COMPLEMENTARY PROTECTION IN AUSTRALIA

ADMINISTRATIVE APPEALS TRIBUNAL

Last updated 14 March 2017

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

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 de4.0.07 re5us.45 249efusal of

			review must therefore be affirmed.’ (para 63).

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

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

			‘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

			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 appli

‘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

			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

			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

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

			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

			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 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).

			'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

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' (

			'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 G

			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

1501066 (Refugee) [2016] AATA 4277 (Successful)			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).

			‘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

			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).

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

			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

			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		

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1418483 (Refugee) [2016] AATA 3975 (Unsuccessful)			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).

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

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-

			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,

‘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

			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

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

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

			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

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

			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

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 pro.91.19 -13(Q Eg)10(he)] TJ2s444.tBT1 0 0 1 696

			'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).

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

‘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).

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 applicantG

			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).

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'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 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

			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

‘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

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

			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).

			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 wi[illegible]

			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

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

			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

objective foundation’ (para 11).

‘He has not suggested that his own family have been having problems because of tensions between different ethnic or religunm(unm()-3s be)392

influence, and he knew the activities they were involved

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

‘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).

- She left India because her husband came to Australia to further his studies.

		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 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

			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

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

			‘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).