 37-39, 41, 43-44 and 47	The applicant was a citizen of Malaysia (para 2). The applicant claimed that 'he was victimised as a student by his headmaster, who did not like him and made false reports about him. If he returned to Malaysia the headmaster would kill him, he has already been hospitalised after being beaten by friends of the headmaster. The police have received reports about him and would believe the headmaster' (para 9).

			The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a)of the Act (para 23). The Tribunal did not accept 'that the applicant has subsequently received any phone calls threatening him arising out of this incident', 'his family has received any threatening phones arising out of this incident', or that 'the applicant was assaulted by a bottle in 2009' (para 37). 'The Tribunal noted at the hearing that country information about the Royal Malaysian Police demonstrated that they had taken real action against the corruption that had caused difficulty with the police in the past' (para 38). 'The Tribunal considers that this report, as is also noted in US State Department reports and other leading credible sources on Malaysia, demonstrates that the applicant's negative attitude towards the RMP is founded on historical concern, and not based on the present circumstances as found in Malaysia. The failure of the applicant to avail himself of any protection in Malaysia is a significant concern to the Tribunal' (para 39). 'The Tribunal further notes that if the applicant or his family wishes to approach the authorities in the future,

			they could do so. The Tribunal considers that the applicant can obtain protection from the authorities should he avail himself of that assistance. The Tribunal considers that state protection is available to the applicant such that he does not face a real risk of significant harm for this reason' (para 41). 'The applicant arrived in Australia in December 2013 but did not lodge his protection application until December 2014, and was unlawfully in Australia for over 9 months after his original visa expired' (para 43). 'The Tribunal considers that if the applicant genuinely had a fear of harm that led him to leave Malaysia, the Tribunal considers that the applicant would have approached the Australian authorities and sought protection far earlier, and not left it so long to seek protection' (para 44). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(aa)of the Act (para 47).
1418483 (Refugee) [2016] AATA 3975 (Unsuccessful)	7 June 2016	1, 2, 22-27, 29-30, 33 and 35	The applicant was a citizen of Pakistan (para 1), 'He arrived in Australia in October 1989 and lodged an application to the Department of Immigration for a Protection visa in January 1993. The application was refused by the Department in 1995 and affirmed by the Refugee Review Tribunal (RRT). Since that time, the applicant has lodged various applications for judicial

			review and Ministerial intervention. The last Ministerial intervention application was commenced in February 2014. A decision was made by the Minister not to intervene in March 2014' (para 1). 'Following the decision in *SZGIZ v Minister v Minister for Immigration and Citizenship*[2013] FCAFC 71; (2013) 212 FCR 235)', the applicant was able to make a further application for a Protection visa [in] April 2014' (para 2). 'The applicant essentially claimed that since he left Pakistan the security, political and criminal situation has become increasingly unstable and his significant period of time in Australia will cause him to be targeted for ransom. The applicant also referred to his previous support for a political party, the Punjabi PakhtoonIttehad (PPI). He also claimed that he will be subject to considerable socio-economic difficulties and he will be without family support. The applicant also claimed he will be subject to discrimination because he speaks Punjabi' (para 2). The 'Tribunal firstly accepts that the applicant was a supporter of the PPI, a political party in Karachi which began as a movement to represent the rights of Punjabis and Pashtuns living in Karachi and other urban areas of Sindh.The Tribunal also accepts that the applicant attended rallies and demonstrations and when he left Pakistan in 1989 there was considerable ethnic conflict

			between Mohajirs, Sindhis, Punjabis and Pashtuns, and several riots in the 1980s resulted in the deaths of numerous people from various ethnic groups. The independent evidence confirms that in 1988 during three days of rioting more than 250 people from various communities (Mohajirs, Punjabis, Sindhis), died in Karachi). The bodies of three Punjabis were subsequently found on a railroad near Model Colony in Karachi in 1990. Further ethnic clashes in 1990 also resulted in the deaths of about 30 people' (para 22). 'The Tribunal accepts on the basis of the above that the applicant left Pakistan at a time when there was considerable ethnic violence and he may at some point have been involved in conflicts between the PPI and members of the MQM and harmed during that time' (para 23). 'The Tribunal accepts that it was for this reason that the applicant left Pakistan for the security of Australia. However, the Tribunal is not satisfied that the applicant's evidence indicates that he was a member or a high profile supporter of the PPI, such that he would be targeted by the MQM or any other political parties upon his return to Karachi where he has not lived for some 27 years. The independent evidence indicates that since the applicant left Karachi there has been ongoing ethnic diversification in Sindh, and Karachi has become an increasingly diversified city. DFAT has also reported that Pakistan is ethnically and linguistically diverse and

			Punjabis are the largest linguistic group (45 per cent) with Pashtuns representing 15 per cent, Sindhis 15 per cent and Seraikis 8 per cent (a variety of Punjabi)' (para 23). 'The evidence before the Tribunal indicates that as at 2011 the Mohajir population represented about 44 per cent of the Karachi population, but the Sindhi, Pushto, Punjabi, Kachhi, Gujarati, Bangali and Burmese speakers also have a significant presence in the city, although Mohajirs are projected to remain the single largest ethnic group through 2025 which is more than double the size of the next group' (para 23). 'Furthermore, as discussed at the hearing and confirmed by the applicant, the PPI no longer appears to exist as an organised party. The evidence indicates that in in Sindh the PPP won the largest number of seats in the 11 May 2013. The evidence indicates that the MQM, a Karachi based secular party has been in conflict with the Sindhi-backed PPP and Pashtun parties. The most recent DFAT report states that politically motivated violence occurs throughout Pakistan, but is most prevalent in Karachi between members of the MQM, ANP, PPP and Sindhi nationalist parties, many of which maintain armed wings' (para 24). 'As discussed extensively with the applicant at the hearing, the DFAT report also states that since September 2013, Ranger paramilitary operations aimed

			at dismantling extensive militant and politico-criminal groups in Karachi have reduced the number of targeted attacks and lessened the activities of criminal syndicates. According to DFAT, official statistics show that there has been a 73 per cent reduction in the number of targeted killings and an 85 per cent reduction in the number of kidnapping for ransom incidents in Karachi in 2015 (target killings peaked at 73 in December 2013, compared with less than 10 in June 2015; and there were 174 kidnapping cases in 2013, compared with only 10 from January to July 2015' (para 24). 'The Tribunal is not satisfied that as a result of any involvement the applicant had in rallies and demonstrations several years ago will result in him and some conflict he had with the MQM that there is a real risk he will be targeted by the MQM or any other opposing political parties upon his return to Karachi. The Tribunal considers that the evidence set out above indicates that the MQM is not targeting members and supporters of Punjabi parties and is instead focusing its attention on the PPP and the Pashtun parties' (para 25). 'The Tribunal considers it unlikely that it will be known some 27 years later that the applicant had any involvement with the PPI, but even it is known the Tribunal does not accept that this will result in him being targeted or sought by the MQM or any other political parties. The Tribunal is not satisfied, therefore,

			that there is a real risk that the applicant will be targeted or suffer significant harm by the MQM or any other political parties upon his return to Pakistan' (para 25). 'In terms of his claims relating to his Punjabi ethnicity, the Tribunal accepts that lingering resentments may exist throughout Pakistan against Punjabis who are considered to obtain economic and political benefits not found in Karachi which has struggled with crime, terrorist incidents and an influx of various ethnic groups seeking refuge. The Tribunal accepts that the Punjab is perceived to be politically and demographically dominant whilst Sindh is perceived to operate in a "seemingly permanent state of disadvantage" and is seen by some as unlikely to meet its full social and economic potential in the absence of major qualitative changes to the Pakistani state. However, the major ethnic clashes in Karachi are between the ethnic Pashtuns, whom the Mohajir's view as sheltering terrorists in Karachi' (para 26). 'DFAT has stated that Pashtun-majority areas have been disproportionately affected by violence because of the historical concentration of military operations, militant attacks and tribal, intra-communal and politically motivated violence in those areas. The most recent DFAT report does not name Punjabis as one of the groups of interest and the Tribunal is not satisfied that there is any evidence to indicate that Punjabis are targeted in Sindh province' (para 26).

			‘Additionally, although the Tribunal accepts that the applicant speaks Urdu with a Punjabi accent, his own evidence indicates he was born and raised and educated in Sindh province. The Tribunal is not satisfied, therefore, that the applicant’s own evidence or the independent evidence indicates that there is a real risk he would suffer significant harm as a result of his Punjabi ethnicity, accent or his prior involvement with the PPI or because he is viewed as a Mohajir or an outsider of some kind’ (para 26). ‘During the Department interview, the applicant stated that he fears he will be personally targeted because it will be known he has been living in a Western country. He will be perceived as rich and will be subject to ransom for money because of the difference in earnings in Australia and Pakistan. The applicant stated that target killings and kidnappings for ransom are common. The applicant referred to a number of target killings in 2013 and stated that they have been because the people have been perceived as wealthy’ (para 27). ‘The DFAT 2016 report states that “Western influence is pervasive in many parts of Pakistan” and may (sic) Pakistanis have relatives in western countries and those living abroad frequently return to visit relatives. DFAT assesses that “individuals are not subject to discrimination or violence on the basis of having spent time in the West”. The Tribunal accepts that the

			applicant may initially be perceived as wealthy having spent several years in a Western country. However, the independent evidence discussed above indicates that in Karachi the kidnappings for ransom have declined considerably in recent years' (para 29). 'The Tribunal does not accept that the independent evidence indicates that, apart from some isolated incidents, there is targeting of persons returning from the West after having lived in a Western country for a considerable period of time. The Tribunal is not satisfied, therefore, that there is a real risk the applicant will be kidnapped or held for ransom or will otherwise suffer significant harm because he is a "returnee from the West" and/or is perceived as wealthy upon his return to Pakistan' (para 29). 'The applicant has made generalised claims in relation to the security situation, lower level of security and a high crime rate in Karachi. During the Department interview, the applicant claimed that he cannot live safely in Pakistan because of political rivalry and the rise in Islamic fundamentalism. The applicant referred to a lower standard of living and differences in the quality of water. He also stated that he was [age] years of age when he came to Australia. He is now [age range] years old and he becomes stressed very quickly' (para 30). 'The applicant stated that the security situation has

			deteriorated and Islamic fundamentalists taking power. The applicant stated that he does not believe he could be protected because the government is corrupt and corruption is considerable throughout Pakistan. The applicant stated that when he left Pakistan several years ago he thought the high level of corruption was "normal" but he has become accustomed to the Australian way of life. He does not believe he would be able to readjust or reintegrate into Pakistani society' (para 30). 'He believes in democratic government and he does not believe in the distinction between Sunni and Shia and small comments like that can result in harm. When advised by the Tribunal that he is a Sunni Muslim and the people who are the main target of terrorist groups in Pakistan are minority religious groups, police or employees, the applicant stated that he believes the situation in Pakistan has continued to deteriorate and there are many instances of Sunnis being targeted and killed' (para 30). 'The applicant referred during the hearing to his generalised fears and concerns relating to corruption, the lack of opportunity for people and a climate of target killings, and claimed he will not have sufficient money to pay for police protection. The applicant stated that as a result of the high level of poverty people can be killed for less than $10. The applicant stated that he has no way of surviving in Pakistan if he returns and

			although he could previously obtain employment he is now 27 years older than when he last left' (para 30). 'The Tribunal accepts that after such a significant period of time, the applicant will find it difficult to readjust to life in Pakistan and that there is a different standard of living and a level of corruption not present in Australia. However, the Tribunal does not accept that the applicant will be ostracised or will be "perceived as having infringed social mores" or that the generalised corruption will result in the applicant suffering significant harm' (para 33). 'The Tribunal also considers that although the applicant may suffer from some level of anxiety and depression, there is no evidence that this has affected his ability to obtain work or to maintain a reasonable standard of living. Given that the applicant completed high school, has a diploma and considerable employment experience, the Tribunal is satisfied that although he will no doubt suffer considerable difficulties adjusting to the Pakistani culture and society, he will be able to re-establish himself in Pakistan' (para 33). 'As also discussed with the applicant during the hearing, the Tribunal is also not satisfied that any difficulties he will have readjusting and the differing living standards fall within the Complementary Protectionprovisions. This is because the Tribunal is not satisfied that such difficulties amount to the death

			penalty or arbitrary deprivation of life and the latter three elements of significant harm, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment, contain an intent requirement' (para 33). 'The Tribunal is not satisfied that the applicant's difficulties in re-establishing himself and reintegrating or the fact that his family members may no longer live in Pakistan will be intentionally inflicted. The Tribunal instead considers that such factors are as a result of the applicant's individual circumstances in terms of his lengthy period of time outside his country of residence and his integration and settlement in a Western country which will make it difficult for him to adjust to differing standards of living and a different political and economic environment' (para 33). 'Additionally, although the Tribunal accepts that there have been some natural disasters from time to time in Pakistan this is a factor which affects the population of Pakistan generally and is not faced by the applicant personally and is, therefore, a situation in which there "is taken not to be a real risk" that the applicant will suffer significant harm' (para 33). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(aa)of the Act (para 35).
XTVC and Minister for	2 May 2016	2-8, 11-12, 62-64, 68,	'The applicant is a citizen of Cuba who first arrived in

Immigration and Border Protection (Refugee) [2016] AATA 278 (Unsuccessful)		73, 77-81, 83-84, 87 and 89-95	Australia on 7 July 2007 as the holder of a Partner (Provisional) (Class UF) visa and has not departed since. On 30 September 2009, the applicant was granted a Partner (Migrant) (Class BC) (**"**spouse visa") visa onshore, which allowed him to remain in Australia indefinitely' (para 2) 'On 17 August 2011, the applicant was convicted in the Sydney District Court of New South Wales of one count of sexual intercourse without consent, and sentenced to 4 years' imprisonment with a non-parole period of 2 years and 6 months. The offence was committed on 7 December 2009' (para 3). 'As a result of the applicant's conviction, on 18 December 2013 the Minister exercised his discretion under s 501(2) of the Act and cancelled the applicant's spouse visa' (para 4). 'On 9 April 2014, the applicant lodged an application for a protection visa with the Department of Immigration and Border Protection ("the Department")' (para 5). 'On 19 March 2015, the applicant was released on parole and has been held in immigration detention since' (para 6). 'On 3 February 2016, a delegate of the Minister exercised the discretion under s 501(1) of the Act to

			refuse to grant the applicant a protection visa' (para 7). 'On 15 February 2016, the applicant sought review of the delegate's decision in the Tribunal' (para 8). 'As the applicant was sentenced to 4 years imprisonment with a non-parole period of 2 years and 6 months, the applicant has a "substantial criminal record" in accordance with subsection 501(7) of the Act. As a result and in accordance with subsection 501(6) of the Act, he does not pass the character test' (para 11). 'Having determined that the applicant does not pass the character test, the Tribunal must then consider whether to exercise the discretion under s 501(1) of the Act to refuse to grant a protection visa to the applicant' (para 12). *Protection of the Australian community* 'In considering the lack of remorse the applicant has shown for his actions, his belief that he has committed no offence, together with the comments and recommendations in the CUBIT Report as well as the pre-release reports, the Tribunal concludes that there is a risk of harm to the Australian community should he be released' (para 62). 'Given the nature of the applicant's offending and the

			nature of the harm to individuals should the applicant engage in further criminal conduct of this nature, the risk to the Australian community should the applicant be released weighs heavily against a decision that his visa be granted' (para 63). *Best interests of minor children in Australia* 'There is nothing to indicate that there are any children under 18 in Australia whose best interests would be affected by refusal of the applicant's application for a protection visa' (para 64). *Expectations of the Australian Community* 'Clearly, the applicant has not met the expectation that as a non-citizen he will obey Australian laws while in Australia. The expectation of the Australian community would be that a visa application should be refused where the applicant for such a visa has been convicted of a serious offence in Australia' (para 68). *International non-refoulement obligations* 'The applicant has submitted that he is seeking political asylum in Australia as the Cuban Government has declared him to be a counter-revolutionary. He participated in a documentary about Cuba and correspondence was received indicating that the airing of the documentary was delayed on two occasions

			because of delays in his departure from Cuba and concerns for his safety if it was aired while he remained in that country. The applicant indicated he spoke out about political issues and life in Cuba, including speaking out about Fidel Castro and other political figures in Cuba. He knows if he returns to Cuba his life will be in danger. He will either be killed or be placed in prison all of his life because of his participation in the documentary. Other letters of support provided also referred to the applicant's fear of harm if returned to Cuba' (para 73). 'In a statutory declaration dated 10 November 2014 provided by Mr David O'Shea, a reporter/producer who produced the 2007 documentary, referred to concerns for the applicant's safety as a result of the 2007 documentary, and critical comments from the Cuban consul general in Sydney' (para 77). 'In submissions dated 13 October 2014 and 28 April 2015, the applicant's then representative referred to country information regarding the risk of persecution in Cuba on the grounds of political dissent' (para 78). 'In his statutory declaration made on 22 April 2015 the applicant states that "rumours that I may be in immigration detention for years before I get a decision, is putting a lot of pressure on me" and that his "sleep and appetite are affected and I have panic attacks and feel desperate at times". He told the Tribunal that being

			in detention is hard for him and he is unable to return to Cuba and does not want to remain in detention' (para 79). 'The Tribunal has carefully weighed Australia's non-*refoulement* obligations and the prospect of prolonged detention against the seriousness of the applicant's offending' (para 80). 'The applicant's 2009 offence involved a sexual assault against a young woman who was asleep at the time. While the sentencing judge accepted that the offence was "spontaneous", he also referred to "the very serious violence which is, by definition, part of a rape", and recorded the victim's observation that she was "extremely sore for several days after the incident". Further, while the applicant received a custodial sentence of four years, the offence was punishable by imprisonment for a maximum term of 14 years' (para 81). 'The applicant has been assessed as a moderate to high risk of reoffending. He has expressed no remorse for his actions, believing he is innocent. The Tribunal has regard to comments in the CUBIT Report as well as the pre-release reports, that he has little insight into his behaviour and takes no responsibility for his sexual offending behaviour. Having regard to the nature of the applicant's offence, the nature of the harm to individuals should the applicant re-offend and the risk

			of the applicant re-offending, the Tribunal considers that the applicant presents an unacceptable risk to the Australian community should he be released' (para 83). 'After weighing all the factors, the Tribunal considers that the seriousness of the applicant's offending outweighs countervailing factors, including Australia's non-*refoulement* obligations and the prospect of prolonged detention' (para 84). *Impact on family members* 'While the applicant's friends and family may experience disappointment and sadness at the refusal of the applicant's visa, the Tribunal is not satisfied that this will cause them or his ex-girlfriend any hardship' (para 87). *Impact on Australian business interests* 'The Tribunal accepts that the applicant was a successful musician and entertainer prior to his offending and incarceration in 2011. However there is no evidence that any Australian business interests would be affected if he is unable to continue his work in the industry' (para 89). *Impact on victims* 'The applicant's 2009 offence involved a sexual assault

			against a young woman who was asleep at the time. While the sentencing judge accepted that the offence was "spontaneous", it also involved serious violence against a victim who was asleep and therefore unable to defend herself' (para 90). 'Whilst there is no direct evidence from the applicant's victim before the Tribunal, the sentencing remarks comment on the impact of the offence on the victim including her age at the time of the offence, the consequences of the offending on her at the time of the offence as well as the impact the offence had on her wellbeing into her future' (para 91). 'Taking into account all of the considerations and guided by the principles set out in the Direction, the Tribunal concludes that the primary considerations of the protection of the Australian community and the expectations of the Australian community outweigh the other considerations' (para 92). 'The Tribunal considers the risk of the applicant re-offending and the serious consequences which could arise in those circumstances outweigh all other considerations in favour of his protection visa being granted' (para 93). 'Accordingly, the protection visa application should therefore be refused' (para 94).

			'The Tribunal affirms the decision under review' (para 95).
1415095 (Refugee) [2016] AATA 3770 (Unsuccessful)	27 April 2016	2, 7, 11, 21, 36-37 and 41-47	The applicant was a citizen of Former Yugoslav Republic of Macedonia (Macedonia) (para 2). The applicant 'applied for the visa [in] September 2013 and the delegate refused to grant the visa [in] August 2014' (para 2). 'The applicant lodged a previous application for protection that was refused by the Department of Immigration [in] March 2002. This decision was affirmed by the Refugee Review Tribunal on 13 January 2004. In 2013 the decision of the court in *SZGIZ v Minister for Immigration and Citizenship*[2013] FCAFC 71 permitted the lodgement of a further application where a determination of the applicant's complementary protection claims had not been made' (para 7). 'The Tribunal has proceeded to consider the applicant's claims in relation to the complementary protection requirements of s.36(2)(aa)' (para 11). 'He arrived in Australia in 2000. His family were threatened by Albanian rebels in early 2000, the applicant receiving significant harassment. He was told if he fought against them they would harm him and his family. He only served [a short period] in the Yugoslav National Army, and was called up in [year]. The

			applicant feared he would be arrested and detained, and harmed while being detained, because of his failure to serve in the national army. The applicant also stated he would be imprisoned on arrival because of his failure to serve with the Macedonian army [in year]. His wife in Macedonia (now deceased) told him he had received letters demanding he join, and that they had come to his house. The applicant stated records of this had been kept and still exist' (para 21). 'The applicant's claims regarding his call-up for national duty revolve around this period. The Tribunal notes that the Yugoslav National Army no longer exists, given the break-up of that country. Given that this state and army no longer exists, the Tribunal does not accept that the applicant has any real risk of significant harm arising from his refusal to join this army in [year]' (para 36). 'The Tribunal notes that the applicant has claimed that he also refused to serve with the Macedonian army in [year] and that he had a conscientious objection to fighting. The applicant provided the Tribunal with the decision of the delegate. The delegate's decision references country information regarding the treatment of Macedonians who refused to respond to the Macedonian government's military call-up during [year]. The Tribunal has reviewed the country information cited in the delegate's decision' (para 37).

			'The Tribunal considers this country information as detailed in the delegate's decision remains valid and has not been superseded. The information demonstrates that those individuals who chose not to respond to the call-up for military service had been provided with an amnesty by decree on 18 July 2003' (para 37). 'The Tribunal considers that this decree is relevant to the applicant's circumstances, that he would not face prosecution for his decision to refuse join when called up to the military in [year]. The Tribunal considers that the provisions of this decree apply to the applicant. The Tribunal considers that the applicant will not be prosecuted for his conscientious objection to fighting and his failure to attend when required in [year]. The Tribunal finds that the applicant will not be prosecuted for these reasons, and that he will not be detained or harmed for this reason on return to Macedonia. The Tribunal finds that the applicant does not face a real risk of significant harm for these reasons' (para 41). 'The Tribunal also notes the country information that conscription has ended in Macedonia as it has established a standing army of professionals and volunteers. The Tribunal does not consider that the applicant, [age] years old, will be conscripted to the Macedonian army on return to Macedonia' (para 42). 'The Tribunal notes that the applicant has sought and received a new Macedonia passport in [2011]. As

			discussed in the delegate's decision, the applicant stated he wanted some formal documentation. The delegate discussed with the applicant the concern that the seeking and issuing of this passport, along with his legal departure from Macedonia in 2000, led to a conclusion that the applicant was not of interest to the authorities. The delegate noted provisions of the UNHCR Handbook for determining Refugee Status regarding passports' (para 43). 'The Tribunal considers that the applicant's willingness to seek to replace an expired passport from his Consulate in [Australia] demonstrates that the applicant has limited subjective fear from the authorities of his country. Further, the issuing of the passport demonstrates that the authorities of Macedonia have limited interest in the applicant' (para 44). 'The applicant has not attended a hearing to raise any new claims or discuss these issues further. The Tribunal considers that the country information referenced in the Tribunal and Department decision is clear with respect to the applicant's circumstances on return to Macedonia as a conscientious objector to fighting and his failure to attend when called up, that he would not face a real risk of significant harm for these reasons' (para 45). 'Further, the applicant's subsequent actions in Australia availing himself of the services of his Consulate and having a new passport issues demonstrate that he has no

			subjective fear from the authorities of Macedonia' (para 46). 'The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa)' of the Act (para 47).
1417062 (Refugee) [2016] AATA 3696 (Unsuccessful)	20 April 2016	2, 16, 22, 38-39 and 47-51	The first and second named applicants (husband and wife) were citizens of India and the third and fourth named applicants were dual citizens of India and Australia (para 2). The first and second named applicants 'applied for the visas on [date] December 2013 and the delegate refused to grant the visas on [date] September 2014' (para 2). 'As the first and second named applicants in this case have previously had their claims for protection assessed under s.36(2)(a) and (b) prior to the commencement of the complementary protection laws and have not left Australia since the final determination of the previous protection application, the Tribunal considers that it must confine its consideration to whether the applicants satisfy the requirements of s.36(2)(aa) and (c) – the complementary protection legislation' (para 16). 'The first named applicant is the only applicant who has made claims for protection. The second named applicant is included as a member of the family unit of the first named applicant. The Tribunal therefore refers to the first named applicant as 'the applicant' in this

			decision record' (para 22). 'The Tribunal notes that the applicant's claims of fearing harm in India relate to his past experiences of harm perpetrated against him by the police in 1984 and his and his wife's mental stress in relation to their fears for their children in India' (para 38). 'As put to the applicant at the hearing, his past experiences of harm occurred more than thirty years ago. He does not claim to have experienced any further harm between 1984 and 2002 when he departed India. His past experiences of harm occurred during the movement for a Sikh separate state in India and the state's actions in repressing this movement. There is no longer a Sikh uprising or active militant movement for a separate state and there is no evidence to indicate that Sikhs in general face a real risk of significant harm in India in relation to the past uprising or for any other reason' (para 39). 'The applicant does not claim to have any outstanding charges against him. After assessing all the evidence the Tribunal is satisfied that the applicant does not face a real risk of significant harm from the police or any other agent of the state on return to India as a result of his past experience of harm, or because he is a Sikh, or for any other reason' (para 39). 'After assessing the evidence the Tribunal accepts that

			the applicant's two children will experience a period of difficult adjustment returning with their parents to live in India and this difficult adjustment will be in part because they are not fluent in the Punjabi language. However the Tribunal does not accept after assessing all the evidence that the applicant's two children will be denied access to education and suffer discrimination and/or humiliation and/or social and economic disadvantage, to an extent that can be regarded as "significant harm" as that term is defined in s.36(2A) and s.5(1) of the Act' (para 47). 'In support of this finding the Tribunal notes that both children are young and their parents speak mainly Punjabi at home. It is reasonable to assume that both children would quickly become fluent in Punjabi and would also retain their English language skills. In the Tribunal's view the applicant's children will be advantaged rather than disadvantaged by having English language skills and having lived in Australia' (para 47). 'The Tribunal does not accept that the applicant's children face a real risk of significant harm in India. The Tribunal therefore does not accept that the applicant and his wife's anxiety and mental stress or their fears for their children are based on objective facts. The Tribunal finds that the applicants' mental stress does not constitute "significant harm" as that term is defined in the legislation; nor does the Tribunal find

			that the applicants faces a real risk of significant harm as a result of their mental stress in relation to their concerns for their children' (para 48). 'The Tribunal does not accept that the applicant and his wife have no money, given that they have managed to fund protection visa applications, review applications and several court actions in relation to their immigration status in Australia. They have both worked in Australia for many years prior to losing their permission to work and they receive support from the Sikh community in Australia. They have extended family members living in India; the applicant has farming skills and worked in India as a farmer prior to coming to Australia. The Tribunal does not accept that the applicants' socio-economic circumstances are such that they face a real risk of significant harm in India, as that term is defined in s.36(2A) and s.5(1) of the Act' (para 49). 'The Tribunal considered the applicants' claims individually and cumulatively. After assessing all the evidence the Tribunal finds that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicants being removed from Australia to a receiving country, there is a real risk that they will suffer significant harm' (para 50). 'The Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection

			obligations' (para 51).
1415413 (Refugee) [2016] AATA 3612 (Unsuccessful)	14 March 2016	1, 16, 112-113, 115-118 and 120-123	The applicant was a citizen of the People's Republic of China (para 1). The applicant claimed 'he could not make a living in his hometown because the government had deprived him of his basic rights and he lost the ability to make a living in his hometown' (para 16). The Tribunal was 'not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention' (para 112). 'The Tribunal has also considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm' (para 113). 'The Tribunal has accepted that the applicant's property in the village of [Village 1] was resumed in 2013. It accepts he may have been gone to the county government and appealed against what he perceived to be the unfair way he and his family were treated in this arrangement. The Tribunal accepts he may have been intimidated and harassed by local officials for this conduct as set out above. However, the Tribunal does not consider he suffered any other mistreatment as a result of his petitioning' (para 115).

			‘The Tribunal also accepts that his economic circumstances may have deteriorated after the resumption and demolition of the property. However, the Tribunal considers that he has the skills and resources to find work in China and has considerable family support available to him as set out above’ (para 116). ‘The Tribunal does not consider that he would be subject to any further threats, harassment or mistreatment on his return to China. His property has been resumed; the house demolished and his parents and wife are living elsewhere. The Tribunal does not accept that the Chinese authorities have any continuing adverse interest in the applicant and does not accept he will continued to petition or protest if he returns’ (para 117). ‘The applicant left China on a false passport. If he returns on his own passport border officials may discover that he left on a false passport and this might result in him being charged with a criminal offence’ (para 118). ‘Country information obtained in 2010 indicated that the penalties for illegally departing China, including departing on false documents range from a fine, ten days detention or in serious cases one year's detention or surveillance and a fine. There is no agreement

			amongst observers over whether these penalties are always applied. Older reports indicate that penalties would be light unless the person was a recidivist or the Chinese authorities had a particular interest in the case' (para 120). 'On the evidence before it, the Tribunal does not consider that if the applicant returned to China he would face the death penalty or that there is any risk he will be arbitrarily deprived of his life. There is no evidence he would be tortured or subject to cruel or inhuman treatment or punishment; or to degrading treatment or punishment' (para 121). 'Whilst the Tribunal accepts that the applicant might be subject to a fine or a short period of imprisonment for departing China on a false passport it does not accept that such a sanction meets the requisite level of severity to constitute torture, cruel or inhuman or degrading treatment or punishment within the meaning of the Act' (para 122). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s. 36(2)(a) ors. 36(2)(aa) of the Act (para 123).
1500901 (Refugee) [2016] AATA 3545 (Unsuccessful)	11 March 2016	10-11, 46-51 and 55	The applicant was a citizen of the Republic of Korea (para 11). The applicant claimed to fear harm 'as a result of his

			parents owing money to money lenders' (para 10). 'The Tribunal is satisfied that the applicant does not have a real chance of serious harm from money lenders in the reasonably foreseeable future in Korea. Accordingly the Tribunal finds that the applicant's fears of persecution in the future in Korea are not well-founded' (para 46). 'The Tribunal then considered the applicant's claims under the complementary protection legislation' (para 47). 'The Tribunal considered the applicant's claims that he will be subjected to harm, in particular emotional and psychological harm, by the money lenders. The Tribunal notes the applicant's evidence that he is unclear about how much of the debt remains, if any, and that his parents have indicated that the debt is "getting repaid" and "it is almost all resolved". The applicant also stated that previously he felt a real danger; however he now thinks it might be okay' (para 48). 'The Tribunal also notes the laws in place specifically to protect debtors, their family members, and other people connected to them; and the independent information regarding the general effectiveness of police in Korea; and the mechanisms in place to assist low-income earners to repay debts from private money lenders' (para 49).

			‘In any event, in *MIAC v SZQRB*, the Full Federal Court held that the ‘real risk’ test imposes the same standard as the ‘real chance’ test applicable to the assessment of ‘well-founded fear’ in the Refugees Convention definition. Given the Tribunal’s findings above, that the applicant does not face a real chance of serious harm in Korea, the Tribunal is satisfied that the applicant does not face a real risk’ (para 50). ‘The Tribunal notes that ‘significant harm’ is different from the concept of serious harm in the context of s.36(2)(a). With regard to the applicant’s claims of emotional and psychological harm, the Tribunal accepts that the applicant’s past experiences may have an emotional and psychological effect on him. In assessing whether this amounts to significant harm the Tribunal is notes that the types of harm that amount to ‘significant harm’ are exhaustively defined by s.36(2A). Under this provision, a person will suffer significant harm if he or she will be arbitrarily deprived of his or her life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. The terms “torture”, “cruel or inhuman treatment or punishment” and “degrading treatment or punishment” are further defined n s. 5(1) of the Act and require “severe pain or suffering” and in the case of degrading treatment or punishment, “extreme humiliation”’ (para 51).

			‘After assessing all the evidence the Tribunal is satisfied that the applicant does not face a real risk of significant harm from money lenders in the future and/or as a result of his past experiences at the hands of money lenders’ (para 51). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (para 55).
1410867 (Refugee) [2016] AATA 3532 (Unsuccessful)	8 March 2016	2-4, 53, 56 and 65-72	The applicant (husband) was a citizen of the People’s Republic of China (53). The applicant’s wife was ‘included in the application as a member of the family unit of the applicant’ (para 4). ‘He made an application for a Protection visa [in] January 2005 that was refused by a delegate of the Minister for Immigration [in] February 2005, and on review by a differently constituted Tribunal on 23 June 2005. He appealed that decision to the Federal Court and the matter was remitted for reconsideration to the RRT. On 20 July 2006 a differently constituted Tribunal again affirmed the decision to refuse the visa. He unsuccessfully appealed that decision to the Federal Court and High Court of Australia, which dismissed his application [in] May 2008’ (para 2). ‘The applicant was eligible to have his claims assessed

			against the Complementary Protection criterion, and on that basis, he lodged a further application for a Protection visa [in] February 2014'(para 3). 'The applicant has advanced the following claims in the present application: his business was harassed and bullied by neighbouring competitors who hired thugs or gangsters to intimidate and disrupt and demand money from him. He fought these people in self-defence and was accused of breaking the arm of one of them. He was detained by police overnight and had to pay money to be released. The harassment of his business continued, and there was another incident when he again was accused of a physical attack and was detained by police. He borrowed a large amount of money to buy stock for his business but he could not sell his stock. He came to Australia because of the problems he had with his business. He fears harm because he is unable to repay the debt from the loan and if he returned to his business he would face problems from the gangsters and thugs who previously harassed him. The second named applicant told the Tribunal her husband cannot return to his business because of the problems he had previously and that they would risk their lives to fight the people who would come after them' (para 56). 'The Tribunal has accepted that the applicant experienced problems with hired thugs who disrupted his business and provoked him into fights, for which he was detained on two occasions in the early 2000's prior

			to coming to Australia. He has now been in Australia for over 10 years. His business in China has long since closed. He has not indicated that any of his family members living in China have had any problems relating to these incidents in the recent past. For all of these reasons, the Tribunal does not accept that the applicant will face a real risk of significant harm in the foreseeable future in China because of his past business experiences or having been detained overnight previously' (para 65). 'The applicant has made contradictory claims about whether he intends to re-open his business, stating at one point that he cannot return to his old business and then that he will have to go back to his old business and the same people will trouble him. Given the passage of time since he left China and since he had his old business, the Tribunal does not accept that the applicant can or will re-open the same business he previously had in China. It also does not accept, given the passage of time and absence of any recent contact from any creditors that anyone would pursue him if he were to open a new business. Therefore, the Tribunal does not accept that the applicant will face a real risk of significant harm from past creditors in the foreseeable future on the basis of running a business in China' (para 66). 'Regarding his fear of harm on account of his association with Huhanpai religion, the Tribunal has

			found he is not a genuine practitioner of Huhanpai, or any religion in China or Australia' (para 67). 'Regarding his claimed fear of harm on the basis of outstanding debts in China, the Tribunal has rejected his claim that he has an outstanding debt in China or that anyone is pursing him for repayment of money in China' (para 68). 'The applicant referred to a fear of being deprived of his right to access social equality. In respect of this claim, the Tribunal has considered the applicant's fear of being unable to earn a livelihood in China in future because of his past experiences. The Tribunal finds that financial hardship, unemployment or being unable to earn a livelihood do not come within the meaning of 'significant harm' for the purposes of this criteria and therefore it is not satisfied there are substantial grounds for believing that there is a real risk the applicant will suffer significant harm for this reason, if he is returned to China' (para 69). 'The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa)' of the Act (para 70). The Tribunal also considered applicant's wife's 'evidence to the Tribunal that she fears harm because she is part of her husband's family and that they will risk their lives to fight the people who come after them

			if they go back' (para 71). 'Having regard to the findings made above of the real risk of significant harm in the foreseeable future in China to the applicant because of his past business experiences or from past creditors on the basis of running a business in China, the Tribunal also does not accept that anyone will fight them if they re-open a business in China' (para 71). 'For these reasons, it is not satisfied that there are substantial grounds for believing there is a real risk the second named applicant will suffer significant harm for this or any other reason, if she returns to China' (para 71). The Tribunal also found that neither the applicant or his wife satisfieds.36(2)(b) or s.36(2)(c)of the Act (para 72).
1315841 (Refugee) [2016] AATA 3530 (Unsuccessful)	7 March 2016	1, 4, 73, 75-78 and 82	The applicant was a citizen of Sri Lanka (para 4). 'According to the applicant, his family home was destroyed during the Sri Lankan civil war and his family lived in an internally displace (sic) persons ("IDP") camp. The Sri Lankan authorities suspected he has links to the Liberation Tigers of Tamil Eelam ("LTTE"). He was questioned and detained many times as well as threatened at gunpoint. His brother was a member of the LTTE. His family land was appropriated by the Sri Lankan army to build a base without

			compensation, when he complained about that, he was prevented from fishing' (para 1). 'He evaded a kidnap attempt he suspects was by the Sri Lankan authorities. Since departing Sri Lanka, the authorities have been looking for him. He fears the Sri Lankan authorities will for a number of reasons consider he is a supporter of the LTTE and will harm him if he returns to Sri Lanka, including because he is a Tamil from Northern Province, there is militarisation and Singhalisation of Northern Province, he applied for asylum in Australia and he departed Sri Lanka' (para 1). 'The Tribunal is not satisfied the applicant faces a real chance of serious harm by the Sri Lankan authorities due to any of his claimed reasons. The Tribunal is not satisfied the applicant has a well-founded fear of persecution for any Convention reason or combination of reasons, now, or in the reasonably foreseeable future if he returns to Sri Lanka. Therefore he does not satisfy the requirements of s.36(2)(a)' (para 73). 'The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances' (para 75). The Tribunal accepted 'there was an attempt to abduct the applicant in the past, the Tribunal considers that was a random event. The Tribunal considers there is only a speculative and therefore not a real risk of the applicant suffering significant harm from being the victim of a

			second attempt to abduct him if he is removed to Sri Lanka' (para 76). The Tribunal accepted 'on basis of the country information that Tamils in Sri Lanka have historically faced a degree of harassment and discrimination on account of their ethnicity and may continue to do so, such as difficulties in accessing employment and disproportionate monitoring by security forces. It accepts too that there is a Militarisation and Singhalisation of the north of Sri Lanka' (para 77). 'The Tribunal has had regard to whether that harassment and discrimination amounts to significant harm. The Tribunal considers the only relevant forms of significant harm are torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment' (para 77). 'On the evidence before it, the Tribunal is not satisfied the harassment of or discrimination towards Tamils involves severe physical or mental pain or suffering, therefore it does not meet the definition of torture in s.5(1). Similarly, the harassment and discrimination cannot meet limb (a) in the definition in s.5(1) of cruel or inhuman treatment or punishment, nor could the harassment or discrimination be reasonably regarded in all the circumstances as cruel or inhuman in nature for the purpose of limb (b) of that definition' (para 77).

			'The Tribunal accepts the harassment and discrimination may cause some humiliation to the applicant, but is not satisfied that the harassment and discrimination would cause extreme humiliation which is unreasonable. Therefore, the Tribunal is not satisfied any harm arising from the harassment or discrimination or Militarisation or Singhalisation of the north of Sri Lanka will amount to significant harm' (para 77). 'The Tribunal has had regard to whether the harm the applicant may suffer arising from his committing offences' under the Immigration and Emigration Act of 2006'amounts to significant harm, in particular, being questioned, his bail conditions, being detained for a short period while on remand and imposition of a fine. The Tribunal has had regard to whether that amounts to significant harm' (para 78). 'The Tribunal is not satisfied any harm arising from his being questioned, the bail conditions, being detained while on remand or fined will amount to significant harm' (para 78). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa)of the Act (para 82).
1420949 (Refugee) [2016] AATA 3779 (Unsuccessful)	6 March 2016	2, 9-10, 13, 18-24, 31-32, 36-37, 43-44, 47 and 49	The applicant was a citizen of Tonga (para 2). The applicant 'applied for the visa [in] September 2013

			and the delegate refused to grant the visa [in] December 2014' (para 2). Following the application of *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71 to the applicant's case, 'the issue in this case is whether there are substantial grounds for believing there is real risk the applicant will suffer significant harm if removed from Australia to Tonga' (paras9 and 10). The applicant claimed 'he has no way to survive in Tonga, no close family or friends there and no connection with the country. He has no way of earning money, finding a place to live or starting a life. It will be next to impossible for him to survive in Tonga. He does not know how things are done there, how to get a job, how to bank or how to get accommodation. He would be like an alien' (para 13). 'He left Tonga when he was [a young child]. In [year] his mother took him and his [sibling] brother to [Country 1] to get away from their violent, abusive, alcoholic father. His father verbally and physically abused his mother and if he or his [sibling] cried or asked him to stop he turned his attention on them. They were also verbally and physically abused' (para 18). 'His family did not intervene to help and eventually his mother took them to [Country 1] and then to Australia' (para 19).

			‘If he returns to Tonga he fears reprisal attacks from his father’s side of the family because they are a violent group of people who hate them because they left Tonga and have told people about their father’s violence and how his extended family did nothing to help them when they needed it. They have called them cowards for not intervening in the situation and as a result they have brought great shame upon them. In Tongan culture the punishment for bring great shame upon a family is a violent beating which often ends in death’ (para 20). ‘He is also considered to have brought great shame on the family of his wife who was promised in marriage to another male. His wife did not want to marry that person and has since married him. Her family is shamed by this and want vengeance. Violence is a regular part of Tongan life and that is how this family will react if he is forced to go back’ (para 21). ‘He fears harm from members of his father’s side of the family and members of the family his wife was meant to marry’ (para 22). ‘He has absolutely no-one on his side in Tonga to protect him, he only has enemies. The authorities cannot and will not protect him 24 hours per day, 7 days per week. They cannot predict when he will be attacked. These families will wait for the opportune time to get him and then it will be too late. The only

			thing the authorities will be able to do is investigate who carried out the beating' (para 23). 'These families do not care about getting caught, they only care about vengeance and punishing those who bring shame on them. The point for them is restoring honour to their family and it doesn't matter to them if they get caught by the authorities' (para 24). 'Having considered the applicant's evidence and responses at hearing the Tribunal is not satisfied there is a real risk that his father or other members of his father's family will harm him on return to Tonga. The applicant's fear of harm is in the Tribunal's view purely speculative and not based on any tangible threats toward him. Indeed the Tribunal notes that the applicant does not even know where his father is currently living. The Tribunal also finds it significant that the applicant's mother, who arguably would more likely provoke anger from his father and other family members in the circumstances, has returned to Tonga on more than one occasion without being significantly harmed. The Tribunal is not persuaded by the applicant's reasons for never mentioning these fears to the Department beforehand' (para 31). 'The applicant has lived in Australia for most of his life and having reached adulthood here would be aware that systems and processes exist for the protection of claimants in such circumstances. The Tribunal

			considers the applicant has fabricated or exaggerated his claims in this respect in order to strengthen his claims for protection' (para 31). 'Even if the applicant had something to fear from his father or members of his father's family the Tribunal notes that country information indicates that Tonga has a functioning police force, judiciary and laws and processes which require the Tongan authorities to take action in relation to violence in the community' (para 32). 'When asked to comment on such information at hearing the applicant stated that the police will not act unless you pay them. He referred to a reported incident in which a person was killed in police custody. Further, he stated that the police cannot protect him 24 hours per day and that they will not do so because he has returned from Australia' (para 36). 'The Tribunal pointed out that it has seen no country information to support that the authorities would not provide him with protection because he has returned from Australia, noting that people move between the two countries frequently. Further, the Tribunal pointed out that the Tongan authorities cannot guarantee absolute safety to each and every citizen at all times. Rather, what is required is that the state takes reasonable measures to protect its citizens. In the Tribunal's view, the available country information

			supports that the applicant could avail himself of state protection in the event he faced harm from his father or members of his father's family in Tonga' (para 37). 'Having considered the applicant's evidence and responses at hearing the Tribunal is not satisfied there is a real risk that his wife's family or the family of a [certain] man she was promised to marry will harm him or his wife and [child] on return to Tonga. The applicant has provided no evidence of any threats made to them by either his wife's family or the family of the man she was intended to marry. Further, he and his wife's inability to provide any details about the identity of the man in question make it difficult to substantiate the claims with any certainty. The Tribunal considers the applicant's fears in this respect are at best speculative and as such the Tribunal is not satisfied there is a real risk he, his wife or child will suffer any significant harm on return to Tonga for this reason' (para 43). 'In any event, as noted above, the Tribunal is of the view, that independent country information supports that the applicant could avail himself of state protection in the event he or his family faced harm from his wife's family or members of the family his wife was intended to marry in Tonga' (para 44). 'The Tribunal has considered the applicant's claims and responses at hearing and while recognising that a return

			to Tonga will not be without its challenges for the applicant in the circumstances, the Tribunal is not persuaded that any hardship he will encounter meets the threshold of significant harm as defined for the purpose of assessing whether he is owed complementary protection' (para 47). 'The Tribunal considers the applicant has some family support in Tonga through his marriage, that he is physically fit to work, and that dedicated organisations, including churches, are working to provide support to persons like him, including persons with past criminal records, who are faced with returning to Tonga after living most of their lives abroad. The Tribunal is not satisfied that there is real risk the applicant will be arbitrarily deprived of life, subjected to the death penalty, to torture or cruel or inhumane treatment or punishment or to degrading treatment or punishment if removed from Australia to Tonga for these reasons' (para 47). 'Therefore the applicant is not a person in respect of whom Australia has protection obligations under the criterion set out in s.36(2)(aa) of the Act' (para 49).
1512165 (Refugee) [2016] AATA 3386 (Unsuccessful)	3 March 2016	1 and9-13	The applicant was a citizen of India (para 1). The applicant claimed to fear harm of 'being harassed due to his ethnicity (which he identified as Hindu) and that he feared harm especially in schools by teachers as they thought his religion (which he likewise identified

			as Hindu) was outcaste and they had no mutual respect' (para 1). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) of the Act (para 9). 'The applicant has referred to his problems with his parents but the fact that he may be estranged from his parents and that he may be ostracised by elements of his community or the population of Jalandhar more generally as a result of the fact that he has not obeyed his parents or that he has "broken the rules" does not in itself suggest that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to India, there is a real risk that he will suffer significant harm as defined in subsection 36(2A)' of the Act (para 10). The Tribunal was not satisfied 'that any problems which [the applicant] has had in the past have risen to the level of extreme humiliation which is unreasonable nor that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to India, there is a real risk that he will suffer problems of this nature' (para 10). The Tribunal considered that the applicant's 'fears for his life' were 'entirely speculative and lacking in any

			objective foundation' (para 11). 'He has not suggested that his own family have been having problems because of tensions between different ethnic or religious communities in Jalandhar. When he was interviewed by the primary decision-maker he linked his fears for his life once again to the fact that he had not obeyed his parents' (para 11). The Tribunal was not satisfied that there were 'substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to India, there is a real risk that he will be arbitrarily deprived of his life or that he will otherwise suffer significant harm because he has not obeyed his parents as he has claimed' (para 11). The Tribunal was not 'satisfied on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to India, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined' (para 12). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia

			had protection obligations under s.36(2)(a) and s.36(2)(aa) of the Act (para 13).
1418341 (Refugee) [2016] AATA 3388 (Unsuccessful)	2 March 2016	1, 2, 44, 47-52 and 55	The applicant was a citizen of Malaysia (para 1). 'He claims his employer, [(Mr S)], worked as a [Occupation 2] to [a] Minister but after this Minister's party was defeated at the election in [year] Mr S became involved with illegal [activities]' (para 2). 'He fears Mr S or gang members acting on his behalf will harm or kill him. He has also said he is still afraid of a prominent businessman, [(Mr T)], who he worked for until around 2004' (para 2). The Tribunal found that there was 'no real chance that the applicant will be subject to serious harm in Malaysia for one or more the Convention reasons, now or in the reasonably foreseeable future' (para 44). 'During the hearing the applicant was invited the applicant to comment upon the delegate's conclusion that he could obtain State protection such that there was not a real risk he would suffer significant harm' (para 47). 'The applicant disagreed: he said there was no protection for his life; they may try to kill him and set it up as an accident; he has seen this happen; the authorities could not protect him. He gave evidence that he had worked for Mr T and Mr S; they had money and

			influence, and he knew the activities they were involved in' (para 48). 'He gave evidence there would be 'no point' seeking protection – his attempt to make a complaint about Mr S was not successful' (para 48). 'The applicant first claimed to have approached the authorities about Mr S before the Tribunal. He claims the authorities did not assist him and told him he was working for Mr S and should go back to work' (para 48). The Tribunal did not accept the applicant's evidence as credible (para 48). However, 'even if it were to be accepted that the applicant could not obtain State protection such that there would be a real risk that he would not suffer significant harm, it would not change the outcome of this review' (para 48). That is, the Tribunal found that it was 'reasonable for the applicant to relocate to an area of Malaysia where there would not be a real risk that he would suffer significant harm' (para 49). 'The applicant has given evidence that neither Mr S nor Mr T know he is Australia; that he does not have any family in Malaysia; that no one knows where he is and

			he is not in contact with anyone. While he says he believes Mr S or Mr T would want to find him, there is no evidence before the Tribunal that either Mr T or Mr S have made any attempts to find him after he left Malaysia' (para 49). The Tribunal found that the 'risk that Mr T and/or Mr S would discover he had returned to Malaysia if he relocated away from Kuala Lumpur (where the applicant lived between around 2001 and 2013 and where he worked for Mr T and Mr S) is far-fetched, remote and insubstantial' (para 50). The Tribunal did not consider that 'the applicant's own evidence supports the conclusion that, even if Mr T and/or Mr S became aware that he had returned, they would be motivated to target the applicant, kill him or otherwise cause him significant harm (whether this be physical harm or forced labour)' (para 50). The Tribunal had 'regard to the applicant's evidence Mr T did not actually threaten him when he began working for him again in 2013, it is just his feeling that he will be harmed by Mr T for leaving his employment without telling him. I also note his evidence that he had left Mr T's employment before (when Mr T was imprisoned under the NSA) and, although his written claims suggest that, when he had a chance encounter with Mr T, Mr T expressed his disappointment about the fact he stopped working for him and then behaved in a

			threatening way to try and get the applicant to return to work for him, the applicant did not return to work for Mr T' (para 50). 'The applicant's evidence does not indicate he has ever actually been physically harmed by Mr T and there is no evidence that Mr T ever took any action to carry out any implied or express threats made to the applicant' (para 50). 'Even accepting, for the purpose of this decision, that there is a real risk that, if the applicant were to return to his home in Kuala Lumpur, Mr T or Mr S might discover the applicant had returned home and cause him to be subjected to significant harm', the Tribunal was of the 'view that this risk is localised and only exists in Kuala Lumpur where the applicant lived while working for Mr T and Mr S and where he might encounter Mr T or Mr S or people who worked for them in Kuala Lumpur' (para 51). The Tribunal did not accept 'that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia there is a real risk that Mr T or Mr S would discover the whereabouts of the applicant and subject him to significant harm if he relocated away from Kuala Lumpur to another area of Malaysia, such as [State 1]' (para 51).

			'With respect to whether it is reasonable for this particular applicant to relocate', the Tribunal 'considered the fact that he is a single man who has had the means to relocate within Malaysia, and from Malaysia to Australia' (para 52). 'Notwithstanding his lack of formal education he has found employment in both Australia and Malaysia (para 52). 'Having regard to the applicant's particular circumstances', the Tribunal considered it was 'reasonable for the applicant to relocate to another area of Malaysia where there would not be a real risk that he would suffer significant harm as a result of being targeted by Mr T and /or Mr S or persons acting on their behalf. An obvious place for the applicant to go would be the state of [State 1] where he was born and where he lived until around 2001. However, it would also appear to open to him to relocate to other areas in Malaysia' (para 52). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) and s.36(2)(aa) of the Act (para 55).
1414047 (Refugee) [2016] AATA 3387 (Unsuccessful)	29 February 2016	13, 34, and 58-61	The applicant was a citizen of India (para 34). 'The applicant's claims from her Protection visa application may be summarised as follows:

			- She left India because her husband came to Australia to further his studies. - In India she married without her parents' consent. She married someone who lived in the same street. This is not allowed in India. - Her mother was very shocked and did not want to see her face. Her father-in-law threatened to kill her. Her brothers were very insulted and one committed suicide due to her marriage. - She fears that if she returns her father-in-law and her family will kill her because they don't accept her marriage. Her father-in-law hired some people to catch and kill her. He said he wants to take revenge due to being insulted. Her husband left her due to these threats and she does not know where he is. A friend told her that one couple was killed by the villagers because they had a love marriage. In India people are very cruel and don't have any feelings toward people. They treated her like she did a very big crime like murder. - The Indian authorities like the police don't help poor people. Her father-in-law lodged an FIR (First Incident Report) against them and the police are looking for them' (para 13). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations pursuant to s.36(2)(a) of the Act (para 58). The Tribunal also considered the application of s.36(2)(aa) of the Act to the applicant's claims (para

			59). 'The Tribunal has considered the applicant's submissions in relation to her mental health issues. In this regard the Tribunal notes that she was prescribed the anti-depressant [medication] by her doctor [in] November 2015, but also notes that the original, unfilled prescription was submitted to the Tribunal as evidence, on 2 December 2015, so it is unclear whether the applicant is actually taking this medication' (para 60). 'The Tribunal notes the findings of the applicant's psychologist in his report of [November] 2015 that the applicant is experiencing a major depressive disorder at a severe level of intensity and that she is motivated to proceed with regular psychological consultations. The Tribunal notes country informationwhich indicates that, while the quality of medical care in India varies considerably, medical care in the major population centres approaches and occasionally meets Western standards' (para 60). 'Based on the psychologist's report, The Tribunal accepts that the applicant has mental health problems. However, drawing on the country information regarding the availability of appropriate services in major population centres in India such as Amritsar, where the applicant's sister lives, the Tribunal finds that the applicant's mental health issues are not such as to give

			rise to a real risk that the applicant would suffer significant harm, should she return to India' (para 60). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa)of the Act (para 61).
1415850 (Refugee) [2016] AATA 3384 (Unsuccessful)	25 February 2016	20-21, 26-27, 43-45, 51-52, 57, 61-62, 66 and 68	The applicants (first and second named) were citizens of Indonesia (para 27). The first named applicant claimed 'he is a Christian and of Chinese ethnicity. He belongs to a minority community. Al Qaeda and Islamic extremists have established their presence and network in Indonesia and it has become a hub of Islamic extremist activities. Christians are considered as sin and they are targeted. Native Indonesians consider ethnic Chinese as their enemies. He fears he will be targeted because of his religion and ethnicity. He fears that native Indonesians will perceive him to be a person with wealth due to his long stay in Australia. He will not get protection because of the influence of Islamic extremists and he will continue to face this harm even if he relocates to other parts of Indonesia' (para 20). The second named applicant claimed that 'she is a Christian. She belongs to a Chinese minority community. She is a female from a minority Chinese community. Islamic extremists have established their presence and network in Indonesia. Christians are

			considered as sin. She fears she will not get State protection because of the influence of Islamic extremists and fears she will continue to face even if she relocates to other parts of Indonesia. She will not get protection because of the influence of Islamic extremists and she will continue to face this harm even if she relocates to other parts of Indonesia' (para 21). 'The first named applicant was previously refused a Protection visa [in] August 1999 and the second named applicant was previously refused a Protection visa [in] November 2010 on the basis of the Refugees Convention. [In] January 2014, the applicants lodged a second application for Protection visas. Applying the reasoning in *SZGIZ*, and *AMA15* the Tribunal finds that it does not have the power to consider the applicants' claims under the Refugee Convention criterion in s.36(2)(a) of the Act and has proceeded on the basis that it can only consider their claims under the complementary protection provisions in s.36(2)(aa) of the Act' (para 26). *First named applicant* 'Having considered the claims and the evidence, the Tribunal accepts that the first named applicant is of Chinese ethnicity. The Tribunal accepts that he was bullied at school. The Tribunal accepts that in May 1998 he was stopped by rioters in the street when on his way home but managed to get away on his motor cycle.

			The Tribunal accepts that his neighbour's house was burned and looted in May 1998. The Tribunal accepts that in November 1998 he was at his girlfriend's house and witnessed a violent clash in the street between Muslims and Christians. The Tribunal does not accept that since 13 May 1998 Chinese Indonesians have not dared to do business as they are afraid that indigenous Indonesians will destroy their businesses. The country information indicates that Chinese Indonesians are still disproportionally influential in the business sector' (para 43). Based on country information 'the Tribunal does not accept that "demonstrations in Indonesia which could lead to civil war because of the upheaval in East Timor" may result in Indonesians of Chinese ethnicity being attacked and subjected to looting and plunder' (para 44). 'The Tribunal accepts that the first named applicant was traumatised by the riots in Indonesia in 1998. The Tribunal accepts that he does not wish to return to Indonesia and would prefer to live in Australia permanently. The Tribunal accepts that he has a subjective fear of returning to Indonesia but does not accept that it is well-founded. The Tribunal accepts that he may face some discrimination because of his Chinese ethnicity if he returns to Indonesia now or in the reasonably foreseeable future. However, the Tribunal does not accept that it would amount to

			significant harm as defined. The Tribunal does not accept that he would not be able to obtain State protection' (para 45). 'Having considered the claims and the evidence, the Tribunal accepts that the first named applicant is a Christian and that he attended Church regularly in Indonesia. The Tribunal accepts that he attends Church regularly in Australia and has many friends and supporters through the Church. The Tribunal accepts that he will continue his practise of Christianity if he returns to Indonesia. The Tribunal accepts that as a Christian and being of Chinese ethnicity he belongs to a minority community' (para 51). 'The Tribunal does not accept that all indigenous Indonesians consider ethnic Chinese to be their enemies and that he will be targeted for this reason and because he is a Christian. The Tribunal does not accept that he would not be able to get State protection for these reasons or because of the influence of Islamic extremists' (para 52). 'The Tribunal finds that the first named applicant does not satisfy the criterion in s.36(2)(aa) of the Act' (para 57). *Second named applicant* 'When asked to tell the Tribunal her reasons for fearing

			to return to Indonesia, she responded that she was not traumatised by the riots in 1998. She stated that she does not want to be separated from her husband and will follow him wherever he goes. She stated that her husband has spent almost [number] years in Australia and wants to stay here. When asked if she had any concerns for herself about returning to Indonesia, she responded that she does not care where she lives. She stated that whether she lives in Australia or Indonesia it is all the same to her' (para 61). 'The Tribunal asked the second named applicant again whether she had any concerns for herself if she returned to Indonesia. She responded that she had no concerns for herself. When the Tribunal pointed out that she had made claims in her own right in her visa applications, she responded that Chinese girls are being raped. She stated that this could happen anywhere. She stated that it could happen in Indonesia or Australia or anywhere else. She stated that accidents happen. The Tribunal is satisfied that this is not a claim being made by the second named applicant' (para 62). The 'Tribunal is not satisfied that there is a real risk that the second named applicant will suffer significant harm because of her husband's history in Indonesia or because his mental state would present him from leading a normal life in Indonesia if she returns to Indonesia now or in the reasonably foreseeable future' (para 66).

			'Therefore, the Tribunal finds that the second named applicant does not satisfy the criterion in s.36(2)(aa) of the Act' (para 68).
1413480 (Refugee) [2016] AATA 3370 (Unsuccessful)	21 February 2016	5, 15, 21, 27-28, 32-33, 35, 37-38, 41-42 and 54	The applicant was a citizen of Fiji (para 21). 'The applicant lodged his second application for a Protection visa with the Department [in] December 2013, pursuant to *SZGIZ v MIAC*[2013] FCAFC 71; (2013) 212 FCR 235 (*SZGIZ*), and the Department refused to grant the visa [in] July 2014. On 5 August 2014, he applied to the Tribunal for review of that decision' (para 5). The applicant claims that 'he will face serious harm if he returns to Fiji because he is an Indian Fijian and in a minority ethnic group in Fiji, he will be perceived as a person holding a political opinion against the military government and as a person with wealth' (para 15). 'The Tribunal accepts that the applicant came to Australia at the age of [age] years and has lived in Australia since then. The Tribunal accepts that his knowledge of Fiji may be limited but does not accept that he does not know anything about Fiji' (para 27). 'The Tribunal accepts that he may not have the guidance of close family members in Fiji. The Tribunal accepts that his limited knowledge of Fiji may lead to him being taken advantage of or even discriminated

			against but does not accept that it would lead to physical harm. The Tribunal does not accept that he would not be able to obtain State protection. Based on the evidence before it, the Tribunal is not satisfied that any discrimination that the applicant may be subject to would amount to significant harm' (para 27). Based on country information and the above findings the 'Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because he is an ethnic Indian Fijian if he returns to Fiji now or in the reasonably foreseeable future' (para 28). 'In view of the applicant's evidence that he does not follow politics in Fiji, his poor knowledge of politics in Fiji and the fact that he is not involved in politics in Australia, the Tribunal is not convinced that he may wish to express any political views that may or may not bring him to the adverse attention of the Fijian authorities. He is not a public figure or a person of high profile in Australia or Fiji. On the evidence before it, the Tribunal is not satisfied that the applicant will be perceived as having a political opinion against the government. In view of the''country information, the Tribunal does not accept that the applicant will have his democratic rights taken away if he returns to Fiji' (para 32). 'The Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because of

			his actual or implied political opinions or that he would have his democratic rights taken away if he returns to Fiji now or in the reasonably foreseeable future' (para 33). 'The Tribunal accepts that the applicant may be perceived to be a person of wealth because he has been living in Australia. The Tribunal was unable to find any country information to indicate that returnees to Fiji from overseas are targeted for abduction or extortion. On the evidence before it, the Tribunal is not satisfied that there is any basis for these claims' (para 35). 'The Tribunal has considered the applicant's claim that he will have no home or support in Fiji' (para 37). 'The evidence before the Tribunal is that the applicant's partner is currently supporting him financially, that they plan to get married, have a family and a future together. In these circumstances, the Tribunal is not satisfied that the applicant's partner would not continue to financially support him if he is required to return to Fiji' (para 37). 'The Tribunal discussed with the applicant his claims that if he returns to Fiji he will be separated from his [child], will not be able to contact his [child] and will lose his relationship with [his child]' (para 38). 'The Tribunal accepts that the applicant is the father of the [child]. The Tribunal accepts that [the child] lives

			with [the] mother and has regular contact with [the] father. The Tribunal accepts that the applicant has a good relationship with his [child]. The Tribunal accepts that if he returns to Fiji it will have a detrimental impact on him and his [child] and on their relationship. The Tribunal does not accept that he will not be able to contact his [child] if he returns to Fiji. He will be able to continue to have telephone contact with [him/her] and face to face contact over the internet on programmes such as Skype. The Tribunal does not accept that he will lose his relationship with his [child] or that [he/she] will lose [his/her] father' (para 41). 'The Tribunal is not satisfied that there is a real risk that the applicant would suffer significant harm because he would not be able to have regular personal contact with his [child] if he returns to Fiji now or in the reasonably foreseeable future' (para 42). In concluding, the Tribunal found that the applicant did not satisfy the criteria in s.36(2)(aa) of the Act (para 54).
1414581 (Refugee) [2016] AATA 3213 (Unsuccessful)	28 January 2016	2, 5, 10, 35-36, 50-51 and 53	The applicant was a citizen of Bangladesh (para 2). The applicant claimed to fear harm based on being of the Hindu faith (para 10). In accordance with the decision of the Full Court of the Federal Court in *SZGIZ v MIAC*[2013] FCAFC 71; (2013) 212 FCR 235, the Tribunal only considered the

			application of s.36(aa) of the Act to the applicant's claims (para 5). Based on the applicant's evidence, the Tribunal made the following findings: - 'the applicant was born on [Date 2] in Bangladesh to Bangladeshi parents', - '[in] November 1991 the applicant and his family left Bangladesh following a series of incidents, including an assault on his [sibling] and a threat of kidnapping in relation to his [child]', - 'the applicant and his family lived in [Country 1] for approximately 5 years' and 'while living there he obtained a false [Country 1] passport', - 'although the applicant has travelled to [Country 2] and [country], he never applied for protection in those countries, - 'the applicant travelled to Australia on that passport arriving [in] May 1996, and first applied for a protection visa [in] June 1996', -'the applicant returned to Bangladesh in about July 2010', - 'he did not return to his local village and 'he did not receive any threats or suffer harm'during his visit to Bangladesh in 2010, and -'in 2010 he applied to the Bangladeshi High Commission for a passport' and 'that application is still being processed' (para 35). The Tribunal did 'not accept that because of his age or

			health the applicant would be unable to find employment in Bangladesh. His application shows that he has been employed while in Australia almost continuously as a [occupation] since his arrival' (para 36). The Tribunal did not 'accept that the applicant would be unable to access medical facilities' in Bangladesh (para 36). 'Based on the applicant's own evidence, and the country information which he relies, the Tribunal does not accept, and does not find, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Bangladesh, there is a real risk he will suffer significant harm because of his religion, because of political opinion that may be attributed to him because of that religion, or because of the recent rise of Islamic fundamentalism in Bangladesh' (para 50). 'DFAT assesses that Bangladesh is generally able to provide adequate protection to the Hindu community from societal harassment or violence, and that failures to do so are not a sign of systemic or deliberate neglect but rather of a lack of resources and capacity. The Hindu community is generally able to practise their faith without interference and do not live in fear of societal violence on a day-to-day basis' (para 50).

			‘There is some material which supports the claim that Islamic fundamentalism is growing in Bangladesh, but the submissions fail to link that factor with any harm that may be faced by the applicant, save for the bare assertion that because he is a Hindu he will be targeted and seriously harmed for that reason’ (para 51). The Tribunal ‘rejected the submission that the applicant is stateless’ (para 51). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 53).