COMPLEMENTARY PROTECTION IN AUSTRALIA

REFUGEE REVIEW TRIBUNAL

Last updated 4 December 2015

This is a list of all published Refugee Review Tribunal decisions containing analysis of complementary protection between 2012 (when the complementary protection regime began) until 30 June 2015.

On 1 July 2015, the Refugee Review Tribunal (RRT) was merged with the Administrative Appeals Tribunal (AAT). Previous RRT decisions can 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).

Until 23 May 2014, this list contained only decisions that resulted in a finding that the applicant was entitled to protection. From 30 May 2014 onwards, this list contains all successful decisions, as well as those decisions where the applicant was unsuccessful but the Tribunal nevertheless provided useful guidance on complementary protection. The separate list of 'unsuccessful decisions' (final update 23 May 2014) is no longer published, but the archived list remains available on the Kaldor Centre website.

The decisions are listed in reverse chronological order.

Case	Decision date	Relevant paras	Comments
1313807 [2015] RRTA 269 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/269.html (Unsuccessful)	21 May 2015	1, 51, 56-58 and 62	The applicant was a citizen of Sri Lanka and of Tamil ethnicity (para 1). The applicant claimed to fear harm because his 'eldest brother, Mr Y was forcibly recruited by the Liberation Tigers of Tamil Eelam ("LTTE")' (para 1).

			The applicant also claimed to fear harm from 'Mr M and the Karuna group' (para 1). The applicant claimed that his 'third eldest brother, Mr S was wrongly accused of murder, but later released by the Sri Lankan authorities' (para 1). The applicant claimed that 'the actual murderer, Mr M threatened to harm the applicant and the applicant's mother because Mr S informed on Mr M to the police' (para 1). In addition, the applicant claimed that his 'family suffered harassment in the past from the Karuna group' (para 1). The applicant also claimed to fear harm from the 'Sri Lankan authorities because he is a Tamil, applied for asylum in Australia and departed Sri Lanka illegally' (para 1). The Tribunal that the applicant's claim did not 'satisfy the requirements' of s.36(2)(a) of the Act (para 51). *Mr M* With respect to the application of s.36(2)(aa) of the Act to the applicant's circumstances, the Tribunal accepted

			that the applicant had 'a genuine subjective fear' as to the risk that Mr M 'may come out of hiding again to harm the applicant' (para 56). However, the Tribunal found that the applicant's 'subjective fear alone may not mean there is a real risk Mr M will harm the applicant' (para 56). This finding was based on the 'passage of time' since Mr M threatened the applicant in 2012, 'the minimal role of the applicant in the issues involving Mr M and that Mr M has not harmed or threatened anyone else' (para 56). Therefore the Tribunal found that there was 'only a remote and therefore not a real chance that Mr M will cause significant harm to the applicant if the applicant is removed to Sri Lanka' (para 56). *Discrimination* The Tribunal accepted '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' (para 57). However, the Tribunal found that such 'harassment of

			or discrimination towards Tamils' did not meet the definition of significant harm pursuant to s.5(1) of the Act (para 57). Specifically, the Tribunal accepted that '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' (para 57). Therefore, the Tribunal was not satisfied any harm arising from the abovementioned harassment or discrimination would amount to significant harm (para 57). *Illegal departure* The Tribunal was not satisfied that 'the applicant's being questioned, bail conditions, detention on remand or fine' amounted to significant harm pursuant to s.5(1) of the Act (para 57). Specifically the Tribunal did not accept 'on the evidence before it that the pain or suffering caused by the overcrowding and other problems in prisons in Sri Lanka was 'intentionally inflicted' on prisoners as required by the definition of 'cruel or inhuman treatment or punishment' in s.5(1) of the Act' (para 58).

			The Tribunal also did not 'accept that the overcrowding and 'other problems' were 'intended to cause' extreme humiliation as required by the definition of degrading treatment or punishment (para 58). Therefore, the Tribunal was not 'satisfied any harm arising from his being questioned, the bail conditions, being detained while on remand or fined' would amount to significant harm (para 58). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (para 62).
1410334 [2015] RRTA 278 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/278.html (Unsuccessful)	15 May 2015	1, 11-12, 17, 50, 53, 55, 57, 60-61 and 64	The applicant was a citizen of Fiji (para 1). The applicant lodged his first Protection visa application in September 2010. The application was refused by the delegate of the Minister in November 2010 and the delegate's decision was affirmed by the Tribunal on 16 May 2011 (para 11). The applicant lodged a second protection visa application in December 2013, which was permitted as a 'result of the Federal Court decision of *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235' (para 12).

			It follows, that the Tribunal in this matter only considered the applicant's claims with respect to the complementary protection criteria (para 12). The applicant claimed to fear harm based on the applicant's political activity in Fiji, his detention in Fiji for 'breaching a curfew' and his perceived 'opposition to the regime' as a result of residing in Australia (para 17). The Tribunal did not accept any of the abovementioned claims by the applicant (para 50, 53 and 55). The applicant also claimed to fear harm based on the 'health care in Fiji' (para 17). The Tribunal accepted that the applicant had '[health] problems' and that the applicant was 'concerned about his ability to access necessary drugs' (para 57). 'The applicant's adviser submitted that there is one particular drug that is not available in Fiji, although there is an alternative but it does not perform in the same way' (para 57). Based on country information the Tribunal found 'that any harm that might be suffered by the applicant as a

			result of the inadequacy of the health system of a country, is not generally the result of an intentional desire to harm, but is as a result of the resources the state is able to allocate to the health system' (para 60). The Tribunal concluded that 'any harm suffered by the applicant as a result of the health system in Fiji is therefore not a type of harm that constitutes significant harm for the purposes of the Act' (para 60). The applicant also claimed he would 'suffer due to the overall poor economic circumstances in Fiji, his inability to gain employment, difficulties finding somewhere to live, and having no one to assist him if he returns' (para 61). The Tribunal found that such circumstances did not amount to the 'types of harm that are contemplated in the definitions of significant harm for the purpose' of the complementary protection criteria and the Act (para 61). In concluding the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations pursuant to s.36(2)(aa) of the Act (para 64).
1410069 [2015] RRTA 263 http://www.austlii.edu.au/a	7 May 2015	4, 6, 42, 44, 48, 50 and 52	The applicants (husband and wife) were citizens of Fiji (para 4).

u/cases/cth/RRTA/2015/263.html (Unsuccessful)			The applicants claimed to fear harm based on the 'inferior education and health systems in Fiji for the (sic) children and difficulty for [the applicant parents] in finding employment, as well as lack of freedom of speech in Fiji' (para 6). The Tribunal found that he applicant's claims did not meet the criteria pursuant to s.36(a) of the Act (para 42). The Tribunal's findings with respect to the complementary protection criteria are as follows. *Freedom of speech/corruption in Fiji* Based on country information, in relation to freedom of speech and corruption in Fiji, the Tribunal was not satisfied that there was 'a real risk that any of the applicants will suffer significant harm if they are required to return to Fiji' (para 44). *Standard of living in Fiji: employment, health, education* The Tribunal was not 'satisfied that a lower standard of living in Fiji, employment difficulties, or the Fijian education or medical system would cause the applicants any of the types of harm which would meet the

			statutory definition of significant harm' (para 48). Specifically, in relation to the 'risk of bullying by students' because of the 'children's inability to speak Fijian', the Tribunal found that this 'would not result in arbitrary deprivation of life or the death penalty, nor would it be for any of the reasons set out in the definition of torture' (para 50). The Tribunal also found that 'on the basis of the description provided, would it also not be of sufficient severity to constitute severe pain or suffering, (whether physical or mental) to meet the definition of cruel or inhuman treatment or punishment, or extreme humiliation which is unreasonable for the purposes of degrading treatment or punishment' (para 50). Therefore the Tribunal found that 'that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of any of the remaining applicants being removed from Australia to Fiji, there is a real risk that any of them will suffer significant harm' (para 52).
1410415 [2015] RRTA 259 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/259.html (Unsuccessful)	7 May 2015	2, 11, 14, 19, 21-23 and 26	The applicant was a citizen of Fiji and of Indian ethnicity (paras 2 and 11). The applicant claimed that he was 'punched when he supported his Indian Fijian friends' (para 14).

			The Tribunal did not accept the applicant's claims that he was 'punched when he supported his Indian Fijian friends' (para 19). The applicant claimed that his former 'wife had told him that because he was seen (sic) another woman, her family would punch him' (para 21). The Tribunal did not accept that that if 'the applicant were return to Fiji, his former wife and/or any member of the family would cause him harm amounting to significant harm within the definition of s.36(2A) of the Act' (para 21). The applicant claimed that there had 'been a number of unreported incidents in Fiji that relate to people being taken and killed by the Fijian authorities' (para 22). On the basis of country information the Tribunal was 'satisfied that there is not a real risk of the applicant suffering significant harm on the basis of the situation in Fiji, in case of his return' (para 23). The Tribunal was also 'satisfied that there is nothing in the applicant's profile or personal circumstances that would mean that there is a real risk of any such harm' (para 23).

			In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 26).
1400209 [2015] RRTA 289 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/289.html (Unsuccessful)	6 May 2015	1, 57, 60-63 and 67	The applicant was a citizen of Sri Lanka and of Tamil ethnicity (para 1). The applicant claimed that an 'attempt was made to abduct him in June 2012' and he believed 'the abductors were related to the army or a paramilitary group and they sought to abduct him due to the applicant's relationship with a *Tamil Makkal Viduthalai Pulikai* ("TMVP") politician, Mr S' (para 1). The applicant claimed that 'Mr S went missing in 2010' and that the 'applicant fears he will be harmed by the Sri Lankan army or paramilitary groups because of his relationship to Mr S' (para 1). The applicant also claimed to fear that he 'will be harmed because he is a Christian, he is Tamil, he applied for asylum in Australia and because he departed Sri Lanka illegally' (para 1). The Tribunal found that the applicant did 'not satisfy the requirements of s.36(2)(a)' (para 57). The Tribunal's consideration of the application of s.36(2)(aa) to the applicant's circumstances was as

			follows. *Abduction* The applicant claimed that 'he fears he will be abducted again if he returns to Sri Lanka' (para 60). The Tribunal rejected the applicant's claim that 'he was targeted in that abduction attempt and found it was rather a random criminal act of attempted extortion against him' (para 60). The Tribunal considered 'the country information that paramilitary groups continue to operate in the applicant's home town' (para 61). The Tribunal found that 'while mindful there was an attempt to abduct and extort the applicant in the past, the Tribunal considers that was a random event' (para 61). Therefore, the Tribunal found 'there is only a speculative and therefore not a real chance that the applicant would be (sic) face a real risk of significant harm from being the victim of a second attempt to abduct him if he is removed to Sri Lanka' (para 61). *Discrimination*

			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' (para 62). However, the Tribunal was 'not satisfied any harm arising from the harassment or discrimination will amount to significant harm' (para 62). *Illegal departure* The Tribunal was 'not satisfied any harm arising from his being questioned, the bail conditions, being detained while on remand or fined' would amount to significant harm (para 63). In conclusion, 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 67).
1319179 [2015] RRTA 252 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/252.html	5 May 2015	3, 8, 82, 84-85, 87, 89-91, 94 and 96	The applicant was a citizen of Sri Lanka (para 8). The applicant claimed to fear harm from the 'CID and opposition supporters' based on the following grounds:

(Unsuccessful)			- his support for the TNA and 'his work excavating areas which had human remains', - his 'brother was a TNA candidate in the 2012 provincial elections and the applicant was his driver', - the 'applicant and his brother were beaten when they returned from lodging the brother's nomination for the 2012 election', - 'during the civil conflict, he was rounded up in 2001 and 2003 questioned and assaulted', and 'he was abducted by Karuna group in 2006 for 9 days' (para 3). The Tribunal found the applicant's claims did not meet the criteria pursuant to s.36(a) of the Act (para 82). The Tribunal did not accept 'the applicant's claims that he was assaulted or threatened by opposition supporters or followed by CID or Karuna or anyone is looking for him or that he is suspected of LTTE or anti-government or is of adverse interest to authorities' (para 84). While the Tribunal accepted that he had 'suffered harm during the civil conflict', the Tribunal did 'not accept he faces similar harm or serious harm in the future as the war ended in 2009' (para 84). The Tribunal did 'not accept that there is a real risk that the applicant will suffer significant harm on the basis

			that he is a Tamil male or young Tamil male from the East or because his brother nominated for TNA (or Tamil congress party or TULF or any similar or political party) in 2012 election, or is Catholic or sought asylum or his extended presence in Australia as an asylum seeker or because of his past harm during the civil war, his scarring or because his brother also sought asylum' (para 85). The Tribunal did 'not accept the applicant will be considered to have any adverse political profile as a result of seeking asylum in Australia or a western country, or his extended presence in Australia as a Tamil asylum seeker or because his brother is also in Australia having sought asylum' (para 85). The Tribunal accepted 'that, as a returnee to Sri Lanka who departed illegally, the applicant may face being questioned at the airport, being arrested on charges of leaving the country illegally, potentially being remanded for a relatively short period pending a bail hearing and be fined up to 50,000 rupees for his illegal departure' (para 87). The Tribunal also accepted that the applicant 'may also receive contact visits from the authorities on return to his home' (para 87). However, based on country information which detailed

			that 'that returnees are not mistreated', the Tribunal did not accept that 'questioning at the airport, being charged and bailed or payment of fine, or held on remand for a short period constitutes significant harm' (para 89). The Tribunal 'also accepted that the applicant may be remanded in conditions which are cramped, uncomfortable and unsanitary, but the tribunal does not accept that spending up to a fortnight in such conditions amounts to "significant harm" as defined in subsection 36(2A) of the Act or that he faces a real risk of suffering significant harm' (para 90). Neither did the Tribunal 'accept that overcrowding and other problems' were 'intended to cause extreme humiliation as required by the definition of 'degrading treatment or punishment' (para 91). 'Having considered these circumstances, singularly and cumulatively', the Tribunal was 'not satisfied there are substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there would be a real risk that he would suffer harm which would amount to significant harm' (para 94). 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 96).
1309930 [2015] RRTA 249 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/249.html (Unsuccesful)	1 May 2015	1, 53, 56-57, 59 and 61	The applicant was a citizen of Sri Lanka (para 1). The applicant claimed that 'he was harmed in the past by the Sri Lankan authorities because he was restricted from fishing' and 'he was attacked by Singhalese fisherman because he was a spokesperson for Tamil fishermen' (para 1). He claimed that he feared 'he will be harmed again if he returns to Sri Lanka because he will be considered a troublemaker' (para 1). The applicant claimed to fear that 'he will be harmed too by the Sri Lankan authorities because he is a Tamil, applied for asylum in Australia and departed Sri Lanka illegally' (para 1). The Tribunal was not satisfied that the applicant faced 'a real chance of serious harm by the Sri Lankan authorities due to his race, being a fisherman, being a failed asylum seeker, political opinion, membership of a particular social group or unlawful departure from Sri Lanka' (para 53). The Tribunal's consideration of the application of s.36(2)(aa) to the applicant's circumstances was as

			follows. *Discrimination* Based on country information, the Tribunal accepted 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' (para 56). The Tribunal accepted that 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' (para 56). Therefore, the Tribunal was not satisfied that 'any harm arising from harassment or discrimination towards Tamils in Sri Lanka' would amount to significant harm (para 56). *Illegal departure* The Tribunal was not satisfied that 'any harm arising from his being questioned, the bail conditions, being detained while on remand or fined will amount to significant harm' (para 57).

			Therefore the Tribunal considered 'there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka there is a real risk the applicant will suffer significant harm' (para 59). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations (para 61).
1309907 [2015] RRTA 245 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/245.html (Unsuccessful)	30 April 2015	1, 53, 56-57, 59 and 61	The applicant was a citizen of Sri Lanka (para 1). The applicant claimed that 'he was often questioned and detained by the Sri Lankan authorities in the past' (para 1). The applicant also claimed that a former employee of the applicant, 'Mr R, was a member of the Liberation Tigers of Tamil Eelam ("LTTE")' (para 1). The applicant claimed that 'Mr R went missing' and, 'because he employed Mr R, the Sri Lankan army threatened the applicant' (para 1). He also feared he would 'be harmed by the Sri Lankan authorities because, his photograph appeared in a newspaper in Australia, he is a Tamil, he comes from

			the north or east of Sri Lanka, he is an orphan, has an implied pro-LTTE, was a businessman, applied for asylum in Australia and because he departed Sri Lanka illegally' (para 1). The Tribunal was not satisfied the applicant had 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' (para 53). The application of s.36(2)(aa) of the Act the applicant's claims was as follows. *Discrimination* The Tribunal, on the basis of country information, accepted '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' (para 56). The Tribunal accepted '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' (para 56).

			Therefore, the Tribunal was not satisfied that 'any harm arising from the harassment or discrimination will amount to significant harm' (para 56). *Illegal departure* The Tribunal was 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 57). Therefore the Tribunal found 'there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka there is a real risk the applicant will suffer significant harm' (para 59). 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)
1400168 [2015] RRTA 243 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/243.html (Unsuccessful)	30 April 2015	20, 22, 32, 34, 58, 64, 66, 73-74, 80-82, 84-85 and 91	The applicant was a citizen of Sri Lanka, of Sinhalese ethnicity and a Roman Catholic (para 20). The applicant claimed to fear harm based on his political activities in Sri Lanka (para 22). The applicant claimed that 'he and [a relative Mr A]

			were both active supporters of a political party named Podu Peramuna which was currently the ruling party' (para 22). The applicant also claimed that that '[Mr A] had been kidnapped' (para 32). The applicant claimed that 'approximately two weeks after [Mr A]'s disappearance, [Mr B] a wealthy member of the opposition party, the United National Party (UNP), threatened the applicant and [a family member Mr C' (para 34). The applicant claimed that '[Mr B] made threats stating that something would happen to both the applicant and [Mr C], if they continued with their political activities' (para 34). The applicant also claimed that he feared 'that he would be persecuted as he has applied for asylum in Australia (and because his associated unlawful departure from Sri Lanka)' (para 58). The Tribunal did not accept 'that the applicant was an active supporter of the SLFP', or he that he was an 'opposition politician' (para 64). Therefore, the Tribunal found that the applicant was not of one of the 'classes of people who might be at risk on

			return to Sri Lanka', such as 'persons suspected of certain links with the LTTE; certain opposition politicians and political activists; certain journalists and other media professionals; certain human rights activists' (para 64). The Tribunal found that the 'applicant would not be regarded as having spoken out against the government and imputed with a political opinion of opposing the Sri Lanka authorities as a result of applying for asylum' (para 66). The Tribunal found that with respect to the applicant's illegal departure from Sri Lanka, the harm the applicant feared was not 'Convention based persecution' (para 73). The Tribunal found that based on country information 'the applicant would be granted bail once taken before a court' and the applicant 'may be remanded for a one to several days if he is unable to be brought immediately before a court' (para 74). The Tribunal accepted 'that prison conditions in Sri Lanka are poor and overcrowded and that the applicant may suffer discomfort whilst in prison' (para 80). However, the Tribunal found that 'a short period of remand on return to Sri Lanka does not give rise to a

			real risk the applicant will suffer significant harm in the form of torture or cruel or inhuman or degrading treatment or punishment' (para 81). The Tribunal also found that country information indicated 'that the poor prison conditions in Sri Lanka are due to a lack of resources, rather than an intention by the Sri Lankan government to inflict cruel or inhuman treatment or punishment or cause extreme humiliation' (para 82). Based on country information, the Tribunal found that 'the fine likely to be imposed on the applicant is between 5,000 and 50,000 Sri Lankan rupees according' (para 84). The Tribunal did not accept that the imposition of such a fine on the applicant will give rise to a real risk of significant harm' (para 84). The Tribunal found that the 'applicant had a good employment history in Sri Lanka', 'he was able to afford to pay for his journey to Australia' and 'the Sri Lanka legislation allows for payment of fines by instalment' (para 84). Based on this reasoning, the Tribunal found that the 'applicant would be able to pay any fine imposed' (para 84).

			Therefore the Tribunal found 'that there are no substantial grounds for believing that there is a real risk that the applicant would be significantly harmed as a result of his illegal departure from Sri Lanka' (para 85). In conclusion, 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 91).
1319289 [2015] RRTA 162 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/162.html (Unsuccessful)	22 April 2015	2, 9, 12, 48, 50-53 and 55	The applicant was a citizen of Sri Lanka (para 9). 'The applicant claimed to fear harm on the basis of his Tamil ethnicity, his political opinion and his membership of the particular social groups "Tamil failed asylum seekers" and "Tamil fishermen"' (para 2). The Tribunal did 'not accept there to be a real chance that the applicant will be targeted for serious harm by Sri Lankan authorities on the separate or cumulative bases of his Tamil ethnicity, his actual or imputed political opinion, his profile as a Tamil fisherman, his illegal departure from Sri Lanka or the fact that he has sought asylum in Australia and will not voluntarily return to Sri Lanka' (para 48). With respect to the applicant's claims regarding 'his Tamil race, his actual or imputed political opinion, his

			profile as a Tamil fisherman, his illegal departure from Sri Lanka or the fact that he has sought asylum in Australia and will not voluntarily return to Sri Lanka' found that there was not '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 50). The Tribunal '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 usually being less than 24 hours but possibly as long as several days while awaiting a bail hearing' (para 51). However, the Tribunal did not 'accept on the information before it there to be a real risk that the applicant will face torture, either during his questioning at the airport or during any period he spends on remand' (para 51). The Tribunal found that 'the applicant will be granted bail on his own recognisance and that if convicted of charges under Sri Lanka's I&E Act, he will likely face a fine of between 5,000 and 50,000 rupees' (para 51). The Tribunal did 'not accept that the applicant will be unable to pay such a fine if it is imposed upon him'

			(para 51). Based on country information, the Tribunal accepted 'that prison conditions in Sri Lanka are generally poor and overcrowded' (para 51). However the Tribunal did 'not 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 would spend on remand awaiting a bail hearing' (para 51). The applicant claimed that 'applicant and his relatives were required to obtain a navy pass before fishing in both [Town 1] and Trincomalee' (para 12). The Tribunal 'considered whether the fishing restrictions that may be imposed on the applicant constitute significant harm' (para 52). The Tribunal 'found that the applicant and his family members have been granted the necessary permissions in the past and will continue to be granted those permissions in the future' (para 52). Therefore, the Tribunal did 'not accept there to be a real

			risk the applicant will suffer significant harm for reason of being required to obtain such fishing permissions as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka' (para 53). 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).
1409569 [2015] RRTA 189 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/189.html (Unsuccessful)	22 April 2015	12, 13, 15, 16, 35, 59-67, 70, 74, 76-77, 79-83 and 85	The applicant was a citizen of Fiji (para 15). The applicant's husband was of 'Indo Fijian ethnicity', and the applicant was 'indigenous Fijian' (para 16). The Tribunal considered the applicant's claims only in relation to the complementary protection criteria (s.36(2)(aa) of the Act), based on the Federal Court decision of *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235 (para 12). The applicant claimed to fear harm on 'the basis of: her political opinion and activities; discrimination and harm suffered by her family and herself given her Indo Fijian marriage; the economic situation in Fiji; and general crime fears and corruption' (para 13). The Tribunal was 'not satisfied that the applicant has

			engaged in any political activity either in Fiji or in Australia in opposition to the regime or ruling party' (para 35). The Tribunal was also 'not satisfied that the applicant would become politically active should she return to Fiji, based on her past lack of political involvement' (para 35). Therefore, the Tribunal found that 'there is no basis on which the Tribunal is satisfied that there is a real risk of the applicant suffering significant harm should she return to Fiji based on her political activities' (para 35). Based on country information, the Tribunal accepted 'that there are ongoing ethnic tensions between Indo Fijians and indigenous Fijians, but that the extent of this tension has reduced since the 2006 coup' (para 59). The Tribunal was not satisfied that the main reason for the closure of the applicant's business in 2004 'was discrimination directed at the applicant based on a mixed marriage' (para 60). The Tribunal was 'satisfied that the applicant's children have suffered some discrimination and teasing due to their mixed heritage' (para 61). However, the Tribunal was not satisfied, 'that they have

			been denied on a discriminatory basis government support or access to scholarships' (para 61). The Tribunal detailed 'that the applicant's children are now adults' and 'of the two who live in Fiji, one is employed and the other is a university' (para 61). The Tribunal found that there was 'no indication has been provided that they now suffer significant difficulties in their lives due to their parent's mixed marriage' (para 61). Therefore, the Tribunal was 'not satisfied with the applicant's claims that their lives would be made difficult if she was to return to Fiji' (para 61). The Tribunal was 'satisfied that the applicant's parents-in-law disapprove of her, but it notes that they have moved to [Country 4] and therefore the impact that they would have on the applicant should she return to Fiji is likely to be limited' (para 62). Based on country information and the applicant's evidence, the Tribunal was 'not satisfied with the applicant's claim that her husband has been unable to obtain employment due to discrimination' (para 63). The Tribunal was 'not satisfied with the applicant's claim, for the first time at the end of the Tribunal

			hearing, that her family home in Fiji has been subject to frequent burglaries and attacks from people throwing stones' (para 64). The Tribunal accepted that the applicant had 'suffered disapproval from her parents-in-law' and 'the applicant had suffered a degree of generalised societal disapproval' (para 65). The Tribunal also accepted that the 'applicant has suffered is (sic) seeing her children teased, and her husband experienced harm in terms of what happened to him in the early 2000s' (para 65). 'However, considered both singularly and cumulatively, the Tribunal does not consider that the harm identified amounts to significant harm to the applicant for the purposes of the Act, as distressing as it might be for her' (para 65). The Tribunal 'accepted that the applicant's husband was robbed and on one occasion bashed in the period following the 2000 coup' and that 'that the bashing constituted significant harm' (para 66). However, 'given the length of time that has passed since those events, and that he has not been the victim of any other physical harm or attack since, and the more inclusive racial policies of Bainimarama, the Tribunal is

			not satisfied that there is a real risk of the applicant's husband facing similar treatment in the future' (para 66). Therefore, the Tribunal was not satisfied that 'there is any harm suffered by the applicant in the past in Fiji based on discrimination or adverse treatment given her mixed marriage that could be said to amount to significant harm' (para 67). The applicant claimed that 'it is difficult being a woman in Fiji trying to make ends meet in a society where your opinion and your voice are not heard' (para 70). The applicant claimed that 'the applicant's husband was unwell, the applicant had to play the role of both parents' (para 70). The applicant also claimed that she 'was deprived of a livelihood in Fiji and was not able to get a job and lived in poverty' (para 70). At the Tribunal hearing the applicant 'confirmed that she was employed as a cook after her business closed down in 2004 until she left for Australia' (para 74). The Tribunal found that the applicant had 'no reason to consider that the applicant will not be able to gain employment should she return to Fiji' (para 75).

			The Tribunal found that 'employment difficulties and the general economic situation are not matters which fall within the definition of significant harm under s.36(2A) of the Act' (para 76). That is the 'general economic conditions and any harm that may be suffered as a consequence are not conditions that contain the requisite element of intention of the government or anyone else to inflict harm' and are 'simply a product of the general circumstances' (para 76). The Tribunal accepted the the applicant's claims 'that it is difficult being a woman in Fiji and having your voice heard' and these 'may be factors which present some hurdles both from a financial perspective, and otherwise' (para 77). However, the Tribunal found that 'insufficient evidence' had 'been provided to the Tribunal that would suggest a real risk to the applicant of significant harm on these grounds' (para 77). The applicant claimed that she felt 'unsafe in Fiji due to the high crime rate' and made a 'general reference' to corruption in Fiji (para 79). As detailed above, the Tribunal 'accepted that the

			applicant's husband was robbed and on one occasion physically assaulted in the early 2000s' (para 80). However, the Tribunal was not 'satisfied that the applicant's family home has been robbed and had stones thrown at it on multiple occasions' (para 80). The Tribunal found that the 'applicant has provided no evidence that she has been the victim of crime during her time in Fiji' (para 80). The Tribunal did not consider 'that what happened to the applicant's husband in the early 2000s provides a foundation for a real risk of significant harm to the applicant' (para 81). The Tribunal found that 'insufficient evidence has been provided by the applicant that the general level of crime in Fiji is such that would support the position that any particular individual faces a real risk of significant harm' (para 81). The Tribunal found that 'no detail has been provided by the applicant as to harm faced on the basis of corruption, and the Tribunal is not satisfied there is a real risk of significant harm to the applicant on this basis' (para 82). Therefore, the Tribunal was not 'satisfied that there are

			substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there is a risk that she will suffer significant harm on the basis of criminal acts or corruption' (para 83). In conclusion, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under the complementary protection criteria (para 85).
1412755 [2015] RRTA 216 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/216.html (Unsucessful)	20 April 2015	1, 75, 77-80 and 82	The applicant was a citizen of Fiji and claimed to fear harm based on his 'political activities and opinions' and the 'level of health care in Fiji' (paras 1 and 78). The Tribunal found that the applicant did 'not have a well-founded fear of being persecuted for a Convention reason in Fiji' (para 75). The Tribunal also found that the 'applicant will not be harmed at all because of his political opinion if he returns to Fiji', and therefore found there were 'no substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed to Fiji, there is a real risk he will suffer significant harm for that reason' (para 77). The Tribunal accepted that the applicant had a 'heart condition' and that the 'level of health care in Fiji' did 'appear to pose a considerable risk to him because of

			his heart condition' (para 78). However, the Tribunal found that to meet the complementary protection criteria 'the pain or suffering must be intentionally inflicted' (para 79). The Tribunal found that 'the applicant's evidence was quite clear that the general level of medical care in Fiji is not as high as it is in Australia, and that may be the case' (para 78). 'However he did not claim, and there is no evidence before the Tribunal to suggest, that any pain or suffering he might face as a result would be intentionally inflicted' (para 78). Therefore, the Tribunal found 'there are no substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Fiji, there is a real risk the applicant will suffer significant harm' (para 80). In conclusion, 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).
1311316 [2015] RRTA 142 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/14	20 April 2015	1, 2, 34-39 and 41-42	The applicant was a citizen of Sri Lanka, of Sinhalese ethnicity and Christian (para 1).

2.html (Unsuccessful)			The applicant claimed to fear 'harm in Sri Lanka on the grounds of his political opinion because he claims he assisted his [relative] in his campaign as a candidate of the Janatha Vimukthi Peramuma (JVP) party in local elections in 2009; and as a failed asylum seeker who departed Sri Lanka illegally' (para 2). The Tribunal found that the applicant's claims did not meet the criteria pursuant to s.36(2)(a) of the Act (para 41). The Tribunal was 'not satisfied for the purposes of the Complementary Protection provisions that the applicant will be considered to have any adverse political profile such that there is a real risk he will suffer significant harm upon his return to Sri Lanka or that there is a real risk that he will suffer significant harm on the basis that he is a failed asylum seeker departed Sri Lanka illegally' (para 34). The Tribunal 'accepted that the applicant departed the country illegally, an offence under the I&E Act of Sri Lanka' (para 35). Therefore, the Tribunal accepted 'that it is likely that the applicant would face questioning at the airport, arrest on charges of illegal departure, that he could be placed in remand for a relatively brief period while awaiting a bail hearing, and he would later be fined if

			found guilty' (para 35). The Tribunal accepted that the 'applicant may spend up to a fortnight in jail on remand, in conditions that are cramped, uncomfortable and unsanitary' (para 35). However, the Tribunal did 'not accept that spending up to a fortnight in such conditions amounts to "significant harm" as defined in subsection 36(2A) of the Act or that such treatment is intentional as is required by the law in Australia' (para 36). Specifically, the Tribunal did not 'accept that there is a real risk that the applicant will be subjected to "torture" as defined while he is on remand for a relatively short period' (para 37). The Tribunal did not 'accept on the evidence before it that the pain or suffering caused by the overcrowding and other problems in prisons in Sri Lanka is "intentionally inflicted" on prisoners as required by the definition of "cruel or inhuman treatment or punishment" in subsection 5(1) of the Act' (para 38). Nor did the Tribunal accept that the 'overcrowding and other problems are "intended to cause" extreme humiliation as required by the definition of degrading treatment or punishment' (para 38).

			Therefore, the Tribunal was not satisfied that there were 'substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there would be a real risk that he would suffer harm which would amount to significant harm' (para 39). In concluding, the Tribunal said it 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 42).
1411673 [2015] RRTA 205 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/205.html (Unsuccessful)	23 March 2015	2, 3, 5, 17-18, 20-21, 24-26 and 42-45	The applicant was a citizen of the People's Republic of China (para 2). The applicant claimed to fear harm based on 'her illegitimate [child], born in Australia (now reportedly a citizen of Australia), her ongoing association with a church in Australia and her desire to nurse her seriously injured brother, who is also an Australian citizen' (para 3). The applicant applied for a 'protection visa [in] February 2002', but was unsuccessful (paras 2 and 3). 'Having regard to *SZGIZ*, [the applicant] lodged a new protection visa application [in] March 2014' (para 5). The Tribunal accepted the applicant's claim that she 'belonged to a "house church" or "family church" from

			the time she was an infant in China', but she was 'not baptised until 2009' (paras 17, 20 and 21). The applicant outlined to the Tribunal 'that although she had heard of other people being arrested nothing of that sort had ever happened to her' (para 18). 'Rather she made a general comment about the Chinese government disliking underground churches' (para 18). When asked by the Tribunal as to 'what would happen to her if she returned to China', the applicant claimed that 'her reason for coming to Australia was that her brother, who' 'suffered multiple [injuries] and who required microsurgery, was critically ill and had appeared at the time to be about to die' (para 24). The applicant also claimed that 'her infant[child], an Australian citizen, resides here and needs her care and supervision, not least because, although already having turned[age], is still having some problems with getting to the bathroom on time' (para 25). The applicant said 'she wants to stay in Australia because her family is here' (para 25). The applicant 'did not suggest that her activities with the church in Australia would get her into any trouble at all in China' and 'she did not even suggest that the

			article she wrote in the church publication would lead to any harm at all in the event of her being removed to China' (para 26). Based on country information and the applicant's evidence the Tribunal was not satisfied that the applicant's 'religious principles, stance or profile' were 'substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to China, there is a real risk that she will suffer significant harm' (para 42). With regard to the applicant's 'concerns about being separated from her family here and about the difficulties she might face trying to find a job and accommodation in China', the Tribunal was not satisfied that there were 'substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to China, there is a real risk that [the applicant] will suffer significant harm (para 43). The applicant had previously made 'claims about having had a [child] outside of Chinese family planning regulations, [his/her] having been born out of wedlock' (para 44). The applicant claimed that she 'may be fined for bearing her [child] out of wedlock' (para 44).

			However, the applicant did not suggest 'that law or regulations governing such things is discriminatory or that she would be penalised on a discriminatory basis, or that the penalty would be one that does not apply to the population generally' (para 44) The Tribunal did not 'accept that the penalty she would have to pay for the unauthorised birth, or the social compensation fee she would have to pay for her [child] to be *hukou*-registered in China would amount to significant harm in China' (para 44). Therefore, in concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(aa) of the Act (para 45).
1402232 [2015] RRTA 102 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/102.html (Unsuccessful)	11 March 2015	23, 27, 95-98, 100-102, 105, 107, 112, 114-115, 121, 123-124 and 127-131	The applicant was a citizen of Sri Lanka and of Tamil ethnicity (para 23). The applicant claimed that as a 'Tamil fisherman' he had 'problems not only with the Sri Lankan military but also with Sinhalese fishermen, who would harass and verbally abuse them and sometimes prevent them from entering the designated Tamil areas' (para 27). The Tribunal accepted that the 'applicant was stopped and detained for some hours in 2006 in the early hours of the morning, when checked and without his pass, at

			the height of the civil war' (para 95). However, the Tribunal did not accept that this incident provided the 'basis for an ongoing adverse profile' or gave 'rise to any real chance of future harm' (para 95). The Tribunal also accepted that 'in January 2012, when the applicant returned the fishing passes of himself and his father-in-law an hour late, he was warned not to do this again and was struck on the face by the naval officer involved' (para 96). However, the Tribunal did not accept that the '2012 incident gave the applicant any significant adverse profile (including an LTTE profile) or that he would be subsequently targeted for this reason' (para 96). The Tribunal did not 'accept that the move to [Village 2] was motivated by the incident over the late fishing pass, but rather was simply the applicant's normal seasonal practice' (para 97). The Tribunal relied on 'DFAT advice that subsequent to this incident in January 2012 the practice of issuing fishing passes in this way has been discontinued' (para 98). Therefore, the Tribunal was not satisfied that there was 'any real chance or risk that in the reasonably

			foreseeable future there will be any issue with the applicant obtaining from or returning to the navy a fishing pass or permit' (para 100). Nor did the Tribunal accept that there was a 'real chance or risk that the local naval command in [Village 1], or an individual naval officer, would now or in the reasonably foreseeable future target and offer serious or significant harm to the applicant because he had returned a fishing pass late more than three years ago' (para 101). 'The applicant stated that after he left [Village 1] and before he left Sri Lanka there were several enquiries as to his whereabouts' (para 102). The Tribunal was not satisfied that 'these were anything other than routine or that they reflected any intention to persecute the applicant' (para 102). The Tribunal was 'satisfied that at the time he left Sri Lanka the applicant did not have an LTTE profile or any adverse profile with relevance now or in the reasonably foreseeable future' (para 105). The Tribunal accepted 'that there may have been tension between fishermen over fishing areas and that on one occasion in the past the applicant may have been assaulted when his boat entered a fishing area restricted

			to other (Sinhalese) fishermen' but it was 'not satisfied that this entailed serious or significant harm or that it gives rise to a real chance or real risk of serious or significant harm in the reasonably foreseeable future' (para 107). The Tribunal did not accept that a 'Tamil who has departed Sri Lanka illegally and applied for refugee status in Australia the applicant would now be imputed with an LTTE political opinion and targeted and harmed for that reason and that on return he would be arbitrarily detained and tortured and killed' (para 112). The Tribunal did not accept the 'cumulative effect of the applicant's ethnicity, place of origin and illegal departure might lead to an imputed political opinion (para 114). The Tribunal did not accept that 'failed Tamil asylum seekers' were 'imputed as being pro-LTTE' or that 'systemic targeting of failed asylum seekers' existed (para 115). On the basis of the advice from the Department of Foreign Affairs and Trade (DFAT), the Tribunal was 'satisfied that the applicant (who would not be suspected of LTTE links) would be held in prison for only a few days at most (over a weekend or public holiday when a magistrate might not be available) and

			that during such period there is no real risk of the infliction of significant harm' (para 121). The Tribunal was 'satisfied that any punishment the applicant would face for illegal departure would be under a law of general application and is not disproportionate or arbitrary and does not amount to persecution for a Convention reason' (para 123). The applicant also 'expressed concern about medical treatment for his [child] who was apparently disfigured by burns some time ago' (para 124). The Tribunal was 'satisfied that the applicant's [child] has not been denied medical treatment, for a Convention or any other reason' (para 124). The Tribunal did not 'accept that the applicant's [child] has been denied medical treatment (or that any shortcomings in medical treatment generally available amount to infliction of significant harm)' (para 127). The applicant claimed that because he was 'returning from overseas it will be suspected that he has a lot of money and will be detained and tortured until he pays' (para 128). The Tribunal found that 'no specific evidence was offered to support this suggestion' and 'it is also

			inconsistent with the DFAT advice that returnees are released when brought before a magistrate after brief detention'. The Tribunal was not satisfied that there were substantial grounds for believing that there was a real risk that this would occur (para 128). Based on the above reasoning, the Tribunal was not satisfied that there were substantial grounds for believing that the applicant would face a real risk of significant harm upon return to Sri Lanka (para 129). Therefore the applicant did not satisfy the criteria set out in s.36(2)(a) and s.36(2)(aa) of the Act (para 130 and 131).
1411512, 1411514 [2015] RRTA 138 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/138.html (Unsuccessful) See also 1411884 [2015] RRTA 77 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/77.html (Unsuccessful); 1402432 [2015] RRTA 72	26 February 2015	2, 3, 35, 38, 53, 66-7, 72, 90-1, 93 and 96-100	The applicants were a married Indian couple from the State of Punjab (paras 2 and 3) who feared harm by their families because they had married within the same *gotra*, or lineage (para 3). The Tribunal found that the applicants' membership of the particular social group of people in same-*gotra* relationships in India would be the essential and significant reason for their feared harm (para 66). The Tribunal also found that the 'harm would be systematic and discriminatory as it would be directed at the applicants for reason of their membership of the particular social group of people in same-*gotra*

http://www.austlii.edu.au/au/cases/cth/RRTA/2015/72.html (Unsuccessful)			relationships in India' (para 66). Therefore, the Tribunal found 'that the harm the applicants would face would amount to serious harm capable of amounting to persecution for the purposes of s.91R(1)(b) of the Act' (para 66). 'Having regard to the very significant number of "honour killings" still occurring in India for reason of mixed or inter-caste marriage and same-*gotra* marriage, the Tribunal finds that the protection available to the applicants cannot be considered consistent with "international standards"[32] and that the applicants could not expect that a reasonable level of protection would be available to them' (para 72). On the evidence before it, the Tribunal found that state protection would not be available to the wife applicant or the husband applicant' (para 72). However, the Tribunal found that there was 'not a real chance the applicants would be found by their families or seriously harmed for this or any other reason if they moved to a location outside the state of Punjab' and that 'in all the circumstances it would be reasonable, in the sense of practicable, for the applicants to relocate to an area in India outside the state of Punjab' (para 90). Since Tribunal had 'found that the applicants would not

			face a real chance of serious harm if they relocated to a state in India away from Punjab and that it would be reasonable for them to do so', the Tribunal found that the applicants' fear of persecution was 'not well-founded' (para 91). For the same reasons set out above, the Tribunal was satisfied that there was a real risk the applicants would suffer significant harm, 'in the form of cruel or inhuman treatment of punishment or degrading treatment or punishment or at worst, arbitrary deprivation of life, at the hands of their family members, as a necessary and foreseeable consequence of their removal from Australia to a their home village in the Punjab' (para 93). However, in relying on the reasons detailed above, the Tribunal was 'satisfied that it would be reasonable, in all the circumstances, for the applicants to relocate to an area of India where there would not be a real risk that they would suffer significant harm' (para 93). In concluding, the Tribunal found that the applicants were persons in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (paras 96-100).

1409754 [2015] RRTA 75 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/75.html (Unsuccessful)	16 February 2015	2, 6, 8, 9, 12, 13 and 17-21	The applicant was a citizen of the People's Republic of China (para 2). The issue in this case was whether or not the applicant was 'entitled to a protection visa on complementary protection grounds' pursuant to s36(2)(aa) of the Act (para 8). The applicant claimed to fear harm based on 'the appropriation of his family's home in Fujian' and his 'membership of the unauthorised Catholic Church in China' (para 9). The applicant claimed that 'his next-door neighbour grew up to be a criminal gang leader with connections to local government, which presides over land occupation and sale' (para 12). He stated that 'a few years ago, the neighbour was able to use his influence to buy the portion of land on which one of the semi-detached houses stood and extend his own house upon in'. He further claimed 'that compensation was offered but that he and his brothers considered it inadequate'. He said that 'his brothers reluctantly accepted the albeit inadequate compensation and moved away' (para 12). The applicant claimed that if he returned to China he would want to reclaim his property because he was 'not satisfied with what happened' (para 13). The Tribunal was not satisfied that the applicant 'would

			bother to pursue this matter in the event of return to China'. In addition, according to the applicant's evidence, the Tribunal was not satisfied 'that he would refrain from pursuing the matter out of fear of significant harm' (para 13). Rather, 'it would be impossible to reverse the process overseen by local government to which his brothers had several years ago reluctantly subscribed' (para 13). Regarding the applicant's claims about religion, the applicant outlined 'in his previous protection visa application that he had been persecuted in China for belonging to the unauthorised Catholic church' (para 17). The applicant claimed that 'he escaped persecution when he came to Australia' and 'he would continue to face persecution over his past association with the church in the event of return to China' (para 17). The Tribunal did not accept that the applicant was 'ever involved in an underground church in China' (para 18). However, the Tribunal did accept that the applicant had 'engaged in some affiliation with the Catholic church and members of the same in Australia' and 'that s.91R(3) of the Act does not apply in the consideration of claims to complementary protection' (para 19).

			However, the Tribunal found that there was 'insufficient evidence to suggest, even remotely, that any activities [the applicant] might have undertaken, in Australia, with a church that is unauthorised in China has, or would ever, come to the attention of the authorities or relevant parties in China, let alone that such activity or any other of his activities here would give rise to a real risk of significant harm back in China' (para 19). Therefore, 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 China', that there was a real risk that he would suffer significant harm (para 20). 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)(aa) of the Act (para 21).

1403522 [2015] RRTA 73 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/73.html (Unsuccessful)	16 February 2015	2, 5-6, 17, 20-23 and 26-27	The applicant was a citizen of the People's Republic of China and feared harm from Chinese officials and the police because he 'lodged objections' against what he claimed was unfair treatment by officials in relation to the family business (paras 2 and 5). The applicant also claimed 'that minority ethnic groups in China are treated better than Han Chinese', and that he claimed to 'fear persecution by reason of his race' (para 6). The applicant's claims with respect to being Han Chinese were not accepted by the Tribunal based on the fact that the applicant had not provided any examples of the harm he had 'experienced by reason of being Han Chinese' and, 'the delegate was unable to locate any independent information to support the applicant's claim that Han Chinese people are discriminated against or harmed for this reason' (para 17). The Tribunal was not satisfied that there was 'any likelihood of any further harassment or difficulty with the officials against whom the applicant previously lodged complaints', since the applicant's 'wife's business was operating, his family continued to live in the family home, his [child] continued to attend school and the applicant was not on any blacklist which might alert the Chinese authorities to his return' (para 20).

			The Tribunal found that the 'only continuing harassment' the applicant complained of was that officials asked his wife for 'small amounts of money or meals' (para 21). The Tribunal found that 'this harassment is far too minor to amount to either serious harm or significant harm – the applicant and his family have not been reduced to being unable to subsist by reason of this harassment' (para 21). The Tribunal also found that even if the business had closed down, 'the applicant has proved himself able to be employed throughout his life (except while he father was ill) and to provide for his family' (para 22). The Tribunal also found that the applicant's delay and timing in lodging a protection visa application after arriving in Australia was not 'consistent with a genuine fear of serious or significant harm' (para 23). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (paras 26 and 27).
1405899 [2015] RRTA 70 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/70.html	10 February 2015	1, 47-48, 51-52, 54-55, 58, 71-74, 77 and 79	The applicant was a citizen of Fiji (para 47). The applicant's fears of returning to Fiji related 'variously to the consequences of a past assault, the Fiji

(Unsuccessful)			military seeking her husband, and her political opinion as a supporter of democracy' (para 1). The Tribunal accepted that the applicant 'was sexually assaulted in 2000 during a period when George Speight had taken over the parliament building in Suva' (para 48). However, the Tribunal found that there was a remote chance that 'her previous assailants might harm her in future' (para 51). This finding was primarily based on the fact that the applicant had lived and worked 'in Suva for some 12 years after the assault without any further contact from her previous assailants or people associated with them' (para 52). Additionally, during the 'final four years in Fiji the applicant was not subjected to any form of harassment that might possibly be connected with the assault in 2000' (para 54). Since 2000 the applicant had also 'travelled abroad on several occasions, returning to Fiji after each trip' (para 55). The Tribunal did not accept the applicant's claims with respect to the 'authorities' interest in her husband' (para 58). The Tribunal accepted that the 'applicant accompanied her husband when he attended two meetings of the Fiji Democracy and Freedom Movement in Australia', and that she regarded the more recently-elected Prime

			Minister Frank Bainimarana to be a 'big bully' (para 71). The Tribunal also accepted 'that the applicant made a comment on another person's Facebook page after the recent election, but that she did not claim to fear being harmed for doing so (para 71). However, the Tribunal found that the 'applicant was not regarded as politically active at all when she was living in Fiji' and 'that the applicant had 'done nothing else in Australia that might change the Fijian authorities' view of her' (paras 73 and 74). Based on the above reasoning and country information which detailed that 'only high profile political activists were being targeted by the regime', the Tribunal found that the Applicant 'did not have a well-founded fear of being persecuted in Fiji' (para 72 and 74). Applying the above reasoning and country information, the Tribunal also found that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to Fiji, that there was a real risk that she would suffer significant harm (para 77). In concluding the Tribunal found that the Applicant did not meet the criteria in s.36(2)(a) or s.36(2)(aa) of the

			Act (para 79).
1218366 [2015] RRTA 41 www.austlii.edu.au/au/cases/cth/RRTA/2015/41.html (Unsuccessful)	10 February 2015	2, 4, 6, 20-29 and 31	The applicants (father and child) were citizens of the People's Republic of China (para 2). Only the applicant father made a claim for a Protection Visa. The applicant child relied on her membership to the applicant father's family unit (para 4). The applicant father claimed to fear harm based on the fact that a 'corrupt local official forced him to sell his [farm], at considerably less than market value and for a price that was never paid, to the official's son. The applicant claimed that 'he tried to protest against the official' (para 6). The applicant father claimed that when he protested, 'he was arrested and detained and his wife was obliged to pay a bribe for his release' (para 6). The Tribunal accepted that the applicant father 'had a dispute with a corrupt local official and that his contract to operate his [farm] on village land was unilaterally cancelled at the instigation of that corrupt official' (para 20). The Tribunal also accepted that the applicant father believed that he was 'owed money for the loss of his [farm]' and when the applicant father 'protested to

			district-level officials, he was detained by police on the basis of having disturbed the public order and making accusations of corruption against village and other officials' (para 20). The Tribunal also accepted that the applicant father's wife 'paid a bribe to secure his release after a number of days' (para 20). However, the Tribunal did not accept that: - 'the applicant father was required to report to the local police in his village after his release' - there was 'any continuing interest in the applicant as a consequence of these events', - 'the applicant father was charged with an offence', - the applicant father 'never appeared before a court' or - that 'no penalty was imposed' (para 21) The Tribunal also did not accept that the applicant's passport was confiscated and that he experienced any difficulties in departing China (paras 22-24). Based on the above reasoning, the Tribunal found that at the time of his departure from the China the applicant father was not of 'any adverse interest to any Chinese authorities' (para 25)

			The Tribunal did not accept the applicant father's claims that his wife in China had been harassed by local police or that she had 'been moving around between their house, her [child]'s house and the houses of friends in order to evade this harassment' (para 26). The Tribunal did not accept that there had 'been any interest in the applicant since his departure in April 2012' (para 26). The Tribunal also found that the applicant father had not utilised 'State-sanctioned avenues of complaint and redress' (para 27). 'In the absence of an attempt to access those avenues of complaint and redress', the Tribunal did not accept that if the applicant pursued his complaint 'against the corrupt official' that he would be 'unable to access effective protection from future harm by that corrupt official' (para 27). Based on the above findings, the Tribunal concluded that the applicant father did not have a 'well-founded fear of serious harm amounting to persecution if he were to return to China', 'the chance of harm' was 'remote' and that there were 'avenues for protection and redress available to him' (para 28).

			On the basis of the 'factual findings' the Tribunal made in relation to the applicant father's 'Convention claims', the Tribunal was not satisfied that there was 'a real risk' that the applicant father faced 'significant harm' (para 29). In concluding the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations pursuant to s.36(2)(a) and s.36(2)(aa) of the Act (para 31).
1403231 [2015] RRTA 45 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/45.html (Unsuccessful)	9 February 2015	2, 10, 33-34, 36-39, 46, 48, 52-56 and 58.	The applicant was a citizen of Nepal. She claimed to fear harm from Maoists and based on her status 'as a single widowed and divorced female returning to Nepal from Australia' (paras 2 and 10). The Tribunal accepted that the applicant was a widow and that her 'first husband was shot and killed by Maoist insurgents in 2004' (para 33). However, the Tribunal did not accept that the applicant was 'at risk of harm from the same people who killed her husband', or that she was at 'risk of harm from Maoist insurgents because she was married to a Nepalese army soldier, or because she refused to join the Maoists' (para 33). The Tribunal also did not accept that the 'applicant's first husband was deliberately targeted by people she knew because she refused to join the Maoists' (para 33). The Tribunal found that it was 'reasonable to assume

			that the applicant's first husband was killed because he was a soldier fighting for the Nepalese army against the insurgents and he was shot and killed in this context' (para 33). The Tribunal found that if it was accepted 'that the applicant's first husband was killed by people who knew the applicant in revenge for her refusing to join the Maoists', there was 'only a very remote chance that the same people would target and harm the applicant in the reasonably foreseeable future given that ten years' had passed since her husband's death and that there was 'no longer a Maoist insurgency in Nepal' (para 34). The Tribunal did 'not accept the applicant's claim that the Maoists would track her down and harm her in Kathmandu' (para 34). The Tribunal accepted that the applicant may have been 'at risk of demands for money in her home village in the Chitwan district' (para 36). However the Tribunal did not accept that this level of extortion was 'serious harm for Convention purposes' (para 36). In the event of the applicant experiencing 'extortion demands', the Tribunal found that the applicant could live with her aunt in Kathmandu where she had not claimed to 'suffer harm' previously (para 37).

			With respect to the applicant's claim that her injuries made her more 'vulnerable to crimes including extortion' and that she would be targeted because she was a 'single female returning from Australia', the Tribunal relied on country information and found that 'the police acts to protect people in relation to extortion and other crime'(para 38). The Tribunal found that while returning from Australia 'may increase the chance of her being subjected to extortion demands', the Tribunal found that being a victim of the crime of extortion in itself was not 'serious harm in the applicant's case' (para 38). Therefore the Tribunal found that there was not a real chance that the applicant would face serious harm because of extortion demands in Nepal (para 38). The Tribunal accepted the applicant would experience discrimination and social stigma in Nepal and 'as a widow, a divorcee, and a single female with a child', she would 'suffer serious harm in Nepal' (paras 39 and 46). However, the Tribunal found that the country evidence did not suggest that the applicant would 'be denied access to employment or access to an income or basic services such that her capacity to subsist would be threatened' (para 46).

			Therefore, the Tribunal found that the disadvantage the applicant would face in this regard, and as a member of the social group 'women in Nepal' or 'unmarried, widowed, and divorced women', did not constitute persecution as defined in s.91R(1) and (2) of the Act (para 46). In considering the applicant's claims on a cumulative basis, the Tribunal found that the applicant did not meet the criteria specified in s.36(2)(a) of the Act. (para 48) Based on the Tribunal's earlier reasoning, the Tribunal found that the applicant did not 'face a real risk of being targeted and harmed' because she was 'known as a person who opposed the Maoists, and/or because her husband was a soldier in the Nepalese army and was killed in 2004' (para 52). Based on the above reasoning, the Tribunal also found that 'being subjected to extortion demands' did not 'constitute her being subjected to significant harm' (para 53). With respect to the applicant's 'gender, marital and social status' the Tribunal was satisfied that the applicant would 'face a real risk of disadvantage and discrimination in Nepal' (para 54).

			The Tribunal accepted that the applicant's first husband's family were hostile towards her and had treated her 'harshly in the past', and asked her for money (para 54). However, the Tribunal noted that the applicant's own family were supportive of her and had assisted her previously. Further, the applicant had not claimed that she would be 'forced to live with, or have any contact with, her first husband's family' (para 54). Therefore, the Tribunal found that there were 'not substantial grounds for believing the applicant is at real risk of significant harm from her first husband's family' (para 54). In assessing all the evidence, including the fact that the applicant was supported by her own family, had a 'home to return to', had relatives in Kathmandu whom she had lived with previously and had not stated that she would be unable to live with again and that her brother continued to care for her child, the Tribunal found that the applicant was not at a real risk of significant harm 'because of her gender, marital and social status' (para 55). In concluding, the Tribunal found that there were no 'substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being

			removed from Australia to Nepal', she faced a real risk of suffering significant harm for any reason (para 56). 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) (para 58).
1500655 [2015] RRTA 60 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/60.html (Unsuccessful)	6 February 2015	1, 30-34, 37-41 and 43	The applicant was a citizen of Fiji and claimed to fear harm based on'access to medical treatment and financial and other support' in Fiji, and 'not being treated well by members of the public or the government because of his long absence from the country and as a person deported due to character issues' (para 1). The Tribunal accepted that the applicant had various medical conditions and that 'at some point as he gets older he may need treatment for one or both of these conditions' (para 30). The applicant did not claim that he would be denied the necessary treatment in Fiji for any reason if it was available. Therefore the Tribunal found 'that any lack of access to treatment for his physical condition would not constitute persecution, as persecution requires serious harm which is systematic and discriminatory' (para 30). The Tribunal accepted that the applicant took 'buprenorphine on a daily basis', and that he may not

			have been able to obtain such medication in Fiji due to lack of resources. On that basis the Tribunal found that 'any lack of access to it would not constitute persecution, again as it requires serious harm which is systematic and discriminatory' (para 31). The Tribunal accepted that the applicant may not have 'fit in in Fiji' because he had been in Australia for so long and because his 'family and the community' would be aware of his criminal history and the reason for his deportation (para 32). However, the applicant did not claim that he was concerned that the authorities may have been interested in him for these reasons (para 32), The Tribunal accepted that the applicant 'would be unable to get a job' and that this would be 'problematic because of the limited social services in Fiji' (para 32). However, based on the fact that the applicant 'agreed that he did not fear being seriously harmed by anyone', the Tribunal found 'that none of these problems, whether in isolation or taken together', constituted persecution (para 32). The Tribunal found that if the applicant expressed his views with respect to being 'critical of the lack of resources in Fiji', the chance of the applicant 'being

			harmed at all' was 'remote' (para 33). Based on the above, the Tribunal found that the applicant did not 'have a well-founded fear of being persecuted for a Convention reason in Fiji' (para 34). The Tribunal found that there was no evidence and that the applicant did not claim that he would be deprived of his life, that the death penalty would be carried out on him or that he would be tortured (para 37). With respect to whether the applicant might have be subjected to cruel or inhuman treatment or punishment or to degrading treatment or punishment, the Tribunal accepted that the applicant may have been unable to obtain medication or treatment for his health problems if he returned to Fiji, 'because of Fiji's poorly resourced health system' (para 38). However, the Tribunal found that there was 'no evidence at all that he would be intentionally subjected to such treatment through the denial of medical care'. Therefore the Tribunal found that his claim did not fall within the complementary protection criteria of the Act (para 38). The Tribunal found that the fact that people would 'know about his criminal history and deportation', that he would have 'difficulty fitting in, and that he 'might

			have difficulty finding a job', 'even taken together', did not constitute cruel or inhuman treatment or punishment or degrading treatment or punishment (para 39). On the basis that the Tribunal had earlier found that there was a remote chance that the applicant would be harmed for expressing his views with respect to access to services in Fiji, the Tribunal found that there was no real risk that he would suffer significant harm for doing so (para 40). In concluding the Tribunal found that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Fiji, there was a real risk that he would suffer significant harm (para 41). Therefore 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 43).
1408508 [2015] RRTA 51 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/51.html (Unsuccessful)	5 February 2015	22-23, 34, 36-41 and 44-45	The applicant was a citizen of India and a practising Muslim (para 22). He claimed to fear harm based on the existence of 'communal riots' in India (para 23). The applicant's claims were assessed in relation to the s.36(2)(aa) of the Act as the applicant had already had his claims for protection assessed under s.36(2)(a) (para 34).

			The Tribunal accepted that the applicant was a Muslim (para 36). However, based on country information, the Tribunal did not accept 'that there was a festival of Muharram in Calcutta, in 1994 or 1995, there were big riots in various different suburbs' or that 'the applicant had to flee Calcutta for a few weeks in order to avoid being harmed' (para 36). The Tribunal found that the applicant 'had no adverse religious or political profile in India prior to departing for Australia' and that 'the applicant did not flee India fearing harm but came to study in Australia' (para 37). The applicant claimed that 'he was not happy with the Indian government system, he does not want to be a victim, it is corrupt, there is no law in India, nobody follows it and nobody listens and so he does not want to go back' (para 38). Based on country information, the Tribunal found that 'delays or denials of justice in India' affect 'all Indians' rather than targeting Muslims (para 38). The applicant also claimed that the RSS [Rashtriya Swayamsevak Sangh were 'anti-Muslim' and 'they caused the riot in 2002' (para 39). The Tribunal accepted that 'since 1947 there have been

			many Hindu and Muslim riots' in which people have died (para 40). However, the Tribunal found that 'when communal violence occurred, the Indian authorities sought to end it at the earliest opportunity' and that 'persons considered to be inciting communal violence could be prosecuted under Indian law' (para 40). Further, the Tribunal did not 'accept that there is no law in India and nobody follows it or that the RSS will seek to harm the applicant' (para 40). The Tribunal was not satisfied that the applicant would 'not be able to obtain protection from the Indian authorities on his return to India' (para 41). Based on the above reasoning, the Tribunal did not accept that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, that there was a real risk that he would suffer significant harm (para 44). Therefore, the Tribunal found that the applicant did not satisfy the criteria in s.36(2)(aa) of the Act (para 45).
1409020 [2015] RRTA 53 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/53.	30 January 2015	1, 5, 6, 25-29, 34-35 and 37-39	The applicant was a citizen of the People's Republic of China and 'the infant child of [Ms A] and [Mr B]', both of whom were citizens of China (para 1).

html (Unsuccessful)			[Ms A] stated that because she had two children she would be forced to pay a 'huge fine' and she would be forcibly sterilized (para 5). [Ms A] also stated that she believed the authorities would refuse to place [the applicant] on the 'family register (the *hukou*) because his birth was unauthorised according to China's relevant family planning regulation' (para 6). She further claimed that in 'China a *hukou* is essential for public education, health care and social security' (para 6). The Tribunal accepted independent evidence that indicated that 'social compensation fees are imposed for children born in breach of China's family planning policies' (para 25). The Tribunal also accepted that children 'cannot be registered and obtain a *hukou* in China until the social compensation fee is paid' (para 25). The Tribunal also accepted that children who are not registered in China 'are known as "black children" as they will be denied access to public education and medical care, amongst other things' (para 25). The Tribunal accepted that the 'fee is substantial, particularly by Chinese standards where incomes are generally lower than in Australia' (para 26).

			However, the Tribunal found, based on applicant's parent's evidence, that they were 'willing and able to pay the social compensation fee in Fujian for the birth of their second child' (para 26). The Tribunal was not 'satisfied that the imposition of contraceptive devices, sterilisation or even abortion which may be imposed forcibly on the applicant's mother would result in a real chance that [the applicant] would suffer serious harm for reasons of his race, religion, nationality, membership of a particular social group or his political opinion if he returned to China now or in the reasonably foreseeable future' (para 27). Based on country information, the Tribunal did not accept that '[the applicant] would be unable to be registered until his mother undergoes a forcible sterilization' (para 28). The Tribunal found that 'upon payment of the compensation fee to the relevant authorities that a child is then issued with a *hukou* and included on the household registration of his family' (para 29). Based on country information the Tribunal found that even if the applicant's parents practised 'their Christianity', and the applicant was 'raised as a Christian', that there was not a real chance that he

			would suffer harm for this reason (para 34). The Tribunal was not satisfied that the applicant's parents would be 'arrested, harassed or detained for practising Christianity in China' such that the applicant would be denied care by his parents (para 34). Having found that there was no real chance that the applicant would suffer serious harm for reasons of his 'particular social group or his religion', the Tribunal found that the applicant did not have a 'well founded fear of persecution for these reasons' (para 35). Based on the findings that the applicant would be 'able to obtain a *hukou* after the compensation fee' had been paid and that the Tribunal did not consider 'any harm the applicant's mother may suffer', but the effect that it may have had on her son, the applicant, the Tribunal did not accept that the imposition of China's family planning laws on the applicant's mother was such that there was a real risk that the applicant would 'suffer significant harm, arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or degrading treatment or punishment' (para 37). Nor did the Tribunal accept that the 'imposition of fines themselves, which is a law which is applied to the entire population, amounts to significant harm' (para 37).

			Based on country information and the finding from above that the applicant would not 'suffer harm as a result of being raised as a Christian in Fujian or as a result of his parent's religious beliefs', the Tribunal was not satisfied that there was a real risk that the applicant would suffer significant harm for this reason (para 38). In concluding, 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 China that there was a real risk that he would suffer significant harm, including arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or degrading treatment or punishment (para 39).
1310704 [2015] RRTA 31 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/31.html (Unsuccessful)	27 January 2015	1, 48-50 and 52-54	The applicant was a citizen of Pakistan and claimed to fear harm based on 'his religion as a Shia Muslim, because his father (who was killed in fighting in [City 1] in [month] 2007) was quite a well-known figure in [City 1] and because he himself briefly worked for a non-government organisation in Peshawar and was accused by militants of spying' (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 48). The Tribunal also found that the applicant was not a person in respect of whom Australia had protection

			obligations under s.36(2)(aa) of the Act (para 54). This was based on the following reasoning. The Tribunal did not accept that: - there was a real risk that the applicant would suffer 'significant harm as a result of his having worked briefly for an NGO, [Organisation 4]' (para 49), - the applicant was 'forced to quit this job because he was receiving threatening telephone calls' or because he was a Shia Muslim (para 49), - there was 'a real risk that the only employment he will be able to obtain will require him to work in areas where he may be in danger because of his religion as a Shia Muslim' (para 50), - there was 'a real risk that he will have to remain confined to Peshawar or that he will not be able to travel outside that city'(para 50), - that the applicant 'will suffer significant harm because he will be able to be identified from his identity card as a Shia from [City 1]' (para 50), - [Tribe 7] 'was targeted by the Taliban who were supported by the government' (para 52), or - there was a real chance that he would be 'targeted to be kidnapped or abducted or killed because he belongs to a known family (as a result of his relationship with his father) or because he is a Shia Muslim if he returns to

			Pakistan now or in the reasonably foreseeable future' (para 53). It was accepted by the Tribunal that there had 'been sectarian terrorist attacks in Peshawar and there were risks to innocent bystanders in the context of such attacks' (para 54). However, the Tribunal was not satisfied that there were particular factors which would 'increase the risk of [the applicant] being harmed in these sorts of terrorist attacks' (para 54).
1408885 [2015] RRTA 27 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/27.html (Unsuccessful)	22 January 2015	11, 15, 28, 32, 34, 36-37, 39, 42, 44 and 51	The applicant was a citizen of Lebanon and claimed to fear harm based on his role in the Future Movement (paras 11 and 15). The Tribunal did not accept the claim by the applicant that a member of the Lebanese Parliament, [Mr A], advised the applicant in March 2013 'not to return to Lebanon because of his safety' (para 28) It was accepted by the Tribunal that the applicant had 'participated in charity work with the Future Movement in [Village 1] before he came to Australia and handed out pamphlets and voting papers in the 2010 election in support of [a] Future Movement Member of Parliament' (para 32). The Tribunal also accepted that the applicant 'went to

			dinner and hung out with other young people associated with the Future Movement in [Village 1], Tripoli and [location]' (para 32), The Tribunal accepted that 'the applicant may have had to go through an army check-point in some part of Tripoli when there was conflict in the Jabal Mohsen – Bab al Tabbaneh neighbourhood' (para 34). However, the Tribunal did not accept that the applicant 'had to actually travel through the Jabal Mohsen – Bab at Tabbaneh area when there was conflict there to get to his English school' (para 34). The Tribunal accepted 'that Hezbollah exercises substantial control over the security of Beirut's international airport which is located within an area of Beirut where Hezbollah exerts substantial control' (para 36). However, the Tribunal did 'not accept that the applicant's profile as a participant in the Future Movement's charity activities, social activities, or his role in the 2010 election has caused him to have a profile such as those individuals had or a profile that would result in there being a real chance that he would suffer serious harm or there being a real risk that he would suffer significant harm from Hezbollah if he returned to Lebanon' (para 37).

			The Tribunal did not accept that 'he was employed [in a certain role] for the Future Movement', from February 2010 to December 2012 (para 39). It was accepted by the Tribunal 'that a person named [Mr B] was shot and killed [in] April 2014'; however, the Tribunal did not accept the applicant's claim that 'the murderer or murderers were Hezbollah operatives or that [Mr B] worked with the Future Movement' (para 42). Based on the above, the Tribunal did not accept that there was a real chance that the applicant would suffer serious harm or that there was a real risk that he would suffer significant harm from Hezbollah or its supporters if he returned to Lebanon (para 44). In concluding the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under ss.36(2)(a) or (aa) of the Act (para 51).
1404901 [2015] RRTA 19 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/19.html (Unsuccessful)	21 January 2015	1, 2, 33, 35-36 and 39	The applicant was a citizen of Egypt and claimed to fear harm based on his 'conversion from Sunni Islam to Shia Islam in Australia' (paras 1 and 2). The Tribunal found that the applicant did not have a 'well-founded fear of persecution for a Convention reason in Egypt' (para 33).

			The Tribunal was not satisfied that there was a real risk that the applicant would 'face significant harm in Egypt arising from his conversion to Shiism, his adherence to Shia faith, or his political opinion' if he returned to Egypt, based on the following reasoning (para 35). It was accepted by the Tribunal that the applicant 'might face some limitation in the practice of his faith' (para 35). However, the Tribunal was not satisfied that such limitations raised 'substantial grounds for believing' that there was a real risk that he would be 'subjected to any form of harm specified the definitions of torture, cruel or inhuman treatment or punishment and degrading treatment or punishment in s.5 of the Act or that he would be subjected arbitrary deprivation of his life or the death penalty' (para 35). With regard to the 'general lack of security and violence in Egypt', the Tribunal found that the risk is 'one faced by the population generally and not by him personally' (para 36). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(a) and s.36(2)(aa) of the Act (para 39).

1408186 [2015] RRTA 24 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/24.html (Unsuccessful)	20 January 2015	2, 8, 16, 35-39, 40 and 42	The applicant was a citizen of Lebanon and feared 'being harmed by Shia, including Hezbollah or their allies', based on his religious beliefs and because of his support the Future Movement (paras 2 and 16). Applying the reasoning in *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235, the Tribunal found that it did not have the power to consider the criteria in s.36(2)(a) of the Act, and proceeded on the basis that it could only consider the applicant's claims under the complementary protection criteria in s.36(2)(aa) of the Act (para 8). *Activities in relation to the Future Movement* The Tribunal did not accept that the applicant's activities in Lebanon in relation to the Future Movement caused him to have a profile as a supporter or member of the Future Movement (para 35). The Tribunal found that 'those activities occurred before he came to Australia [in] July 2008, more than six years ago' and that he had not been engaged in political activities in Australia (para 35). Based on the applicant's evidence, the Tribunal did not accept that the applicant would be a 'member of or a supporter of the Future Movement' if he returned to Lebanon. Nor did the Tribunal accept that he would

			have to join the Future Movement to 'protect himself' (para 35). Therefore, the Tribunal did not accept that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, that there was a real risk that he would suffer 'significant harm because of his past or future association with the Future Movement' (para 36). <u>*Applicant's imputed religious beliefs*</u> The Tribunal found that the applicant would be imputed to be a Sunni if he returned to Lebanon because his family was Sunni. However, the Tribunal did not accept that the applicant would 'be caught up in sectarian violence between Sunnis, Shiites, Alawites, Hezbollah and their allies' if he returned to Lebanon (para 37). This finding was based on the following reasoning: - 'His family are Sunni and live in a Sunni area but have not been harmed', - 'He was not harmed when he was in Lebanon', - Country information published by the Department of Foreign Affairs and Trade 'refers to the frequent clashes between the Alawite suburb of Jabal Mohsen and the adjacent Sunni suburb of Bab al-Tabbeneh, in Tripoli',

			- 'The Lebanese security forces have normally been able to contain violence quickly, though there are examples of violence lasting several weeks', - There was no evidence that the applicant had to travel to or would travel to areas of 'Lebanon where the deployment of the Lebanese Armed Forces is sometimes delayed for political reasons', - The 'sectarian violence has remained limited to Tripoli and Akkar Province in the North, Beka'a Governorate, parts of Beirut, and Saida in the South Governorate' and 'Lebanese security forces have been able to contain the outbreak of sectarian violence in these locations', - There was no evidence before the Tribunal that 'there are sectarian conflicts in the area of [Village 1]', and - The applicant studied previously in Tripoli but did not suffer any harm during that time (para 37). The Tribunal did not accept that the applicant would be kidnapped by Hezbollah because 'it is not safe to express an opinion against Hezbollah or that any Sunni could be kidnapped' (para 38). Nor did the Tribunal accept that the applicant had the 'profile of a person that Hezbollah may harm', if he

			returned to Lebanon (para 38). The Tribunal accepted that employment opportunities in Lebanon 'may not be as good as in Australia', but did not accept that the applicant had 'suffered significant harm in the past because of lack of economic opportunity or the capacity to access essential services' and did not accept that there was a real risk that he would suffer significant harm for these reasons if he returned to Lebanon (para 39). 'Given that the applicant's family were living and working in [Village 1]', the Tribunal found that the applicant would also live and work in the [Village 1] area'. The Tribunal did not accept that the applicant would have reason to travel to the 'unsafe areas of Lebanon' (para 40). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(aa) of the Act (para 42).
1406538 [2015] RRTA 22 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/22.html (Unsuccessful)	20 January 2015	2, 11, 35-37, 43, 47, 49 and 50	The applicant was a citizen of Egypt and a Coptic Christian (paras 2 and 11). The applicant claimed to fear harm from 'Muslim extremist groups targeting Coptic Christians including the Muslim Brotherhood and Salafis' (paras 11).

			Based on country information, the Tribunal accepted that there was 'widespread societal discrimination against women in Egyptian society' and that 'as an elderly woman on her own', the applicant was more 'vulnerable to harassment and that she may have been harassed for this reason'. However, the Tribunal was not satisfied that this amounted to serious harm (para 35). The Tribunal did not accept that all Coptic Christians were 'persecuted everywhere in Egypt or that all Coptic Christians have not and will not be able to obtain State protection' (para 36). The Tribunal accepted that the applicant was 'called names by Muslim extremists' but did not accept that this amounted to serious harm (para 37). The Tribunal accepted that the applicant was 'harassed, threatened and assaulted by a neighbour' because she was a 'Coptic Christian, she had complained about the mosque loudspeaker and she had stepped on a prayer carpet' (para 37). However, the Tribunal was not satisfied that the incidents the applicant was involved in with her neighbour amounted to serious harm (para 37). The Tribunal was of the view 'that in her particular

			circumstances there is a real chance that the situation could escalate to a point where she is at risk of serious harm should she remain in her place of residence in Cairo' (para 37). However, the Tribunal was satisfied that the applicant was able to relocate to an area in Egypt, or more specifically in Cairo, where there was 'no real chance of being persecuted for being a Coptic Christian' (para 43). Therefore, the Tribunal found that the applicant did not have a 'well-founded fear of persecution for a Convention reason' (para 47). Based on the above reasoning, 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 Egypt, that there was a real risk that she would suffer significant harm as defined in s.36(2A) of the Act (para 49). In concluding the Tribunal found that the applicant did not satisfy the criteria in s.36(2)(a) or s.36(2)(aa) of the Act (para 50).
1407031 [2015] RRTA 35 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/35.	19 January 2015	12, 14, 15, 20, 35, 73, 80-81, 85, 88 and 90	The applicant was a Tibetan Buddhist and born in [central Tibet]. The applicant did not accept his citizenship to the People's Republic of China (para 12).

html (Unsuccessful)			The applicant claimed that he was detained by the Chinese government based on his religious beliefs from [April] 1989 to [May] 1990 and 'was tortured and forced to do hard labour and dirty work' (para 14). 'The applicant stated that he had left Tibet as he feared being imprisoned again because he was an ex-political prisoner and has no rights in Tibet' (para 15). The applicant also claimed that he had 'participated in four or five anti-Chinese protests, in Delhi as part of a large group, as well as in [another city] each year' and that he 'had also participated in three anti-Chinese protests while in Australia' (para 35). The applicant submitted a number of documents, including his current Indian travel document, which expired in 2021. The applicant's Indian travel document contained the following endorsement: 'No objection to return to India provided a visa is obtained within ten years of date hereof, permitted to stay up to one year from the date of return to India' (para 20). Based on country information and the information provided by the applicant, the Tribunal was satisfied that that the applicant had the 'right to enter and reside in India' for a period of at least one year (even if his Registration Certificate had not been renewed). The

			Tribunal was also satisfied that the applicant would be able to obtain a further Registration Certificate (para 73). Given that the applicant had 'been prepared (and been able) to return to India on a number of occasions since 2005' and 'the lack of available objective country information to indicate that a Tibetan living in India would be at risk of harm', the Tribunal concluded that there was 'not a real chance that the applicant would face harm' (para 80). Therefore the Tribunal was not satisfied that the applicant had a well-founded fear of 'Convention-related persecution in India' or that there were substantial grounds for believing that, 'as a necessary or foreseeable consequence of him availing himself of his right to enter and reside in India, there would be a real risk that he will suffer significant harm'(para 81). The Tribunal found that the provisions of s.36(3) of the Act were not excluded on this basis (para 81). Based on country information and the applicant's submissions, the Tribunal was also not satisfied that the applicant 'had a well-founded fear that India would return him to China, his country of nationality' or that 'the Indian authorities would send the applicant to a country other than China' (para 85).

			In concluding, the Tribunal found that the applicant had a right to enter and reside in India and had not taken all possible steps to avail himself of that right (para 88). Therefore, the Tribunal found that Australia did not have protection obligations in respect of the applicant (para 90).
1407197 [2015] RRTA 29 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/29.html (Unsuccessful)	18 January 2015	3, 4, 13-17, 21, 26-28, 31-32, and 35-36	The applicant was a citizen of Nepal and claimed to fear harm based on 'her inter-caste relationship with her now ex-husband who is of the [Caste 1] while the applicant is of [Caste 2]; and being a divorced woman' (paras 3 and 4). Specifically, she claimed 'to fear that she will be forced into the sex trade and/or trafficked; that her [family] and [society] more generally will harm her for her inter-caste marriage; her ex-husband's family may also harm her' (para 4). The Tribunal also accepted that the applicant was from 'the [Caste 2] caste, considered an elite caste in Nepal, and that her ex-husband was of the [Caste 1]' (para 13). The Tribunal did not accept that the applicant had received direct threats of violence from her ex-husband's family (para 14).

			Nor did the Tribunal accept that the applicant's ex-husband or his family desired 'to harm the applicant currently or in the reasonably foreseeable future' (para 15). This finding was based on the fact that the applicant had not been in contact with her ex-husband and his family for two years prior to the Tribunal hearing and the lack of 'reliable information' about her claimed fear of serious and/or significant harm from the applicant's ex-husband or his family (para 15). The Tribunal was 'not satisfied on the evidence advanced that the applicant has any intention of reclaiming money she spent on her ex-husband should she return to Nepal' (para 16). Nor was 'the Tribunal satisfied on the evidence before it that she would face a real chance of serious or significant harm from her ex-husband or his family in the unlikely event that she did take such action' (para 16). The Tribunal did not accept the applicant's claim that her family had 'disowned her or wanted to harm her in any way' (para 17). Based on country information and the applicant's evidence the Tribunal did not accept the applicant's claims to 'fear serious and/or significant harm in the reasonably foreseeable future in connection with having

			had an inter-caste marriage in the past' (para 21). While the Tribunal accepted that the applicant's status as a 'divorced woman' may hinder her ability to remarry in Nepal, the Tribunal was not satisfied that 'hindrances to remarrying, or even an inability to remarry, without more, amount to or give rise to a real chance of serious or significant harm to the applicant in the reasonably foreseeable future' (para 26). This reasoning by the Tribunal was based on 'the cultural context of Nepal, the independent reports before it and in the context of what it accepts of the applicant's claimed circumstances' (para 26). The Tribunal accepted that single women in Nepal can be vulnerable to 'sexual assault, harassment, prostitution and/or sex trafficking'. However, the Tribunal did not consider that there was a 'real risk of this arising for the applicant in the context of what the Tribunal accepts of the applicant's background and circumstances' (para 27). For example, the 'applicant is a tertiary educated woman with extensive work and study experience in both Nepal and Australia. She will return to Nepal with the benefit of having some 5 years work and study experience in a western, English speaking country. She will return to reside in Kathmandu, an area she has

			lived, worked and studied in previously, where she has some familiarity and where she has accessible family networks' (para 27) With regard to her fears of exposure to sexual harassment and mistreatment more generally as a single woman in Nepal, the Tribunal did not accept that the applicant faced 'risks of serious and/or significant harm in Nepal in the reasonably foreseeable future in the context of all of her circumstances, considered above' (para 28). While the Tribunal accepted 'that the applicant is, and will be, in the reasonably foreseeable future, a "Nepali Single Woman", in the context of her education, work experience, family connections, caste and her background and employment prospects more generally', the Tribunal was not satisfied, on the 'evidence advanced that the applicant faced a real chance of harm rising to the level of serious or significant harm as contemplated by the relevant law in the reasonably foreseeable future' (para 31). The Tribunal found that, 'even if the protection and contact between herself and her family in Nepal is not as strong as it was before she married, the Tribunal is satisfied that she remains a supported member of her family that she will be perceived to be part of family network, that perception providing her with added

			protection in Nepal' (para 32). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations pursuant to ss.36(2)(a) or (aa) of the Act (paras 35 and 36).
1403704 [2015] RRTA 6 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/6.html (Unsuccessful)	9 January 2015	1, 65-66, 71, 73, 74, 77-82, 89, 95-98, 101, 103 and 105-107	The applicant was a citizen of India and claimed to fear harm in India based on his involvement with a Muslim 'political party, the TMMK, and his more recent involvement in anti-nuclear activities' (para 1). The Tribunal accepted that the applicant was a Muslim and that he had been 'seriously harassed in his home village by Hindu nationalists (paras 65 and 66). The Tribunal also accepted that in 2005, the applicant was 'assaulted in his home village by several local thugs from the Hindu nationalist RSS or possibly the political party the BJP' and that 'the reason for that harm was his involvement with the TMMK' (para 66). The Tribunal referred to country information which indicated that Tamil Nadu had not experienced communal conflict affecting Muslims in recent years (para 71). Therefore, in the 'absence of evidence pointing to a deterioration in that situation' for Muslims in Tamil Nadu, or elsewhere across the country, the Tribunal did

			not accept that 'merely being' a Muslim in India gave rise to a well-founded fear of being persecuted (para 71). The Tribunal accepted that the applicant 'left the TMMK in 2010, and that prior to that he had been an office holder' in TMMK (para 73). Additionally, the Tribunal accepted that the applicant 'may have been located by Hindu nationalists and suffered some harassment in Chennai at various times before his resignation in 2010' (para 74). However, the Tribunal was not satisfied that the harassment continued after he left TMMK, based on lack of supporting information and inconsistencies in the applicant's evidence with regard to this particular claim (paras 77-82). The Tribunal accepted that the 'applicant was an active supporter of the People's Movement Against Nuclear Energy' (PMANE) since he 'showed a reasonable level of familiarity with this NGO in his oral evidence to the Tribunal' (para 89). Based on country information, the Tribunal accepted that 'at least until 2013, the Indian government was making concerted efforts to stifle various forms of dissent by NGOs including PMANE in Tamil Nadu, by

			laying charges against its leader and some protesters and by trying to starve it of funds' (para 95). The Tribunal also accepted that the applicant was 'detained by police in 2012 after he participated in a hunger strike' and the applicant's 'active involvement with PMANE was known to police at the time he was detained' (paras 96 and 97). However 'despite this he was released without charge and has never been charged with any crime because of his involvement with the PNAME' (para 97). Since the applicant 'continued to be involved with PMANE for some months after the above brief contact with the police, without any further problems from them' the Tribunal was 'satisfied that at the time he left India he was of no ongoing interest to the authorities as a result of his PMANE activities' (para 98). As the applicant did not claim that these types of protests were continuing in Tamil Nadu, the Tribunal inferred that 'the government's efforts to stop them' had been successful (para 101). Therefore, the Tribunal found that if the applicant were to 'return to India and participate in other forms of activism within PMANE', the Tribunal considered that the chance that he would be subjected to any serious

			harm was remote (para 101). Based on the above reasoning, the Tribunal found that the applicant did 'not have a well-founded fear of being persecuted in India for the Convention reason of political opinion' (para 103). The Tribunal applied such reasoning to find that the applicant did not meet the complementary protection criteria (para 105). 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 106-107)
1409581 [2015] RRTA 15 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/15.html (Unsuccessful)	7 January 2015	10, 12-13, 28-29, 32-36, 38-39 and 47-48	The applicant was a citizen of India and a practising Hindu (paras 12 and 13). The applicant claimed to fear harm based on the fact that his wife was 'from a different caste' and previously a 'divorced woman' (para 10). The Tribunal did not accept that 'Hindus are not allowed to marry divorced women' (para 28). However, it was accepted by the Tribunal that the 'applicant's wife will not return to India because of her fear of her ex-husband's family and that the applicant will return on his own' (para 29).

			The Tribunal did 'not accept that the wife's extended family will harm the applicant given that her parents have not opposed the marriage and the wife is now a divorced woman with [children] living in another country' (para 32). The Tribunal accepted that the 'applicant's parents may be angry or upset if they learn he has married without telling them', 'that they may not speak to the applicant' and 'may not allow' him into the family home (para 33). However, the Tribunal did not accept that such treatment amounted to serious harm (para 33). The Tribunal accepted that the applicant's maternal uncle had 'been beaten by his brothers when he married a divorcee against his parent's wishes' (para 34). However, the Tribunal did not accept that the applicant would be 'be harmed by his uncles given his age and his independence from his family' (para 34). The Tribunal did not accept that the applicant's family would report him to the khap panchayat (a group 'known to decree or encourage mistreatment of inter-caste couples including honour killings') (para 35).

			Since the applicant's family lived in a city, the Tribunal did not accept that 'any members of the khap panchayat would learn of the applicant's marriage by some other means or issue a decree against him' (para 36). The Tribunal did not accept that the applicant's family would report him to the khap panchayat (para 36). As a separate and independent finding, the Tribunal found that the applicant could have 'safely and reasonably' relocated to another part of India, since the harm the applicant feared from his own family and the khap panchayat was localised to his home district of [City 1] in Haryana state (paras 38 and 39). In concluding, the Tribunal found that the applicant did not meet the criteria in s.36(2)(a) of the Act (para 47). The Tribunal relied on the above reasoning to also find that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(aa) of the Act (para 48).
1408161 [2015] RRTA 11 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/11.html (Unsuccessful)	5 January 2015	22-23, 25, 29, 46-47, 49-50, 54-56, 58-59 and 62-63	The applicant was a citizen of India and claimed to fear harm from his ex-wife's family (para 25). The applicant claimed 'he and his [Ms A] married against the wishes of his wife's family (para 22). The applicant's wife's family 'did not approve of the

			relationship because he was a Hindu of [a certain] caste and she was a Sikh of [a certain] caste' (para 22). 'Once they were in Australia they began to have marital problems. This culminated in his wife leaving him and taking out an Intervention Order against him. The applicant's wife's family then threatened the applicant. He believed that they would seek revenge against him to restore their honour' (para 23). The Tribunal was of the view that the applicant had 'exaggerated the extent of her family's disapproval and enmity towards him' (para 29). The applicant confirmed during the Tribunal hearing that he had had no contact with [Ms A] or her family for six years (para 46). The Tribunal found the 'fact that the applicant contacted [Ms A]'s family to enlist their help to mend the relationship between him and [Ms A] reinforces the Tribunal view that her family's opposition to the relationship was not as great as he claimed' (para 47). There was no evidence before the Tribunal that the applicant and [Ms A] were divorced (para 49). Based on the above facts and reasoning the Tribunal found that there was 'no real chance that [Ms A]'s

			family would seriously harm the applicant in the reasonably foreseeable future because they blame him for the breakdown of the marriage and divorce' (para 50). The Tribunal found that since the 'applicant has had no contact with the applicant or her family for six years it is mere speculation that they would now seek to harm him because [Ms A] has remarried' (para 54). Therefore the Tribunal found that there was no real chance that '[Ms A]'s family would seriously harm the applicant in the reasonably foreseeable future because she has remarried and they wish to ensure that her current husband does not find out that she has been previously married' (para 55). The Tribunal did not accept that the applicant's family had received phone calls from [Ms A]'s family or calls that caused the family any concern. The Tribunal found that this claim was a 'recent invention' (para 56). The 'considerable delay', 4 years, in lodging the application added 'to the Tribunal's concern' as to whether the applicant had a genuine fear of harm (para 58). Based on the above reasoning the Tribunal found that there was 'no real chance that [Ms A]'s family will

			seriously harm him, or cause him to be seriously harmed, in the reasonably foreseeable future and that his fear of persecution on this basis is not well-founded' (para 59). The Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (paras 62 and 63).
1405664 [2015] RRTA 9 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/9.html (Unsuccessful)	5 January 2015	1, 27-28 and 30-32	The applicant was a citizen of Pakistan and claimed to fear harm based on his involvement in the political party, the Pakistan Tehreek-e-Insaf (PTI) (para 1). The Tribunal accepted the applicant's 'involvement in the PTI was limited to attending meetings or gatherings' but did not accept 'that he was a prominent figure in the PTI' (para 27). It was accepted by the Tribunal that '[the applicant] may have received threatening telephone calls and letters from political opponents, that on one occasion in October 2012 some people fired shots at his [relative]'s house and that on another occasion in December 2012 some people fired shots in the air when he was driving to a convention with [a party official]' (para 27). The Tribunal found that these incidents were attempts to scare the applicant, but not that 'there was ever any intention on anyone's part to do him harm' (para 27).

			The Tribunal accepted that there was violence between political parties in the lead up to the last election in Pakistan, but found that there was 'only a remote chance that protests similar to this one will be organised by the PTI in the future or that [the applicant] will become involved in such protests if he returns to Pakistan now or in the reasonably foreseeable future' (para 28). Based on the above, the Tribunal found that the applicant was not owed protection pursuant to s.36(2)(a) of the Act (para 30). With respect to the application of s.36(2)(aa) of the Act to this case, the Tribunal relied upon the reasoning detailed above and found that there was not a real risk that the applicant would 'suffer significant harm as a result of his involvement in the PTI' (para 31). The applicant also considered the fact that 'he was undergoing medical treatment' (para 32). In December 2014 the applicant 'produced to the Tribunal documents indicating that he had begun treatment for a [medical condition in] November 2014 and that this treatment would continue for [a number of] weeks' (para 32).

			The Tribunal did not accept, and the applicant had not claimed, that there was a real risk that he would be 'arbitrarily denied medical treatment nor that there is an intention to inflict pain and suffering or to cause extreme humiliation to people in his situation as required by the definitions of cruel or inhuman treatment or punishment and degrading treatment or punishment' in s.5(1) of the Act (para 32).

1405216 [2014] RRTA 876 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/876 (Unsuccessful)	23 December 2014	2, 3, 30, 31, 34, 36, 37, 40, 41, 44-46 and 49	The applicant was a citizen of Bangladesh and claimed to fear harm if returned there because he was an alcoholic (paras 2 and 3). The applicant claimed that it was illegal to purchase or consume alcohol in Bangladesh and that if he were found to be drunk he would be arrested and imprisoned. He claimed that the 'police are corrupt and might demand a bribe for his release' (para 3). He also claimed that he had been rejected by his family and would have 'no family support, no job and no one to secure his release' if he were arrested (para 3). The applicant also feared harm from the Muslim community and 'strict Muslim groups such as *Jamaat-e-Islami*, whose members could kill or harm him if they found him drunk' (para 3). The Tribunal found that 'any punishment administered to the applicant under the *Intoxicant Control Act* would not constitute 'Convention persecution' (para 30). That is, such punishment would 'be a penalty imposed under a law of general application' (para 30). Additionally, the Tribunal found that to the extent that the law discriminated against a section of the population, the law was nonetheless appropriate and adapted for a legitimate purpose (para 30). The Tribunal did 'not accept that the applicant would be treated particularly harshly by law enforcement

			authorities because he would be regarded as "not a proper Muslim" due to his consumption of alcohol' (para 31). Based on country information, the Tribunal did not accept that there was a 'real chance that the applicant would face harm from vigilante or Islamist groups, including *Jamaat-e-Islami*, as a consequence of being known to consume alcohol' (para 34). With respect to the applicant's claims of social rejection because of his alcoholism, the Tribunal accepted that the applicant might experience such difficulties if he returned to Bangladesh. However, the Tribunal was not satisfied that any such harm 'would be sufficiently serious as to constitute persecution' (para 36). Based on the above reasoning, the Tribunal found that applicant did not have 'a well-founded fear of persecution in Bangladesh for any Convention stipulated reason connected with his dependence on alcohol' (para 37). With respect to the complementary protection criteria, the Tribunal found that there was 'no suggestion that the applicant would be subjected to the death penalty on return to Bangladesh' (para 40). Following the Tribunal's earlier reasoning, the Tribunal

			also found that there was no real risk that the applicant would face 'arbitrary deprivation of life at the hands of vigilante groups, or others who may take the law into their own hands because of their opposition to the consumption of alcohol' (para 41). The Tribunal found that 'any risk faced by the applicant of being subjected to harm in the context of the penal system is one faced by the population generally, as any Bangladeshi citizen who breaks the law and comes into contact with the police or the penal system faces the same risk' (para 44). Therefore, in that sense, the Tribunal found that it was not a risk faced by the applicant personally (para 44). The Tribunal was also not 'satisfied that the social ostracism and consequent difficulties' which the applicant claimed he would face constituted any form of significant harm, as defined in the Act (para 45). Further the Tribunal was 'not satisfied that any act of rejection or ostracism of the applicant by members of the community, his family, or employers would be intentionally inflicted; or that it would cause severe pain or suffering; or, if it caused pain and suffering, that it would be intended to cause extreme humiliation, as required by the Act' (para 46). The Tribunal was not 'satisfied that any acts of

			ostracism or rejection would be intended to cause extreme humiliation' which was unreasonable (para 46). In concluding, the Tribunal found that the applicant did not meet the criteria set out in s.36(2)(a) and s.36(2)(aa) of the Act (para 49).

1404941 [2014] RRTA 865 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/865 (Unsuccessful)	12 December 2014	1, 2, 29-32 and 36	The applicants (husband, wife and child) were citizens of Vietnam. The applicant husband claimed to fear harm based on the fact that he injured his left shoulder in an accident at his workplace in Australia and was afraid that if he returned to Vietnam he would suffer discrimination and be denied employment (paras 1 and 2). The Tribunal was not satisfied that the applicant father would be denied employment because of the abovementioned injury to his shoulder. The Tribunal found that while his level of education, past employment experience and his shoulder injury restricted the range of employment that he could have undertaken, based on his experience in Australia, there 'was employment he could undertake and which he would be able to seek' (para 29). In addition, his wife and child had both 'worked in Australia and could seek and undertake employment in Vietnam and assist to provide for him'. The Tribunal also found that the applicants also had family in Vietnam who could had assisted with accommodation (para 29). Therefore, the Tribunal found that the risk of the applicant husband being unable to subsist in Vietnam, including being unable to access healthcare in Vietnam for his condition, was remote (para 30). With respect to the complementary protection criteria,

			for the same reasons that the Tribunal found that there was not a real chance that the applicant husband would suffer serious harm in Vietnam, the Tribunal also found that there was not a real risk that he would suffer significant harm (para 31). The Tribunal found that 'while there may be societal discrimination' against people with disabilities in Vietnam, in the case of the particular applicant, such discrimination did not reach the level of significant harm (para 32). Further the Tribunal found that 'whatever discrimination he may encounter', 'he would have the 'support of family in Vietnam to assist him with that (para 32). In concluding the Tribunal found that the applicants did not satisfy the criteria set out in the Act for a protection visa (para 36).
1408557 [2014] RRTA 846 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/846.html (Unsuccessful)	12 December 2014	29, 32-35, 39, 44-48, 51, 53-54	The applicant was a citizen of India and claimed to fear harm from 'his family and the local community in his home area', based on their disapproval of him leaving the priesthood (para 34). The applicant claimed that his family 'regarded him as having brought shame on their family by leaving the church. He stated that at first they subjected him to verbal abuse but later his father hit him with a stick and his brother beat him' (para 29).

			The applicant stated that he moved to southern Kerela to get away from his family, but his brother contacted his employer in southern Kerela and convinced the employer to no longer employ the applicant. The applicant then moved to Chennai. The applicant claimed that his brother also hindered his work opportunities in Chennai (paras 29 and 32). The applicant stated that if he were to return to India, 'he had an uncle who was in the "central police", and had connections with the intelligence services, who would be able to find out where he was' (para 33). The applicant also stated that he would only be able to live in a Christian part of India and Christians would look down on him 'as a failed priest' (para 35). Further, the applicant believed that his family would be angrier with him than they were before because he had 'failed as a priest a second time' (while in Australia) and so his family would make more of an effort to find him and harm him (para 35). The Tribunal accepted that the applicant's family 'felt anger and shame about his decision and were willing to be physically violent to him as a result' (para 39). The Tribunal also accepted that the 'applicant's brother,

			in early 2007, convinced the applicant's employer in southern Kerala to stop employing him' (para 39). Further, the Tribunal accepted that the applicant's family and other members of the local community, after finding out that he had left the priesthood a second time, 'may react in a way that results in him facing a real chance of suffering serious harm, in the form of serious physical assault', if he were to return to his home area in India (para 44). However, the Tribunal did not accept the applicant's remaining claims with respect to his uncle's connections to 'intelligence services' and that his brother hindered his work opportunities in Chennai (para 44). Based on these findings, the Tribunal did not accept that the applicant faced 'a real chance of suffering serious harm at the hands of his family, or anyone else, outside his home area in India', even if they became aware of his location and that he had left the priesthood a second time (para 45). Also, the Tribunal found that the applicant was 'highly likely to be able to obtain work and accommodation in a major urban area in India, such as Chennai, if he were to return to India' for the following reasons: i. he was a 'healthy, single Christian man with

			a postgraduate [degree]', ii. he had been able to work in Chennai for approximately two years before coming to Australia, and iii. he had work experience as a welder (para 46). The Tribunal accepted that it was only reasonable to expect the applicant to relocate to an area that had a Christian community. The country information relied on by the Tribunal detailed 'that there are Christian communities concentrated in Tamil Nadu and Goa in southern India' (para 47). The Tribunal accepted that the applicant 'may be viewed as a "second class person" by Christians' in those areas because he had left the priesthood but the Tribunal did not accept that being viewed in that way made it unreasonable for the applicant to relocate to those areas (para 47) Therefore, the Tribunal was satisfied that it was 'reasonable to expect the applicant to relocate to another part of India, such as Chennai, away from his home area if he were to return to India' (para 48). With respect to the complementary protection criteria, the Tribunal accepted that the applicant faced a real risk of significant harm 'in the form of serious physical

			assault at the hands of his family or members of the local community' if he returned to his home area (para 51). However, in applying the same reasoning as detailed above, the Tribunal did not accept that there was a real risk of the applicant suffering significant harm in India outside his home area (para 51). As a result, the Tribunal found there was not a real risk that the applicant would suffer significant harm in India (para 51). Therefore the Tribunal found that the applicant did not satisfy the criteria set out in ss.36(2)(a) and (aa) (paras 53 and 54).

1406452 [2014] RRTA 874 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/874.html (Unsuccessful)	11 December 2014	28, 30, 37-40 and 42	The applicant was a citizen of Fiji and claimed to fear harm based on her political opinion (para 28). The Tribunal accepted that there were 'a lot of difficulties in Fiji when it was led by a military government', that the applicant feared the military and 'it was difficult to express her own opinion' (para 30). However, the Tribunal was not satisfied that a 'difficulty to express an opinion or living in Fiji under the military government' amounted to serious harm (para 30). That is the Tribunal found that there was 'no threat to the applicant's life or liberty', and that the 'applicant did not suffer physical harassment or physical ill-treatment or economic hardship that threatened her capacity to subsist' (para 30). Further the Tribunal found that she was 'not denied access to basic services, where the denial threatened her capacity to subsist nor was she denied the capacity to earn a livelihood of any kind, where the denial threatened her capacity to subsist' (para 30). The Tribunal accepted that the applicant had 'been involved in one activity in Australia, a protest', but was 'not satisfied that because of this involvement, including tearing up a photo of the PM' there was a real chance that 'she would face harm in the reasonably foreseeable future' (para 37).

			The Tribunal accepted that the applicant 'wished to stay in Australia to be with her husband and that it is a difficult life in Fiji as in Australia they have money' (para 38). However, the Tribunal did not accept that any such difficulty that the applicant would experience in Fiji was essentially and significantly for a 'Convention reason' (para 38). Given that the applicant's political activities in Australia were minimal, and that she was not politically active in Fiji, the Tribunal did not accept that she would be politically active if she returned to Fiji. Also, 'given that she was not in fear of her life when she left Fiji', and had never been threatened or harassed in any way, the Tribunal did not accept that she had a well-founded fear of serious harm because of her political opinions if she returned to Fiji (para 39). Therefore the Tribunal found that the applicant did not meet the criteria outlined in s.36(2)(a) of the Act (para 40). In applying the above findings, the Tribunal was not satisfied that there were 'substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there would be a real risk that she would suffer harm which would amount to significant harm in terms of

			s.36(2)(aa) of the Act' (para 42)
1407914 [2014] RRTA 854 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/854.html (Unsuccessful)	4 December 2014	2, 11, 35-54, 62 and 64	The applicants (husband, wife and child) were citizens of Nepal and claimed to fear harm based on harassment and physical attacks by 'gangs' (paras 2 and 11). The Tribunal did not accept the applicant husband's claims with respect to the incidences of harassment and physical attacks by 'gangs' (paras 35-54). With respect to the crime and security situation in Nepal, while the Tribunal accepted that there was 'crime and extortion' in Nepal, 'the situation has improved significantly since the peace agreement in 2006 and even more so in recent years' (para 62). The Tribunal accepted that the applicant husband had 'a [child] and wants to keep [the child] secure'; however, the Tribunal did not accept that he or his family faced a real risk of significant harm in Nepal (para 62). Also, the Tribunal did not accept that the applicants would be subject to 'torture and cruel behaviour' because of the applicant husband's successful career. Nor did it accept that the applicant husband would face any difficulties studying or working, or that the family's 'life would not be secure' (para 62). This was based on the fact that the applicant husband had studied and worked in the past in Nepal and his wife had owned a

			shop (para 62). The Tribunal did not accept that the applicants faced a real risk of significant harm upon return to Nepal, whether from criminal activity or the general security situation (para 62). Therefore, the Tribunal found that the applicants did not satisfy the criteria set out in ss.36(2)(a) or (aa) for a protection visa. It followed that none of the applicants were able to satisfy the criteria set out in s.36(2)(b) or (c) (para 64).
1319201 [2014] RRTA 835 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/835.html (Unsuccessful)	2 December 2014	2, 18, and 22-47	The applicant was a citizen of Pakistan and claimed to fear harm 'from Sunni extremists operating in the FATA region' (para 2). The applicant stated that although his wife, parents, [and siblings] continued to live in Parachinar he had 'become increasingly fearful because of attacks on Shias' (para 18). The applicant detailed that he had not been specifically targeted by the Taliban or any other groups, and he had no specific involvement in political groups (para 18). Based on country information and the applicant's evidence, the Tribunal accepted that there was a real chance that the applicant would face serious harm on

			his return to Parachinar or the Upper Kurram (para 22). However, the Tribunal found that based on country information and the applicant's evidence, it was reasonable for the applicant to relocate to an area of the country outside Parachinar and FATA, such as Islamabad or Rawalpindi (para 23-42). In particular, the Tribunal relied upon the fact that: - the applicant had 'worked in Pakistan for some years and the Tribunal did not accept that there was any evidence that he would be unable to obtain some form of employment upon his return to Pakistan', and - there was no evidence indicating that Shias are discriminated against in terms of employment in government positions, the police, the military or the private sector (para 41). Further, the Tribunal did not accept that the applicant would be: - 'discriminated against in terms of accommodation or employment in Islamabad and Rawalpindi', - 'required to obtain a high paying job in order to survive in places such as Rawalpindi or Islamabad' since large groups of Shias had settled in various parts of Pakistan, and Punjab had the largest group of Shias, or

			- required to change his conduct in Islamabad or Rawalpindi in terms of his practice of his religion, in order to avoid harm (para 41). The Tribunal accepted that Pakistani authorities had failed to prevent attacks on Shias and prevent 'extremist groups from operating in Pakistan', but this did not alter the Tribunal's view as to the risk of the applicant suffering serious harm in either Islamabad or Rawalpindi (para 41). For the same reasons as detailed above, the Tribunal was also satisfied that there was a real risk that the applicant would face significant harm upon his return to Parachinar, including arbitrary deprivation of life, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment (para 43). However, based on the reasons detailed above with respect to relocation, the Tribunal found that the applicant would be able to relocate to another part of Pakistan where he would not be at a real risk of suffering significant harm (para 45). In concluding, the Tribunal stated that it was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under ss.36(2)(a) or (aa) (paras 46 and 47).

1406630 [2014] RRTA 852 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/852.html Unsuccessful	27 November 2014	13-15, 21-22, 25, 29, 31-32 and 35	The applicant was a citizen of Fiji and claimed to fear harm based on her 'cousin's support/profile' of the SDL and the poverty and unemployment levels in Fiji (paras 13 and 15). The applicant claimed that her cousin was abducted, questioned and tortured in 2006 because he was a supporter of the SDL (para 13). The applicant also claimed to fear harm from the Fiji military based on her membership to the FDFM in Australia (para 14). The Tribunal accepted that the 'applicant's cousin was a supporter of the SDL before the military coup of 6 December 2006' (para 21). However, the Tribunal did not accept that the applicant 'was, or was imputed, to have been at any time a political activist or a dissident whilst in Fiji' (para 22). Also, the Tribunal did not accept that the applicant – as a member of the FDFM – had a significant profile as an opponent of the regime (para 25). With regard to the applicant's claims of poverty in Fiji, the Tribunal did not accept that her fears gave rise to a 'well-founded fear of persecution for a Convention related reason' (para 29). Based on the above reasoning, the Tribunal found that the applicant did not have a 'well-founded fear of

			persecution because of her political opinion or for any other Convention reason should she return to Fiji' (para 29). With respect to the complementary protection criteria, the Tribunal accepted that the applicant did not wish to return to Fiji because of the poverty and lack of employment opportunities in Fiji (para 31). However, while the Tribunal accepted that the applicant 'may not be able to find the work that she hopes for in Fiji', 'the applicant is resourceful and has been able to travel to Australia and to live in Australia since 2012' (para 31). Further, the Tribunal did not accept that the country information indicated that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, that there was a real risk that she would suffer significant harm because of the poverty and the lack of employment opportunities in Fiji (para 31). Since the Tribunal found that no adverse political profile had been imputed to the applicant, 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 Fiji, that there was a real risk that she

			would suffer arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 32). Therefore the Tribunal found that the applicant did not satisfy the criteria in ss.36(2)(a) or (aa) of the Act (para 35).
1311732 [2014] RRTA 833 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/833.html Unsuccessful	25 November 2014	1, 2, 49 and 51-53	The applicant was a citizen of Zimbabwe and claimed to fear harm based on her prior experiences of being discriminated against, harassed, threatened, beaten, imprisoned and otherwise persecuted as a result of her mixed ethnicity (paras 1 and 2). Based on country information and the applicant's evidence, the Tribunal did not accept that the applicant faced a well-founded fear of serious harm or a real risk of significant harm 'at the hands of the ZANU-PF, the CIO, the police or any other government agency' because she was of a mixed race, did not speak Shona or because of any political opinion imputed to her because she was of mixed race or because she did not speak Shona (paras 49 and 51). Further, the Tribunal did not accept that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Zimbabwe, that there was a

			real risk that she would suffer significant harm as a result of discrimination in employment or access to services because she was of mixed race, did not speak Shona or specifically because she was a 'woman of mixed race' (para 51). The Tribunal in having regard 'to her stable employment history in [a certain] sector prior to her departure from Zimbabwe' did not accept that there was a real risk that she would be unable to support herself in Zimbabwe (para 51). The Tribunal, in taking into account the cumulative effect of her circumstances – 'a widow in her early [age] who no longer has any members of her immediate family living in Bulawayo, who was of mixed race and who did not speak Shona' – did not accept that there was a real risk that she would be arbitrarily deprived of her life, that the death penalty would be carried out on her, that she would be 'subjected to torture, that she would be subjected to cruel or inhuman treatment or punishment or that she would be subjected to degrading treatment or punishment as defined' (para 52). Therefore, the Tribunal did not accept that there were 'substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Zimbabwe, that there was a real risk that she would suffer significant harm as defined in subsection 36(2A)' of the Act (para 52).

			The Tribunal found that it was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 53).
1406176 [2014] RRTA 813 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/813.html Unsuccessful	25 November 2014	14, 20, 53, 56-59 and 61	The applicant was a citizen of Nepal and claimed to fear harm based on threats he and his mother had received from the Maoist rebel party, including death threats (para 14(a)). The applicant claimed that he had also been physically attacked by Maoist rebels and that 'the Maoist rebels attacked and broke into his mother's school' (para 14(f)). The applicant claimed that since he left Nepal, his mother had received threats from the Maoist rebels that they would harm the applicant if he returned to Nepal (para 14(c)). The applicant also claimed that he feared 'harm from the big party (Communist party of Nepal)' who had small cadres who had 'personal anger with the communities workers or teachers', like the applicant and his mother (para 14(d)). The applicant claimed that he had experienced depression while living in Australia (para 20). The Tribunal accepted that the applicant was attacked in 2005, that Maoists had threatened and sought money from his mother in 2004 and 2005 and that the Maoists

			had sought donations from time to time from his mother until August 2013 (para 53). However, the Tribunal did not accept that the past verbal threats amounted to serious harm or that they were serious threats. Also, given that the last threat occurred more than one previous to the hearing, the Tribunal did not accept the applicant or his mother were of interest to Maoists (para 53). The Tribunal did not accept that the applicant faced a real chance of harm from 'Maoists, Akhil Krantikari Activists, splinter groups, YCL, cadres or anyone else' or that he was on any hit list (para 53). This was based on the following findings by the Tribunal, based on the applicant's evidence and country information: - 'the attack occurred in 2005', - the applicant was able to 'remain at home for another two years without harm', - there was a five-year delay in the applicant making a claim for protection in Australia, - the applicant's mother continued her daily life in the same home, on her own (while paying donations but without harm), and - 'the last threat and donation was in August 2013' (para 53).

			In applying the above findings to the complementary protection criteria, the Tribunal did not accept that the applicant would 'be targeted physically, or by verbal threats, by his attackers, Maoists, splinter groups, small cadres, Akhil Krantikari Activists, YCL or anyone else' (para 56). The Tribunal was not satisfied that the applicant would face future verbal threats, and in any event, the Tribunal did not accept that verbal threats amounted to significant harm (para 57). Also, on the evidence before the Tribunal, it did not accept that the applicant faced 'a real risk of depression or mental harm such that it would amount to significant harm' (para 58). In concluding, the Tribunal found that there were not 'substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal', that there was a real risk that he would suffer significant harm (para 59). Therefore, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under ss.36(2)(a) and (aa) (para 61).

1404910 [2014] RRTA 806 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/806.html Unsuccessful	19 November 2014	2, 47, 50, 54, 64-66 and 69-72	The applicant was a citizen of the People's Republic of China (China) and claimed to fear harm based on 'his religious beliefs and practice as a member of the underground Christian church' (para 2). The applicant also claimed that he would be mistreated if he returned to China based on his criminal history (para 47). The Tribunal had serious concerns about the reliability of the applicant's 'evidence in support of his claim to be a genuine and committed member of the "underground Christian church" in China' (para 50). However, 'in light of [Pastor A]'s evidence, that, in his opinion, the applicant was a diligent and faithful member of his church who was committed to learning more in an effort to become baptised,' the Tribunal accepted that, 'over the past 21 months, he has become a genuine believer and a committed member of his faith and would wish to continue his practice as a Protestant Christian in the future, including if he returned to China' (para 54). Based on the information before the Tribunal, it found that attending a church such as the [Christian Church] in [Suburb 4] would not 'cause a person to come to the adverse attention of the Chinese authorities on return to China' (para 64).

			Therefore, the Tribunal did not accept that there was a real chance that the applicant would suffer serious harm in China for 'reasons of having attended the [Christian Church] in [Suburb 4] or for becoming a Christian in Australia or for any other matter' (para 64). With regard to the applicant's claim to fear harm based on his criminal record in China, the Tribunal accepted 'that in 1993 he was convicted of assaulting a police officer and sentenced to six years in prison in China but was released early in 1998' (para 65). Based on the applicant's evidence 'and in the absence of independent information to indicate that, in the recent past, people with criminal records or people convicted of criminal offences or people who had been imprisoned had been denied access to basic services or denied the capacity to earn a livelihood or otherwise been subjected to harm of the type set out in s.91R(2)', the Tribunal did not accept that there was a real chance that the applicant would suffer serious harm if he returned to China (para 65). Therefore, the Tribunal did not accept that there was a real chance that the applicant 'would suffer serious harm for a Convention reason if he returned to China' (para 66).

			With respect to the complementary protection criteria, in light of the reasoning detailed above the Tribunal considered there were no substantial grounds for believing that there was a real risk that the applicant would suffer significant harm 'based on his religious beliefs and practice as a Protestant Christian in China or his conduct in Australia, including by attending a [Christian Church] in [Suburb 4]' (para 69). With regard to the applicant's claims to fear harm on the basis of 'his criminal record in China, his conviction of a criminal offence in China or because he served a term of imprisonment in China', following the Tribunal's earlier reasoning, the Tribunal considered that there were no substantial grounds for believing that there was a real risk that he would suffer significant harm in that way, including with regard to his ability to find employment, which he was able to do in the past 'despite those factors' (para 70). In concluding, the Tribunal found that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, that there was a real risk that he would suffer significant harm (para 71). Therefore, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 72).

1314106 [2014] RRTA 796 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/796.html Unsuccessful	13 November 2014	2, 10, 20, 27, 36-39 and 41	The applicant was a citizen of Pakistan and claimed to fear harm from Sunni extremists operating in the Federally Administered Tribunal Area (FATA) region, based on the applicant being a Pashtun Shia from the Turi tribe of the Upper Kurram Agency, Parachinar in FATA (para 2). The applicant also claimed to fear harm based on being a 'failed asylum seeker' (para 10). The Tribunal accepted, 'having regard particularly to the continuing nature of violent attacks against Shias using the Parachinar-Thall road', that the applicant faced a real chance of persecution for reasons of his religion and ethnicity if the applicant returned to his home in Parachinar in the Upper Kurram Agency' (para 20). The Tribunal also found that the 'protection offered to persons by the Pakistani authorities in the Kurram Agency is inadequate and not of a standard that its citizens are entitled to expect' (para 20). In such circumstances, the Tribunal accepted that there was a real chance that the applicant would be harmed if he return to Parachinar (para 20). However, the Tribunal found that it was reasonable for

			the applicant to relocate to an area of Pakistan outside Parachinar and FATA, such as Islamabad or Rawalpindi and in such areas that there was 'not a real chance that the applicant would be persecuted for reasons of his religion, ethnicity, membership of the Turi tribe, or imputed political opinion or for any other Convention reason' (paras 37). This reasoning was based on country information which indicated that the security situation varied greatly within different parts of Pakistan and that there were a number of areas within the country which remained 'relatively free from the threat of militant, sectarian and politically motivated violence, particularly outside of FATA, Khyber Pakhtunkwha and Balochistan (para 27). With respect to the applicant's claims of harm based on being a 'failed asylum seeker', the Tribunal accepted 'that returnees from the West may be investigated upon their return in relation to any crimes they have committed' (para 36). However, since 'the applicant confirmed at the hearing that he did not have a criminal record or that there are any crimes for which he would be prosecuted', the Tribunal was not satisfied that the applicant would face serious harm because he was a member of a particular social group of "Returned Failed Asylum Seekers"'

			(para 36). For the same reasons as detailed above, the Tribunal was also satisfied that there was a real risk that the applicant would face significant harm if he returned to Parachinar (para 38). However, following the Tribunal's earlier findings with respect to relocation, the Tribunal found that applicant would be able to reside safely in other parts of Pakistan, in particular in Islamabad or Rawalpindi (para 39). Again, following the Tribunal's reasoning with respect to the applicant's 'Convention-based claims', the Tribunal was also not satisfied that the applicant would 'suffer significant harm for reasons associated with his application for asylum or presence in Australia for a reasonably lengthy period' (para 39). In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations (para 41).
1405884 [2014] RRTA 810 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/810.html#fnB2 Unsuccessful	12 November 2014	8, 15, 17-18, 20, 22, 36, 44, 50, 52, 54, 58 and 61-62	The applicants were citizens of the Philippines. The first named applicant claimed that she was a teacher in Mindanao and that she was threatened by the mother of one of her students [student A] in March and October 2007 and again in 2010 (paras 8, 17, 18 and 22). The Tribunal accepted that the first named applicant

			received two threats, in March and October 2007, but did not accept that she received the claimed threat in 2010 (paras 15, 20 and 36). Also, the Tribunal did not accept that the confrontation with [student A's] mother in March 2007 went any further or that the threat in October 2007 was connected with the confrontation in March (para 50). The Tribunal did not accept that the first named applicant or her family were a 'target', based on the fact that the first named applicant 'remained in the Philippines for 3 ½ years after the initial confrontation, undertaking the same job and living for most of that time in the same house' and had spent another three years in Australia (para 52). The 'Tribunal noted that although there were relatively high levels of generalised violence in the Philippines, it appeared to be random and would not be targeted at her, but rather something to which anyone in the Philippines might be subjected' (para 54). Therefore, the Tribunal did not accept that the first named applicant or her family would be targeted on return to the Philippines as a result of the confrontation in 2007. The Tribunal found that if the first named applicant or her family were caught up in generalised violence, the Tribunal was satisfied that this would not

			involve systematic and discriminatory conduct and accordingly Article 1A(2) of the Refugee Convention would not apply in accordance with s 91R(1)(c) of the Act (para 44). With respect to the complementary protection criteria, on the basis of the findings set out above, the Tribunal found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to the Philippines, that there was a real risk that they would suffer significant harm (para 58). Also, the Tribunal found that if the first named applicant were to be caught up in generalised violence in the Philippines, 'this would be a risk faced by the population of the Philippines generally and is not faced by the first named applicant personally (para 61). In concluding, the Tribunal found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the first named applicant being removed from Australia to the Philippines, there was a real risk that she would suffer significant harm (para 61). Therefore, the Tribunal was not satisfied that any of the applicants were persons in respect of whom Australia had protection obligations, and accordingly none of the

			applicants satisfied ss.36(2)(b) and (c) of the Act (para 62).
1406290 [2014] RRTA 815 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/815.html Unsuccessful	11 November 2014	37-38, 57, 59, 64, 66, 68, 69 and 71	The applicants (husband and wife) were citizens of Fiji and of Indian ethnicity (paras 38 and 57). The applicant wife did not submit an individual claim for protection (para 37). The applicant husband claimed to fear harm on account of his race, religion or imputed political opinion arising from his son's activities (i.e. being a supporter of the Labor government and holding religious gatherings at the family home)(paras 57 and 59). The Tribunal did not accept the applicant husband's evidence with respect to the above grounds and found that that the applicant husband's protection visa application was prompted by a 'deterioration in his medical condition' (para 59). Therefore, the Tribunal was not satisfied that the applicant husband faced a real chance of serious harm in the reasonably foreseeable future in Fiji for one of the reasons specified in the Refugee Convention (para 64). With respect to the complementary protection criteria, the Tribunal accepted that the applicant husband suffered from medical conditions which required frequent dialysis and if the applicant husband returned

			to Fiji, 'there would likely be a deterioration in his health as a result of difficulties in accessing medical care in Fiji' (para 66). However, the Tribunal found that 'any difficulty in accessing medical care in Fiji would be due to insufficient resources which effect the needs of the population of Fiji' (para 68). The Tribunal did not consider that any pain and suffering experienced by the applicant husband as a result of his inability to access any aspect of his medical treatment in Fiji would be 'intentionally inflicted upon him by the Fijian authorities or any other person'(para 68). Further, the Tribunal did not accept that any severe pain or suffering that the applicant husband may suffer 'as a result of difficulties accessing medical treatment would be inflicted upon him for any one of the five specified purposes set out in the definition of torture contained in s.5(1)' of the Act (para 68). The Tribunal did not accept that there would be 'any intention on the part of the Fijian authorities or any other person to deprive' the applicant husband of accommodation (para 69). The Tribunal found that 'any lack of accommodation would be due to the fact that he has spent the proceeds of the sale of his house on

			repeated travel to Australia' and, in any event, the Tribunal found that the applicant husband 'would be able to stay with relatives on a long term basis' (para 69). Therefore, the Tribunal was not satisfied that either of the applicants were persons in respect of whom Australia had protection obligations and accordingly neither applicant was found to satisfy ss.36(2)(b) and (c) of the Act (para 71).
1404760 [2014] RRTA 769 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/769.html Unsuccessful	31 October 2014	2, 28, 29, 30 and 31	The applicants (father, mother and daughter) were citizens of Lebanon and claimed to fear harm based on the 'sectarian conflict in their neighbourhood in Tripoli' and 'the economic downturn as a result of the conflict and influx of Syrian refugees' (paras 2 and 29). The applicant father and daughter both had physical disabilities and the daughter had an intellectual disability. The applicant father claimed that 'his business suffered as a result of the sectarian conflict and he was forced to close his business'. The applicant father also claimed that he would have 'no livelihood on return' to Lebanon (para 2). The Tribunal found that there was not a real chance that the applicant's would suffer harm, 'as a result of the sectarian conflict in Bab Al-Tabbaneh spilling over into [Suburb 1]' (para 28).

			'With regard to their claims to fear harm because of the economic downturn as a result of the conflict and influx of Syrian refugees', the Tribunal found that there were no substantial grounds for believing there was a real risk that any of the applicants would suffer significant harm on this basis (para 29). In relation to the applicant daughter's need for corrective surgery for her [disability] and her need for full-time care and support, the Tribunal relied on country information which indicated that that 'Lebanon has a functioning medical system in which it would appear she would be able to receive relevant treatment and care'. Following consideration of such country information, the Tribunal found that the applicant's limited financial capacity to access the required treatment did not meet the test of 'significant harm' pursuant to s36(2A) of the Act (para 30). In concluding, the Tribunal found that there were 'no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Lebanon, there is a real risk that they will suffer significant harm' (para 31).
1402744 [2014] RRTA 766 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/766.html	31 October 2014	3, 41, 45, 53, 57, 59, 87 and 109	The applicant was a citizen of Turkey and claimed to fear harm based on his 'Armenian race, his religious beliefs and his political opinion' (para 3).

Unsuccessful			The Tribunal accepted that the applicant: - 'may have been subjected to name-calling and other forms of harassment as a child because of his Armenian ethnicity' (para 41), - 'experienced harassment and insults based on his Armenian ethnicity' while in the military (para 45), - 'was beaten and hospitalised when he suffered a [injury]' while in the military (para 45), and - 'was charged with but not tried for attempting to flee military service when he cited in his defence the treatment to which he had been subjected' (para 45). The Tribunal also accepted that 'being called names and harassed as a child because of his Armenian ethnicity would have been unpleasant for the applicant and that his experiences while undertaking military service were both difficult and disagreeable' (para 53). However, the Tribunal did not accept that such experiences and treatment amounted to significant harm pursuant to s.36(2A), or that there was a real risk that the applicant would be subjected to significant harm if he returned to Turkey, because he was of Armenian ethnicity (paras 57 and 59). With regard to the applicant's religious beliefs, the Tribunal found that there was not a real risk that the

			applicant would be subjected to significant harm as an agnostic or non-observant Muslim, if the applicant returned to Turkey (para 87). The Tribunal did not accept the applicant's claims with respect to his political opinion (para 109).
1402471 [2014] RRTA 765 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/765.html Unsuccessful	31 October 2014	11, 31, 32 and 33	The applicant was a citizen of Bangladesh and claimed to fear harm from persons connected to the Awami League (AL), arising from the applicant's involvement with the BNP (para 11). The Tribunal did not accept 'the applicant's claimed involvement with the BNP in Bangladesh' or his claim that he would 'be imputed with any political opinion relating to such involvement' (para 31). Although the Tribunal 'accepted that the applicant had engaged in some BNP activities in Australia', the Tribunal found that such activities were more social than the political in nature and the Tribunal did not accept that 'any such activities would be of any adverse interest to anybody in Bangladesh' (para 31). Also, the Tribunal did not accept that the applicant had a 'high profile' and found that the 'applicant's involvement with BNP in Australia would be of no adverse interest to anybody upon his return to Bangladesh' (para 32).

			The Tribunal accepted the applicant's claim that he had been 'involved in a dispute with a customer, who had criminal connections and who threatened the applicant' (para 33). However, the Tribunal found that the 'dispute had no political basis and was purely commercial.' In concluding the Tribunal found that 'given the minor nature of the dispute and the passage of time', there was no real risk that the applicant would be harmed as a result of the dispute (para 33).
1401815 [2014] RRTA 764 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/764.html Unsuccessful	31 October 2014	2, 50, 57 and 58	The applicant was a citizen of Pakistan and claimed to fear harm from the 'Taliban because of his Shia faith, his work for that religion and his work at a school operated by his father which Shia students attended' (para 2). The Tribunal did not accept the applicant's claims with respect to his work for the Shia faith or in relation to the school operated by his father (para 13). The Tribunal accepted that the applicant was 'a Shia man from a Mohajir family' who lived in Karachi and that the applicant's father operated a school in Karachi. However, the Tribunal found that there was 'no credible evidence' that the applicant or any member of his family had 'suffered harm in Pakistan or that any person or group in Pakistan wished to harm the applicant' (para 50).

			The Tribunal found that the risk of the applicant suffering significant harm on the grounds of being a Shia man whose father operated school in Karachi, which was attended by Shias, was remote (para 57). Relying on country information, the Tribunal found that the primary victims of violence, kidnapping and extortion in Karachi, 'are those who belong to political parties, criminal and extremist groups and wealthy businesspeople' (para 57). In concluding, the Tribunal found that 'the applicant does not belong to a political, extremist or criminal group and he is not a wealthy businessperson' (para 58).
1411694 [2014] RRTA 827 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/827.html Unsuccessful	27 October 2014	26-27, 49-50, 54, 56-58 and 61	The applicants were citizens of India. The applicant husband was a Sikh from Punjab and the applicant wife was 'a Hindu from a lower caste family (Dalit)' (para 26). The applicant husband claimed to fear harm from his family and the members of his local community based on his interfaith marriage (para 27). The applicant husband gave evidence of an incident where his family and members of the local community physically attacked the applicants based on their interfaith marriage (para 26). The applicant husband claimed that when they reported

			the incident to the police 'they were laughed at and the report was not taken' (para 27). The Tribunal accepted the applicant husband's claims and found that the applicants faced 'a real chance of persecution at the hands' of the applicant husband's 'family members and other villagers in the reasonably foreseeable future' in Punjab (para 49). Similarly, the Tribunal accepted that there were 'substantial grounds for believing that as a necessary and foreseeable consequence of the applicants being removed from Australia to India' that there was a 'real risk that they would suffer significant harm in their home area of Punjab at the hands of his family members and other villagers' (para 50). However, the Tribunal concluded that based on the applicants' individual circumstances and the country information, it was reasonable for the applicants to relocate to another state in India to avoid the 'localised threat of serious harm' that the applicants faced in Punjab (para 54). In coming to this conclusion, the Tribunal relied upon the fact that the applicant husband could read, speak and write Hindi (which is understood by about 40% of the population), and the applicant husband could speak, read and write English, (which is recognized as a

			"associate" official language to Hindi, and 'is used predominantly by educated and professional groups, the media, and in administrative contexts') (para 56). Also, the applicant wife had some understanding of both English and Hindi (para 56). The Tribunal also relied upon the fact that the applicant wife was Hindu (the predominant religion in India) and 'that Sikhs are present throughout the country and are able to practise their religion without restriction and that they have indiscriminate access to employment' (para 57). The Tribunal also relied on independent country information which indicated 'that unemployment is low in India and the country is experiencing substantial economic growth' (para 58). The Tribunal did not accept that the applicant husband would not be able to 'obtain employment in the light of his educational history and past work experience which would be sufficient to support himself and his family' (para 58). Also, the applicants had been 'receiving ongoing financial support for a substantial period' from the applicant husband's [relative] whilst in Australia and 'that this could be utilised for a period in India … whilst the applicants re-established themselves' (para 58).

			Therefore, based on the above reasoning, the Tribunal was not satisfied that either of the applicants were persons in respect of whom Australia had protection obligations. It followed that the applicants were also unable to satisfy the criteria set out in ss.36(2)(b) or (c) of the Act (para 61).
1405429 [2014] RRTA 787 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/787.html Unsuccessful	27 October 2014	6, 51, 53-58 and 61	The applicant was a citizen of Fiji and claimed to fear harm based on his role as 'a main organiser and key person in the rebellious takeover at Monasavu Dam in Fiji in 2000' (para 6). The Tribunal found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being returned to Fiji, that there was a real risk that he would suffer significant harm arising from the following claims (individually or cumulatively): - 'mistreatment by the army following the takeover of Monasavu Dam', - being questioned at Nadi Airport as to his travel plans, - 'overstaying his visa in Australia' or - 'the resumption of land' in Fiji by the Fijian Government (para 51) In relation to the applicant's house being searched in 2008, since the army searched his house as part of a wider operation to find 'missing weapons believed to

			have been taken near the applicant's village during the 2000 coup', the Tribunal was not satisfied that such a search would constitute significant harm as set out in s 36(2A) of the Act (paras 53 and 54). With respect to the applicant's claim of harm based on a 'lower standard of living in Fiji', the Tribunal found that 'although he stated that it is easier to make money in Australia, the applicant's evidence to the Tribunal did not indicate that, in his individual circumstances, the lower standard of living in Fiji' constituted significant harm pursuant to 36(2A) of the Act (paras 55-58). In concluding, the Tribunal found the 'applicant was not a person in respect of whom Australia has protection obligations' under s.36(2)(aa) of the Act (para 61).
1407713 [2014] RRTA 702 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/702.html Unsuccessful	24 September 2014	2, 18-20, 30, 48, 50 and 54	The applicant was a citizen of Fiji and claimed that he faced harm there on the basis of his membership to the SDL (a political party in Fiji) and his relationship with his relative, Mr A (who was a high-profile SDL member) (paras 19 and 30). The applicant also claimed that he and his wife had been 'subjected to degrading and inhumane treatment and punishment by the Fijian authorities such as the police, the army, and the secret service of the military dictatorship'. The applicant and his wife claimed to fear

			significant harm from government authorities because of their political involvement in Fiji and on account of being involved in anti-Fijian government activities in Australia (para 18). The applicant further claimed that he feared returning to Fiji because he found 'information relating to a plot to kill' Fiji's Prime Minister (para 20). The Tribunal was not satisfied that the applicant or his wife had 'suffered any of the claimed harm for any of the claimed reasons, including any actual or perceived association with [Mr A], or that he is of any interest to the Fijian authorities, or that there is a warrant for their arrests' (para 48). However, the Tribunal did accept that the applicant was a member and a supporter of the SDL and 'that the extent of his support was demonstrated in him using his car in campaigns and to drive people to their homes'. The Tribunal also considered independent country information about Fiji which indicated that 'low level SDL supporters are not likely to be subjected to harm' (para 50). The Tribunal found that 'given the applicants' limited support of the SDL whilst in Fiji and in Australia (one published photograph on the internet), and looking at the evidence independently and cumulatively, the Tribunal does not accept that the applicants would be

			perceived as being strong supporters or associates of the SDL, or as being disloyal to the Fijian authorities, or that they would be perceived as having any association with [Mr A], or that there is a real risk of being harmed for any reason by the authorities such as the police and secret service' (para 54). Based on this reasoning, the Tribunal did not accept that there was a real risk of significant harm occurring to the applicant or his wife if they were returned to Fiji (para 54).
1406459 [2014] RRTA 738 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/738.html Unsuccessful	23 September 2014	1, 2, 17, 40 and 41	The applicants were citizens of the Philippines. The first and second named applicants were a couple and the third, fourth and fifth named applicants were their children (para 1). The first named applicant (the mother) claimed to fear harm resulting from the typhoon that 'devastated their home and almost killed her son' in November 2013. The applicant mother also claimed that they were 'burgled, stalked and threatened by persons who are connected to her father's political opponents who had murdered her father in 1995' (para 2 and 17). The Tribunal did not accept the applicant mother's claims that 'she or other family members had been pursued by their father's political opponents several years after his death in 1995' (para 40).

			The Tribunal accepted that the applicant mother and her family had been 'affected by natural disasters and her son was almost a victim of one of those disasters'. The Tribunal also accepted that the family had concerns for their safety, particularly as they had been robbed (para 41). The Tribunal found that one of the reasons that they were robbed was because they owned a business. Since the applicants no longer owned the [business], the Tribunal concluded that the applicants did not face a real risk of significant harm based on this ground (para 41). The Tribunal also found that the applicants would be able to 're-establish themselves upon their return to the Philippines', even though they no longer had a business or a home. The Tribunal considered 'that the generalised crime and natural disasters are matters which affect the Filipino population generally and are not specific to the applicants' (para 41).
1411104 [2014] RRTA 714 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/714.html Unsuccessful	18 September 2014	2, 35-37, 42, 44, 53-56 and 62	The first applicant (husband) and second applicant (wife) were citizens of Malaysia and claimed to fear harm 'on the basis of their Indian Tamil ethnicity, their Hindu faith and their political opinion' (para 2). In addition, the first applicant claimed to fear harm based on his tattoo, which he claimed to be a 'gang

			tattoo' (para 36).The second applicant claimed to 'fear harm on the basis of her gender and her relationship to her husband' (para 2). The Tribunal did not accept that the applicants had a well-founded fear of persecution on the basis of their political opinion (para 35). Nor did it accept that the applicant husband faced serious harm in Malaysia because of his tattoo, since the Tribunal did not accept that the applicant's tattoo was a 'gang tattoo', nor 'that it would be perceived as such by the Malaysian authorities' (para 37). With regard to the applicants' fear of harm on the basis of their Tamil ethnicity and Hindu religion, the Tribunal accepted, based on independent evidence and the applicants' evidence before the Tribunal, that 'non-ethnic Malays, including ethnic Indian Tamils such as the applicants, faced discrimination in Malaysia, including in the areas of education, government employment and ownership of businesses' (para 42). However, the Tribunal did not accept there to be a real chance that the applicants would face serious harm on the basis of their Tamil or non-Malay ethnicity if they returned to Malaysia (para 44). In regard to the applicant wife's individual claims, the Tribunal accepted that the 'applicant wife was harassed

			by a man named [Mr B] while at college in 2004/05 and that the harassment caused her to terminate her studies at that time'. However the Tribunal did not 'accept that [Mr B] continued to harass her up until the time she departed Malaysia in April 2012, nor that he continued to ask about her whereabouts through her friends in Malaysia'. In concluding, the Tribunal did not accept that there was a real chance that the applicant wife would be targeted for serious harm by [Mr B] (para 53). The applicant wife also claimed to fear harm in Malaysia on the basis of her profile as a Hindu Tamil woman, claiming that since her childhood she had been 'discriminated against for being a Hindu Tamil girl' and had 'lost many job opportunities due to her ethnicity' (para 54). The Tribunal accepted that non-ethnic Malays face discrimination in Malaysia, but it did not accept that either of the applicants had 'experienced serious harm for the purposes of s.91R(1)(b) of the Act' in the past or that there was a real chance that they would face serious harm on that basis in the future (para 55). 'Even considering the applicant wife's religion, ethnicity and gender cumulatively', the Tribunal did not accept 'there to be a real chance that she would face serious harm on these bases if she were returned to Malaysia' (para 56).

			The Tribunal did not accept that 'the discrimination faced by the applicants as non-ethnic Malaysians (sic) constituted significant harm'. In making this assessment the Tribunal did not accept that the 'lost opportunities the applicants claim to have suffered could reasonably be described as cruel or inhuman, or intended to cause extreme humiliation which is unreasonable, in circumstances where they are both educated to college levels and have worked in a variety of occupations in Malaysia and more recently Australia' (para 62).
1404202 [2014] RRTA 683 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/683.html Unsuccessful	18 September 2014	2, 32, 34, 37-9, 41, 43, 45, 46 and 48	The applicant was a citizen of Egypt and claimed that she faced harm in Egypt as a Christian female (para 2). The Tribunal accepted that the applicant experienced 'minor incidents' and was 'subjected to some sexual harassment, verbal abuse and insulting and intimidating behaviour in public places' in Egypt (para 34). Specifically, the Tribunal accepted - 'that in [year] the applicant was on her way to school with her friends when they were surrounded by a group of young men who proceeded to verbally abuse and touch them in an indecent way' (para 32), - 'that in [year] the applicant was on her way to the university when a bearded man screamed at her that 'the hijab is a must'. She realised later

			the man had sprayed her with acid through a syringe resulting in holes appearing in her clothes' (para 32), and - 'that on one occasion, when the applicant was assisting handicapped members of her community, she was approached by a man who spat at her and told her that all Coptic Christians deserved to be handicapped' (para 32). The Tribunal accepted 'the applicant may be subjected to sporadic harassment at the same level she has in the past' if she was returned to Egypt (para 37). However, the Tribunal was not satisfied that she faced a real risk of significant harm as defined in the Act (para 38). While the Tribunal accepted that there were 'credible reports of increased sexual assault of women in Egypt following the revolution'; however, the Tribunal was not satisfied that sexual violence was so prevalent that it 'would create a real chance the applicant, being a young, single, educated Coptic female, would be subjected to such treatment' (para 39). The Tribunal accepted 'that since the January 2011 revolution, Christians in Egypt have witnessed an increased level of harassment and intimidation by more conservative Muslims emboldened by the unfolding political events'. However, the Tribunal found that 'the

			level of discrimination and violence directed at Christians depends on the individual circumstances' (para 41). Therefore, for the same reasons as listed above the Tribunal did 'not accept there to be a real risk that the applicant will be subjected to significant harm arising from her religion as a necessary and foreseeable consequence of her removal from Australia to Egypt' (para 41). The Tribunal accepted 'that in the lead up to and after the fall of the Morsi Government in July intervention, Muslim Brotherhood figures and supporters placed part of the blame for the fall of the government on Copts. This led to acts of violence against Copts and Christian properties' (para 43). However, for the same reasons listed above the Tribunal was not satisfied that there was a real risk that the applicant would be 'subjected to significant harm, including arbitrary deprivation of life, arising from sectarian violence or religiously motivated terrorist attacks if she were removed from Australia to Egypt' (para 43). The applicant claimed that 'she was given bad marks at university because she was a Christian. She also claimed that she had experienced discrimination when applying for jobs'. The Tribunal further accepted 'that the applicant had experienced some religious based

			discrimination while studying or in the process of finding work'. However, the Tribunal found that the applicant's evidence, nevertheless, indicated that she is 'highly educated, having graduated with a Bachelor [degree] from [a] University, and was employed at a Christian owned [business] in the 12 months prior to her departure from Egypt' (para 45). Therefore, having regard to the applicant's circumstances, the Tribunal was not satisfied that 'there was a real risk of her facing significant harm arising from the country's current state of the economy' (para 45) The Tribunal also accepted that 'while working as a [occupation] the applicant was subjected to discriminatory behaviour in the form of being ignored and ridiculed or being told to convert by Muslim customers or employees' (para 46). Having accepted the applicant may experience some discrimination in Egypt, the Tribunal was is not satisfied that she faced 'a real risk of harm of the scope or gravity envisaged in the definitions of torture and cruel, inhuman or degrading treatment or punishment' (para 48).
1411093 [2014] RRTA 713 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/713.html Unsuccessful	17 September 2014	3, 20, 21, 24, 28, 29, 34, 39, 41, 44 and 45.	The applicant was a citizen of Malaysia and claimed to fear harm based on three grounds. Firstly, the applicant claimed to fear harm 'from loan sharks, creditors and debt collectors as a result of money he borrowed to finance his construction

			company which he was unable to repay' (para 3). Secondly, the applicant claimed to fear harm from government officials and [Mr A], who had colluded to cheat the applicant (para 29). And, thirdly, the applicant claimed to fear harm based on his Chinese ethnicity (para 39). The Tribunal accepted that the applicant was fined 120,000 Malaysian Ringgit following legal proceedings in which the applicant was found responsible for the structural problems in a building, which the applicant had developed. The structural problems arose due to 'the poor quality of materials used in its construction' (para 21). The Tribunal also accepted that the applicant 'was instructed by [Mr A] to purchase the cheapest materials, in particular bricks, wooden beams and plaster,' even though the applicant 'warned [Mr A] that the poor quality of the materials would result in structural problems in the building' (para 20). The Tribunal further accepted the applicant's evidence that he paid the fine imposed by the court, resumed his subcontracting business, and travelled to Australia on 1 March 2010 (para 24). However, the Tribunal did not accept that the 'applicant

			borrowed money from loan sharks, nor that he was ever harassed or harmed by creditors, gangs or debt collectors related to those loan sharks' (para 28). The Tribunal accepted 'that the applicant's business was subjected to increased quality inspections by the relevant government department following his plea of guilty and the payment of a fine'. However the Tribunal did not accept that 'the applicant was ever threatened with physical harm', nor did the Tribunal 'accept there to be a real chance that the applicant would suffer physical harm or harassment from government officials if he returned to Malaysia' (para 34). Also, the Tribunal did not accept there to be a real chance that [Mr A] or any person associated with him would seriously harm the applicant if he were to return to Malaysia given that the applicant 'pleaded guilty to the offences relating to the [building construction]' and had 'paid the fine imposed upon him' (para 34). The Tribunal did not accept that there was a 'real chance that the applicant would experience discrimination amounting to serious harm in the future, given his profile as a [age] year old male who has worked for almost [number] years in the construction industry and owned his own business employing others for [number] years'. Therefore, the Tribunal did not accept that there was a real chance that the applicant

			would be ‘targeted for serious harm if he returned to Malaysia for reasons of his Chinese ethnicity’ (para 41). With respect to whether the increased scrutiny by government officials on the applicant’s business activities constituted significant harm, the Tribunal did not ‘accept that the treatment described by the applicant constituted arbitrary deprivation of life or the death penalty’. The Tribunal ‘considered the applicant’s claims that he felt mentally tortured by his treatment,’ but did not ‘accept that the treatment he received did in fact cause him severe pain or suffering, nor that it was intentionally inflicted upon him’ (para 44). The Tribunal also found that the increased scrutiny of the applicant’s work following his guilty plea was ‘inherent in or incidental to lawful sanctions that are not inconsistent with the Articles of the ICCPR and therefore do not constitute torture for the purposes of the definition contained in s.5(1)’ of the Act (para 44). In considering whether the increased scrutiny described by the applicant constituted ‘cruel or inhuman treatment or punishment’ or ‘degrading treatment or punishment’, as claimed by the applicant and that ‘such treatment caused him mental and emotional suffering’, the Tribunal concluded that it did not. In making this assessment the Tribunal did not accept that the ‘mental suffering’ the applicant claimed to have ‘suffered was

			severe for the purposes of paragraph (a) of the definition of cruel or inhuman treatment or punishment, nor that it was intentionally inflicted upon him'. Nor did the Tribunal accept that such treatment could be described as 'cruel or inhuman, or intended to cause extreme humiliation which is unreasonable, in circumstances where the applicant had recently pleaded guilty to offences relating to the building of [buildings] using unacceptable materials and the government department charged with overseeing that contract required subsequent assurances about the quality of his work and materials' (para 45).
1401411 [2014] RRTA 695 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/695.html (Unsuccessful)	15 September 2014	2, 18-20, 30 and 37-38	The applicant was a citizen of Egypt and claimed harm based on his appearance and mannerisms. The applicant claimed that he liked to dress in a 'Western style appearance', which included that he had a tattoo, wore earrings and maintained long hair. The applicant claimed that his appearance and mannerisms 'were frowned upon in Egypt and resulted in him being subjected to discrimination and abuse, both physical and mental, over a long period of time'. The applicant also claimed that in Egypt he was 'perceived to be gay, although he is not homosexual'. The applicant claimed that the 'treatment directed towards him escalated with the rise of Islamic fundamentalism and the electoral success of the Muslim Brotherhood'. The applicant claimed that 'he had to alter his appearance in order to counter threats from radicals' (para 2).

			With respect to his political views and activities, at his interview with the delegate the 'applicant claimed that during the Revolution he associated with a group of people who advocated passive resistance and were against killings. He claimed that in effect he took a position against both the Islamists and the army'. He further claimed that being a lecturer at university put him in a leadership position' and that he 'led a demonstration to the radio and TV station' (para 18). The applicant also claimed that people had broken into his house and left a letter threatening to kill him (para 19). The Tribunal accepted that the applicant found 'certain political views and might have participated in political rallies during the 2011 Revolution', but the Tribunal did not accept that he was targeted or harmed in any way by anyone for that reason. Also, the Tribunal did 'not accept that the applicant was threatened in Egypt for the reasons of his appearance, political opinion, including his liberal, pro-democracy views, or participation in demonstrations during the 2011 Revolution' (para 20). The Tribunal found that the applicant exaggerated the nature and extent of his experiences arising from his appearance, mannerisms and conduct in Egypt. However, the Tribunal accepted that the applicant faced

			some ‘discrimination, verbal abuse, derogatory comments imputing him with homosexuality and some physical harassment, namely pushing and shoving’. The Tribunal also accepted that the applicant found this treatment to be ‘offensive, degrading, unpleasant and distressing’ (para 30). In concluding, the Tribunal was not satisfied that there was a real chance that the applicant would be subjected to serious harm as a result of his appearance, including his tattoo, mannerisms, conduct, musical taste, liberal views, political opinion and/or participation in the 2011 demonstrations, if the applicant were to return to Egypt (paras 37). The Tribunal was also not satisfied ‘that if the applicant, upon being removed to Egypt, were to continue to dress or behave in the same way or express his views at the same level’ as he had in the past, there was a real risk that he would be subjected to significant harm (para 38).
1312358 [2014] RRTA 650 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/650.html (Unsuccessful)	28 August 2014	2-4, 10, 36 and 37	The applicant was a citizen of Egypt and claimed to have been severely mistreated during compulsory military service in Egypt. He also claimed to have absconded on three occasions from military service and was subsequently sentenced to two years and three months imprisonment for absconding. He claimed to have suffered severe torture and mistreatment during his imprisonment, and that he required psychiatric care

			following his release (paras 2-4). The applicant submitted to the Tribunal that if he returned to Egypt he feared that he would be called to serve in the Egyptian Army as a reservist (para 10). The Tribunal found that the applicant 'did not have a well-founded fear of persecution in relation to his past military service or to his possible future reservist obligations' (para 36). The Tribunal next considered whether the obligation to perform reserve duty gave rise to protection obligations under the complementary protection criteria (para 37). The Tribunal was not satisfied, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, that there was a real risk that he would suffer significant harm (para 37). The Tribunal found that although the applicant remained eligible for reserve duty for nine years after the completion of the regular period of conscription, the evidence relied upon by the Tribunal indicated that reservists are infrequently called for service, even in times political turmoil. The Tribunal also found that the applicant was unlikely to be called to serve as a reservist given his poor service record and his 'potential psychological condition', arising from his imprisonment

			for absconding from military service (para 37). The applicant also claimed to fear harm from the Muslim Brotherhood and Islamic extremists in Egypt (para 3). The Tribunal was not satisfied that the applicant had a well-founded fear of persecution based on this claim; or that there were substantial grounds for believing that the applicant was personally, rather than the population generally, at real risk of serious harm arising from general insecurity or violence in Egypt (para 37).
1310292 [2014] RRTA 641 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/641.html (Unsuccessful)	18 August 2014	11-14, 18, 37, 48 and 57	This case relates to: • The meaning of significant harm The applicant was a Sri Lankan citizen and an ethnic Tamil and Hindu. The applicant claimed he would be seriously harmed, or possibly killed, in Sri Lanka on account of his ethnicity and suspected links to the LTTE (paras 11-14). The applicant also feared harm if returned to Sri Lanka as a failed asylum seeker (para 18). The applicant claimed that upon return to Sri Lanka, the authorities would investigate and detain him, and, if detained, he would be abused in detention (para 18). The Tribunal found that the applicant was not a credible witness (para 38) and did not accept the applicant's

			evidence with respect to the main factors for the applicant's departure from Sri Lanka (para 37). With respect to the applicant's fear that he would be detained and abused in detention on account of being a 'failed asylum seeker', the Tribunal found that 'prosecution in such circumstances is a legitimate action by the authorities' and 'there is no evidence that the law, any period of detention and fine, or the condition of detention, are being applied in a discriminatory manner' (para 48). With respect to whether such detention would amount to significant harm pursuant to section 36(2A) of the Act, the Tribunal found that the applicant did not have 'a level of adverse profile such that he is of any adverse interest to the authorities in Sri Lanka' (para 57). The Tribunal examined the likelihood of the applicant being arrested upon return and found on remand awaiting bail. It also acknowledged the likelihood of his being fined and questioned about where he had been. The Tribunal concluded that such procedures did not amount to significant harm under section 36 (2A) (para 57).

1400973 [2014] RRTA 606 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/606.html (Successful)	7 August 2014	40–1	This case relates to: • the availability of complementary protection where the applicant fears generalized violence in a country. The applicants, husband and wife, were nationals of Iraq. The first applicant (husband) claimed to fear harm from al Qaida, Islamic State of Iraq and Syria and other Sunni insurgents because he was a liberal, educated professional who had been out of Iraq for eight years. He was a Shi'a from [Town 1] where both he and his wife's family were well known (para 6). His wife feared harm because she was a Sunni and would have to follow the first applicant to live in a Shi'a area (para 28). The Tribunal found the applicants' evidence to be inconsistent and lacking credibility (para 33). Nevertheless, the Tribunal found that the general situation in Iraq was such that the applicants faced a real risk of substantial harm, in light of the first applicant's educated status and the applicants' inter-religious marriage. The Tribunal stated (at paras 40–1): 'Although I have not accepted the first-named applicant's account of his experiences in Iraq nor do I accept that the second-named applicant has faced serious harm in the past, I am cognisant of the current tenuous security situation in Iraq, particularly in the area where the applicant and his family is from. While

			it could be argued that the harm feared in this case is faced equally by everyone in Iraq, the combination of the first-named applicant's education status and the applicants' ethnic and religious mixed marriage means that I am satisfied that there are substantial grounds for believing that there is a real risk of significant harm. 'As a consequence I accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Iraq, there is a real risk that the applicants will suffer significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa).' The applicants were found to satisfy s 36(2)(aa) of the Act.

1318956 [2014] RRTA 562 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/562.html (Unsuccessful)	23 July 2014	50	This case relates to: • the meaning of 'significant harm'; • whether 'significant harm' encompass lack of access to health care/medical treatment. The applicant was a national of Indonesia. He feared harm as he had certain health problems and 'did not know' if he could obtain the medication and treatment required to address his health problems. He had no financial support in Indonesia (para 35). The Tribunal found that the risk of the applicant not being able to obtain medication was not a real one 'because he will be able to access some form of government provided medical assistance, either through community health centres or government funded health insurance despite any financial difficulties he may face on his return to Indonesia' (para 49). However, the Tribunal went on to note that, even if it accepted that the risk of not obtaining medication was real, and that 'being unable to do so would result in him suffering harm', that would not be sufficient. This was because 'the forms of significant harm defined in the Act require that there be an intention to inflict that significant harm on the applicant' (para 50). As such, the Tribunal concluded: 'I find that even if the applicant suffered harm as a

			result of being unable to obtain the medical treatment or medication he needs (which, for the reasons set out above, I do not accept) it would not be something intended to happen to the applicant and so would not and could not amount to any form of significant harm set out in the Act.'

1317970 [2014] RRTA 576 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/576.html (Unsuccessful)	21 July 2014	42–3	This case relates to: • the meaning of significant harm. The applicant was a national of China and claimed to fear harm there as a single mother (para 1). She had never married (para 19). With respect to the complementary protection claim, the Tribunal found that the applicant would suffer degrading treatment at her family home but, on her evidence, she was not intending to return there (para 42). More generally, the Tribunal concluded (para 43): 'As to whether there is a real risk she will suffer significant harm … if she returns to China and resides elsewhere, I accept that she will experience some discrimination and may also have difficulty finding employment, at least initially. However I am not persuaded that these difficulties, even taken together, will constitute "significant harm" as it is defined.'
1400603 [2014] RRTA 552 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/552.html (Unsuccessful)	14 July 2014	57–64	This case relates to: • the meaning of 'significant harm' The applicant was a national of Mongolia. He claimed to fear harm in Mongolia as a homosexual man. The Tribunal found the applicant's evidence to be inconsistent (see paras 44–7). Overall, however, the Tribunal accepted that 'the applicant had a homosexual relationship in Mongolia and regards himself as a

			homosexual' (para 49). The Tribunal accepted that 'should the applicant return to his family home, there is a real chance or risk that his father might again assault him and might be able to arrange for the applicant to be arrested and detained for a period' (para 54). However, the Tribunal observed that 'the applicant is not constrained on return to Mongolia to go back to his family home' (para 55). The Tribunal then considered whether the applicant's circumstances gives rise to 'a real chance or real risk of serious or significant harm more generally and not just from his father'. The country evidence suggested that harassment and assaults could occur at the hands of 'some homophobic or "loutish" elements in the community'. However, official attitudes appeared to be 'benign' (para 58). Homosexuality is not illegal in Mongolia. Most of the documented violence had been familial, with LGBT people attacked by a family member when their sexual orientation and/or gender identity was suspected or became known. However, there have also been gang attacks on gay men and transgendered persons (para 58). Country information did not persuade the Tribunal that homosexuals generally were persecuted in Mongolia (although individual homosexuals might be), but it did indicate that there was 'a lack of acceptance by society

			in general and by many families and that societal discrimination can and does occur' (para 61). However, the applicant did not claim 'to have been denied the right to subsist nor precluded from earning a living' (para 62). The Tribunal observed that the applicant had stated he was 'shy', and did not 'appear to be a person who is naturally flamboyant and confident' (para 63). The Tribunal was satisfied that if the applicant returned to Ulaan Baatur in Mongolia, he would not 'engage in the kind of overt activity or conspicuous behaviour which might arguably lead to harm from homophobic elements', although he might 'experience hostile attitudes and abusive comments from some people' (para 63). The Tribunal was not satisfied that there were substantial grounds for believing that the applicant faced a real risk of significant harm in the reasonably foreseeable future on return to Mongolia (para 64).

1400769 [2014] RRTA 500 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/500.html (Unsuccessful)	11 June 2014	56	This case relates to: • the meaning of 'significant harm' The applicant was a national of Vietnam and claimed protection on a number of grounds, including that he would face religious, political and economic oppression (see paras 50, 53–4) as well as in relation to a territorial dispute between China and Vietnam (para 55). His final claim was that he would be separated from his son. The Tribunal found that this would not constitute 'significant harm' under s 36(2A) (para 56): 'The applicant has also made claims that he fears harm because he will be separated from his son, who the applicant has lost contact with in January 2014 and who has been included as a dependent in his mother's Partner visa application. The Tribunal finds that any emotional or psychological harm that might arise to the applicant due to being physically separated from his son would not be for a Convention reason, nor is there a nexus between any harm the applicant claims he might face and his country of nationality. The Tribunal further finds that any such harm does not constitute significant harm as defined in s 36(2A) of the Act.'
1313153 [2014] RRTA 463 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/463.html	26 May 2014	96–103	This care relates to: • the meaning of 'significant harm'. The applicant was a national of Vietnam. She feared

(Unsuccessful)			harm from her estranged husband because of domestic violence and from the Vietnamese authorities because she was a Catholic and for being as a failed asylum seeker (para 1). The Tribunal rejected her claims for protection as a refugee. The applicant also claimed she would suffered 'significant harm' as a Catholic with state protection. While accepting that the applicant would suffer some harassment and discrimination, the Tribunal rejected that this would constitute significant harm (para 98): 'The Tribunal accepted the applicant's claims regarding plain clothes police disrupting church services, destroying church posters or statutes and the closing off of a popular prayer site. The Tribunal has had regard to whether such 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. On the evidence before it, the Tribunal is not satisfied the harassment of or discrimination towards Catholics 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. The Tribunal accepts the harassment and discrimination may cause some humiliation to the first named 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 will amount to significant harm.' The applicant also claimed she would suffer significant harm as a result of facing stigma or societal discrimination arising from her being separated or considered divorced or being considered to be single as well as her having children born out of wedlock (para 100). The Tribunal rejected this claim, stating (paras 100–01): 'The Tribunal notes the country information there is social discrimination against single mothers in Vietnam. The Tribunal accepts there is likely to be social discrimination as a woman with children born out of wedlock or because she is separated from her estranged husband or an adulteress. The Tribunal accepts that discrimination may cause some humiliation to the first named applicant. The Tribunal accepts too as she is from a rural area of Vietnam, where society is more conservative. The Tribunal considers the only relevant head of significant harm to that issue is degrading

			treatment or punishment. 'Due to the lack of detail and the vagueness of her claimed harm arising from the social stigma or social discriminations for any reason regarding the marital or parental status of the first named applicant, the Tribunal is not satisfied that discrimination would cause extreme humiliation which is unreasonable. Therefore, the Tribunal is not satisfied any harm arising from the stigma or social discrimination will amount to significant harm.'
13122991 [2014] RRTA 398 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/398.html (Unsuccessful)	22 May 2014	64–9	This case relates to: • the meaning of 'significant harm' The applicant was a national of South Korea. He had limited formal education and claimed that he did not want to return to South Korea 'because he fears social humiliation and discrimination because it is a highly competitive society and he lacks the qualifications and education necessary to compete for good jobs' (para 24). In addition, his father had been abusive while he was growing up, beating the family and failing to provide for them financially (para 25). Finally, his brother had borrowed money from certain people, who would exert pressure on the applicant to repay the loan (para 25). The Tribunal rejected the applicant's application. While the Tribunal accepted that the applicant may be 'discriminated against socially because of his

			educational background and lack of money', the Tribunal noted that this did not equate to significant harm for the purposes of the legislation (para 67). The Tribunal's findings with respect to the applicant's claim for complementary protection are set out below (paras 66–8): 'The Tribunal considered the applicant's claim that his home situation made it impossible for him to lead a normal life as his father was often drunk and bashed the family and did not bring home sufficient money. As stated previously, the Tribunal accepts that this may have been the situation in the applicant's past. However, in assessing the risk of harm to the applicant in the future the Tribunal notes that the applicant is now a [age] year old adult with [number] years formal education and work experience in both South Korea and Australia. He has demonstrated his independence from his family through travelling to Australia twice and to [Country 1] on one occasion. He has worked in Australia and studied English in [Country 1]. As an adult male of independent financial means the applicant is not compelled to return to the family home in South Korea and the Tribunal finds that he will not return to the family home. Accordingly the Tribunal finds that there are not substantial grounds for believing the applicant is at real risk of significant harm in this regard in the future. 'The Tribunal considered the applicant's claims that the

			living environment in South Korea is harsh, he will be discriminated against socially because of his educational background and lack of money and this will affect his capacity to find a partner to marry. The Tribunal noted that the applicant is now older and considered his claim that people of his age have to be experienced and well educated to compete with younger applicants who are preferred by potential employers. The Tribunal considered the applicant's claim that the frustration and stress accumulated through the repeated job search process will shorten his life expectancy and make him lead a miserable life. Again, while the Tribunal accepts that the applicant may have concerns regarding these issues, it does not accept that these issues equate to significant harm as it is defined in the legislation. Accordingly the Tribunal finds that there are not substantial grounds for believing that the applicant is at real risk of significant harm in the future if removed from Australia. 'The Tribunal considered the applicant's claims that he will be forced to repay his brother's debt; that he will be subjected to significant harm by the loan sharks; and that he may be forced to sell his organs to repay the debt. Given the laws in place specifically to protect debtors, their family members, and other people connected to them; the police response to the applicant's call for assistance in the past; and the independent information regarding the general effectiveness of police in South Korea; and the

			mechanisms in place to assist low-income earners to repay debts from private money lenders, the Tribunal finds that the level of protection offered by the South Korean authorities reduces the risk of significant harm to the applicant to less than a real risk. Accordingly, the Tribunal is satisfied that there are not substantial grounds for believing the applicant faces a real risk of significant harm from debt collectors in the future in South Korea.'
1212347 [2014] RRTA 390 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/390.html (Unsuccessful)	26 March 2014	10, 61–5	This case relates to: • the meaning of 'significant harm' The applicant was a Sri Lankan national with Tamil ethnicity. He feared that certain armed men were looking for him because his brother had been involved with the Liberation Tigers of Tamil Elam. He also claimed to fear harm from the Sri Lankan authorities as he was Tamil and had departed Sri Lanka illegally. The Tribunal rejected his claims for protection as a refugee as well as under the complementary protection regime. Regarding significant harm arising as a result of his Tamil ethnicity, the Tribunal noted (para 62): 'The Tribunal accepted … 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. 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. On the evidence before it, the Tribunal is not satisfied the harassment of or discrimination towards Tamils involves severe physical 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. 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 will amount to significant harm.' Regarding his illegal departure, the Tribunal noted (para 63): 'The Tribunal has had regard to whether the harm the applicant may suffer arising from his committing offences under the IEA amounts to significant harm, in particular, his bail conditions, being detained for a short

			period while on remand and imposition of a fine. The Tribunal considers the only relevant forms of significant harm are torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. On the evidence before it, the Tribunal is not satisfied the applicant's bail conditions, detention on remand or fine will involve severe physical pain or suffering, therefore it does not meet the definition of torture in s.5(1). Similarly, the bail conditions, detention while on remand and fine cannot meet limb (a) in the definition in s.5(1) of cruel or inhuman treatment or punishment, nor could his bail conditions, detention while on remand or fine be reasonably regarded in all the circumstances as cruel or inhuman in nature for the purpose of limb (b) of that definition. The Tribunal is not satisfied too that the bail conditions, detention while on remand and fine would cause extreme humiliation which is unreasonable. Therefore, the Tribunal is not satisfied any harm arising from the bail conditions, being detained while on remand or fine will amount to significant harm.' The Tribunal applied the same reasoning in 1218768 [2014] RRTA 374 (31 March 2014) (see paras 10, 71–4).
1318565 [2014] RRTA 191 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/19	12 March 2014	58–60, 69, 72	This case relates to: • the meaning of 'significant harm' • loan sharks

1.html			The applicant was from Malaysia. He was Indian by ethnicity and followed the Hindu religion. He feared harm from 'loan sharks', i.e. money lenders who had imposed debilitating levels of interest rates on money they had loaned to the applicant (paras 23, 36). *Refugee claim* (paras 58–66) The Tribunal accepted that the applicant was in significant debt to loan sharks in Malaysia and that they had previously abducted and beaten him in order to enforce the payment of the debt. The Tribunal found that the applicant did not have the means to repay the debt, or even a significant part in the reasonably foreseeable future (para 58). As such, the Tribunal found that there was a real chance that the applicant would face a threat to his life or liberty, significant physical harassment and/or ill-treatment if he were to return to Malaysia now or in the reasonably foreseeable future. The Tribunal found that the harm the applicant would be subjected to involved 'serious harm' (para 59). Although the applicant claimed that he was discriminated against as an ethnic Indian and felt like a third class citizen in Malaysia he did not claim, and the Tribunal did not find, that his race or religion played any part in motivating the loan sharks to take action against him (para 60). Further, he was found to be part

			of a particular social group (para 62). As a result, The Tribunal found that the applicant did not have a well-founded fear of persecution in Malaysia for the reason of his race, religion, membership of a particular social group or any other Convention ground (para 66). *Complementary protection claim* (paras 67–75) The Tribunal accepted evidence that the applicant had already suffered a deprivation of his liberty and severe physical pain at the hands of the loan sharks. The Tribunal was satisfied that there was a real risk that the applicant would be subjected to assault, significant harassment, and various forms of punishment for his failure to meet his financial obligations to loan sharks. The Tribunal was satisfied that the harm involved severe physical and/or mental pain or suffering, which was intentionally inflicted on the applicant. The Tribunal found that the harm also involved an act that caused, and was intended to cause, extreme humiliation which was unreasonable. The Tribunal found that the treatment that the applicant would be subjected to amounted to cruel or inhuman treatment or punishment or degrading treatment or punishment (para 69). The Tribunal concluded the significant harm the applicant faced was one faced by him personally, and found it would not be reasonable for the applicant to

			relocate within Malaysia (para 71). As such, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there was a real risk that he would suffer significant harm (para 72).
1217887 [2014] RRTA 12 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/12.html	15 January 2014	21, 28–9, 45– 54, 71–7, 91	This case relates to • the meaning of 'significant harm' • army deserter • laws of general application and individual risk The applicant was a Sunni Muslim from Lebanon. He had served in the Lebanese armed forces, where he claimed to have faced discrimination and persecution as a result of his religion and anti-Syrian political opinions (para 27). He also claimed he had been ordered to selectively shoot Sunnis during fighting (para 29). He claimed he had deserted the armed forces when he came to Australia and feared punishment as a result (para 28). *Refugee claim* (paras 58–60, 76–84) The Tribunal found that Sunnis had not been the victims of violence caused by Hezbollah, Alawites, Syrian agents or anyone else in Akkar district (para 54). The Tribunal did not accept that a person with the applicant's profile – a Sunni who opposed pro-Syrian parties and organisations and who was in the Lebanese

			armed forces – faced a real chance of persecution at the hands of Hezbollah, Shia Muslims, Alawites, Syrian agents or anybody else (para 55). The Tribunal was not satisfied that the Lebanese armed forces engaged in sectarian violence or that the applicant had been given orders to shoot Sunnis but not Alawites in Tripoli or Sunnis but not Shias in the south of Beirut (para 58). *Complementary protection claim* (paras 61–94) The Tribunal found that the applicant was a deserter of the Lebanese army (para 63–4). The Tribunal found that there was a real risk that on return to Lebanon the applicant might be arrested, charged and convicted of desertion and sentenced to a term of imprisonment between 2 and 5 years (para 66). The Tribunal found that this was pursuant to a law of general application (para 68). However, country information showed that the Minister of Defense had its own prisons (paras 69 – 70), where there was evidence of detainees being tortured (paras 71–5). In light of this, the Tribunal found that the applicant faced a real chance of serious harm amounting to persecution, but that this was not for a Convention reason (para 77). The Tribunal found the applicant could not avail himself of state protection, and it was not reasonable for him to relocate within Lebanon (paras 93–4). As such, the Tribunal found that there were substantial

			grounds for believing that as a necessary and foreseeable consequence of being removed to Lebanon, there was a real risk that the applicant would not only be imprisoned for 2 to 5 years but while in prison he would be subjected to treatment amounting to torture or cruel or inhuman treatment or punishment, namely: 'being detained incommunicado for a period of time up to several months; being insulted, humiliated, threatened and beaten with electric cables, hoses, or sticks, being punched and kicked on all parts of the body; being forced to remain standing for long periods; being deprived of sleep as well as toilet facilities; being subject to the Balanco suspension or falaqa (blows to the soles of the feet); and/or being exposed naked' (para 91).
1305442 [2013] RRTA 887 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/887.html	23 December 2013	13, 16, 22, 27–9, 37, 40–5	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' • extortion and death threats The applicant was from Colombia. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed. His wife applied as a member of the same family unit as the applicant. *Refugee claim* (paras 17–25) The Tribunal found the applicant's mother was being

			extorted for money by [Organisation A], a guerilla group in Colombia. By relation, the applicant had been threated by [Organisation A]. He and his wife had fled to Australia, while his mother (who was taking care of her own mother) had stayed behind in Colombia, in hiding. While the Tribunal accepted that extortion demands and other threats had been made against the applicant and his family, the Tribunal found that these threats were not for reasons of race, religion, nationality, membership of a particular social group or political opinion, i.e. for a Convention reason (para 22). *Complementary protection claim* (paras 26–45) The Tribunal found that death threats had been made against the applicant by [Organisation A]. The Tribunal accepted that, if they were carried out, this would constitute 'significant harm' through the applicant being arbitrarily deprived of his life and/or subjected to cruel or inhuman treatment or punishment (paras 28–9). The Tribunal found that the threats had been genuine (para 43) and sufficiently substantial to constitute a 'real risk' (para 44). The Tribunal found that the risk was faced by the applicant personally and not by the population generally (para 41); it was not reasonable for the applicant to relocate within Colombia (para 37); and the Tribunal was not satisfied that the level of protection available in the applicant's circumstances would reduce the risk of the applicant being significantly harmed to less than a real risk (para 40).

			The Tribunal was satisfied that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Colombia, there was a real risk that the applicant would suffer significant harm (para 45).
1302314 [2013] RRTA 847 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/847.html	10 December 2013	73–6	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' The applicant was from Pakistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed. *Refugee claim* (paras 55–72) The Tribunal found that the applicant was abducted for ransom in 2012, that it was highly probable that [Mr F] was behind the abduction to recoup money that he believed the applicant's former business owed him, and that [Mr F] had become 'quite hostile' towards the applicant and 'would not have stopped short of harming him further had the ransom not been paid' (para 60). The Tribunal was satisfied that there was 'more than a remote or speculative prospect' that [Mr F] might take further steps to extort more money from, or harm, the applicant or his family (para 60).

			The Tribunal was satisfied that the motivation for the harm from [Mr F] arose 'primarily and essentially from the particular circumstances of the financial arrangements between the applicant's former company and his key investor [[Mr F]'s father]' (para 61). The Tribunal was not satisfied that the motivation for the harm was 'essentially and significantly because the applicant was a businessman or because he is a Muhajir or because he was a Muhajir businessman' (para 61). The Tribunal also considered the applicant's claims about crime in Karachi directed against businessmen, but was not satisfied that any such harm 'would be directed against him primarily and essentially as a Muhajir or as a member of the particular social group of "Muhajir businessmen" (or even "businessmen")' (para 62). The Tribunal found that those who engaged in kidnapping and extortion in Karachi were 'criminally motivated and targeting businessmen because they are persons with money and thus susceptible to such crime' (para 63). The Tribunal also considered the applicant's claim that, as a returnee from overseas, he would be perceived as wealthy and therefore a target for robbery and kidnapping for ransom (para 66). Although the Tribunal found this submission to be 'rather speculative', it found that, in any event, 'the ascribed motivation is clearly again financial', rather than for a Convention

			reason (para 66). *Complementary protection claim* (paras 73–6) The Tribunal found: 'The Tribunal has concluded at paragraph 60 above that given past events and the degree of animosity displayed, future harm at the instigation of [Mr F] (for non-Convention reasons) is more than a remote or speculative prospect. This is not a real risk faced by the population generally. In the particular circumstances of this case, other factors discussed which give rise to some degree of risk, including the general risk of criminality to businessmen and to persons returning from overseas and perceived as wealthy, add cumulatively to the risk of harm for a non-Convention reason or reasons.' (para 74) 'Having regard to all the relevant circumstances, the Tribunal is satisfied that there are substantial grounds for believing that, cumulatively, there is a real risk that the applicant will face significant harm on return to Pakistan.' (para 75)
1305331 [2013] RRTA 877 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/877.html	11 November 2013	41, 47, 53, 65–79, 80–6	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' • prison conditions The applicant was a Tamil man from Sri Lanka

			(although he had a Sinhalese last name). The applicant and his father were involved with the United National Party (UNP) (in opposition to the Sri Lankan government). The applicant claimed his father was physically attacked for this. He claimed supporters of the government tried to set fire to the applicant's house (paras 28–30). The applicant also claimed that he feared harm in Sri Lanka because of his Tamil ethnicity (paras 42–3). The applicant had left Sri Lanka illegally and had been involved with driving and steering the boat which carried a number of other Sri Lankan asylum seekers (para 55). *Refugee claim* (paras 28–79) The Tribunal accepted that the applicant's father had been involved with the UNP and that the applicant had assisted him (para 40). However, the Tribunal found that the chance that the applicant's support for the UNP would result in him facing serious harm in the reasonably foreseeable future in Sri Lanka was remote (para 41). The Tribunal accepted that the applicant had suffered harassment, including being prevented from working. However the Tribunal did not consider this to be significant harassment or a denial of employment or a denial of the applicant's capacity to subsist. Overall, the

			Tribunal found that the applicant was not subject to serious harm because of his Tamil ethnicity or his father's Sinhalese name (para 47). With respect to his departure from Sri Lanka, the Tribunal found that the applicant may be subject to imprisonment if he were suspected not only of departing illegally but also transporting other persons illegally out of Sri Lanka (para 65). The Tribunal found that there was more than a remote chance that the applicant's activities in helping to steer and drive the boat containing Sri Lankan asylum seekers who departed Sri Lanka illegally might come to the attention of the Sri Lankan authorities on his return to Sri Lanka. As such, there was more than a remote chance that he could remain in detention for a longer period of time than he would normally remain in detention for if found on remand as a failed asylum seeker returning after departing Sri Lanka illegally. The Tribunal considered evidence that Sri Lankan authorities often presume that those who fled the country in an unauthorised manner have links to the LTTE (para 70). In addition, the Tribunal considered and accepted country information that detainees in Sri Lankan police stations and prisons are often tortured (69–78). The Tribunal found that the applicant faced a real chance of serious harm in the reasonably foreseeable future if returned to Sri Lanka. However the

			Tribunal was not satisfied that the essential and significant motivation for the harmed feared could be attributed to a Convention ground (para 79). *Complementary protection claim* (paras 80–6) The Tribunal found that the conditions in prisons in Sri Lanka were such that there was a real risk that the applicant would suffer harm beyond being deprived of his liberty in accordance with a lawful sanction relating to an alleged offence. The Tribunal further found that the treatment the applicant might face would also involve the intentional infliction of pain or suffering or extreme humiliation which was unreasonable (para 82). The Tribunal accepted the applicant's evidence that his wife was visited by Sri Lankan authorities after the applicant had departed Sri Lanka, and that she was sexually assaulted by those Sri Lankan authorities. This further showed that the authorities in Sri Lanka were open to abusing their power (para 83). The Tribunal was satisfied that the real risk was not one faced by the population of Sri Lanka generally but by the applicant personally (para 85). Further, the applicant could not reasonably relocate within Sri Lanka (para 85). As such, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being

			removed from Australia to Sri Lanka, there was a real risk that he would suffer significant harm (para 86).
1303849 [2013] RRTA 469 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/469.html	18 July 2013	87–94	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Shahristan District in Daikundi Province, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 74–86) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 32–40). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply

			as a Hazara Shia in Afghanistan (paras 74–6), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 77). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 77–86): • *Harm in Daikundi*: The Tribunal reviewed country information indicating that the security situation in Daikundi Province was relatively stable, and that the challenges facing the Hazara community in Daikundi Province were economic rather than security related (para 78). Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in Daikundi Province from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 79). • *Harm on the roads in and around Daikundi, and returning from Kabul*: Given the limited health care facilities and services in Shahristan District and the fact that the applicant had a wife and a number of young children, the Tribunal found that he would need to travel regularly outside of Shahristan District to obtain medical care for himself and his family (para 80). The Tribunal also found that the applicant would likely have to regularly travel inside and outside the district and province to obtain

			income to support himself and his large family (para 80). Moreover, the applicant would have to travel from Kabul (the country's major entry point by air) back to his home area on return to Afghanistan (para 80). The Tribunal reviewed country information indicating that there had been a number of instances of criminality on the roads in Daikundi, involving armed robbery, shootings, and kidnapping for ransom (para 81). Based on this country information and the applicant's individual circumstances, the Tribunal accepted that he faced a real chance of persecution on the roads in and around Daikundi and returning from Kabul (para 82). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 83). This was because of authoritative country reports indicating that travel on the roads was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 83). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 84). • *Family claims*: The Tribunal accepted that the applicant's father was killed in the late 1990s after an incident where Hazara men attacked their village (para 85). However, the applicant stayed in the area for a further year without anything happening to

			him, a long period of time elapsed, and he returned in 2008 without anything averse happening to him (para 85). Hence, the Tribunal found that the applicant did not face a real chance of persecution on account of his membership of a particular social group consisting of his family (para 85). *Complementary protection claim* (paras 87–94) Given the country information indicating a substantial amount of targeting of persons on the roads in and surrounding Daikundi, and from Kabul to the applicant's home area, and given the Tribunal's findings regarding the applicant's need to travel on these roads, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on these roads (para 87). This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 87). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 90). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the

			fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; and the existence of IOM reintegration assistance plans for returnees (para 91). Moreover, the applicant had work skills in construction and had experience living in large cities (para 91). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links or friends in Kabul; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; the applicant's illiteracy and very limited education, which would reduce his prospects of obtaining employment; and the fact that the applicant had a large family (para 92). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 93). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 89).

			(c) *Risk faced by population generally and not by applicant personally*: The Tribunal took account of the Department of Immigration – PAM3 Refugee and Humanitarian – Complementary Protection Guidelines, which stated that s 36(2B)(c) should be interpreted to mean that the particular individual must face a real risk in light of the individual's specific circumstances, although it was not necessary to show that an individual had been or would be 'singled out' or targeted (para 88). The Tribunal found that persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads (para 88). However, the risk of harm was also faced by the applicant personally in his specific circumstances, as someone who would need to travel on these roads and who faced being directly targeted as an individual (para 88). Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 88). Editorial note: The reasoning in this case is similar to that for 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.

1219395 [2013] RRTA 633 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/633.html	26 June 2013	32–48	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • 'prayer camps' The applicant was a national of Ghana. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment – if removed. *Refugee claim* (paras 15–31) The Tribunal accepted that the applicant developed a mental illness following his parents' death and that if he returned to Ghana, he could be forcibly placed into a government psychiatric hospital or 'prayer camp' (paras 15–17). The Tribunal accepted that persons with mental illness in Ghana constituted a particular social group, since they had a characteristic common to all members (mental illness) and the possession of this characteristic distinguished the group from society at large (paras 19–20). The Tribunal considered country information indicating that there were significant inadequacies in Ghana's mental health care system (paras 22–7). However, the Tribunal was not satisfied that this amounted to persecution for reason of the applicant's membership of the particular social group of persons

			with mental illness: 'Where there are inadequacies in a health care system this does not amount to persecution as persecution must involve systematic and discriminatory conduct by a person or persons. This implies selective, non-random harassment – it must be deliberate, premeditated and motivated. I am not satisfied that the government policy is deliberate or premeditated but is instead a result of lack of funds and initiative. Furthermore it appears as if Ghana is attempting to improve the situation for mentally ill patients …' (para 28) The Tribunal concluded that the applicant did not face a real chance of persecution from the state for reason of his membership of a particular social group or any other Convention reason (paras 28–9). The applicant also claimed that he faced a real chance of persecution at the hands of Islamic groups. However, on the basis of country information, the Tribunal rejected this claim (paras 30–1). *Complementary protection* (paras 32–48) The Tribunal was satisfied that if the applicant returned to Ghana, there were substantial grounds for believing that he would be forced into a prayer camp by members of the public or the police (para 36). On the basis of country information, the Tribunal found that patients

			were routinely taken to prayer camps, which were run by people who believed that mentally ill people possessed evil spirits (paras 38–9). The country information indicated that patients were subjected to verbal and physical abuse: 'most are chained up to logs, trees or other fixed spots, some for 24 hours a day. Many had to eat, sleep, defecate and urinate in the same spot. They are also regularly denied food and drink in order to get rid of "evil spirits"' (para 38). Moreover, patients were unable to leave until the prophets declared them healed (para 38). The Tribunal was satisfied that such treatment amounted to cruel or inhuman treatment or punishment (paras 37–41). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the situation for mentally ill patients was state-wide. Hence, it would not be reasonable for the applicant to relocate to another area within Ghana (para 44). (b) *State protection*: On the basis of country information, the Tribunal found that prayer camps operated with little or no state regulation. Hence, the Tribunal was not satisfied that the applicant could obtain state protection such that there would not be a real risk that he would suffer significant harm (paras 42–4). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the risk of harm was not faced by the population

			generally: 'The applicant faces a real risk because he is mentally ill. His position is particularly vulnerable given that he has no family or community support and has not lived in Ghana since he was [age]' (para 46).
1301683 [2013] RRTA 765 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/765.html	20 June 2013	23–71	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' • cruel or inhuman treatment or punishment • degrading treatment or punishment • relevance of international jurisprudence The applicant was a young Tamil man from [Village 1] in Sri Lanka. His claim for a protection visa was based on three grounds: (1) claimed past events in Sri Lanka; (2) his Tamil ethnicity; and (3) his unlawful departure from Sri Lanka. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, degrading treatment or punishment – if removed. *Claimed past events in Sri Lanka* (paras 9–29) The Tribunal accepted that army personnel stationed in the applicant's village had picked on the applicant, along with other Tamil boys, to run errands, such as buying beer or cigarettes (para 23). The Tribunal considered this to be to 'harassment or bullying', which was 'demeaning' (para 25). The Tribunal found that

			such conduct was 'motivated in part because the applicant is Tamil and the SLA personnel involved are Sinhalese' (para 25). However, the Tribunal did not consider such conduct to rise to the level of 'serious harm' (para 26). The Tribunal considered that the chance of facing serious harm from the SLA personnel was 'remote and far-fetched' (para 26). Hence, the Tribunal found that the applicant did not have a well-founded fear of persecution (para 28). Further, the Tribunal did not consider that there were substantial grounds for believing that there was a real risk of significant harm to the applicant (para 29). *Tamil ethnicity* (paras 30–33) On the basis of country information, the Tribunal accepted that some Tamil returnees faced arrest, interrogation and torture, in circumstances where they had engaged in some activity or had some past history which brought them within one of the groups identified in the UNHCR Guidelines to be at risk (para 30). The Tribunal found that the applicant did not have any adverse profile in Sri Lanka (para 31). On this basis, the Tribunal did not accept that there was a real chance that the applicant would face any form of serious harm due to his membership of any of the following social groups: 'failed asylum seeker', 'young male Tamil returnee who has unsuccessfully sought asylum in the West and/or who has left Sri Lanka unlawfully', 'young Tamil males', 'young Tamil males from the North-West

			of Sri Lanka' or 'young Tamil males from [Village 1]' (para 31). The Tribunal also did not accept that there was a real chance that the applicant would face any form of serious harm due to his race, religion, or any political opinion, either actual or imputed (para 31). Hence, the Tribunal found that the applicant did not have a well-founded fear of persecution (para 32). Further, the Tribunal did not consider that there were substantial grounds for believing that there was a real risk of significant harm to the applicant (para 33). *Initial processing upon arrival* (paras 37–38) On the basis of country information, the Tribunal found that, on arrival at the airport in Colombo, the applicant would be questioned (para 37). The Tribunal did not consider that this gave rise to a real chance of serious harm (para 37). Further, the Tribunal did not consider that questioning at the airport gave rise to substantial grounds for believing that there was a real risk of significant harm to the applicant (para 38). *Unlawful departure from Sri Lanka – refugee claim* (paras 34–6, 39–44) The Tribunal accepted that the applicant left Sri Lanka in breach of Sri Lankan domestic law (the *Immigrants & Emigrants Act* (*I&E Act*)) (para 34). The Tribunal noted that it had received advice from DFAT that, as of November 2012, Sri Lanka had commenced charging and remanding irregular maritime arrivals who had

			been returned from Australia (para 35). On the basis of country information, the Tribunal found that the *I&E Act* was a law of general application and was not applied in a discriminatory manner (paras 40–1). The Tribunal further found that the punishment for unlawful departure was most likely to be a fine and not a custodial sentence (para 42). The Tribunal found that, even if the applicant experienced short-term imprisonment on remand before applying for bail, or a fine as a result of being found guilty under the *I&E Act*, and even if this harm amounted to 'serious harm' (which the Tribunal doubted), it did not amount to persecution for a Convention reason because it involved the enforcement of a generally applicable law (para 44). *Unlawful departure from Sri Lanka – complementary protection claim* (paras 45–71) Based on country information, the Tribunal considered that the chance of bail not being granted to the applicant to be remote and far-fetched (para 52). However, the Tribunal accepted that there was a real risk that the applicant would spend up to four days on remand in Negombo prison (para 53). This would occur if the applicant arrived in Sri Lanka on a weekend or public holiday (para 52). The Tribunal considered country information indicating

			that that remand prisoners in Sri Lanka faced poor conditions, including overcrowding, unhygienic conditions, insufficient medical care, and incidents of maltreatment (para 54). *Arbitrary deprivation of life or death penalty* The Tribunal did not consider that there was a real risk that the applicant would be arbitrarily deprived of his life or would face the death penalty if remanded in custody upon his arrival in Sri Lanka (para 55). This was because there was 'no persuasive evidence before [the Tribunal] to suggest that these things will occur' (para 55). *Torture* The Tribunal did not consider that there was a real risk that the applicant would suffer torture if remanded in custody upon his arrival in Sri Lanka (paras 56–7). This was because the UNHCR Guidelines did not suggest that returnees *per se* were at risk of torture, and the applicant did not have any adverse profile to suggest that he was at risk (para 57). *Cruel or inhuman treatment or punishment* The Tribunal did not consider that there was a real risk that the applicant would suffer cruel or inhuman treatment or punishment if remanded in custody upon his arrival in Sri Lanka (paras 58–61). After considering international jurisprudence, including from the

			European Commission on Human Rights (para 59), the Tribunal found: 'The international courts have found the following types of conduct to constitute cruel or inhuman treatment or punishment: threats of torture, forcible medical treatment, abuse whilst incarcerated, female genital mutilation, forced marriage, domestic violence, mob violence, blood feuds, organised criminal activity, enforced disappearances, relatives of victims of human rights violations and certain breaches of socio-economic rights.' (para 60, footnotes omitted) 'Whilst the conditions the applicant will face on remand for a short period are unpleasant, and would give rise to feelings of fear and anxiety, they are not, in my view, so serious to rise to the level of conduct or oppression that 'shocks the conscience' or is an outrage on his personal dignity. I find the treatment or punishment the applicant faces on remand for a short period could not reasonably be regarded as cruel or inhuman treatment or punishment.' (para 61) *Degrading treatment or punishment* The Tribunal found that there were substantial grounds for believing that there was a real risk that the applicant would suffer degrading treatment or punishment if remanded in custody upon his arrival in Sri Lanka (paras 62–71). After considering international

			jurisprudence, including from the European Court of Human Rights and the Inter-American Court of Human Rights (para 63), the Tribunal found: 'On the evidence before me, the applicant exhibits certain personal characteristics which render him so vulnerable that the conduct, punishment or treatment he faces while on remand, even for a short period, would rise to the level of degrading treatment. These characteristics are his youth, innocence, impressionability, immaturity, lack of worldly experience together with his appearance and slight physical stature. In simple terms, while he may now have turned [age], he is still effectively a child in terms of my assessment of his particular vulnerability.' (para 64) 'In my assessment in facing such treatment or punishment while on remand there is a real risk that he will, based upon the country information about prison conditions in Sri Lanka, experience humiliation or debasement, a diminution of his dignity or fear or anguish so significant such that it could be regarded as capable of breaking his physical or moral resistance. I am satisfied that he will experience *extreme humiliation which is unreasonable* for the purpose of s.5(1) of the Act. I find the treatment or punishment the applicant faces on remand for a short period ought be regarded as degrading treatment or punishment taking his particular

			characteristics and attributes into account.' (para 65, emphasis original) The Tribunal noted that the definition of 'degrading treatment or punishment' in the Act excluded an act or omission 'that was not inconsistent with Article 7 of the [ICCPR]' or 'that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the [ICCPR]' (s 5(1)). The Tribunal considered that the conditions that would be faced by the applicant if he was remanded in custody amounted to degrading treatment inconsistent with ICCPR Art 7 (para 69). In reaching this conclusion, the Tribunal considered jurisprudence from the European Court of Human Rights indicating that the conditions faced by prisoners in Sri Lanka (overcrowding, lack of sanitary facilities, and lack of bedding) amounted to degrading treatment inconsistent with ICCPR Art 7 (para 69). Further, the Tribunal considered that, although the treatment faced by the applicant if he was remanded in custody would arise from lawful sanctions, such treatment would offend ICCPR Art 10(1) (para 70). Accordingly, the Tribunal found that there were substantial grounds for believing that there was a real

			risk that the applicant would suffer significant harm if he was removed from Australia to Sri Lanka (para 71).
1304445 [2013] RRTA 374 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/374.html	29 May 2013	27–42	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • police informants The applicant was from Nepal. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life – if removed. The Tribunal accepted that the applicant had provided information to the police in Nepal, which led to the arrest and imprisonment of a number of drug dealers; that members of the applicant's family had been subjected to intimidation and threats by persons involved in the drug trade; and that those persons had threatened to kill the applicant for being a police informant (para 33). The Tribunal also accepted the applicant's claim that the people imprisoned had now been released, thereby placing the applicant at an even greater risk of harm from them and their associates (para 34). On this basis, the Tribunal found that the applicant was at risk of being arbitrarily deprived of his life by criminals seeking to harm him for being a police informant (para 37).

			In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal accepted the applicant's claim that relocating within Nepal would not provide him with safety, since the persons that he feared had demonstrated that they had the resources, ability and persistence to travel considerable distances to find him (para 38). (b) *State protection*: The Tribunal considered country information indicating that the authorities in Nepal had limited resources, that the police were prone to corruption, and that a witness protection program was not available in Nepal (para 36). On this basis, the Tribunal was not satisfied that the applicant could obtain protection from the state such that there would not be a real risk of significant harm (para 38). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the risk faced by the applicant was faced by him personally (para 37). *The Treaty of Peace and Friendship* The Tribunal also considered information relating to the *Treaty of Peace and Friendship* between India and Nepal, which enabled the citizens of one country to live in the other (para 41). However, the Tribunal found that the applicant would face a real risk of significant harm even if he lived in India. The Tribunal found that the conditions which would enable the applicant to go to

			India would also enable the people he feared to follow him there (para 42). The Tribunal found that those people had demonstrated a strong determination to locate the applicant, and accepted the applicant's claim that they would seek to follow the applicant wherever he settled (para 42).
1215413 [2013] RRTA 346 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/346.html	24 May 2013	48–63	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • torture • cruel or inhuman treatment or punishment The applicant was from the Magdalena Medio region in Colombia. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life, torture, and cruel or inhuman treatment or punishment – if removed. *Refugee claim* (paras 12–47) The Tribunal accepted that the applicant was managing a family farm in Magdalena Medio from 2003; that [Mr A], from a paramilitary group, demanded payments from him in 2004; that the applicant refused to pay and as a result, was attacked in his car by two motorcyclists in May 2004, and attacked and tortured at his farm in November 2005 (paras 12–14). The Tribunal accepted that the applicant returned to the family farm in June 2006, after [Mr B], [Mr A]'s father, demobilised the

			paramilitary group in February 2006; and that during this time of relative peace in the area, the applicant rebuilt the farm for about five years (para 15). The Tribunal accepted that, in 2011, when [Mr A] was re-arming, the applicant received a condolence card (commonly used as a death threat in Colombia), telephone threats and demands for payment (paras 16–19). The Tribunal found that the physical ill-treatment suffered by the applicant in the past constituted serious harm (paras 27, 31). The Tribunal considered whether there was a real chance that the applicant would face serious harm in the future, given that media reports suggested that [Mr A]'s organisation had now been dismantled (para 40). However, the Tribunal accepted, on the basis of country information and the applicant's evidence, that paramilitary groups remained in the Magdalena Medio region and that they had mutated into the BACRIM (para 43). Although [Mr A] had been arrested and a trial appeared to be pending, the Tribunal was not satisfied that circumstances had changed so substantially that there was no longer a real chance that the threats against the applicant would be carried out if he were to return to Magdalena Medio, either by [Mr A] or by others at his behest (para 45). Moreover, the Tribunal was satisfied that there was a real chance that the applicant could face serious harm at the hands of paramilitary groups that had mutated into the BACRIM

			(para 45). However, the Tribunal found that the essential and significant reason for the harm suffered by the applicant in the past and the future risk of harm faced by the applicant was not a Convention reason. Rather, the reason for the past harm and the future risk of harm was revenge and extortion (paras 32–4, 46). On this basis, the Tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason if he returned to Colombia (para 47). *Complementary protection claim* (paras 48–63) The Tribunal found that the harm feared by the applicant constituted arbitrary deprivation of life, torture, or cruel or inhuman treatment or punishment (para 48). The Tribunal found that the criminal proceedings against [Mr A] were not concluded and that there was more than a remote chance that [Mr A] could be freed to carry out the threats against the applicant or that [Mr A] could engage another group to carry out those threats (para 49). The Tribunal was also satisfied that the applicant faced a real chance of significant harm from the BACRIM, because he would be perceived as having money and he had refused to make payments in the past (para 49). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it

			would be reasonable for the applicant to relocate to another city in Colombia, such as Cartagena, Barranquilla or Bogota (para 51). However, on the basis of country information and the applicant's evidence, the Tribunal found that there were connections between the paramilitary groups and the police, and that the applicant might be tracked through police or army connections (paras 51–4). The Tribunal also considered the mental trauma that had been suffered by the applicant and the fact that all of the applicant's family and support networks were located in Armenia (a city in Colombia) (para 55). On this basis, the Tribunal found that it would not be reasonable for the applicant to relocate elsewhere in Colombia. (b) *State protection*: The Tribunal considered country information indicating that there had been successes by the authorities in capturing former paramilitaries, FARC operatives and BACRIM (para 58). However, there was also country information suggesting that BACRIM was nevertheless on the rise in the Magdalene Medio region (para 59). On the whole, the Tribunal was not satisfied that the applicant could obtain state protection such that there would not be a real risk that the applicant would suffer significant harm (para 60). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the risk faced by the applicant was faced by him

			personally, not the population generally (para 61).
1216120 [2013] RRTA 359 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/359.html	17 May 2013	115–30	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • domestic violence • child • relocation (reasonableness) • state protection The applicant was a minor of Tamil ethnicity from [Village 1] in Sri Lanka. The Tribunal accepted that the applicant had suffered ongoing domestic violence from his alcoholic father (paras 112, 116). He was not recognised as a refugee because he did not suffer this harm for any Convention reason (para 113). However, there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment – if removed. The Tribunal was satisfied that the applicant had suffered significant harm in the past. The Tribunal found that the applicant could not leave the household in [Village 1] because he was a minor and because he felt that he needed to be at home to protect his mother from his father's abuse (para 116). The Tribunal accepted that the applicant's father was 'very violent' and had beaten the applicant, his brother and mother

			(para 117). The Tribunal also accepted that the applicant's father had prevented the applicant from completing his school studies (para 117). The Tribunal was satisfied that the act of ongoing domestic violence by the applicant's father towards the applicant, a minor, and preventing him from completing his schooling could be regarded as cruel or inhuman in nature (para 117). In determining the risk of future significant harm, the Tribunal found that the applicant, as a minor, could very well end up in close proximity to his father again and, considering that his mother was still living with his father, be subject to significant harm from him, as had been perpetrated against him in the past (para 118). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal was not satisfied that it would be reasonable for the applicant to relocate to an area of Sri Lanka where there would not be a real risk of significant harm (para 120). In making this finding, the Tribunal had regard to the applicant's age as a minor and the fact that the applicant had lived all of his life in [Village 1] at home with his parents (para 120). The Tribunal found that it was not reasonable for a minor to have to relocate to another region of Sri Lanka when, as a minor, he had only lived with his parents in [Village 1], had no familiarity with another area, and would have to

			live on his own as a minor in an area unfamiliar to him (para 120). The Tribunal also considered the applicant's evidence that he had stayed at home to look after his mother and felt that he needed to protect her (para 120). (b) *State protection*: On the basis of independent country information (paras 121–7), the Tribunal was not satisfied that the applicant could obtain state protection such that there would not be a real risk of significant harm (para 128). The country information indicated that the Sri Lankan Government had established domestic violence legislation and particular agencies to deal with child abuse (para 127). However, the country information also indicated that there was a lack of enforcement of domestic violence legislation in Sri Lanka, that the police power to prosecute perpetrators of domestic violence was often neglected or abused, and that the police did not consider domestic violence to be a serious matter (para 127). On this basis, the Tribunal was satisfied that the police neglected and abused their power to prosecute perpetrators of domestic violence (para 127). The Tribunal was also satisfied that the applicant's ability to communicate as a victim of domestic violence to police officers, mostly non-Tamil speakers, would further prevent the risk of significant harm being reduced to something less than a real one (para 127). Finally, the Tribunal was

			satisfied that a final ruling against perpetrators of domestic violence took an average of six years (para 127). The Tribunal found that this significant delay illustrated that there was no immediacy of protection offered by the state to victims of domestic violence (para 127). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was not satisfied that the risk was faced by the population generally, rather than by the applicant personally (para 129).
1112558 [2013] RRTA 858 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/858.html	9 May 2013	188–97	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' • cruel or inhuman treatment or punishment • degrading treatment or punishment The applicant was from Fujian Province in China. She was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that she would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 169–187) The Tribunal found that, during the 1990s, the applicant's father was involved in a business transaction where he agreed to be the guarantor for a loan made to a friend; that in the early 2000s, persons came to the applicant's home, demanding money, damaging

			property, attacking and threatening members of her family, and throwing fireworks at the applicant that burnt her; that in and after the early 2000s, criminals tried to extort money from the applicant's father; that the applicant's father was detained and beaten in 2004 when a specific attempt to extort money was made; and that the applicant was mistreated especially by classmates who were connected with criminal gangs (paras 171–2). However, the Tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason arising from her father's business transaction (para 178). The Tribunal found that if persons involved with a black society (practising loan sharking and extortion) had any motivation to harm the applicant, their primary motivation would be money (para 177). The Tribunal further found that the applicant suffered 'discrimination, harassment, bullying and other serious mistreatment including physical and sexual assault when she was at school and that she was robbed twice' (para 179). The Tribunal found that the 'mistreatment was serious in its nature and severity' (para 179). On the basis of the applicant's evidence and the expert evidence, the Tribunal also found that the applicant had symptoms of a mental illness when she was in China (para 179).

			Although the Tribunal found that the applicant was a member of the particular social group of persons in China who have a mental illness, the Tribunal was not satisfied that the applicant's mental ill health was 'the essential and significant motivation for the serious harm that the applicant suffered in China' (para 183). The Tribunal did not consider that there was a real chance that the applicant would suffer serious harm in China for the reason that she had a mental illness (para 183). *Complementary protection claim* (paras 188–97) The Tribunal considered that there were substantial grounds for believing that there was a real risk that the applicant would suffer significant harm in China, in the form of either cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 188). In reaching this conclusion, the Tribunal considered its findings that the applicant was a vulnerable person, with a mental illness, who had been the victim of an act of sexual violence at school, committed by a student who was linked to criminals who were interested in her father (paras 188–9). The Tribunal considered a number of possible sources of future harm to the applicant: • 'If the applicant were to return to China now she may have to explain to the authorities her long absence from the country despite the expiry of her

			student visa and her Chinese passport. That may expose her to the risk of a severe psychological reaction, although the necessary element of intention on the part of the authorities may be lacking.' (para 191) • 'To the extent that any person would still - whether legitimately or not - seek payment from the applicant's father in connection with an old business transaction or otherwise, that may expose her to the risk of serious psychological harm. The necessary element of intention to harm the applicant (as opposed to her father) may be lacking in this context also.' (para 192) • 'There may still be the motivation to intimidate the applicant with a view to extorting money from her family. As a vulnerable person, the applicant may herself be seen as an easy target for robbery or extortion. There may be antipathy towards the applicant as the sufferer of mental illness. There may be some other personal factor that relates to her and her classmates' history at school.' (para 195) The Tribunal found that if the applicant returned to China, 'she would be living among not only persons who were at school with her, including ones who mistreated her, but also the families and associates of those persons' (para 194). The Tribunal observed that '[t]he fact that the applicant and her classmates have left school may diminish the intensity of the negative

			relationship they had at school, but what happened to the applicant in China has made her especially vulnerable' (para 196). The Tribunal concluded that there were substantial grounds for believing that there was a real risk of significant harm to the applicant. The Tribunal found that that harm 'could be the result of one or more of the possible occurrences that the Tribunal has considered' (para 196). The Tribunal also found: 'Whatever the actual motivation for anyone to harm the applicant now or in future, the Tribunal considers that there would be the necessary intention to do harm.' (para 196). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that it would not be reasonable for the applicant to relocate to an area of China where there would not be a real risk of significant harm. In reaching this conclusion, the Tribunal considered 'the applicant's vulnerability, reduced employment prospects, what would likely be a lack of personal support in any place where she was socially isolated, and what would likely also be an insufficiency of professional services suitable for mentally ill persons' (para 197). (b) *State protection*: The Tribunal found that the applicant would not be able to obtain state protection such that there would not be a real risk of significant harm. In reaching this conclusion, the

			Tribunal noted the involvement of corrupt officials in the activities of gangs seeking to extort money, and the fact that the authorities took no effective action when the applicant's family sought help in the past (para 197). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the real risk of significant harm was faced by the applicant personally, and not the population generally (para 197).
1215009 [2013] RRTA 288 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/288.html	9 April 2013	15–25	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was an Assyrian Christian from Harasta, a city in the province of Damascus in Syria. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life – if removed. *Refugee claim* (paras 11–14) The applicant claimed to fear harm in Syria because of his Christian religion and 'cultural background' (para 11). However, based on the applicant's vague, unparticularised and general claims and the country information available to the Tribunal, the Tribunal was

			not satisfied that the applicant had a well-founded fear of persecution for reason of his religion or any other Convention reason (para 13). *Complementary protection claim* (paras 15–25) The Tribunal noted that Syria was in the midst of a civil conflict which had killed tens of thousands of people (para 16). The Tribunal also noted that the applicant was from Harasta in Damascus, that there had been fighting in or near Damascus for many months and that bomb attacks in the city were a regular occurrence (para 17). The Tribunal also referred to reports of fighting in suburbs in Damascus, including Harasta (para 18). Based on the applicant's evidence and the country information, the Tribunal was satisfied that the applicant faced a real risk of significant harm – namely, arbitrary deprivation of life – in the area of Damascus and Harasta in particular, because of the continued hostilities between the opposing sides in the civil war (para 19). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found: 'Based on the country information, the Tribunal is not satisfied that the civil war is nearing an end. The number of refugees and internally displaced persons continues to grow. The general expectation is that President Assad will lose the war after fighting to the death,

			and it is not reasonable to expect the applicant to relocate to any government controlled parts of the country. In parts of the country firmly under the control of rebels, even basic services are hard to obtain. The Tribunal finds that in the applicant's personal circumstances it would not be reasonable for him to relocate to any other part of Syria.' (para 25). (b) *Risk faced by population generally and not by applicant personally*: The country information about Syria indicated that in some parts of the country, including Damascus, the population generally faced a real risk of harm, and in particular, arbitrary deprivation of life, because of the fighting between government forces and rebels (para 22). However, this was also a real risk that the applicant faced personally in those parts of the country (para 22). Moreover, the country information indicated that, unlike disputed areas such as Damascus (Harasta), some parts of the country were controlled by the rebels and others by the government (para 23). Hence, the real risk of significant harm was not faced by the *entire* population of the country (para 23). For these reasons, the Tribunal found that the applicant was not excluded by the operation of section 36(2B)(c) (para 23). (c) *State protection*: In light of the country information about the dire security situation in Syria, the Tribunal was satisfied that the authorities in Syria

			could not provide the applicant with state protection (para 24). There was no evidence to indicate that the applicant would be able to obtain state protection that would remove the real risk of significant harm (para 24).
1213356 [2013] RRTA 287 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/287.html	8 April 2013	18–29	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Sunni Muslim from Talkalakh, a town near the city of Homs in Syria. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life – if removed. *Refugee claim* (paras 11–17) The applicant claimed to fear persecution for reasons of his religion and because he was opposed to the Syrian 'dictatorship' and he supported political change (para 11). However, on the evidence before it, the Tribunal was not satisfied that the applicant would be considered to hold anti-government political views, given his profile as a person who came to Australia almost five years ago in order to get married (para 15).

			Moreover, on the country information available to it, the Tribunal was not satisfied that 'the government, caught in a bloody civil war and fighting for survival, would persecute everyone who returns from abroad and who happens to be a Sunni Muslim' (para 16). *Complementary protection claim* (paras 18–29) The Tribunal noted that Syria was in the midst of a civil conflict which had killed tens of thousands of people (para 19). The Tribunal also noted that the applicant was from Talkalakh, and that this was near the 'border' between government and rebel-held areas of the country (para 20). The Tribunal referred to country information indicating that the town was divided in half between government and rebel forces and that there was a 'tentative ceasefire' in place (paras 20–1). The Tribunal also referred to recent reports of heavy fighting and civilian deaths in Homs (para 22). Based on the applicant's evidence and the country information, the Tribunal was satisfied that the applicant faced a real risk of significant harm – namely, arbitrary deprivation of life – in the area of Talkalakh and Homs, because of the continued hostilities between the opposing sides in the civil war (para 23). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found: 'Based on the

			country information about the high level of violence and insecurity in the country, even though some parts of the country appear to be firmly under the control of the Sunni rebels, the Tribunal is not satisfied that the civil war is nearing a conclusion. The Tribunal finds that in the applicant's personal circumstances it would not be reasonable for him to relocate to any other part of Syria.' (para 29) (b) *Risk faced by population generally and not by applicant personally*: The country information about Syria indicated that in some parts of the country, including Talkalakh, the population generally faced a real risk of harm, and in particular, arbitrary deprivation of life, because of the fighting between government forces and rebels (para 26). However, this was also a real risk that the applicant faced personally in those parts of the country (para 26). Moreover, the country information indicated that, unlike disputed areas such as Talkalakh and Homs, some parts of the country were controlled by the rebels and others by the government (para 27). Hence, the real risk of significant harm was not faced by the *entire* population of the country (para 27). For these reasons, the Tribunal found that the applicant was not excluded by the operation of section 36(2B)(c) (para 27). (c) *State protection*: In light of the country information about the dire security situation in Syria and the fact that the government was controlled by Shi'as and

			Alawites fighting against Sunnis, the Tribunal was satisfied that the authorities could not provide the applicant with state protection (para 28). There was no evidence to indicate that the applicant would be able to obtain state protection that would remove the real risk of significant harm (para 28).
1213043 [2013] RRTA 187 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/187.html	29 March 2013	27–37	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Sunni Muslim from a town near the city of Homs in Syria. She was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that she would suffer significant harm – namely, arbitrary deprivation of life – if removed. *Refugee claim* (paras 18–26) The applicant claimed that if she were to return to Syria, she would be perceived as an opponent of the government because she was a Sunni Muslim and also because she had sought asylum in Australia (para 21). Her refugee claim was therefore based on the grounds of religion, imputed or actual political opinion, and membership of a particular social group (failed asylum seekers) (para 22).

			However, the Tribunal was not satisfied that the applicant would be considered to hold anti-government political views, given her age and given that she had not been involved in political activities either in Syria or Australia (para 23). Further, the Tribunal was not satisfied that the applicant would be identified as a failed asylum seeker, given that she left Syria on a student visa to Australia and would be returning to Syria to apply for a partner visa to Australia (the applicant married an Australian citizen during her stay in Australia) (para 23). In any event, the Tribunal was 'not satisfied that at present, the government, caught in a bloody civil war, would have either the resources or any interest in interrogating and harming a [age deleted: s.431(2)]-year-old woman ostensibly returning from a period of study in Australia.' (para 24). *Complementary protection claim* (paras 27–37) The applicant also claimed to fear going back to Syria and her home town of [Town 1] because of the fighting between rebel forces and the government. In her application, she said that her family members had left their homes and had not returned, fearing for their safety. Two neighbours had been killed and 'thrown on [the] street outside [her family's] home' (para 28). The Tribunal found that the country information was

			consistent with the applicant's claim (para 29). The country information showed that the area of Homs was affected by fighting and civilian deaths (paras 30–1). Hence, on the basis of country information and the applicant's evidence, the Tribunal was satisfied that the applicant faced a real risk of significant harm – arbitrary deprivation of life – in the area of [Town 1] and Homs because of the continued hostilities between the opposing sides in the civil war (para 32). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The applicant had married an Australian citizen and there was no information that the husband either had the right to accompany her to Syria or that it would be reasonable to require him to do so. If the applicant returned to Syria, she would be highly vulnerable, given her age and given that she would be returning alone. Based on the country information about the high level of violence and insecurity in Syria, and even though some parts of the country appeared to be firmly under the control of the Sunni rebels, the Tribunal was not satisfied that, in the applicant's personal circumstances, it would be reasonable for her to relocate to any other part of Syria (para 37). (b) *Risk faced by population generally and not by applicant personally*: The country information about Syria indicated that, unlike disputed areas

			such as [Town 1] and Homs, some parts of the country were firmly under rebel control and others under government control. Hence, the Tribunal found that the real risk of significant harm faced by the applicant was not faced by the entire population of Syria generally (para 35). (c) *State protection*: In light of country information about the dire security situation in Syria and the fact that the government was controlled by Shi'as and Alawites fighting against Sunnis, the Tribunal was satisfied that the applicant would not be able to obtain state protection that would remove the real risk of significant harm (para 36).
1300431 [2013] RRTA 863 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/863.html	26 March 2013	95–103	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Malistan District, Ghazni Province, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 82–94)

			The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 33–42, 56–9). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 82–4), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 85). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 85–8): • *Particular social group*: The Tribunal accepted that the applicant's father was killed by the Taliban in 2006, en route from Herat to Ghazni (para 85). However, the Tribunal did not accept that the applicant faced a real chance of persecution on account of his membership of the particular social group consisting of his family, since there was no evidence that the applicant's family was targeted in the following years by the Taliban on account of his

			father (para 85). • *Harm in Jaghori/Malistan*: The Tribunal reviewed recent country information indicating that Jaghori and Malistan were 100% Hazara, the roads inside the districts were safe, and there were no recent reports of Taliban incursions into the districts. Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in Malistan from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 88). • *Harm on the roads surrounding Jaghori/Malistan*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 89). The Tribunal accepted that the applicant might have to occasionally travel outside Malistan through dangerous areas for work and to obtain medical care for himself and his family (para 90). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Malistan (para 90). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 91). This was because of authoritative country reports indicating that travel on the roads surrounding Malistan was dangerous for all ethnic

			groups and a lack of clear evidence of targeting of any particular ethnic group (para 91). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 92). The Tribunal also considered whether the applicant would be at risk of persecution on account of being a returnee, a returnee from Pakistan, or a failed asylum seeker from Australia or a Western country (para 93). The Tribunal accepted that these were particular social groups, of which the applicant would be a member (para 93). However, on the basis of country information, the Tribunal found that the applicant did not face a real chance of persecution on account of his membership of these particular social groups (para 93). *Complementary protection claim* (paras 95–103) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Malistan, and given the Tribunal's findings regarding the applicant's need to travel outside Malistan, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Malistan. This significant harm could

			include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 95). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 99). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; and the existence of IOM reintegration assistance plans for returnees (para 100). Moreover, the applicant had some experience working and living in a large city (Shiraz, Iran) and had travelled to Kabul on a number of occasions (para 100). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, limited family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the applicant's need to support his wife and children, making it difficult for him and them to successfully adapt to and integrate into Kabul (para

			101). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 102). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 98). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Malistan. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (paras 96–7). Editorial note: The reasoning in this case is similar to that for 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.

1300803 [2013] RRTA 635 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/635.html	18 March 2013	73–84	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • cruel or inhuman treatment or punishment • degrading treatment or punishment • blood feud • land dispute • relocation (reasonableness) The applicant was a Hazara Shia from Ghazni, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 53–72) The applicant claimed that his father was a well-respected elder in his home village in Ghazni; that his father arranged a meeting with [Mr A] in response to [Mr A]'s involvement in murdering and tormenting local villagers; that [Mr A] consequently murdered the applicant's father and threatened to kill his family if they did not leave Afghanistan; and that the applicant and his family fled to Pakistan in the 1990s in response to [Mr A]'s threats (paras 54, 56). The applicant claimed that he feared harm by [Mr A] and his son, because he would be perceived as returning to avenge

			his father and also to reclaim his father's land (para 57). The Tribunal found the applicant's evidence of the incidents concerning his father and their implications for the applicant to be 'generally credible and consistent' (para 61). The Tribunal also considered country information indicating that blood feuds could be 'long-running conflicts, lasting for generations' (para 63) and that land disputes were a 'major source of conflict in Afghanistan' (para 66). On the basis of country information and the applicant's evidence, the Tribunal was satisfied that if the applicant were to return to Ghazni, he would face a real chance of serious harm by [Mr A]'s family (para 67). The Tribunal was also satisfied that the essential and significant reason for this fear was the applicant's membership of the particular social group of his family (para 67). However, the Tribunal found that the applicant was not a refugee because of the operation of s 91S of the Act: 'Under s.91S, in determining whether the applicant has a well-founded fear of being persecuted for the reason of membership of his family, the Tribunal is required to disregard any fear of persecution, or any persecution, that the members of the applicant's family have ever experienced, where the reason for the fear or persecution is not a Convention reason. Section 91S also requires the Tribunal to disregard any fear of

			persecution, or any persecution, that the applicant or any other member or former member of his family has ever experienced where the fear or persecution would not exist if it were assumed that the fear or persecution of members of his family had never existed.' (para 68) The Tribunal found that [Mr A]'s motivation for killing the applicant's father was not a Convention reason, but due to a dispute that was 'criminal in nature' (para 70). Hence, the Tribunal was required to disregard the applicant's fear of harm, which stemmed from his father's (non-Convention related) persecution (para 70). The applicant also claimed to fear harm due to his ethnicity and religion (para 57), and due to his actual or imputed political opinion (para 71). However, the Tribunal was not satisfied that the applicant faced a real chance of serious harm for these reasons (paras 60, 71). *Complementary protection* (paras 73–84) On the basis of the applicant's evidence about the blood feud and potential land dispute with [Mr A], and the country information, the Tribunal was satisfied that there was a real risk that the applicant would be arbitrarily deprived of his life by [Mr A]'s family, or that he would be subjected to cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 75). The Tribunal found that [Mr A] and his son continued to live in Ghazni and that there

			was no reason to believe that they had given up the blood feud with the applicant and his family (para 75). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered that it would not be reasonable for the applicant to relocate to an area of Afghanistan, such as Kabul, where there would not be a real risk of significant harm (para 83). The Tribunal considered factors suggesting that relocation would be reasonable, including that there was a cohesive Hazara community in Kabul, and that it would be relatively easy for new arrivals to integrate (para 80). However, the Tribunal found that these factors were outweighed by factors suggesting that relocation would be unreasonable: the applicant had not lived in Afghanistan since the 1990s; he had limited education and limited skills; and he bore responsibility to support his wife, children and siblings (para 81). Moreover, [Mr A]'s family had a second home in Kabul, and they might become aware of the applicant's presence in Kabul, which would make it 'unlikely that the applicant would be able to properly settle and lead a normal life in Kabul' (para 82). (b) *State protection*: On the basis of country information, the Tribunal was satisfied that the applicant would not be able to obtain state protection such that there would not be a real risk of significant harm (paras 76–7).

			(c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the risk of significant harm was faced by the applicant personally (para 76).
1213768 [2013] RRTA 188 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/188.html	12 March 2013	67–73	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • revenge The three applicants were from India. They were not recognised as refugees, but there were substantial grounds for believing that there was a real risk that they would suffer significant harm – namely, cruel or inhuman treatment or punishment – if removed. *Refugee claim* (paras 64–6) The first and second applicants were the parents of [Mr B], and the third applicant was the parents' daughter. [Mr B] had entered into an arranged marriage with [Ms C], who was emotionally and physically abusive to [Mr B] (para 52). They complained about their marriage, but [Ms C]'s father, [Mr D], threatened that if they separated, he would bring a false dowry case against the first and second applicants and organise for their single daughter to be abducted, raped and otherwise harmed (para 53). The Tribunal considered that this was consistent with country information relating to the importance of family pride and honour in India (para 53). In December 2011, [Ms C] assaulted [Mr B]. He

			was granted apprehended violence orders against her and the marriage was effectively over thereafter (para 55). [Mr D] became very angry at the event (para 55). [Mr D], who was a 'powerful and corrupt' man, laid a police complaint in March 2012 alleging dowry harassment and cruelty by the first and second applicants and [Mr B] (para 57). In May 2012, a First Information Report was laid against the first and second applicants for breach of s 498A of the Indian Penal Code against [Ms C] (para 57). An accusation of breach of s 498A triggers immediate arrest and bail is granted only at the discretion of a magistrate or judge (para 58). The Tribunal accepted that it was likely that proclamation orders had been issued against the first and second applicants, and that upon their arrival in India, they would be arrested (para 60). The Tribunal also accepted that they would spend at least up to one year in prison before any bail application was heard, given delays in the Indian judicial system (para 62). Given widespread corruption, once the first and second applicants were in prison, [Mr D] would use his influence to ensure that harm would be inflicted upon them (para 62). The Tribunal found that the applicants would suffer serious harm from [Mr D]. This is because the first and second applicants would be put in prison and subjected to harm therein, and the third applicant would be abducted and subjected to harm (para 64).

			However, the Tribunal found that the reason for the serious harm was revenge and retaliation for a perceived offence against [Mr D]'s daughter, rather than for a political, religious, nationality, or racial reason (para 65). While the applicants claimed that it was for reason of their membership of a particular social group ("family members of men who are citizens of other countries but have been charged under Indian law (IPC498A) for an alleged offence against Indian law which, if it occurred, did so outside the jurisdiction of Indian law"), the Tribunal did not agree and found that the motivation for inflicting harm was personal revenge (para 65). Moreover, although the Tribunal accepted that the applicants might not have adequate and effective protection against the personal attacks and would be subjected to harm because of the law, the Tribunal was not satisfied that the state would withhold protection, or would condone the misuse of the law or the abduction of the third applicant, for a Convention reason. Any motivation for the state to harm the family would be related to corruption and criminal activity (para 66). *Complementary protection claim* (paras 67–73) The Tribunal found that the first and second applicants would be immediately arrested and detained upon their arrival in India, and in prison, they would suffer

			physical abuse at the instigation of [Mr D], by agents of the authorities, due to his influence and position (para 67). The inflicting of physical abuse would not be an act arising from, inherent in or incidental to the lawful sanction prescribed by the law, and would amount to cruel or inhuman treatment or punishment (para 68). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The first and second applicants would not be able to relocate (para 69). (b) *State protection*: The first and second applicants would not be able to obtain state protection such that there would be no real risk of significant harm, as the authorities would be the instrument of harm (para 69). (c) *Risk faced by population generally and not by applicant personally*: The risk was faced personally by the first and second applicants, and not by the population generally (para 69). The Tribunal found that the third applicant was vulnerable and not independent in India (para 71). She would be located by [Mr D] upon her return to India, and he would organise for her abduction and physical and mental abuse as an act of revenge and retaliation. These acts would not relate to any lawful sanction, and would amount to cruel or inhuman treatment or punishment (para 71).

			In respect of each of the grounds in s 36(2B): (a) *Relocation*: The third applicant was vulnerable and not able to move about freely on her own. Hence, it would not be reasonable for her to relocate to avoid [Mr D] and his reach (para 72). (b) *State protection*: The third applicant would not be able to obtain state protection such that there would be no real risk of significant harm, having regard to her vulnerability and the corruption within police and politics in India (para 72). (c) *Risk faced by population generally and not by applicant personally*: The risk was faced personally by the third applicant, and not by the population generally (para 69).
1300935 [2013] RRTA 865 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/865.html	7 March 2013	91–9	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Jaghori District, Ghazni Province, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed.

			Refugee claim (paras 80–90) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 36–47, 61–4). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 80–2), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 83). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 83–90): • *Harm in Jaghori*: The Tribunal reviewed recent country information indicating that Jaghori and Jaghori were 100% Hazara, the roads inside the districts were safe, and there were no recent reports of Taliban incursions into the districts. Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in

			Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 86). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 87). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas to obtain medical care for himself and his family (para 88). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 88). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 89). This was because of authoritative country reports indicating that travel on the roads surrounding Malistan was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 89). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 90). *Complementary protection claim* (paras 91–9) Given the country information indicating a substantial

			amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 91). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 95). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; and the existence of IOM reintegration assistance plans for returnees (para 96). Moreover, the applicant had some experience living in a large city (in Iran) and had travelled to Kabul on many occasions (para 96). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant

			to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; the applicant's need to support his wife and children, making it difficult for him and them to successfully adapt to and integrate into Kabul; and the applicant's illiteracy, which would reduce his prospects of obtaining employment (para 97). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 98). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 94). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Malistan. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (paras 92–3).

			Editorial note: The reasoning in this case is similar to that for 1300431 [2013] RRTA 863; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1218999 [2013] RRTA 864 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/864.html	6 March 2013	135–48	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • cruel or inhuman treatment or punishment • degrading treatment or punishment • the meaning of 'real risk' The applicant was a Hazara Shia from Kabul, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 125–34) The Tribunal considered, and rejected, each of the applicant's claims to fear harm: • *Hazara Shia*: The applicant claimed that he would be persecuted by the Taliban, Pashtuns and Sunnis

			because he was a Hazara Shia (para 125). However, the Tribunal did not accept this claim. This was in part because the weight of the country information indicated that there was no general campaign by the Taliban, other insurgents or the Pashtun ethnic group to specifically target Hazara Shias for harm (para 126). The Tribunal also considered as relevant that the applicant had not been personally affected by any violence in Kabul, aside from an argument on the street in 2009 (paras 127, 130). • *Failed asylum seeker or returnee*: On the basis of country information, the Tribunal found that the applicant would not face a real risk of persecution for reasons of being a failed asylum seeker or a returnee from a Western country (paras 132–4). *Complementary protection claim* (paras 135–48) The Tribunal considered that there were substantial grounds for believing that there was a real risk that the applicant would suffer significant harm because of his relationship with [Ms A], a young woman from the Sayyed clan in Kabul (para 135). The Tribunal was satisfied that the applicant's feared harm amounted to arbitrary deprivation of life, cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 135). In reaching this conclusion, the Tribunal considered country information regarding the treatment of people

			considered to have had inappropriate relationships with members of the opposite sex prior to marriage, as well as information suggesting that it was generally considered 'taboo' for a Sayyed female to marry a Hazara male (para 136). The Tribunal also considered the applicant's evidence regarding the attitude of [Ms A]'s family and clan towards the relationship, and the harm that the family had caused to [Ms A], which had resulted in hospitalization (para 137). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered country information indicating that the Sayyed clan was mainly located in the eastern region of Afghanistan, although found that there was a lack of information about the population of the Sayyed clan in the west of Afghanistan (para 143). Ultimately, the Tribunal did not consider that it would be reasonable for the applicant to relocate to another area of Afghanistan. In reaching this conclusion, the Tribunal in part relied on UNHCR Guidelines, which indicated that Afghans relied on traditional family and community structures for their safety and economic survival, and that relocation to an area with a predominantly different ethnic/religious make-up might not be possible due to tensions between ethnic/religious groups (para 146). Having regard to this information and to the applicant's circumstances (a young and illiterate man with no family outside of Kabul), the

			Tribunal found that it was 'not satisfied that the applicant will be able to establish himself in a new city far from any connection or family support, with limited opportunity for employment, and the subsequent risk that he will be without housing or food in that area' (para 147). The Tribunal also found that there was 'an appreciable risk that the applicant will not be able to subsist in a location in the west of Afghanistan' (para 147). (b) *State protection*: The Tribunal was not satisfied that the applicant could access state protection such that there would not be a real risk of significant harm. In reaching this conclusion, the Tribunal noted that the applicant's actions 'arise out of an activity that could be seen as contravening Sharia law and could cause further harm to the applicant from the authorities' (para 139). The Tribunal also noted that 'any report of the crime will draw further retaliation from the family and Sayyed clan in general, and that the Afghan government is not capable of provided adequate security for individuals in Afghanistan' (para 140). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal did not address this aspect of s 36(2B).
1301060 [2013] RRTA 622 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/622.html	1 March 2013	178–86	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • honour killings

			• relocation (reasonableness) The applicant was from Basra, Iraq. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary deprivation of life – if removed. *Refugee claim* (paras 172–77) On the basis of the applicant's evidence and the country information, the Tribunal accepted that the applicant and [Ms C] developed an 'inappropriate relationship', which led to [Ms C] being killed by her family members; that [Ms C]'s tribe was one of several Shi'ite 'tribal-criminal syndicates' and some of its members were also members of the Badr Organisation, which engaged in criminal and sectarian violence; that [Ms C]'s tribe and some of its associates in the Badr Organisation intended to seriously harm or kill the applicant; and that the applicant's own tribe and associated tribes had sought to distance themselves from the applicant for their own protection (paras 174–5). On the basis of country information, the Tribunal found that although it was usually the woman who lost her life in an honour killing, sometimes both parties in an inappropriate relationship were targeted (para 174). However, the Tribunal did not accept that there was a Convention reason for the harm faced by the applicant

			(para 176). Rather, the applicant was being targeted by members of [Ms C]'s tribe due to their perceptions of what he had done and for revenge (para 176). *Complementary protection* (paras 178–86) The Tribunal was satisfied that there were substantial grounds for believing that there was a real risk that the applicant would suffer significant harm – namely, arbitrary deprivation of life – if he returned to Iraq (paras 179–80). The Tribunal found that the fact that the applicant's parents and tribe were trying to protect themselves by distancing themselves from him was 'an indication of the gravity of the matter' (para 181). The Tribunal was satisfied that if the applicant returned to Basra, there was a real risk that he would be killed (para 181). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal was not satisfied that it would be reasonable for the applicant to relocate to an area of Iraq where there would not be a real risk of significant harm. In reaching this conclusion, the Tribunal noted that the applicant had no protection from his family (excluding his wife and children), his tribe or other tribes with an allegiance to his tribe; the applicant had never lived anywhere but Basra in Iraq (excluding [Town 1], where the applicant had stayed briefly, as he was in hiding); and the applicant owned no property outside Basra.

			The Tribunal also found that the applicant had lived a 'settled and happy' life in Iraq, that he was 'plainly distressed' by the problems that he had caused his brothers in Australia, and that the applicant would have relocated to another place in Iraq if he had considered it possible and practicable (paras 182–3). (b) *State protection*: On the basis of country information, the Tribunal found that state protection from non-state actors was unlikely to be available, given the limited ability of national authorities to enforce law and order. Hence, the Tribunal was not satisfied that the applicant could obtain protection from the authorities such that there would not be a real risk of significant harm (para 184). (c) *Risk faced by population generally and not by applicant personally*: The risk to the applicant was 'plainly an individual one', and not faced by the population generally (para 185).
1301427 [2013] RRTA 623 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/623.html	14 February 2013	97–104	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He fled Afghanistan for Pakistan in 2002. He was not recognised as a refugee, but there were substantial

			grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 86–96) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 30–41, 55–8). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 86–8), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 89). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 89–94): • *Harm in Jaghori*: The Tribunal accepted that two of the applicant's family members were taken by the Taliban in the period just prior to the fall of the

			Taliban, and that the applicant and his family were called infidels (para 89). However, the Tribunal found that these events took place many years prior to the defeat of the Taliban (para 89). The Tribunal reviewed recent country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the lack of targeting of the applicant in the past (other than being called an infidel), the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 89). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 90). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care for himself and his family (para 92). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 92). However, the Tribunal was not satisfied that the persecution was

			for a Convention reason (para 93). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 93). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 94). The Tribunal also considered whether the applicant would be at risk of persecution on account of being a returnee, a returnee from Pakistan, or a failed asylum seeker from Australia or a Western country (para 95). The Tribunal accepted that these were particular social groups, of which the applicant would be a member (para 95). On the basis of country information, the Tribunal accepted that the applicant might face 'a general negative attitude' and 'some level of discrimination not sufficient to amount to serious harm' (para 95). However, the Tribunal found that the applicant did not face a real chance of persecution (para 95). *Complementary protection claim* (paras 97–104) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the

			applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 97). In respect of each of the grounds in s 36(2B): (d) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 100). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; and the existence of IOM reintegration assistance plans for returnees (para 101). Moreover, the applicant had some experience living outside his home area in Pakistan (para 101). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting

			the applicant's ability to meet basic needs; existence of insurgent attacks; the applicant's need to support his wife and children, making it difficult for him and them to successfully adapt to and integrate into Kabul; the applicant's illiteracy and lack of education; and the fact that the applicant's work experience in farming and other areas would be of very limited use in a large urban city (para 102). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 103). (e) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 99). (f) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 98).

			Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859
1212050 [2013] RRTA 873	12 February 2013	119–130	This case relates to: • the risk of harm arising from conduct in Australia. The applicant was a national of China. She was of Uighur ethnicity and Muslim faith. She asserted feared discrimination and harassment because of her ethnicity/religion, including discrimination in trying to gain employment, and because of her political activism pursuing rights for Uighurs (paras 31, 45). She had also participated in political events and demonstrations in Australia, as well as practicing Ramadan (para 39). She feared questioning, abuse, discrimination and severe mistreatment by the Chinese authorities as a result of her participation in these activities (para 40). *Past harm* Thus, the applicant claimed to fear harm in China on the Convention grounds of her ethnicity as a Uighur,

			religion as a Muslim, and actual and imputed political opinion as a Uighur activist who has voiced her opposition to discriminatory practices at university and elsewhere, participated demonstrations in Urumqi, and posted online criticism of Chinese policies and practices. The applicant claimed that Chinese authorities at various levels had targeted her in the past. Her claims of past harm included having had adverse comments recorded on her personal file, threats of expulsion from university, being forced to write confessions and undergoing political training, being threated with imprisonment without trial, and finding difficulties obtaining a passport. The applicant claimed she was forced to spend about two years in hiding in Urumqi, with consequential psychological harm (para 102). The Tribunal did not accept the applicant's stated claims of past harm in China (paras 110–8). It disregarded the applicant's conduct for the purposes of the refugee claim (pursuant to s 91R(3)). In the Tribunal's view, the applicant had engaged in those activities deliberately, for the sole purpose of creating a claim for protection, in case she did not obtain permanent residency through her studies in Australia (para 122). *Conduct in Australia*

			While noting that the applicant had undertaken those activities for the purposes of strengthening her claim, the Tribunal did accept that the applicant had attended a protest in Australia and that she went to a number of other Uighur meetings in Sydney (para 122). The Tribunal disregarded the applicant's conduct in Australia when assessing whether she had a well-founded fear of Convention-related persecution (s.91R(3)), but there was no corresponding requirement to disregard the applicant's conduct in Australia when assessing her eligibility for complementary protection under s.36(2)(aa). There was country information available from DFAT that Chinese authorities are believed to actively monitor Uighur groups in Australia, and that they regard separatist activities as criminal, irrespective of where these views are expressed (para 124). Country information suggested that the Chinese authorities remained deeply mistrustful of the Uighur minority, and had a very low tolerance threshold for any expressions of separatism The Tribunal considered that Chinese authorities could well have learnt of the applicant's involvement in one or more Uighur cultural and political events in Australia. Country information indicated that torture and other forms of cruel, inhuman and degrading treatment or

			punishment were inflicted on Uighur protestors and on political prisoners in China more generally. In the case of torture, the Tribunal was satisfied that the purpose would be to obtain information from the applicant (for instance, about Uighur organisations and their activities in Australia), and/or as punishment for her perceived support for these groups and their political agendas. The Tribunal considered that there was a real risk of the applicant being detained and, in the course of her detention, being subject to torture, cruel or inhuman treatment or punishment, and/or degrading treatment or punishment (para 125). Further, the applicant faced this risk throughout China (para 128). The Tribunal concluded that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal from Australia to China, there was a real risk that she would suffer significant harm (para 129).
1220694 [2013] RRTA 171 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/1711.html	12 February 2013	88–95	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness)

			The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 79–87) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 34–45, 59–62). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 79–81), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 82). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 82–7): • *Harm in Jaghori*: The Tribunal reviewed country

			information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 83). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 84). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 85). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 85). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 86). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 86). The Tribunal also noted that

			state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 87). *Complementary protection claim* (paras 88–95) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 88). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 91). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara

			community; and the existence of IOM reintegration assistance plans for returnees (para 92). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; the applicant's limited work skills and his illiteracy, which would make it difficult for him to obtain employment; and the fact that the applicant had lived in rural Afghanistan all his life and had no experience living in a city (para 93). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 94). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 90). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the

			applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 89). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1217334 [2013] RRTA 96 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/96.html	31 January 2013	128–33	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • torture • cruel, inhuman or degrading treatment The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, arbitrary loss of life, torture, or cruel, inhuman or degrading treatment – if removed. *Refugee claim* (paras 115–28) The Tribunal accepted that the applicant would face significant threats from a number of sources if he were

			to return to his village in [District 1] (paras 126–7). Independent reports indicated that travel along key roads was dangerous, as militant groups including the Taliban regularly set up checkpoints and conducted ambushes (para 124). The Tribunal found that, in returning to his village, the applicant would be required to travel along roads that independent evidence indicated were dangerous and volatile (para 126). Without any connection to, or support or protection from, an established family or group, there was a real chance that he would suffer serious harm (para 126). Moreover, if the applicant did return to his village, it was likely that he would be viewed with hostile suspicion, given the length of his absence and his foreign accent (para 126). It was more than likely that unknown persons resided on his family's land. In light of independent information regarding land disputes involving people who attempt to return and reclaim land, the Tribunal considered it reasonable to assume that any attempt by the applicant to return to and reside in his village, or to reclaim his land, would be met with suspicion and hostile opposition (para 126). Even if the applicant were able to re-establish himself in his village, the Tribunal found that it was likely that he would have to travel to various places throughout the district in order to find work, and in so doing, place

			himself at risk of harm by venturing onto insecure roads (para 127). Moreover, it was reasonable to assume that, from time to time, the applicant would be required to travel to Ghazni City to obtain supplies and access certain services, including medical treatment (para 127). Hence, the Tribunal accepted that there was a real chance that the applicant would suffer serious harm from the Taliban or other armed militants while travelling on the roads between Ghazni City and [District 1], or from the people in his village (para 127). However, the Tribunal did not accept that the applicant was a refugee. There was no credible evidence to indicate that the Taliban or other armed groups were targeting people travelling on the roads in and out of Ghazni for reasons of their ethnicity or religion alone (para 128). The independent information indicated that the primary motivation of the Taliban and other armed militants in attacking people on the roads appeared to be political or simply criminal (para 128). Moreover, there was no sufficiently clear evidence with regard to whether the motivation of people in the applicant's village in harming him would be for the 'essential and significant' reason of his race, religion, nationality, political opinion or membership of a particular social group, or that state protection from such harm that the applicant might face would be

			withheld for a Convention reason (para 128). *Complementary protection claim* (paras 128–33) The Tribunal considered that there were substantial grounds to believe that there was a real risk that the applicant would suffer significant harm from the Taliban or other armed militants while travelling on the roads throughout Ghazni and around his village in [District 1], or from the people in his village who resided on his family's land (para 128). This harm included arbitrary loss of life, torture, or cruel, inhuman or degrading treatment (para 128). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it would be reasonable for the applicant to relocate to Kabul. The relevant issue with regard to relocation was 'whether, in all the circumstances, it would be reasonable for him to relocate and reside in Kabul, if he faces no real risk of harm there.' (para 132) The Tribunal noted that relocation would be extremely difficult for the applicant, since he did not have any relatives or contacts in Kabul. He therefore lacked familial or social networks in Kabul, and the ability to access support and assistance. Moreover, there was increasing insecurity and violence, high unemployment and lack of access to basic services in Kabul. In these circumstances, the Tribunal found that relocation to

			Kabul was not a reasonable option for the applicant (para 132). (b) *State protection*: There was authoritative information indicating that State protection was, on the whole, not available in Afghanistan. The Tribunal noted, for example, that: 'UNHCR notes that state protection in Afghanistan is compromised by high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional dispute resolution mechanisms that do not comply with due process standards. It also stated that "to the extent that the harm feared is from non-State actors, State protection is on the whole not available in Afghanistan" In view of the unstable security situation in Afghanistan and potential for further deterioration in the context of the impending draw-down and the likely resurgence of the Taliban, the Tribunal finds that the applicant would not be able to access state protection that would remove the real risk he faces from the Taliban and other armed militants. Accordingly, the Tribunal finds that the applicant is not excluded by the operation of s. 36(2B)(b).' (para 131) (c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the risk of being harmed on the roads in Ghazni was potentially faced by all people who travelled on

			those roads patrolled by the Taliban and other armed militants. However, the Tribunal considered that the applicant faced 'a *real* risk, as opposed to just *a* risk' because of his personal circumstances, as a resident of [District 1] who would regularly travel on those roads in seeking or performing employment or accessing services (para 130). Hence, the 'real risk' was not faced by the population of the country generally; rather, it was faced by people, such as the applicant, who would often have to travel on dangerous roads. 'To suggest in these circumstances that the real risk faced by the applicant is not personal to him defies logic and common sense, and, in light of the purpose of the complementary protection regime, which was to incorporate Australia's non-refoulement obligations under various international human rights treaties, and the Minister's speech and comments in the EM and from the Department, to give a meaning to s. 36(2B)(c) which allowed such a finding would be unreasonable.' (para 130) Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (paras 129–30). Editorial note: The reasoning in this case is the same as for 1217298 [2013] RRTA 81 (discussed below).
1217750 [2013] RRTA 82 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/82.	29 January 2013	81–3	This case relates to: • the meaning of 'significant harm' • arbitrary loss of life

html			• blood feuds The applicant was a citizen of Albania. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed, including arbitrary loss of life. *Refugee claim* (paras 61–80) The applicant was a relative of [Mr A], who was closely associated with [Mr A] and had lived with [Mr A] in Shkoder for most of the time since 2005 (para 71). [Mr A] had shot [Mr B], a relative of [Mr A] who co-owned a bar with [Mr A] (para 70). The Tribunal considered independent country reports of blood feuds taking place in Albania based on the principles of the Kanun, which stipulated blood revenge for major offences, including intentional murder (para 69). On the basis of this country information and that provided by the applicant, the Tribunal accepted that there was a blood feud between [Mr A] and [Mr B], that this blood feud extended to their respective familial or clan groups (para 70), and that there was a real chance that the applicant might be killed by [Mr B] or his clan, due to the applicant's association with [Mr A] (para 74). The Tribunal found that this was a form of 'serious harm' and 'systematic and discriminatory conduct'. The Tribunal also found that the harm feared had an official

			quality, in the sense that the willingness or ability of Albanian law enforcement authorities was compromised by the fact that they were weak, ineffectual and corrupt (para 74). On the basis of this, the Tribunal found that the applicant had a well-founded fear of persecution. With respect to the relevant Convention nexus for the serious harm, the Tribunal considered that the applicant formed part of the particular social group, 'male members of [Mr A's family] threatened with death as a result of a blood feud with [Mr B's family]' (para 77). The Tribunal accepted that the essential and significant reason for the applicant's well-founded fear of persecution was his membership of this particular social group (para 78). However, the Tribunal found that the applicant was not a refugee because of the operation of s 91S of the Act. That section provides that a person who is pursued because he or she is a relative of a person who is targeted for a non-Convention reason does not fall within the grounds for persecution covered in the Convention. In this case, [Mr A] (the relevant relative) has a fear of persecution because of revenge. This was purely criminal in motive, not for any Convention reason (paras 79–80). *Complementary protection claim* (paras 81–3)

			Since there is no equivalent provision to s 91S that operates in respect of consideration of complementary protection, and in light of the findings above, the Tribunal found that 'it is a simple matter to find that that there are substantial grounds for believing that there is a real risk that the applicant may be killed, as a necessary and foreseeable consequence of his removal to Albania, because of the blood feud the Tribunal has found exists. Trite to say, arbitrary deprivation of life constitutes significant harm.' (para 81). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The country information indicated that blood feuds did not abate with time, but continued down the generations. Moreover, blood feuds crossed international borders. The Tribunal also noted that Albania is a geographically small country. The Tribunal inferred that relocation within Albania was not a safe option for a person who had become the target in a blood feud (para 82). (b) *State protection*: The Tribunal found that there was no adequate state protection available in Albania which would remove the risk of significant harm (para 82). (c) *Risk faced by population generally and not by applicant personally*: Although the Tribunal did not address this directly, it is apparent that the risk of significant harm from [Mr B] and his clan was a risk faced by the applicant personally, not one faced by

			the population generally.
1220697 [2013] RRTA 98 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/98.html	25 January 2013	82–9	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 71–81) The applicant claimed that he faced persecution at the hands of the Nasr party and its members for reasons of imputed political opinion (para 71). The Tribunal accepted that the applicant had his father had been physically harmed by this group and that a neighbor was imprisoned by this group, which was consistent with country information indicating that there was a high level of conflict between rival Hazara groups after 1995 and that anyone perceived to be opposed to these parties at the time could be targeted (para 71). However, recent country information indicated that there was no ongoing conflict between Hazara factions

			in Ghazni and that government control of the predominantly Hazara districts had reduced the ability of individuals and groups to act on long-running feuds (para 71). There was moreover no evidence of forcible recruitment into Hazara militias. Based on this information and the very long time (17 years) that had elapsed since the applicant had left Jaghori, the Tribunal did not accept that the applicant faced a real chance of persecution at the hands of the Nasr party for reasons of imputed political opinion (para 71). The applicant also claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 26–37, 51–4). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 72–4), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 75). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the

			applicant was a refugee (paras 75–81): • *Harm in Jaghori*: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information, the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 75). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 76). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 78). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 78). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 79). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular

			ethnic group (para 79). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant for a Convention reason (para 80). The Tribunal found that, even considering the applicant's claims cumulatively, the applicant did not face a real chance of persecution for a Convention reason (para 81). *Complementary protection claim* (paras 82–9) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 82). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 85). The Tribunal

			considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living outside his home area and his work skills (para 86). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his wife and children (para 87). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 88). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real

			risk of significant harm (para 84). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 83). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1220444 [2013] RRTA 97 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/97.html	24 January 2013	80–7	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real

			risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 71–9) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 26–37, 51–4). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 71–3), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 74). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 74–9): • *Harm in Jaghori*: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the

			very long period since the applicant had departed the area, the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Hezbi-i-Islami Gulbuddin, Lashkar-e-Jhangvi or any other Sunni group (para 74). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 75). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 77). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 77). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 78). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 78). The Tribunal also noted that state protection was, on the whole, not available in Afghanistan and hence that state protection would not be discriminatorily withheld from the applicant

			for a Convention reason (para 79). *Complementary protection claim* (paras 80–7) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 80). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 83). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living outside his home area and his

			work skills (para 84). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his wife and children (para 85). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 86). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 82). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c)

			(para 81). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1214218 [2013] RRTA 92 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/92.html	22 January 2013	135–49	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life • family feud • land dispute The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed – namely, arbitrary loss of life. *Refugee claim* (paras 124–34) The applicant's refugee claim was based on the following grounds: • *Ethnicity and religion*: The applicant claimed to face a real chance of persecution for reasons of his Hazara ethnicity and Shia religion (para 124). However, the Tribunal was not satisfied on the

			limited evidence before it that there was a real chance of persecution on this basis (para 130). • *Particular social group*: The applicant claimed to face a real chance of persecution by reason of his membership of a particular social group consisting of failed asylum seekers returning from a western country, children in Afghanistan, or Hazaras in Afghanistan (para 124). However, on the basis of the evidence before it, the Tribunal was not satisfied that there was a real chance of persecution on this basis (para 130). The Tribunal accepted that the applicant faced a real chance of harm at the hands of his uncle because of a private dispute between the uncle and the applicant's mother. However, this dispute was not Convention-related (para 131). Further, the Tribunal noted that where the feared persecution came from private or non-state agents for a non-Convention reason, the failure of state protection could only constitute persecution where such failure was itself for a Convention reason (para 133). Moreover, the State must be aware of the harm and not act to prevent it or protect the victim – mere inaction, however discriminatory, would not suffice (para 133). In this case, the country information suggested 'an almost complete absence of state authorities in remote areas such as the applicant's home area of Jaghori,

			rather than a systematic and discriminatory conduct on the part of the authorities' (para 134). Although the state authorities would not be able to protect the applicant, they would be equally unable to protect anybody else who required state protection (para 134). Hence, the Tribunal was not satisfied that state authorities would refuse to protect the applicant from his uncle for a Convention reason such as his race or religion (para 134). *Complementary protection claim* (paras 135–49) The Tribunal accepted that there were substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed to Afghanistan, there was a real risk that the applicant would suffer significant harm at the hands of his uncle – namely, being arbitrarily deprived of his life (para 139). The applicant's uncle had taken over the land which used to belong to the applicant's father (para 131). If the applicant were to return to Afghanistan, there was more than a remote chance that the uncle would try to kill the applicant because of the family dispute between the uncle and the applicant's mother, and also because the uncle might fear that that the applicant was returning to Jaghori to claim his father's share of the family land (para 131). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it

			would be reasonable for the applicant to relocate to Kabul (paras 141–9). However, having regard to the country information and the applicant's individual circumstances, the Tribunal found that such relocation would not be reasonable. This was because of the applicant's young age, low level of education and lack of employment skills, his lack of familiarity with Kabul, the absence of social or familial networks connecting him to Kabul, the overall security situation in Kabul, and the limited accommodation and infrastructure in Kabul (para 149). (b) *State protection*: The Tribunal accepted that the level of state protection available in Afghanistan was inadequate and did not reduce the risk of significant harm to less than a real risk (para 138). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the risk of harm to the applicant was faced by him personally (para 140).
1217298 [2013] RRTA 81 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/81.html	21 January 2013	140–5	This case relates to: • the meaning of 'significant harm' • arbitrary loss of life • torture • cruel, inhuman or degrading treatment The applicant was a Hazara Shia from Afghanistan. He worked as a driver for an Afghan government organisation for three months. After that work ceased,

			he operated an occasional taxi service, driving passengers throughout Jaghori and occasionally to Ghazni City. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed, including arbitrary loss of life, torture, or cruel, inhuman or degrading treatment. *Refugee claim* (paras 117–140) The applicant claimed that he was at risk of persecution from the Taliban in Afghanistan for the following reasons (para 130): • *Past work for government*: The applicant had been engaged as a driver for an Afghan government organisation for three months from August 2010 (para 129). The Tribunal accepted that the Taliban carried out targeted attacks against civilians who worked with or for the government or foreign forces (para 136). However, the Tribunal did not find any credible evidence to indicate that the applicant would come to the attention of the Taliban more than two and a half years after the applicant had engaged in government work, given the applicant's profile and background and the nature and duration of his work (para 136). Hence, the Tribunal did not accept that there was a real chance that the applicant would be persecuted by the Taliban by reason alone of his past work with an Afghan government organisation (para 136).

			• *Hazara Shia*: The Tribunal considered that the applicant faced a real chance of suffering serious harm while travelling on the roads between Ghazni City and the applicant's village [Village 2] in Jaghori (para 139). However, there was no credible evidence to indicate that the Taliban or other armed groups were targeting people travelling on the roads in and out of Ghazni for reasons of their ethnicity or religion alone. Rather, the independent information indicated that the primary motivation of the Taliban and other armed militants in attacking people travelling on the roads appeared to be political (i.e. targeted against persons connected to or associated with the Afghan government or international forces), or simply criminal (i.e. involving robbery, extortion, kidnapping and ransom) (para 140). • *Returned asylum seeker from Australia*: The Tribunal found that, even if 'returned failed asylum seekers from Australia' or 'returning refugees' or 'returnees' were capable of constituting particular social groups, there was no credible independent information to indicate that their members faced a real chance of persecution (para 140). *Complementary protection claim* (paras 140–5) The Tribunal found that there were substantial grounds for believing that there was a real risk that the applicant would suffer significant harm while travelling on the roads throughout Ghazni and around his village in

			Jaghori (para 140). Independent reports indicated that travel along these roads was dangerous, as militant groups including the Taliban regularly set up checkpoints and conducted ambushes (para 137). For a number of reasons, the Tribunal considered it likely that the applicant would be required to travel on these dangerous roads. If the applicant was to be returned to his village in Jaghori, he would have to travel on these roads from Kabul (para 139). In the event that the applicant was able to safely return to his village, the Tribunal considered it likely that he would again engage in occasional taxi work, driving passengers to various places in Jaghori and throughout Ghazni (para 139). Moreover, the Tribunal considered it reasonable to assume that, from time to time, the applicant would be required to travel to Ghazni City to obtain supplies and access certain services, including medical treatment (para 139). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it would be reasonable for the applicant to relocate to Kabul. Although the Tribunal did not consider that there was a real risk that 'someone with the applicant's profile is presently at risk of being targeted by the Taliban or other armed groups in Kabul', the relevant issue with regard to relocation was 'whether, in all the circumstances, it would be

			reasonable for him to relocate and reside in Kabul, if he faces no real risk of harm there.' (para 144) The Tribunal noted that relocation would be extremely difficult for the applicant, since he did not have any relatives or contacts in Kabul. He therefore lacked familial or social networks in Kabul, and the ability to access support and assistance. Moreover, there was increasing insecurity and violence, high unemployment and lack of access to basic services in Kabul. In these circumstances, the Tribunal found that relocation to Kabul was not a reasonable option for the applicant (para 144). (b) *State protection*: There was authoritative information indicating that State protection was, on the whole, not available in Afghanistan. The Tribunal noted, for example, that: 'UNHCR notes that state protection in Afghanistan is compromised by high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional dispute resolution mechanisms that do not comply with due process standards. It also stated that "to the extent that the harm feared is from non-State actors, State protection is on the whole not available in Afghanistan" In view of the unstable security situation in Afghanistan and potential for further deterioration in the context of the impending draw-

			down and the likely resurgence of the Taliban, the Tribunal finds that the applicant would not be able to access state protection that would remove the real risk he faces from the Taliban and other armed militants. Accordingly, the Tribunal finds that the applicant is not excluded by the operation of s. 36(2B)(b).' (para 143) (c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the risk of being harmed on the roads in Ghazni was potentially faced by all people who travelled on those roads patrolled by the Taliban and other armed militants. However, the Tribunal considered that the applicant faced 'a *real* risk, as opposed to just *a* risk' because of his personal circumstances, as a resident in [Village 2] in Jaghori who operated a taxi service. Hence, the 'real risk' was not faced by the population of the country generally; rather, it was faced by people, such as the applicant, who regularly drove vehicles in such high risk areas. 'To suggest in these circumstances that the real risk faced by the applicant is not personal to him defies logic and common sense, and, in light of the purpose of the complementary protection regime, which was to incorporate Australia's non-refoulement obligations under various international human rights treaties, and the Minister's speech and comments in the EM and from the Department, to give a meaning to s. 36(2B)(c) which allowed such

			a finding would be unreasonable.' (para 142) Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (paras 141–2). Editorial note: The reasoning in this case is the same as for 1217334 [2013] RRTA 81 (discussed above).
1217778 [2013] RRTA 67 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/67.html	9 January 2013	85–92	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 76–84) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 32–43, 57–60). The Tribunal found that, on the whole, these reports failed to specifically identify

			Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 76–8), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 79). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 79–84): • *Harm in Jaghori*: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the lack of targeting of the applicant in the past (in Jaghori), the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 79). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para

			80). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 82). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 82). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 83). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 83). Although the Tribunal accepted that the applicant's parents had on one occasion been stopped by the Taliban on the Qarabagh road on their way to Kabul, and that the Taliban took their money, threatened them and ordered them to return to Jaghori (para 79), the Tribunal noted that this targeting by the Taliban appeared to have been motivated for reasons of financial gain and not for an essential and significant reason related to their race and religion (para 83). *Complementary protection claim* (paras 85–92) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal

			found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 85). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 88). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living outside his home area and his work skills (para 89). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of

			insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his parent and younger children (para 90). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 91). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 87). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 86). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97;

			1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1215348 [2013] RRTA 55 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/55.html	2 January 2013	109–17	This case relates to: • the meaning of 'significant harm' • cruel, inhuman or degrading treatment • land dispute The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed. *Refugee claim* (paras 83–108) The applicant claimed fear of being killed by the Taliban as a Hazara Shia, on the grounds of race and religion (para 87). However, on the basis of independent country information, the Tribunal was not satisfied that Hazaras and Shias faced a real chance of harm amounting to persecution by the Taliban or other non-state actors simply by reason of their race and religion (paras 92–5). The Tribunal also considered the applicant's individual circumstances to determine whether he might be at risk (paras 96–100): • *Returnee from Western country*: The applicant claimed fear of persecution on the basis of imputed political opinion, as a returnee from a Western

			country who would be regarded as a foreign spy or informer (paras 87–8). However, on the basis of country information, the Tribunal rejected this claim (para 99). • *Land dispute*: The Tribunal accepted the applicant's claims that his father had been killed by Mr A, who had seized his land; that Mr A was a man of power and influence in the local Hazara community, with links to the government and the Hizb-e-Wahdat, the dominant Hazara party in the region; and that, as a result, the applicant's family had been unable to resolve the dispute or reclaim their land through either government or traditional tribal channels (para 101). The Tribunal also accepted that if the applicant returned to Afghanistan, Mr A might think that the applicant was seeking to reclaim his land and might seek to harm or eliminate him, and that the authorities would not protect the applicant against a powerful tribal leader (para 102). Hence, the Tribunal accepted that the applicant faced a real risk of serious harm from Mr A (para 107). However, the Tribunal did not accept that this claim could be characterised as Convention-related (para 107). *Complementary protection claim* (paras 109–17) The applicant claimed that he faced a real risk of significant harm, in particular cruel or inhuman treatment and degrading treatment, through physical

			violence and the denial of social and economic rights (para 31). The Tribunal was satisfied that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Afghanistan, there was a real risk that the applicant would suffer significant harm from Mr A (paras 112–3). It based this on the applicant's claim relating to the land dispute. The Tribunal accepted that: 'the applicant's father was killed by [Mr A], who seized his land, as claimed; that [Mr A] was a man of power and influence in the local Hazara community, with links to the government and the Hizb-e-Wahdat, the dominant Hazara party in the region; and that as a result, the applicant's family has been unable to resolve the dispute or reclaim their land, through either government or traditional tribal channels. I find it plausible that, as the eldest son, who had stood to inherit his father's property, the applicant was constantly harassed by [Mr A]'s children and that this prompted him to leave Afghanistan for Pakistan.' (para 112) The Tribunal also accepted that if the applicant returned to his home village in Jaghori, 'there is a real chance that his neighbour [Mr A] may think that the applicant has come to reclaim his land and may seek to harm or eliminate him; and that the authorities would not offer him protection against a powerful and well-connected tribal elder.' (para 113)

			In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it would be reasonable for the applicant to relocate to an area of Afghanistan, such as Kabul. The Tribunal noted that the applicant did not have any family or tribal links in the area, which the UNHCR Guidelines had identified as a "pre-requisite for 'a reasonable alternative'" (para 114). The Tribunal also noted country information suggesting that the threat of harm to a person in a land dispute would still exist, even if the person moved location, unless the person had personal relations with the authorities or to national security, which the applicant did not have. Hence, relocation to another area could not be considered a reasonable option for the applicant (para 114). (b) *State protection*: On the basis of country information, the Tribunal was not satisfied that the applicant would be able to access any adequate measure of State protection in Afghanistan (para 115). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the significant harm faced by the applicant was specific to the applicant (para 116).
1212298 [2012] RRTA 1069 http://www.austlii.edu.au/a	19 December 2012	90–9	This case relates to: • the meaning of 'significant harm' • honour killings

u/cases/cth/RRTA/2012/1069.html			• arbitrary deprivation of life • the meaning of 'real risk' The applicant was a national of Iraq. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm, namely arbitrary deprivation of life, if removed. *Refugee claim* (paras 85–9) The applicant claimed that he would be killed if he returned to Iraq because he had committed adultery with a married woman whose husband had discovered the applicant with the woman in the matrimonial home. He claimed that under tribal custom, the woman's husband was entitled to kill the applicant if no mediated solution could be reached. The applicant claimed that his brother was unsuccessful in negotiating a solution and that the woman's husband was determined to kill the applicant (para 85). The Tribunal reviewed authoritative independent country reports dealing with 'honour killings' in Iraq and found that these tended to corroborate the applicant's claims (para 87). In particular, the Tribunal accepted that the act of adultery was a criminal offence in Iraq; punishment for adultery was considered a matter for family and tribe, rather than the state; parties who had committed adultery could be subject to

			'honour killings'; although the victims of such killings were usually women, males could also be killed in these circumstances; Iraqi law prescribed a lesser penalty for such 'honour killings' than for murder in other circumstances; and the police were generally sympathetic to the perpetrators of 'honour killings' and not interested in prosecuting (para 87). Based on this country information and the applicant's evidence, the Tribunal accepted that the woman's husband was deemed under tribal custom to be entitled to kill the applicant and that he in fact intended to do so. Hence, there was a real chance that the applicant would be killed if he returned to Iraq (para 88). However, the Tribunal did not accept that the harm faced by the applicant would be directed against him for a Convention reason (para 89). Rather, the motivation for the murder of the applicant would be revenge for his conduct in having a sexual relationship with a married woman. Although the Tribunal accepted that in some circumstances, there may exist a particular social group comprised of people who had breached social/religious/tribal mores, or dishonoured their family, the Tribunal did not accept that this was the case here. This is because the country information suggested that in Iraqi society, there were many possible ways in which a person could be considered to have infringed mores or to have invited dishonour. Hence, there was no group 'identifiable by a

			characteristic or attribute common to all members' (para 89). *Complementary protection claim* (paras 90–9) On the standard of proof applicable to the applicant's complementary protection claim, the Tribunal noted that there was 'little guidance as to whether parliament intended to impose the same standard as the "real chance" test for the purpose of the Refugees Convention, or a different standard as suggested by the use of different wording' (para 93). After citing the Explanatory Memorandum and the Second Reading Speech (paras 93–4), the Tribunal found: 'I consider that the likelihood of the applicant being subjected to significant harm is clear, present and substantial; I consider it highly probable that if the applicant returns to Iraq he will be killed by the husband of his lover. In these circumstances I consider that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Iraq, there is a real risk that he will suffer significant harm.' (para 95) In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal accepted that relocation in Iraq was problematic. Without tribal and family connections, the applicant would face discrimination in relation to housing, employment

			and basic services, and could even face physical danger. Moreover, given the level of insecurity in much of Iraq, including a high level of danger on most roads, it would not be reasonable for the applicant to relocate outside his usual place of residence. In any case, the man from whom the applicant feared harm worked for the government, and as it was necessary for residents to register any change of residence, the Tribunal accepted the applicant's claim that it was possible that the man would locate the applicant elsewhere in Iraq (para 97). (b) *State protection*: The Tribunal accepted that Iraqi law prescribed a lesser penalty for 'honour killings' than for killing in different circumstances, and 'in effect provide[d] state sanction for the extra-judicial killing of a person who has committed adultery'; authorities took the view that such killings were a matter for the family, not the state; and prosecutions, let alone convictions, for 'honour killings' were rare. On this basis, the Tribunal accepted that the applicant would not be able to obtain protection from a state authority (para 98). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the harm feared by the applicant was faced by him personally (para 99).
1216433 [2012] RRTA 1122	17 December 2012	91–6	This case relates to: • the meaning of 'significant harm'

http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1122.html			• cruel or inhuman treatment or punishment • degrading treatment or punishment • loan sharks/money lenders The applicant was a national of Malaysia. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 73–90) The applicant had borrowed money from private lenders (Ah Long or 'loan sharks') in Malaysia to buy a house and set up a business. He ran a profitable business in Malaysia, which enabled him to meet his repayment obligations. However, during a holiday in Australia in November 2011, he was arrested and charged with possession of pornography. These charges were eventually dismissed for lack of evidence, but by the time the applicant was released from prison, his business had collapsed and his creditors were asking for their money back. The Ah Long had assaulted his father and threatened his sister with severe consequences if the money was not paid back (para 74). The Tribunal accepted that there was a real chance that the applicant would suffer serious harm if returned to Malaysia (para 79). However, the Tribunal did not accept that the serious harm was feared on any Convention ground

			(para 90). The applicant claimed that he feared serious harm at the hands of the Malaysian loan sharks, or the Malaysian authorities, on the following Convention grounds (paras 40, 46). • *Indian ethnicity and Hindu religion – harm from Ah Long*: The applicant's representative had submitted that as an Indian Malay, the applicant was at risk of 'more serious harm' from loan sharks 'given the country information about ongoing discrimination and abuse against ethnic minorities in Malaysia' (para 81). Although the Tribunal accepted country information relating to discrimination against Indian Malays in Malaysia, the Tribunal found that that evidence did not establish that any harm inflicted on the applicant by loan sharks would be essentially and significantly motivated by his race or religion (para 81). • *Indian ethnicity and Hindu religion – denial of state protection from Ah Long*: The Tribunal found no information suggesting that state authorities in Malaysia withhold state protection from ethnic Indians or those who adhere to the Hindu faith (para 88). The Tribunal was not satisfied that the applicant would be denied state protection for reason of his race or religion (or any other Convention reason) (para 88). • *Membership of the particular social group, 'Malaysians who have entered loan arrangements with illegal money lenders/loans sharks/Ah Longs in*

			Malaysia' or 'defaulting debtors of illegal money lenders/loan sharks/Ah Longs': The Tribunal was not satisfied that these groups constituted particular social groups. Individuals from a variety of backgrounds could enter into loan arrangements with illegal money lenders in Malaysia or default on their loans for a range of reasons. Hence, there was no characteristic or attribute which distinguished such people from society at large (para 85). Moreover, even if these groups were particular social groups, the Tribunal did not accept that any harm faced by the applicant at the hands of the Ah Long would be essentially and significantly for the reason of his membership of these particular social groups. Rather, the Ah Long were motivated essentially and significantly by self-interested financial gain and revenge (para 86). • *Membership of the particular social group, 'returnees or ethnic minority returnees to Malaysia who are perceived to have committed crimes overseas which bring disrepute to the Malaysian state'*: The Tribunal found no credible or persuasive country information to suggest that the applicant would be charged or tried in Malaysia with pornography charges, given that such charges were dismissed in Australia (para 89). The Tribunal considered the applicant's claim that he might be detained and mistreated in custody because of his Indian ethnicity. However, on the basis of the

			evidence, the Tribunal was not satisfied that the applicant would be subject to serious harm, including detention and mistreatment, for reason of the charges laid and dismissed against him in Australia (para 89). *Complementary protection claim* (paras 91–6) The Tribunal was satisfied that 'there is a real risk that the applicant will be subjected to assault, significant harassment, and various forms of punishment for his failure to meet his financial obligations to Ah Long', amounting to cruel or inhuman treatment or punishment or degrading treatment or punishment (para 92). (See also para 78: Ah Long operatives were 'prepared to adopt violent means, including assault, inflicting injury, causing serious damage to property, false imprisonment and significant harassment to enforce their demands' (para 78)). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal accepted the applicant's argument that, given police corruption and police connections with Ah Long, the applicant could be located elsewhere in the country through his identity card, which was required for most transactions in Malaysia. It would not be reasonable to expect the applicant to live his life or conduct his affairs in hiding. Hence, the Tribunal found that it would not be reasonable for the applicant to relocate to an area

			of the country where there would not be a real risk of significant harm (para 94). (b) *State protection*: Based on country information relating to police corruption and police connections with Ah Long (paras 87–8), and also the fact that the applicant's family had suffered harm even though they had approached the authorities, the Tribunal found that the applicant could not obtain state protection such that there would not be a real risk of significant harm. Although the evidence suggested that authorities might take reasonable steps after harm was inflicted, the Tribunal was of the view that there was a real risk that the applicant would suffer the harm (para 93). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the significant harm faced by the applicant was faced by him personally (para 94).
1216094 [2012] RRTA 1155 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1155.html	14 December 2012	80–7	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) • land dispute The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real

			risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 71–9) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 28–39, 53–6). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 71–3), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 74). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 74–8): • *Harm in Jaghori*: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the

			lack of targeting of the applicant in the past (in Jaghori), the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 74). • *Harm on the roads surrounding Jaghori*: The Tribunal accepted the applicant's claim that the Taliban had stopped his minibus while he was travelling through Qarabagh with his mother to seek medical treatment in Kabul. The Taliban accused him of being the principal of [the] High School, physically mistreated him and released him after two men stated that he was not (para 74). However, the Tribunal did not accept that the applicant was of any ongoing adverse interest to the Taliban, since he could carry identification papers in the future to ensure that his identity was not mistaken (para 75). The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 75). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (paras 76–7). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the

			roads outside Jaghori (para 77). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 78). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 78). *Complementary protection claim* (paras 80–9) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 80). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 83). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the

			population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living in Kabul and his work skills (para 84). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his wife and children (para 85). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 86). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 82). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real

			risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 81). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1214661 [2012] RRTA 1151 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1151.html	13 December 2012	143–50	This case relates to: • the meaning of 'significant harm' • relocation (reasonableness) • land dispute The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed. *Refugee claim* (paras 108–42) The applicant claimed that he would face persecution as a Hazara and a Shia on the basis of his ethnicity and religion and an associated imputed pro-government

			political opinion (para 108). The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras109–15). These reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion, and the Tribunal drew the inference that Hazaras and Shias in Afghanistan were not generally subjected to persecution (paras 116–22). Further, the Tribunal was not satisfied that the State withheld protection from Hazaras and/or Shias on the basis of their religion or ethnicity or for any other Convention reason (para 124). The applicant therefore did not face persecution simply as a Hazara and a Shia in Afghanistan (para 123), although the Tribunal recognised that the applicant might be a refugee on the basis of his individual circumstances (para 125). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 128–38): • *Residence in, and access to, Jaghori*: The Tribunal was not satisfied that the applicant, as a Hazara and Shia, would face any particular or additional chance of harm for a Convention reason associated with residence in, or access to, Jaghori which would distinguish him from Shias and Hazaras in Afghanistan at large (paras 128–31).

			• *Brother's employment with NGO*: The Tribunal accepted that the applicant's brother worked for an NGO, and for this reason, his brother was taken (and presumably killed) by the Taliban (para 132). The Tribunal also accepted that a message was subsequently delivered or circulated in the local area, stating that the Taliban had killed the applicant's brother because he was working for the NGO and warning that any payments he had received from the NGO were non-Muslim or halal (para 133). However, the Tribunal was not satisfied that the message constituted a threat to kill other members of the family, rather than a statement of the consequences for the brother of his actions and a warning for the family not to profit from the victim's earnings from the NGO (para 133). Hence, the Tribunal was not satisfied that the applicant would be individually targeted by the Taliban for this reason (para 134). • *Land dispute with relative*: The Tribunal accepted that there was ill-feeling between the applicant's father and [Relative 4] over inheritance of land (para 136). However, the Tribunal did not accept the applicant's suggestion that because of the ill-feeling, [Relative 4] had any role in providing information regarding the employment and movements of the applicant's brother to the Taliban, or inducing the Taliban to target the applicant's brother (paras 136–7). The Tribunal also did not

			accept the suggestion that [Relative 4] might provide false information to the Taliban in order to lead them to target the applicant for a Convention reason (para 138). • *Illegal movements*: The Tribunal was not satisfied that the consequences of the applicant's "illegal movements" (i.e. the applicant's undocumented departure from Afghanistan to Pakistan as a child in 2005 or 2006) would amount to persecution for a Convention reason or meet the criteria for complementary protection (paras 139–40). There was no evidence before the Tribunal regarding penalty or harm as a direct result of such movements. Moreover, if there were penalties in effect for undocumented departure from Afghanistan to Pakistan, these would arise from the normal operation of a legitimate law and would not necessarily amount to persecution or arise for any Convention reason (para 139). • *Particular social group of landowner*: The Tribunal accepted that landowners could constitute a particular social group. However, there was no evidence before the Tribunal that members of such a group were subjected to persecution by reason of their membership of that group. Moreover, the applicant did not articulate any specific claims that he would be persecuted by virtue of membership of that particular social group, as opposed to possible actions by [Relative 4] in relation to the specific

			personal land dispute between them (paras 141–2). *Complementary protection claim* (paras 143–50) The Tribunal accepted that there was ill-feeling between the applicant's father and [Relative 4] over inheritance of land. Moreover, the Tribunal accepted evidence that land disputes are a very serious matter in Afghanistan. Given the inequality in position and power of the applicant, as a young man returning to the village where [Relative 4] is established and in possession, there was a real risk that the applicant would be physically threatened and harmed by [Relative 4] or someone on behalf of [Relative 4] (para 143). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered, and rejected, the reasonableness of relocation to Kabul (paras 146–9). There was ample evidence of the strength and pervasiveness of social networks in Kabul, particularly with links to tribes and areas of origin (para 147). On this basis, and given the significance of land in Afghanistan, the Tribunal accepted that there was a real risk (although not a strong likelihood) that [Relative 4] would become aware of the applicant's return and seek to pursue and harm the applicant on return even in Kabul (para 148). (b) *State protection*: The Tribunal was not satisfied that effective protection could or would be provided to the applicant against the particular harm (para 145).

			(c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the risk was faced by the applicant personally and not as a member of some wider group or by the population of the country generally (para 145).
1216720 [2012] RRTA 1141 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1141.html	30 November 2012	78–85	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 68–77) The Tribunal rejected each of the applicant's refugee claims: • *Land dispute*: The applicant had returned to his area in Malistan to reclaim family land, but found that this land had been taken over by his cousins. The Tribunal accepted that the cousins had threatened the applicant with harm and death, but did not accept that the cousins had done anything other than to threaten him. Based on the applicant's individual

			circumstances, and also country information indicating that very few land disputes in Afghanistan end in violence and that the majority of land disputes in Malistan end peacefully, the Tribunal was not satisfied that there was a real chance of persecution in the reasonably foreseeable future due to the land dispute. Moreover, there was no Convention nexus. • *Hazara Shia*: The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 24–35, 49–52). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 69–71), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (paras 72). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 73–7): • *Harm in Malistan*: The Tribunal reviewed country information indicating that Malistan was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions

			into the district. Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in Malistan from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 74). • *Harm on the roads surrounding Malistan*: The Tribunal reviewed country information indicating that the route to Malistan through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (paras 74–5). The Tribunal accepted that the applicant had lost his family land to his cousins, and that the applicant might have to occasionally travel outside Malistan through dangerous areas for work (given his specific employment skills in construction) and for other reasons, such as obtaining medical care for his wife and his children who were still minors (para 75). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Malistan (para 75). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 76). This was because of authoritative country reports indicating that travel on the roads surrounding Malistan was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 76).

			Complementary protection claim (paras 78–85) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Malistan, and given the Tribunal's findings regarding the applicant's need to travel outside Malistan, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Malistan. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 78). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 81). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living in large cities and his work skills (para 82). However, the Tribunal found that these

			factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his wife and children (para 83). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 84). (b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 80). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Malistan. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 79).

			Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1215936 [2012] RRTA 1140 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1140.html	29 November 2012	76–83	This case relates to: • the meaning of 'significant harm' • cruel or inhuman treatment or punishment • degrading treatment or punishment • meaning of risk faced by applicant 'personally' • relocation (reasonableness) The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed. *Refugee claim* (paras 68–75) The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion. The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 24–36, 50–3). The Tribunal found that, on the

			whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 68–70), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 71). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 71–5): • *Harm in Jaghori*: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information and the lack of targeting of the applicant in the past, the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 71). • *Harm on the roads surrounding Jaghori*: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively

			safe, it was regularly inaccessible in winter (paras 72–3). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 73). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 73). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 74). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 74). *Complementary protection claim* (paras 76–83) Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Jaghori, and given the Tribunal's findings regarding the applicant's need to travel outside Jaghori, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 76). In respect of each of the grounds in s 36(2B):

			(a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 79). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's experience living in large cities and his work skills (para 80). However, the Tribunal found that these factors were outweighed by other factors suggesting that it was unreasonable for the applicant to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the applicant's need to support his wife and children (para 81). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 82). (b) *State protection*: There was authoritative information indicating that state protection was, on

			the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 78). (c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Jaghori. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (para 77). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140.
1214761 [2012] RRTA 1032 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1032.html	16 November 2012	97–104	This case relates to: • the meaning of 'significant harm' The applicant was a national of Afghanistan, whose family lived in Kabul. Although born in Afghanistan, he had lived all but a few years of his life in Pakistan and Iran, had adopted a Pakistani lifestyle and spoke

			Hazaragi with an identifiable Pakistani accent (para 100). He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm. *Refugee claim* (paras 75–96) The applicant claimed that he would face persecution as a Hazara and a Shia on the basis of his ethnicity and religion (para 41). The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 80–5). These reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion, and the Tribunal hence did not accept that Hazaras and Shias in Afghanistan were generally subjected to persecution, either by the Taliban or Pashtuns (para 87). The applicant therefore did not face persecution simply as a Hazara and a Shia in Afghanistan (para 88), although the Tribunal recognised that the applicant might be a refugee on the basis of his individual circumstances (paras 89). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 90–6): • First, the Tribunal considered the applicant's fear of harm based on his 'long absence from Afghanistan'

			(paras 89–93). The Tribunal accepted the published information about the dangers in Afghanistan facing returnees from Iran and Pakistan, such as land or water disputes, or dialect differences which could lead to denial of government services, attacks and murders, and targeting by criminal groups (para 92). Hence, the Tribunal accepted that there was a real chance that the applicant would suffer serious harm, notwithstanding his family support in Kabul (paras 92–3). However, the Tribunal was not satisfied that there was a nexus between the serious harm feared and a Convention ground (para 93). • Secondly, the Tribunal considered the applicant's fears that 'as a failed asylum seeker he will be harmed simply for seeking asylum in Australia, that he will be imputed with a political opinion as a spy for the West and that he will be imputed with a religious opinion as a convert to Christianity' (para 89, 94–6). The Tribunal noted that the published information suggested that those returning to Afghanistan after claiming asylum abroad would not be targeted for that reason, and moreover, that there was no published information to support the applicant's assertions that he would be considered a spy and to have changed his religion (para 94). Hence, the Tribunal was not satisfied that there was a real chance that the applicant would face serious harm amounting to persecution for reason of his membership of the particular social group 'failed

			asylum seekers returning from the west' (or similar formulations) should he return to Afghanistan (para 95). *Complementary protection* (paras 97–104) The Tribunal accepted that 'the applicant, as an obvious stranger unaware of the social mores of present day Afghanistan, would be at real risk of being arbitrarily deprived of his life, or cruel or inhumane punishment or degrading treatment or punishment at the hands of criminal groups, random strangers and armed opposition groups' (para 103; see harms set out above). The Tribunal also accepted that the real risk applied in all of Afghanistan (para 104).
1212453 [2012] RRTA 977 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/977.html	1 November 2012	97–101	This case relates to: • the meaning of 'significant harm' • honour killings The applicant was an Iraqi national. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm. *Refugee claim* (paras 85–96) The applicant claimed that he feared harm on the grounds of: • *Political opinion, real and imputed*: The applicant claimed to be a moderate young man with liberal views about Islam and its practice (para 85).

			• *Membership of particular social groups*: namely, young moderate Muslims; moderate young people; young people who do not adhere to fundamentalism; western style young Iraqis; tailors who design western garments; sportsmen; Iraqi Athletes (para 85); However, the Tribunal had significant difficulties with the applicant's credibility in relation to these claims (paras 84, 87–92), and was not satisfied that his claims gave rise to a well-founded fear of persecution on return to Iraq for any Convention reason (paras 93–6). *Complementary protection* (paras 97–101) The applicant also claimed to fear harm at the hands of a family from a particular tribe and/or militant groups because he had been found with an unmarried girl on New Year's Eve, 2011 (para 85). The Tribunal accepted that the applicant met the complementary protection criteria based on this claim. The applicant claimed that he had been caught alone with an unmarried girl by her brother on New Year's Eve in 2011; the brother was very angry and assaulted the applicant; that evening, the applicant did not return to his house as the girl's brother knew where he lived; the applicant was informed by his family that members of the girl's family had come to their house looking for him, just hours after he had left the girl's house, and

			had assaulted people and broken his nephew's arm; members of the girl's family were persistent in seeking to locate the applicant, and sought to harm or kill him; the girl's family was from a very conservative and strict tribe; the girl's brothers were active members of the Mahdi Army, a militia organisation, and the issue of honour was paramount; the applicant feared death at the hands of the girl's family/tribe and the Mahdi militia (paras 22–39). The Tribunal was satisfied that the incident had occurred substantially as claimed and that the visits to the family home and attempts to locate the applicant had been persistent and sustained (para 97). The Tribunal found '[t]he applicant's suggestion that the Mahdi Army or one of its off-shoots have become involved and may now target the applicant because of this incident is speculative; but in any event the Tribunal is satisfied that any harm arising because of this liaison would be for a personal reason or matter of honour and not for any Convention reason.' (para 98) 'Nonetheless, the Tribunal is satisfied that the extended family of the girl would persist in seeking to harm or even kill the applicant to satisfy the perceived slight to the family honour.' (para 99) 'There are clearly substantial grounds for concluding

			that there is a real risk that the applicant would face significant harm … .' (para 100). In respect of each of the grounds in s 36(2B), the Tribunal found that: (a) *Relocation*: 'For a matter with tribal ramifications, relocation might be expected to be even more problematic than as generally indicated by UNHCR in its *Guidelines*.' (para 100). (b) *State protection*: '[T]he country information [does not] provide any real assurance that effective state protection might be available in relation to this matter.' (para 100). (c) *Risk faced by population generally and not by applicant personally*: This was an issue affecting the applicant and not the population generally (para 100).
1214160 [2012] RRTA 962 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/962.html	25 October 2012	81–90	This case relates to: • the meaning of 'significant harm' • membership of a particular social group – blood feuds Applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm. *Refugee claim* (paras 62–80) The applicant's refugee claim was based on two

			grounds: • *Hazara and Shia Muslim*: The applicant claimed fear of serious harm from the Taliban because he was a Hazara and a Shia Muslim. It was submitted that the applicant faced risk of harm simply because of his race and religion (para 66). However, the Tribunal was not satisfied that the Taliban was specifically targeting Hazara or Shias differentially from the population at large (paras 67–70). Hence, there was not a real chance that the applicant would suffer serious harm for reason of race and religion if he were to return to Afghanistan now or in the reasonably foreseeable future and his fear of persecution was not well-founded (para 73). • *Land dispute with cousins*: The applicant also claimed fear of serious harm from his cousins (para 30). The applicant claimed, and the Tribunal accepted, that the applicant and his cousins had been involved in a land dispute; the applicant had attempted to use the traditional forum for resolving such disputes (the local council of elders), but was advised by the elders to give in because his cousins were powerful due to their membership of Hizb-i-Islami (a Mujihadeen group); the applicant sustained permanent injuries during a beating by his cousins; the applicant's brother was detained and suffered serious harm while found as a hostage to force the applicant to sell his land to the cousins; the applicant sold the land to his cousins; and the

			applicant's return to Afghanistan could be seen as a signal that he wished to regain his land and thereby place him at risk of harm (paras 74–5; 78). It was submitted that the applicant faced risk on account of membership of a particular social group because the land dispute could be considered a 'blood feud' (para 77). However, the Tribunal found that in the particular circumstances of the case, there was no blood feud: 'The applicant does not claim to be at risk because of any harm he, or his immediate family, has inflicted on the other party to the feud. Rather he is at risk because his presence in Afghanistan would be seen by the other party as a sign he wishes to regain his land. He would be targeted for serious harm for that reason.' (para 78). Hence, although the Tribunal found that 'there is a real chance that the applicant would suffer serious harm for reason of his land dispute with his extended family should he return to Afghanistan now or in the reasonably foreseeable future and I find that his fear is well-founded', the applicant was not a refugee because 'the serious harm feared is not for a Convention reason' (para 80). *Complementary protection* (paras 81–90) The Tribunal accepted the applicant's complementary protection claim. Because of the applicant's land dispute with his cousins, there were substantial grounds for believing that as a necessary and foreseeable

			consequence of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm (paras 83–6). In respect of each of the grounds in s 36(2B), the Tribunal found that: (a) *Relocation and state protection*: '[T]he majority of land disputes are family conflicts over inheritance and … if a person involved in such a dispute were to return to Afghanistan and return to his home area he would be at risk. … [I]f a person such as the applicant involved in such a dispute settled in a major city … the problem would still exist. The person who had caused the problem might well want to eliminate him. … [U]nless the threatened party has personal relations with the authorities or to national security, he would always live with that threat. I accept that in this case the applicant has no such links.' (para 88). '[H]e would not be safe if he were to relocate to another area or to one of the major cities in Afghanistan.' (para 89) (b) *Risk faced by population generally and not by applicant personally*: In the particular circumstances of the case, the significant harm feared was specific to the applicant and not faced by the population of Afghanistan generally (para 89).
1206698 [2012] RRTA 891 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/89	16 October 2012	74–82	This case relates to: • the meaning of 'significant harm' • arbitrary deprivation of life

1.html			• honour killings First and second applicants were citizens of Pakistan. First applicant was born into a traditional Pashtun family and betrothed 'from birth' to a first cousin. She travelled to Australia and married second applicant. The protection claims made by first and second applicants were based on fear of the harm that would be directed at them by the man to whom first applicant was betrothed. Second applicant had been threatened at gunpoint, beaten and injured by the man to whom first applicant was betrothed, and hospitalized (paras 53–4). Neither applicant was recognised as a refugee, but there were substantial grounds for believing that there was a real risk that each applicant would suffer significant harm. *Refugee claim (first applicant)* (paras 56–73) First applicant claimed to have a well-founded fear of persecution for reason of membership of a particular social group: • 'Western educated Pakistani females' • 'Pakistani females engaged in love marriages' • 'Pakistani females defying family tradition of arranging marriage' • 'Pakistani women facing honour killing' • 'Pakistani females facing forced marriage'

			The Tribunal was not satisfied that 'Pakistani women facing honour killing' constituted a 'particular social group' because the shared characteristic was the feared harm of an 'honour killing' (para 69). For each other social group, the Tribunal was not convinced that all females who fell within the description of the social group constituted a 'particular social group' as the term had been defined by Australian courts. The Tribunal did not accept that in all cases where harm was suffered by such women, the harm was suffered for a collective reason (paras 60, 63, 66, 71). The Tribunal found that there was not a real chance that the first applicant would suffer serious harm for reason of her membership of a particular social group, or that her fear for that reason would be well-founded (paras 61, 64, 67, 69, 71). The serious harm feared by the first applicant was personal to her, for reason of her contravention of Pashtunwali, and specific to the man she was intended to marry (that is, because of his nature and beliefs and his family), rather than for reason of her membership of the particular social group (paras 60, 63, 66, 69, 71). The Tribunal also found that even if these grounds were considered cumulatively, there was not a real chance that the first applicant would be persecuted for a

			Convention reason or that her fear for that reason would be well-founded (para 72). Second applicant did not make a refugee claim (para 82). *Complementary protection* (paras 74–82) The Tribunal accepted that the man to whom first applicant was betrothed was, as a Pashtun man from a rural area of the North-West Frontier Province, bound by the code of Pashtunwali. The Tribunal accepted that the first applicant had transgressed Pashtunwali by not marrying that man, and that in the eyes of a conservative Pashtun, she had thereby 'shamed her betrothed and through him the entire family and that such an insult could not go unpunished' (para 78). Hence, if the first applicant were to be returned to Pakistan there were substantial grounds for believing that she would face a real risk of suffering significant harm: in this case the significant harm being arbitrarily deprived of her life (para 78). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal accepted the first applicant's claims about her inability to relocate to another area of Pakistan where she would be safe. Her family had links into a number of major cities and her whereabouts would become known through those clan and family links (para 80).

			(b) *State protection*: The Tribunal accepted the published evidence about the inability and unwillingness of the police and judiciary to protect would be victims of honour killings, to charge perpetrators after the fact and to impose any meaningful sentences on them (para 80). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the significant harm feared was specific to the first and second applicants, not to the general population of Pakistan (para 80). In relation to the second applicant, who had been attacked and threatened by the man to whom first applicant was betrothed, the Tribunal accepted that there were substantial grounds for believing that as a necessary and foreseeable consequence of his removal to Pakistan, there was a real risk that he would suffer significant harm (para 82).
1213303 [2012] RRTA 859 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/859.html	11 October 2012	106–14	This case relates to: • the meaning of 'significant harm' • relocation (reasonableness) Applicant was a Hazara Shia, who had worked as a taxi driver in Jaghori, Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing there was a real risk that he would suffer significant harm.

			Refugee claim The applicant's refugee claim was based on three grounds: • *Imputed religion*: The applicant claimed that he had been approached by a man in Kabul who asked the applicant to transport Christian books to Jaghori; the applicant had not realised that these were Christian books due to his illiteracy; the applicant's passengers discovered the books and accused him of being a convert; the people in his village believed that he was a convert; and five men came to his wife's house and threatened to kill him if they found him (paras 25–6, 32–4). Although the Tribunal found evidence that apostasy was a crime under Islamic law and punishable by death (paras 37–40), the Tribunal did not accept that the applicant was a credible witness regarding his claims to have unwittingly transported Christian books and to have been targeted because of this (para 101). • *Hazara Shia*: The applicant also claimed fear of the Taliban based on being a Hazara Shia (para 27): this was a claim which fell within the grounds of race, religion, and particular social group ('physically identifiable Hazara Shias') (para 99). However, the Tribunal found that the harm faced by the applicant on the roads surrounding Jaghori was not faced by Hazaras particularly, but rather faced by all ethnic groups (paras 92–100). • *Failed asylum seeker/returnee*: Based on DFAT

			reports, the Tribunal found that 'the applicant does not face a real chance of persecution, now or in the reasonably foreseeable future on account of being a returnee or a failed asylum seeker from Australia or a Western country both of which I accept are particular social groups and of which the applicant would be members of' (para 104). *Complementary protection* The Tribunal accepted the applicant's complementary protection claim: '[T]he country information indicates a substantial amount of targeting of persons on the roads of persons of all ethnic groups for reasons associated with criminality by the Taliban and other groups. Given this information, I find that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to a receiving country that there is a real risk of the applicant suffering significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment or degrading treatment or punishment. This harm is however localised to these areas.' (para 106) In respect of each of the grounds in s 36(2B), the Tribunal found that: (a) *Relocation*: The applicant would not face a real risk

			of significant harm in Kabul (para 110). However, it would be unreasonable for the applicant to relocate to Kabul because of: lack of family links in Kabul; widespread unemployment limiting the applicant's ability to meet basic needs, exacerbated by applicant's limited work skills; the need to support his wife and children, making it more difficult to adapt to and integrate into Kabul; and the general lack of security (paras 109–113). (b) *State protection*: 'Authoritative information from the UNHCR indicates that state protection is on the whole not available in Afghanistan and there is no evidence to indicate that the applicant would be able to access state protection that would remove the real risk.' (para 108). (c) *Risk faced by population generally and not by applicant personally*: Para 107: The applicant is not excluded from protection by virtue of this 'peculiarly worded provision' (since 'it is difficult to imagine a harm that is faced by a population of a country generally and not by a person personally.'). '[P]ersons of all ethnic groups (i.e. the population of the country) face the real risk of harm on the roads but it is also a real risk that faces the applicant personally in his particular circumstances.'
1210224 [2012] RRTA 920 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/92	19 September 2012	94–103	This case relates to: • the meaning of 'significant harm' • relocation (reasonableness)

0.html			The applicant was a national of Afghanistan, who had moved from Afghanistan to Pakistan as an infant. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm. *Refugee claim* (paras 66–93) The applicant claimed that he would face persecution as a Hazara and a Shia on the basis of his ethnicity and religion, and also as a member of that particular social group and because Hazaras are imputed with a political opinion of support for the Western-backed government (para 66). The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 67–80). These reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion, and the Tribunal drew the inference that Hazaras and Shias in Afghanistan were not generally subjected to persecution (para 74). Further, the Tribunal was not satisfied that the State tolerated or condoned persecution of Hazaras and/or Shias, or that Afghan authorities refused to provide protection to Hazaras and/or Shias on the basis of their religion or ethnicity or for any other Convention reason (para 80). The applicant therefore did not face persecution simply as a Hazara and a Shia in

			Afghanistan (para 82), although the Tribunal recognised that the applicant might be a refugee on the basis of his individual circumstances (paras 76–8, 83). However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 86–93). The Tribunal outlined the difficulties and possible harm that the applicant might encounter in returning to his village in Afghanistan (paras 87–92), including land disputes resulting in serious harm or death (para 87), serious practical difficulties resulting from the applicant's lack of familiarity with a whole range of aspects of everyday life in Afghanistan and the fact that his Pakistani accent might mark him out (para 89), difficulty obtaining support and employment, given the applicant's lack of personal, tribal and local connections (para 91), and targeting by insurgents and criminals *en route* from Kabul to the applicant's village in Jaghori, because he was self-evidently returning after a long period out of the country and in part because he might therefore be thought to have financial resources (para 92). However, the Tribunal was not satisfied that this harm would occur significantly and essentially for any Convention reason, rather than arising from his individual, non-Convention circumstances (para 93). *Complementary protection* (paras 94–6) The Tribunal was satisfied that there was a real risk that

			in attempting to return to his village, the applicant would face significant harm including but not limited to cruel and humiliating treatment, as a result of adverse attention intentionally directed towards him, in his village or *en route* (para 96; see harms set out above). In respect of each of the grounds in s 36(2B): (a) *Relocation*: The Tribunal considered whether it would be reasonable for the applicant to relocate to the large urban centre of Kabul, with its very large Hazara population (para 100). However, it found that it would not be reasonable in the sense of practicable for the applicant to relocate to and subsist in Kabul because of language, documentation and support networks. The combination of these factors would make the applicant relatively conspicuous and make it difficult for him to obtain employment, and therefore accommodation (para 101). (b) *State protection*: The Tribunal accepted that state protection in Afghanistan was variable and unreliable and that it was not safe to assume that the applicant could obtain, from Afghanistan authorities, protection such that there would not be a real risk that the applicant would suffer significant harm (para 99). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the real risk was one faced by the applicant

			personally and not one faced by the population of the country generally, because it arose principally in relation to the personal circumstances of his lengthy absence from Afghanistan and return with a strong Pakistan accent and ignorance regarding life in Afghanistan, as well as possible ramifications in relation to land (para 98).
1205075 [2012] RRTA 851 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/851.html	19 September 2012	114–18	This case relates to: • the meaning of 'significant harm' • section 91R(3) ('contrived' refugee claims) • Falun Gong Applicant claimed to be a Falun Gong practitioner in China. She was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that she would suffer significant harm. *Refugee claim* The Tribunal found that the applicant was not a genuine Falun Gong practitioner, had not been involved in Falun Gong activities in China, and would not be involved in Falun Gong if returned to China (paras 112–13). Although accepting that the applicant had been significantly involved in Falun Gong in Australia, the Tribunal disregarded this evidence in determining whether the applicant had a well-founded fear of persecution in Australia, on the basis that the applicant had become involved in Falun Gong activities in Australia solely to strengthen her claims to be a

			refugee: s 91R(3), *Act*. Hence, the Tribunal was 'not satisfied that there is a real chance that the applicant will suffer serious harm for reasons of her political opinion, imputed political opinion, membership of a particular social group or for any reason upon her return to China' (para 113). *Complementary protection* (paras 114–18) However, the Tribunal accepted the applicant's complementary protection claim because s 91R(3) does not apply to complementary protection claims (para 114). '[A]lthough the Tribunal has found that the applicant's claims to be a genuine Falun Gong practitioner are contrived and that she will not practise Falun Gong upon her return to China, the Tribunal accepts that there are substantial grounds for believing that she will have been identified as a Falun Gong practitioner and will be *perceived* to be a Falun Gong practitioner by the Chinese authorities upon her removal from Australia to China. The Tribunal is, therefore, satisfied, having regard to the considerable level of the applicant's involvement, and the independent evidence indicating the monitoring of Falun Gong activists in Australia, that there are substantial grounds for believing that the applicant's involvement in Falun Gong activities in Australia will be known by the Chinese authorities and that she will be perceived to be a genuine Falun Gong

			practitioner … . Falun Gong practitioners are at considerable risk of serious mistreatment including arrest, detention, harassment and physical harm. The Tribunal is satisfied that such mistreatment amounts to significant harm as it may include torture, cruel or inhuman treatment or degrading treatment or punishment' (para 118).
1208795 [2012] RRTA 899 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/899.html	18 September 2012	133–43	This case relates to: • the meaning of 'significant harm' • relocation (reasonableness) • State protection • domestic violence The applicant was a citizen of China. She was not recognised as a refugee (paras 116–32), but the Tribunal found that there were substantial grounds for believing that there was a real risk that she would suffer significant harm. The refugee claim failed because although she had a well-founded fear of serious harm, it was not for a Convention reason (paras 117–21, 132). Although State protection had been withheld from the applicant, it was not for a Convention reason but rather as a result of corruption and/or the ties between her first husband and the police (para 121). *Harm feared* The Tribunal found that the applicant feared harm at the hands of her first husband if returned to China. She had

			previously been stabbed, resulting in six months' hospitalization, strangled and raped by her first husband, and suffered intermittent low-level harassment. There was evidence to suggest this would continue were she to return. The Tribunal found that each incident 'could reasonably be considered to be "cruel or inhuman treatment"' (para 134). In interpreting whether there were substantial grounds for believing that as a necessary and foreseeable consequence of removal to China there would be a real risk that the applicant would suffer significant harm, the Tribunal considered the interpretative guidance provided in the *Explanatory Memorandum* to the *Migration Amendment (Complementary Protection)* Bill 2011 and the Second Reading Speech on the introduction of the Bill (para 137). In respect of the s 36(2B) grounds: (a) *Relocation*: In light of the potential difficulties associated with relocating within China and the applicant's personal situation, the Tribunal found that it would not be reasonable for the applicant to relocate to an area of the country in which she would not face a real risk of significant harm (paras 138–9). The available information indicated that relocating to an area of China remote from her first husband would entail administrative processes which would likely make relocation difficult for the applicant (para 138). Moreover, the applicant was

			emotionally fragile, lonely, effectively estranged from her daughter and brother, suffered from several medical problems and was generally vulnerable (para 139). (b) *State protection*: 'Having regard to all the evidence, the Tribunal finds that cumulatively, the applicant's first husband's connections, the continuing prevalence of police corruption, the ongoing tendency to blame victims for domestic violence and a residual reluctance on the part of the responsible authorities to take action against perpetrators mean that the applicant would be unable to access state protection such that there would not be a real risk that she will suffer significant harm' (para 142).
1212321 [2012] RRTA 775 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/775.html	28 August 2012	83–91	This case relates: • the meaning of 'significant harm'. The applicant was a national of Afghanistan, living around the Jaghori province. He feared harm as a Shia Muslim man of Hazara ethnicity. He also feared harm from the Afghani police and the Taliban as they suspected him of having assisted a man, Mr A. Mr A was suspected of opposing Islam and preaching Christianity (paras 21–7). The applicant was a shopkeeper and often travelled along dangerous routes to the Jaghori province. *Feared harm on the basis of ethnicity/religion*

			The Tribunal noted that the overall weight of the country information indicated that there was no evidence of a general campaign by the Taliban insurgency to target Hazara Shias or that Hazaras were being persecuted on a consistent basis (para 71). The Tribunal accepted that the applicant had worked as a shopkeeper and had to occasionally travel through areas that were dangerous for the purposes of his business and that he and his family would need to occasionally travel outside the area for other reasons such as obtaining medical care. On the basis of the country information, the Tribunal accepted that the applicant faced a real chance of persecution in the reasonably foreseeable future on these roads (para 75). However, this persecution was not for a Convention reason, as travel was dangerous for all ethnic groups and there was no evidence of any particular targeting of ethnic groups on the roads (para 76). *Feared harm on the basis of apostasy/assisting Mr A* The Tribunal accepted country information that those who converted to Christianity from Islam were at considerable risk of harm as apostasy was considered a crime punishable by death and the conditions for religious freedom in Afghanistan were 'exceedingly poor' (para 79). However, there were no identified

			reports of friends of alleged Christian converts and proselytisers being targeted by the authorities due to their association with them. In any case, the Tribunal did not accept that Mr A had been a Christian, nor that the applicant had assisted him (paras 80–2). *Complementary protection* While there was no Convention reason for the persecution that applicant would face on the roads to Jaghori, the Tribunal noted that the country information did indicate substantial targeting on the roads of persons of all ethnic groups for reasons associated with criminality by the Taliban and other groups. In light of this information, there were substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia there would be a real risk of the applicant suffering significant harm on the roads surrounding Jaghori para 83). With respect to whether the risk was faced by the population generally (s.36(2B)(c)), the Tribunal noted: 'This is a peculiarly worded provision as it is difficult to imagine a harm that is faced by a population of a country generally and not by a person personally. The explanatory memorandum and second reading speech

			that accompanied the introduction of the complimentary (sic) protection provisions provide no assistance in its interpretation and application. In the circumstances of this case, the country information that I have given weight to indicates that persons of all ethnic groups (i.e. the population of the country) face the real risk of harm on the roads but it is also a real risk that faces the applicant personally in his particular circumstances. Accordingly, I find that the applicant is not excluded by the operation of s.36(2B)(c).' The Tribunal found it would not be reasonable for the applicant to relocate to Kabul or anywhere else in Afghanistan, in light of a number of factors, including lack of family links elsewhere, widespread unemployment limiting the ability to meet his basic needs (such as access to clean water and electricity), the fact that he had a large family to support and the general lack of security (paras 89–90). The Tribunal concluded that the applicant was owed protection obligations under s.36(2)(aa).
1108957 [2012] RRTA 502 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/502.html	29 June 2012	18–23, 111–128, 130	This case relates to: • the meaning of 'significant harm' Applicant was being targeted by the military and militant groups in Nigeria, because he had witnessed the killing of an Urhobo man. He was not recognised as refugee because the harm that he feared would be

			inflicted upon him by the perpetrators of the killing was not for a Convention reason, but rather motivated by a desire to silence the applicant. However, there were substantial grounds for believing there was a real risk that the applicant would suffer significant harm. *Degrading treatment or punishment*: is exhaustively defined in s 5(1) of the Act and means: an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission: (a) that is not inconsistent with Article 7 of the [ICCPR], or (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the [ICCPR]. [120] In considering the meaning of 'extreme humiliation which is unreasonable' that Tribunal referenced interpretations of degrading treatment or punishment in other jurisdictions (namely, the European Commission of Human Rights and the Inter-American Court of Human Rights), which also involved an element of humiliation. [121] The Tribunal found that the 'lamp incident' amounted to 'extreme humiliation which is unreasonable'.

			Further, the applicant's mistreatment associated with his breach of the curfew may have been an isolated incident, but nevertheless amounted to degrading treatment or punishment. There were substantial grounds for believing that there was a real risk that such significant harm would be repeated on the applicant if he returned to Nigeria. [125] *No 'real risk' of significant harm: s 36(2B)*: There are three circumstances in which there is taken *not* to be a real risk that a non-citizen will suffer significant harm: • where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; • where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or • the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally. [126] Based on the country information available to it, the Tribunal found that the significant harm which the applicant had a real risk of being subjected to was not isolated to a particular part of Nigeria. The Tribunal therefore found that it would not be reasonable to expect the applicant to relocate to another area where

			there would not be substantial grounds for believing that there is a real risk of 'significant harm'. The Tribunal also found that it was not satisfied that the applicant could obtain, from an authority of Nigeria, protection such that there would not be a real risk that he would suffer significant harm. Indeed, the Tribunal found that the significant harm which the applicant faced emanated from the Nigerian state authorities. Finally, the Tribunal found that the real risk faced by the applicant was not one faced by the population of Nigeria generally but was faced by the applicant personally. Based on these findings, the applicant was not denied protection under s 36(2)(aa) by the operation of s 36(2B) of the Act. [127]
1114038 [2012] RRTA 343 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/343.html	18 May 2012	18–22, 96–115	This case relates to: • the meaning of 'significant harm' • the meaning of 'real risk' Applicant was a victim of extortion and threats of violence (including death threats) from a major street gang in El Salvador. She was not recognised as refugee because the harm feared was not for a Convention reason. However, there were substantial grounds for believing there was a real risk that the applicant would suffer significant harm. *Cruel or inhuman treatment*: 'the applicant's past experience of extortion demands accompanied by threats of violence, including of being killed, has caused

			the applicant to suffer severe anxiety and fear'; 'the level of anxiety and fear experienced by the applicant amounts to severe mental suffering'; 'If she returns to El Salvador, and as she claims, is subjected to extortion demands with threats of violence in the reasonably foreseeable future, she will have again been subjected to this cruel or inhuman treatment.' [101] *'Real risk' of significant harm*: The Tribunal drew on Mason CJ in *Chan v MIEA* (1989) (there is no significant difference between the various expressions used in other jurisdictions to describe 'well-founded fear' – 'a reasonable degree of likelihood', 'a real and substantial risk', 'a reasonable possibility' and 'a real chance') to suggest that the terms 'real chance' (in refugee claims) and a 'real risk' (in complementary protection claims) are substantially similar. 'However what may distinguish a "real risk" and a "real chance" are the words "as a necessary and foreseeable consequence".' [102] This was found to mean that the Tribunal 'must be satisfied that the risk to the applicant goes beyond theory and suspicion and there exists a personal and direct risk to the applicant', which was satisfied here. [105] There was no exception under s 36(2B) [106–12]: (a) Not reasonable for applicant to relocate to other areas. Few areas in El Salvador where gangs are not prevalent. Would be very difficult for applicant to

			seek accommodation and employment in these areas, given no contacts there and applicant's limited funds. (b) Could not obtain protection from authority such that there would not be a real risk of significant harm. Inadequate law enforcement, due to corruption and equipment shortages. (c) Risk is one faced by population of El Salvador generally *and* is faced by the applicant personally. Applicant faces a higher risk than is faced by population generally because she would be a single female returning from an overseas country and hence may be perceived by the gangs to have money.