COMPLEMENTARY PROTECTION IN AUSTRALIA

ADMINISTRATIVE APPEALS TRIBUNAL

This table contains AAT decisions from July 2015-December 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).

Case	Decision date	Relevant paragraphs	Comments
1314268 (Refugee) [2015] AATA 3894 (Unsuccessful)	9 December 2015	1, 14, 42, 45-46 and 49	The applicant was a citizen of Afghanistan and of Hazara ethnicity (para 1). 'He fears if he returns to Afghanistan he will be harmed for a number of reasons: because he is Hazara, because he has applied for asylum in Australia and because he worked for a foreign company which provided services to the Afghanistan government. He feared too that he would be harmed because he has ceased practicing as a Shia Muslim. He fears he may be harmed by a number of persecutors including the Taliban, other Pashtun extremists and Islamic State. He fears too he may be harmed by his family, his former friends or members of the community' (para 14). 'The Tribunal is not satisfied the applicant has a well-founded fear of persecution for reason of his race, religion, membership of a particular social group or for any Convention reason or combination of reasons, now or in the reasonably foreseeable future if he returns to Afghanistan. Therefore, the applicant does not satisfy

			the requirements of s.36(2)(a)' of the Act (para 42). The Tribunal accepted 'the applicant faced harassment and discrimination in the past because he is a Hazara and there is a real chance he may face such harassment and discrimination in the future if he is removed to Afghanistan. He referred to having difficulty attending school during the period the Taliban were in power. He referred as well to conflicts between himself and Pashtun customers and colleagues. The Tribunal has had regard to whether that harassment and discrimination amounts to significant harm' (para 45). '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' (para 45). Based on the Tribunal reasoning in applying s.36(a) of the Act to the applicant's claims, the Tribunal was not satisfied the applicant faced a real risk of significant harm with regard to the applicant's remaining claims (para 46). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(a) and s.36(2)(aa) of the Act (para 49).
1409752 (Refugee) [2015]	20 November	2-3, 9, 81-83, 91, 94,	The applicant was a citizen of China (para 2).

AATA 3691 (Unsuccessful)	2015	96-97 and 103-106	In accordance with the decision of the Full Court of the Federal Court in *SZGIZ v MIAC*[2013] FCAFC 71; (2013) 212 FCR 235, the Tribunal only considered the application of s.36(aa) of the Act to the applicant's claims (para 3). 'The applicant claims she is in fear of practising her religious beliefs; in fear of claiming her right to access her property and in fear of mistreatment if she returns to China' (para 9). The 'Tribunal accepts the applicant is from a Christian family and practised her faith in China in an informal house gathering setting' (para 81). The Tribunal also accepted that that applicant's father was 'detained for his religious beliefs many years ago' (para 82). 'However, the Tribunal does not accept the applicant herself experienced past harm because of her religious practice in China' (para 83). The 'Tribunal does not accept the applicant's claims that a cross was erected on the house church or that her neighbours blocked access to the road' (para 91). The 'Tribunal is prepared to accept that the applicant's husband sold the family home and it has now been demolished and that her husband received RMB 100,000 in return for it' (para 94).

			The ‘Tribunal is prepared to accept that the applicant continues to be a Christian in Australia and has been attending church services here’ (para 96). ‘Having accepted that the applicant comes from a Christian family in China and that she has continued to practise Christianity in Australia, the Tribunal accepts that she will seek to practice her faith as a Christian in China’ (para 97). The ‘Tribunal considers the weight of available independent country information does not support that there are substantial grounds for believing there is a real risk the applicant, taking into account her religious commitment and practice, will face significant harm in China for reasons of practising her religion’ (para 103). The ‘Tribunal has also considered whether the applicant will face future trouble or harm from her neighbours or villagers if she returned to her previous area. The Tribunal has rejected the applicant’s claims that her neighbours blocked her access to her house church and that they unlawfully appropriated her land or house. It does not accept that she will take any action if she returns to China to get back her house and land’ (para 104). ‘The Tribunal also does not accept that the neighbours will report her to police for her religious practice or that the neighbours will pursue or harass her if she lives elsewhere’ (para 104).

			The Tribunal is not satisfied there are substantial grounds for believing there is a real risk the applicant will face significant harm in China from her neighbours or local villagers for reasons of her religion or any other reason' (para 104). 'The Tribunal has also considered the applicant's claims that she will be unable to survive if returned to China because she cannot generate enough income to live on and has nowhere to live. In respect of this claim the Tribunal observes that she has a husband and [child] in China and has referred to other relatives with whom they have been staying. Therefore it does not accept that she would be without any family support upon her return' (para 105). 'In any event, the Tribunal finds that unemployment, financial hardship and inability to obtain adequate housing do not come within the meaning of significant harm as contemplated by that term in s36(2A)' of the Act (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)(aa) of the Act (para 106).
1412094 (Refugee) [2015] AATA 3754 (Unsuccessful)	13 November 2015	11, 62, 67-69, 71-72, 78-79, 81, 83-85 and 87-89	The applicant was a citizen of Papua New Guinea (para 62). In accordance with the Federal Court decision of *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235, the

			Tribunal only considered the applicant's claims with respect to s.36(aa) of the Act (para 11). The applicant claimed to fear harm based on 'her being raped in or around 2001; ongoing adverse attention from [Tribe 3]; tribal conflict more generally; physical harm from the applicant's husband; physical harm from the applicant's husband's family and the demand of the return the bride price; pain from her husband rejecting her; the state of the PNG medical system impacting on the applicant's medical conditions; financial difficulties in resettling in PNG including difficulties finding accommodation and getting a job; the difficulty in leaving Australia; or for the any other reason' (para 88). The 'Tribunal is not satisfied that there is any past harm or threats of harm, that has been suffered from [Tribe 3], including being raped, or being monitored by the Tribe, that creates a real risk of significant harm to the applicant should she return to PNG' (para 67). 'The Tribunal considers that the applicant lived safely in Port Moresby before coming to Australia without any harm or threats of harm from [Tribe 3]' (para 68). 'The Tribunal is not satisfied that there is a real risk of significant harm to the applicant from generalised tribal violence in her home area to the applicant in Port Moresby' (para 68). 'The applicant's has expressed concern that she could not live in Port Moresby due to being at risk of harm

			from her husband, the expense, and the fact that she could not get a job, notwithstanding that it is closer to medical facilities' (para 69). 'The Tribunal accepts that the applicant is uneducated and therefore may only be in a position to obtain a low skilled job in Port Moresby. The Tribunal acknowledges that the applicant's health problems may pose constraints in working, although the applicant made no claims to this effect' (para 71). 'The Tribunal is inclined to think that the applicant would be in a position to obtain work of some description in Port Moresby and support herself, although acknowledging that there may be financial challenges. Whilst the Tribunal is sympathetic to any future economic challenges facing the applicant, such challenges, and the difficulty of obtaining employment, do not fall within any definition of significant harm for the purpose of the complementary protection criterion' (para 71). 'The Tribunal is prepared to accept, for the purposes of this decision, that there is a real risk of significant harm to the applicant in [Town 1] as a result of tribal violence. However, as the Tribunal is of the view that the applicant has two home areas, the Tribunal is also of the view that the applicant would be able to live in her second area of Port Moresby without a real risk of significant harm. The Tribunal is not satisfied, based on the independent evidence, that there is a real risk that tribal warfare in [Town 1] would follow her to Port

			Moresby' (para 72). 'The Tribunal does not consider that what took place when the applicant and her husband were living together as man and wife in Port Moresby leads to a risk of physical harm to the applicant should she return to PNG, and, if the husband were also there, given the changed circumstances of the relationship, the fact that they are not living together, and the absence of contact by the husband with the applicant in Australia over the last two years other than one abusive text message. The Tribunal is not satisfied that there is a real risk of significant harm to the applicant on return to PNG, if her husband is there, based on what happened when they were living together as man and wife a number of years ago' (para 78). 'The Tribunal is not satisfied, given all the evidence, that the applicant's husband poses a real risk, in PNG, of physically harming the applicant, forcing her to be with him as his wife, or cause her any form of significant harm as defined in the Act. The Tribunal does not consider that the pain that the applicant would feel if she wants to go back to her husband but be rejected, constitutes significant harm for the purposes of the Act' (para 79). 'In terms of the applicant's claims that her husband's family (or the husband) will harm her or seek repayment of the bride price, the Tribunal considers this is entirely speculative' (para 81).

			‘Whilst the Tribunal acknowledges that violence against women is a problematic issue in PNG, the Tribunal is not satisfied that the independent evidence establishes that every woman in PNG faces a real risk of significant harm on the basis of being a woman. The Tribunal considers that the applicant’s own risk profile needs to be considered. As indicated, the Tribunal is not satisfied that the applicant has been raped or is the subject of ongoing adverse attention from [Tribe 3]. The Tribunal is not satisfied that the applicant is at a real risk of significant harm from her husband or her husband’s family. The Tribunal is not satisfied that the applicant has any particular attributes or profile that puts her at a real risk of significant harm because she is a woman should she return to PNG. In particular, the Tribunal is not satisfied that the applicant would attract any adverse attention from [Tribe 3] in Port Moresby’ (para 83). ‘The Tribunal accepts that the applicant has a [medical] condition which has required surgery in Australia. The Tribunal accepts that the applicant has been diagnosed with a number of mental health conditions’ (para 84). ‘The Tribunal accepts that the standard of medical care in Australia is likely to be superior to that in PNG’ (para 84). The Tribunal found ‘that any harm which she would suffer in terms of treatment of her [medical] and mental health conditions due to the state of the PNG health system is not harm which falls within the definition of significant harm for the purpose of the complementary

			protection criterion' (para 85). The applicant has made a claim that, as a result of being removed from Australia, this would result in severe pain and suffering. To the extent the applicant is claiming that she will be moving from an easier to more difficult life in returning to PNG, the Tribunal is not satisfied that there would be the intention of any individual or entity to cause the applicant harm in the act of her being removed to PNG' (para 87). 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 89).
1402684 (Refugee) [2015] AATA 3667 (Unsuccessful)	12 November 2015	11, 43-44, 51, 54-56 and 59	The applicant claimed to be stateless, of Rohingya ethnicity and born in Bangladesh (para 11). 'Having considered the applicant's claims, evidence, country information and the submissions made by the applicant's migration agent', the Tribunal was of the view that the applicant was not a witness of truth (para 43). The Tribunal was 'of the view that he fabricated his material claims for the purpose of obtaining a Protection visa' (para 43). The Tribunal found that the applicant was not a 'credible witness' (para 43). The Tribunal was not satisfied that the applicant was a

			'Stateless Rohingya' and the Tribunal did 'not accept any of his claims that flow from this' (para 44). 'In light of the Tribunal's finding that the applicant is not a credible witness, the Tribunal is not satisfied that he has a well-founded fear of Refugee Convention related persecution for any of the reasons put forward by him' (para 51). 'During the hearing, the applicant claimed that his family would be upset if he returned to Bangladesh and may die. The Tribunal accepts that his family may be upset if he returns to Bangladesh. However, the Tribunal does not accept that they may die for this reason' (para 54). 'The applicant also claimed that "in Bangladesh they don't pay a proper salary." The Tribunal has not accepted that he was paid half or less than what other employees were paid for doing the same job. The Tribunal accepts that his earning capacity in Bangladesh is less than in Australia' (para 55). 'However, he was in steady employment in Bangladesh from [year] to [year] and was able to subsist and assist his family. His evidence to the Tribunal is that he is able to obtain work in Bangladesh and that locals help him. The Tribunal is therefore not satisfied that there is a real risk that he will face economic hardship amounting to significant harm if he returns to Bangladesh' (para 55).

			The Tribunal was 'not satisfied that there is a real risk that the applicant will suffer significant harm for any of the reasons claimed if he returns to Bangladesh now or in the reasonably foreseeable future' (para 56). 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)(para 59).
1410183 (Refugee) [2015] AATA 3675 (Unsuccessful)	10 November 2015	4, 8, 18, 49-51, 53-54, 60-64, 67-69 and 73	The applicants (husband, wife and two children) were citizens of China (para 4). The primary applicant was the applicant husband (para 4). Applying the reasoning in *SZGIZ v MIAC*[2013] FCAFC 71; (2013) 212 FCR 235, the Tribunal only considered the applicants' claim with respect to s.36(aa) of the Act (para 8). The applicant husband 'claimed that he left China and came to Australia for a better life and to avoid the conflict with the villagers who had intimidated and beaten him. He was in fear of persecution by the authorities and harm by the villagers. He had a dispute over the farmland before he left China. After coming to Australia in 1998 his entitlement of farmland was taken by the villagers with power and his hukou was deregistered by the authorities. As a result he had been deprived of access to social benefits' (para 18). The applicant husband claimed 'if he were removed to

			China, he would claim his right to the farmland, for his hukou to be re-registered and other social benefits which were contrary to both the authorities' and the villagers' interests and he would suffer harm and persecution if he continued to pursue such matters. The authorities had colluded with the villagers and thus would not protect him' (para 18). 'Based on independent country information related to the permanency of hukous' the Tribunal found that the applicant husband had a hukou (para 49). 'The Tribunal accepts that the applicant husband may have lost his household registration book and need to have it reissued if he returns to China. There is no information before the Tribunal which would indicate that requesting a household registration book be reissued would lead to any dispute with authorities. Moreover, independent country information indicates that the applicant has available the option of obtaining a new hukou as his wife's spouse in her rural area' (para 49). 'The Tribunal accepts that there may be difficulties for the applicant husband to try to reclaim his land, particularly if it has been reallocated to another villager as he claims and that person has been using it for the past 10 years or more' (para 50). However, there was 'no evidence before the Tribunal that the land has been reallocated or that the local authorities in the applicant's village would refuse to

			reallocate land to him if he returned to China' (para 51). 'The Tribunal considered the possibility of relocation given the applicant fears he will suffer harm from local authorities or villagers if he attempts to re-establish his household in his own village' (para 51). Based on country information the Tribunal was 'satisfied that the applicant has the option of relocating to his wife's village in Guangdong where her family reside, have land and where he could be issued a joint hukou with his wife, establish his household and receive the benefits of household registration and seek employment' (para 53). 'The Tribunal understands the applicant's reasons for not wishing to return to China, as it undoubtedly would be difficult for him to re-establish himself in China when he has been absent since 1998 and he has no family remaining there, few resources, no employment and no assets. However, the Tribunal is not satisfied that this amounts to significant harm as defined in s.36(2A):s.5(1)' of the Act (para 54). 'The Tribunal accepts that there may be difficulties for the applicant husband to try to reclaim his land, particularly if it has been reallocated to another villager as he claims and that person has been using it for the past 10 years or more. However, the Tribunal is not satisfied that any dispute over land previously allocated to the applicant would lead to him suffering significant harm as defined in s.36(2A) and s.5(1) of the Act.

			Furthermore, the Tribunal is not satisfied that the applicant would suffer significant harm as defined in s.36(2A) and s.5(1) of the Act if his land was not reallocated to him' (para 54). Based on country information 'relating to eligibility rules for parents who have a second child', 'the Tribunal finds that the applicant's second child would be able to obtain household registration (a hukou) and would therefore have access to health, education and other social benefits as any other citizen of China.'(para 60). 'Furthermore, the Tribunal is satisfied that the husband and wife applicants would not be subject to a social compensation fee as a result of having a second child' (para 60). Therefore, Tribunal was 'satisfied that the husband and children applicants would all be able to legally obtain hukous without payment of social compensation fines and there are no substantial grounds for believing that there is a real risk that the applicants would suffer significant harm on the basis of being unable to pay fines or being unable to obtain hukous' (para 61). 'The applicant wife told the Tribunal although there were no reasons related to protection that meant she could not return to China, she did not think they could return as they would have no accommodation and no resources in China. Her husband has not worked much in Australia and so they have no assets. Her own family

			are very poor and have no resources of their own and her parents are both aged and have illnesses, so none of them could help her and her own family re-establish themselves in China. The applicant wife confirmed that she is still in possession of her hukou' (para 62). 'The Tribunal accepts that the applicant and members of his family unit may suffer some economic hardship on their return to China, given their lack of assets and resources. However, it is not satisfied on the basis of any evidence before it that any economic harm that they would suffer would constitute significant harm' (para 64). The 'Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the mother applicant being removed from Australia to China, there is a real risk that she will suffer significant harm' (para 65). 'The applicant husband and wife made the following claims on behalf of the children: - the children were born in Australia and have always lived here and will therefore have difficulties in China; - the applicant husband and wife have no accommodation, resources or help in re-establishing themselves in China; - the applicant husband would have difficulties getting hukous for the children as he does not have a hukou himself' (para 67).

			The Tribunal was 'satisfied that the children would be able to obtain hukous despite their father's loss of his own household registration book, given their mother has a hukuo and they are able to be registered using her hukou. Moreover, there would be no social compensation fine to pay for the applicant's second child' (para 68). 'The Tribunal accepts that the child applicants will undergo a period of adjustment to a new culture, location and lifestyle. The Tribunal also accepts that the applicants will have difficulties re-establishing themselves in China after so many years living in Australia as the applicant has no close family members remaining in his village and the applicants have few assets and resources with which to establish a household in China' (para 69). 'However, the applicant wife has close family members living in China with whom she has maintained contact, and as discussed above, the Tribunal is satisfied that all members of the family will be able to obtain hukous without payment of fines. Accordingly, the Tribunal is satisfied that the child applicants will have access to the benefits associated with household registration, including health care and education' (para 69). 'The Tribunal is not satisfied that the economic hardship that the child applicants may suffer as a result of their return to China would constitute significant harm as defined in s.36(2A): s.5(1) of the Act' (para 71).

			'The Tribunal finds that the applicant husband does not satisfy the criterion set out in s.36(2)(aa) for a protection visa. It follows that the wife and child applicants are also unable to satisfy the criterion set out in s.36(2)(b) or (c). The Tribunal also finds that the child applicants do not meet the criterion set out in s.36(2)(a) or (aa)' of the Act (para 73).
1513133 (Refugee) [2015] AATA 3671 (Unsuccessful)	6 November 2015	1-2, 29-31 and 34	The applicant was a citizen of Malaysia (para 1). The applicant claimed that she 'fears harm from her husband from whom she had previously been the victim of domestic violence' (para 2). The applicant claimed 'that she cannot reside anywhere in Malaysia and she is unable to obtain the protection of the Malaysian authorities' (para 2). The Tribunal was not satisfied 'that there is a real chance that the applicant will suffer serious harm if she returns to Malaysia for reasons of her membership of a particular social group, or for any one of the other reasons mentioned in s.5J(1)(a)'(para 29). 'In terms of the Complementary Protection provisions, the Tribunal is also not satisfied, having not accepted that the applicant has been the victim of domestic violence in the past, that there is a real risk that she will suffer domestic violence from her husband, or his family or friends, if she returns to Malaysia' (para 30). 'The Tribunal accepts that the applicant has separated

			from her husband and at this time does not wish to resume her marriage, but considers that even if she chooses to reunite with her husband, that any "requirement" to work to support her husband as she has done in the past, or to assist him to repay his accrued debts, does not amount to significant harm' (para 30). 'The Tribunal does not accept the applicant's claims that this amounts to physical or emotional harm and, therefore, to significant harm, or that there is a real risk that she would suffer significant harm for this reason upon her return to Malaysia' (para 30). 'Accordingly, the Tribunal is not satisfied that there is a real risk that the applicant will suffer significant harm from her husband, his family or his friends upon her return to Malaysia' (para 30). 'The Tribunal has also found that there is State protection available for persons who are at risk of domestic violence and this is effective in terms of the provisions of the Act' (para 31). 'The Tribunal has not accepted that the applicant will suffer serious or significant, harm' and was satisfied 'that Malaysia has a functioning judicial and police system, and there are avenues available for the applicant to access protection from the Malaysian authorities such that it would remove the real risk of significant harm' (para 31).

			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) (para 34).
1421192 (Refugee) [2015] AATA 3602 (Unsuccessful)	4 November 2015	11, 16, 48, 50 and 53	The applicant was a citizen of the Republic of Korea (para 11). The applicant claimed to 'fear being harassed by creditors if he returns to the Republic of Korea' (para 16). The 'Tribunal finds that the applicant's fears of Convention-based persecution in the future in Korea are not well-founded' (para 48). 'The Tribunal considered the applicant's claims that he will be forced to repay his parents' debt and that he will be subjected to harm by the creditors. Given the laws in place specifically to protect debtors, their family members, and other people connected to them; and the independent information regarding the general effectiveness of police in Korea; and the mechanisms in place to assist low-income earners to repay debts from private money lenders, 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' (para 50). 'Accordingly, the Tribunal is satisfied that there are not substantial grounds for believing the applicant faces a real risk of significant harm from creditors in the future in Korea' (para 50).

			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 53).
1503996 (Refugee) [2015] AATA 3569 (Unsuccessful)	29 October 2015	1, 10, and 44-47	The applicants (husband, wife and child) werecitizens of the People's Republic of China (China) (para 1). The applicant husband claimed to fear harm based on 'being a Roman Catholic' (para 10). The Tribunal was 'not satisfied that the applicant husband comes from a family of Roman Catholics practicing in the underground church in China' (para 44). With respect to the application of s.36(aa) of the Act to the applicant's case, the Tribunal was satisfied that the applicant husband 'could return to China and practice his faith in the underground Roman Catholic Church' (para 45). 'The country information referred to amply demonstrates that many Chinese practice their faith in the underground church without persecution or harassment' (para 45). The Tribunal relied on 'DFAT country information' which stated that 'Catholics in China can experience officially-sanctioned harassment and discrimination when their activities are viewed by authorities to be politically sensitive. Incidence of societal

			discrimination and violence against Catholics in China is generally low' (para 45). The Tribunal also took into account that the applicant husband 'has not been politically active nor has he engaged in politically sensitive activities' (para 45). In concluding, the Tribunal was not satisfied the that 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 46 and 47).
1415903 (Refugee) [2015] AATA 3601 (Unsuccessful)	27 October 2015	2, 14, 24, 35, 49-50, 52-54, 58-64, 66-68 and 73	The applicant was a citizen of Nepal (para 2). The applicant's 'prior protection visa application was made and refused prior to the commencement of the complementary protection criterion on 24 March 2012' (para 14). The Tribunal's decision only considered the application of s.36(2)(aa) of the Act to the applicant's case (para 14) 'The applicant fears that his family will disown him if he reveals his sexuality and he will face social ostracism' (para 24). 'The applicant considers that relatives and members of the Ghurkha Society may torture the applicant to change his sexual orientation. The applicant does not believe that Nepalese society will accept gay males, especially from his caste' (para 24).

			The applicant claimed that he 'will have no option except to kill himself. The applicant has tried many suicide attempts after failing to cope with the pressure of his orientation. The applicant's case officer [at a centre] knew of this and has taken record of it' (para 24). The applicant claimed that he 'cannot get protection from the police because they are corrupt and that they may use public nuisance offences as a ground to punish the applicant' (para 24). 'The Tribunal has a number of difficulties with the applicant's accounts of his homosexual activity both Nepal and Australia' (para 35). 'The Tribunal is not satisfied that the applicant would practice as a homosexual in Nepal, and it is not satisfied that the failure to practise as a homosexual would be due to a fear of significant harm' (para 49). 'The Tribunal is not satisfied with claims by the applicant that he has tried to kill himself as a result of his sexuality, given the credibility issues identified with applicant's evidence' (para 50). 'As the applicant is not, never has been, nor will be a practising homosexual, as found by the Tribunal, the Tribunal is not satisfied that there is a real risk of significant harm to the applicant from Nepalese society or from his family due to his homosexuality' (para 52).

			‘The Tribunal is prepared to accept that there is family pressure for him to marry’ (para 53). ‘Although acknowledging the pressure, and the fact that the applicant may not wish to marry, the Tribunal is not satisfied there is independent evidence before it which establishes that adult men in Nepal are forced into marriage against their will, whether homosexual or not, or that there are reports of men suffering significant harm for not agreeing to marry. The Tribunal is not satisfied that there is anything in the applicant’s particular family situation that leads to a real risk of the applicant facing significant harm due to being forced into marriage’ (para 53). ‘While the Tribunal is prepared to accept that the applicant’s family is conservative, is not satisfied that they would cause him significant harm for failing to marry’ (para 53). ‘The Tribunal is conscious that the delegate of the Minister found that the applicant was homosexual. Therefore the Tribunal considers the alternative position that the applicant is homosexual (which the Tribunal does not accept)’ (para 54). ‘In proceeding on this basis, the Tribunal does so on the basis that the applicant engaged in no homosexual activity in Nepal, but that the applicant identified as homosexual. The Tribunal proceeds on the basis that the applicant is extremely shy concerning the public expression of his sexuality, which is the reason given by

			the applicant in the Tribunal hearing as to why he has done no more than attend the gay [venue] in Australia' (para 54). 'The applicant indicated that he would not tell his family that he is gay. Given that the applicant did not act on his sexuality in Nepal and has only done so to a very limited extent in Australia, it considers that the expression of his sexuality in Nepal would be limited and very discreet' (para 54). 'The Tribunal proceeds on the basis that the applicant's past and future expression of his sexuality is a product of his inherent shyness, or an internal conflict with his homosexuality, rather than a fear of persecution or significant harm. This is based on the limited expression of the applicant's sexuality in Australia when he had the relative freedom to more openly express his sexuality' (para 54). 'The Tribunal has taken note of all the independent information, including that provided by the applicant's former adviser. It accepts that there is still a significant way to go to the full acceptance of homosexuals in Nepalese society (as indeed in most countries of the world). It accepts that there is societal discrimination and negative attitudes. It accepts that there are sporadic instances of violence and authorities have, on some occasions, used general security laws to target homosexuals, particularly transgender people' (para 58).

			‘However, the Tribunal considers that the weight of independent information indicates that there is a significant degree of tolerance of homosexuality in Nepalese society. It considers that homosexual people are not routinely subject to harm by either authorities or the general population’ (para 59). ‘Given the discreet way in which the applicant is likely to express his sexuality as posited by the Tribunal, it is not satisfied, based on the independent evidence, and the applicant’s own circumstances, that there is real risk of the applicant facing significant harm due to his sexuality’ (para 60). ‘If there were suspicion or knowledge of the applicant’s sexuality, the Tribunal accepts that he may face some discrimination and negative attitudes both from the society and his family. However, the Tribunal is not satisfied that the independent evidence demonstrates that the discrimination and negative attitudes that he is at a real risk of facing harm would fall within any definition of significant harm, and there is nothing in the applicant’s particular circumstances which would put him at any particular additional risk’ (para 61). ‘The Tribunal is prepared to accept that the applicant’s family and caste are conservative and that there will be disapproval should they suspect or learn that he is homosexual. The Tribunal is not satisfied, however, that there is a real risk of the applicant’s family or caste causing him significant harm based on his sexuality. The Tribunal considers it most likely, based on the

			applicant's evidence, that he will have little to do with his family' (para 62). 'The Tribunal is not satisfied given the weight of independent information, that the applicant is at risk of being tortured by the Gurkha Society who would seek to change the applicant's sexual orientation' (para 63). 'The Tribunal does not consider that any disapproval by society or the applicant's family would cause or be intended to cause extreme humiliation and thus constitute degrading treatment or punishment (as a defined category of significant harm under the Act). The Tribunal does not consider that there would be a real risk of cruel and inhuman treatment which (as a further defined category of significant harm under the Act), or any other category of significant harm' (para 64). 'While the Tribunal accepts that there are instances of police harassment, it is not satisfied, based on the independent evidence, that this occurs to an extent that there would be a real risk to every individual gay person facing police harassment amounting to a significant harm. The Tribunal is not satisfied that there is anything in the applicant's profile, such that he would be at any increased risk. For example, the applicant has not indicated that he is, or would be, politically active in advance of gay causes' (para 64). 'The Tribunal is not satisfied with the applicant's claims that what actually happens in practice is not

			reported by the media or more broadly. The Tribunal is satisfied that the independent information referred to in this decision paints a full picture of the situation facing homosexuals in Nepal' (para 66). 'The Tribunal does note the proposal in the Draft Criminal Code to make 'unnatural sex' illegal. There is no clear understanding of what this term means. The proposal has been on foot for several years. The implementation of such a proposal, at least to any extent that would make same sex activity illegal, would be inconsistent with the more liberal attitudes by government, courts and society including consideration by the government of legalising same-sex marriage and the Supreme Court mandating abolishing discriminatory laws against homosexuality. The Tribunal, considering these factors, thinks that the chance of a law being enacted that would criminalise same sex activity, and it operating to an extent that would create a real risk of significant harm to the applicant is speculative and remote' (para 67) 'The Tribunal considers the risk of self-harm to the applicant if it were to accept (which it does not) that he suffers the internal conflict as a result of his sexuality. The Tribunal does not consider that 'significant harm' as defined in the Act in 36(2A) covers self-harm. The definitions are passively worded, referring to the non-citizen being arbitrarily deprived of his or her life, the death penalty being carried out on the non-citizen, and harm that the non-citizen will be subjected to. Each of these phrases suggests harm being inflicted by a third

			party on the non-citizen. The Tribunal is not satisfied that self harm, without more, is harm contemplated in the definition of significant harm for the purposes of the complementary protection criterion' (para 68). 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) (para 73).
1413546 (Refugee) [2015] AATA 3567 (Unsuccessful)	26 October 2015	2, 11, 47, 60, 61 and 64	The applicant was a citizen of Lebanon (para 2). The applicant claimed to fear harm on the basis that he 'could be perceived to have an imputed political opinion of being pro- Hezbollah and pro Shia Muslim' (para 11). The Tribunal was 'not satisfied as to the applicant's claims that he has a well-founded fear of persecution if he returned to Lebanon based on his claims and his evidence to the Tribunal' (para 47). 'The Tribunal after having considered the totality of the applicant's evidence does not accept on the evidence before it that the applicant would be at a real risk of significant harm should he return to Lebanon on the basis of any memory difficulties or on the basis that he apparently requires time on occasions to process and respond to questions' (para 60). 'The Tribunal found 'that apart from the claimed threatening phone calls the applicant had no other difficulties while he resided in Lebanon (apart from being injured in the bombing and as indicated there is

			no suggestion or evidence that he was a specific target of the bombing)' (para 60). 'The applicant is not politically active and as indicated the country information that has been referred to does not suggest that the applicant has a risk profile that would place him at risk in Lebanon and including any risk of harm from Salafist extremists' (para 60). 'The applicant's evidence to the Tribunal was that he would return to his family home in Lebanon if he had to return. The applicant has previously worked in a family company and has trained as [occupation]' (para 60). 'The evidence before the Tribunal suggests that the applicant if he returned to Lebanon would be able to reside with his family and there is no evidence before the Tribunal that indicates that the applicant would not be able to resume employment if he returned' (para 60). 'The applicant had previously worked in a business controlled and operated by relatives' (para 60). 'The Tribunal finds that any risk the applicant might face if he returned to Lebanon in terms of possible harm from extremists would be a risk faced by the population generally and not faced by the applicant personally' (para 60). 'The applicant's injuries from the Beirut bombing is an example of such a risk in that there is no evidence to indicate that the applicant was personally targeted in

			that bombing' (para 60). 'The Tribunal also notes that the applicant claimed that he had reported the threatening phone calls to the local police in Lebanon but he claimed that they had indicated that they were unable to provide protection to him' but 'the applicant did not claim that he had suffered any harm apart from receiving the telephone calls' (para 61). The Tribunal did not 'accept that the applicant faces a real risk of significant harm on the basis of his association with [Mr B] or on the basis of his membership of the wider family' (para 61). The Tribunal found that 'there was no evidence before the Tribunal that suggests or indicates that the applicant would engage in any political or other activities if he returned to Lebanon that would place him at risk of a real chance of serious harm or a real risk of significant harm in accordance with country information' (para 61). 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 64).
1411073 (Refugee) [2015] AATA 3618 (Unsuccessful)	16 October 2015	2, 30, 94, 98-102 and 104	The applicant was a citizen of Afghanistan (para 2). The applicant claimed 'that he and [Mr A] left Afghanistan because their father-in-law, [Mr B], had been killed by the Taliban for working as a truck driver

			for the American forces in Afghanistan' (para 30). 'The Tribunal does not accept on the evidence before it that the applicant has a well-founded fear of being persecuted for one or more of the Convention reasons if he returns to Afghanistan now or in the reasonably foreseeable future' (para 94) The Tribunal did not accept 'that the applicant will be specifically targeted for harm in his personal circumstances by the Taliban or other insurgent groups in Kandahar' (para 98). The Tribunal notes that there is a level of violence in Kandahar', but 'the country information does not indicate that someone with his profile and personal characteristics (Sunni and Pashtun, not related to the government or foreigners) would be targeted' (para 98). 'The Tribunal accepts that in late September and early October 2015, after the hearing with the applicant, the Taliban took over the city of Kunduz and controlled if for about 15 days. According to reports they destroyed government offices and facilities, seized military hardware, hunted down opponents and freed prisoners from the city prisons. Even though the operation was unexpected and impressive, the total number of people killed was relatively low (57 people) and nearly half of the fatalities were caused by a US airstrike on a hospital. Otherwise, the number of civilians killed was low: it was reported that of the 57 dead, 31 were police officers' (para 99).

			‘The Tribunal has also considered recent country information about the rise of ISIS or Da’esh in Afghanistan, including reports that the veteran Afghan warlord GulbuddinHekmatyar, the leader of Hezb-e-Islami, has aligned himself with ISIS’ (para 100). ‘The Tribunal accepts that there has been violence against the civilian population across Afghanistan, including Kandahar, and that there have been a number of civilian casualties (deaths and injuries) of people caught up in the targeted attacks. While the Tribunal accepts that terrorist attacks do occur in Kandahar from time to time, the Tribunal considers that this is a risk that is faced by the population generally, and that the applicant is not personally at greater risk in this generalised violence context than the general population in that city. The Tribunal does not accept that there is any particular attribute of the applicant that would lead him to be at a greater risk of harm in the generalised violence on his return’ (para 101). Based on country information ‘and the information from a number of sources, including the risk of deterioration in the security situation, the Tribunal does not accept that the level of generalised violence in Afghanistan and in Kandahr in particular is so widespread that the applicant faces a real risk of significant harm, as defined in the Act’ (para 102). 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) (para 104).
1410411 (Refugee) [2015] AATA 3506 (Unsuccessful)	5 October 2015	2, 13 and 48-51 and 53	The applicants (mother, father and son) were citizens of the People's Republic of China (China) (para 2). The applicant mother 'a [age] year old woman from Fuqing, Fujian Province in China – claims to fear harm if she returns to China on the basis of her sexual orientation, as a bisexual' (para 13). 'She also claims to fear harm from the authorities as a member of an unregistered Protestant 'family' church' (para 13). The Tribunal 'has not accepted there to be a real chance that the applicant will suffer serious harm if she returns to China now or in the foreseeable future on the basis of her membership of a particular social group of bisexuals or her (Christian) religion, or as a victim of family violence or for any other reason' (para 48). With respect to the second named applicant, the father, the 'Tribunal has found that he does not hold any subjective fears of persecution on the basis of his or his parents' Christian religion' (para 49). 'Having regard to the country information about the situation for Christians in China and for those practising in Fujian in particular as set out above, the Tribunal finds there is no real risk of the secondary applicant facing significant harm on the basis of his low-level involvement in the church if returned to China' (para

			49). 'Based on his vague evidence and the fact that he raised this for the first time at hearing the Tribunal is not satisfied that the second named applicant's parents were members of the church in China and suffered harm as a result' (para 50). 'It follows that the Tribunal is not satisfied that the second named applicant faces a real risk of significant harm on account of his parent's involvement in the church as a necessary and foreseeable consequence of the second named applicant being removed from Australia to China' (para 50). The 'Tribunal has rejected the applicant's claims that she would not be able to pay a fine imposed to register her [child], who was born out of wedlock, on return to China. For the same reasons the Tribunal is satisfied that none of the applicants face a real risk of significant harm on this basis on return to China' (para 51). In concluding, the Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligation (para 53).
1319789 (Refugee) [2015] AATA 3453 (Unsuccessful)	25 September 2015	1, 46-50 and 52	The applicant was a citizen of Iraq (para 1) That applicant claimed to fear 'that if he returned to Iraq he would be killed by "the militia" and Sunni extremists because of his religion as a Shia Muslim and his membership of two particular social groups, "children from inter-faith marriages; Shi'a and Sunni

			Muslims" and "a failed asylum seeker from a Western country"' (para 1). The Tribunal did not accept that 'he has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Iraq now or in the reasonably foreseeable future' (para 46). The Tribunal did not accept that 'as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm because of his parents' mixed Shia-Sunni marriage' (para 47). The Tribunal accepted 'that he was threatened in [Suburb 3] in 2007 because he is a Shia Muslim but I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm because he was unable to pursue his studies in Baghdad because [Academy 2] was located in a Sunni area' (para 47). 'The applicant had already qualified as [occupation] and his evidence is that he was working as [occupation] in Basra before he left Iraq to come to Australia' (para 47). The Tribunal accepted 'the advice of the Australian Department of Foreign Affairs and Trade that the Shia-dominated provinces in southern Iraq experience fewer

			violent attacks by Sunni insurgent groups than other parts of Iraq, that Shia living in these provinces are less likely to become victims of sectarian violence and that Shias in the Shia-dominated provinces of southern Iraq are at a low risk of generalised violence' (para 48). Based on this advice, the Tribunal did not 'accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm in the context of the sectarian violence or the generalised violence in Iraq' (para 48). The Tribunal also relied on advice from the Department of Foreign Affairs and Trade which 'has said that many Iraqis who have sought asylum overseas have returned to southern Iraq' (para 49). Based on this advice, the Tribunal did not accept 'that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm because he will be returning to Iraq as a failed asylum-seeker from a Western country or specifically because he will be perceived as a spy because he has been in a Western country as he has claimed' (para 49). 'In their submission dated 14 March 2014 the applicant's representatives said that he identified as a Shia Muslim because his father had been a Shia Muslim

			but that he did not practise his religion. They said that the applicant suspected that the attack on [Mr A] had been motivated in part by the fact that the applicant's family did not discriminate between the Shia and Sunni Muslim faiths' (para 50). At the Tribunal hearing the applicant said 'he did not believe in the sects - they all had one God - and he did not care about such things. He said that his brothers had not cared who was Shia or Sunni and they had not wanted sectarianism. He said that he did not believe that there was a difference between Shia or Sunni or Christians' (para 50). The Tribunal did not accept that 'there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm for expressing such views' (para 50). The Tribunal did not accept 'there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm through being forced to go and fight for the Shia against the Sunni' (para 50). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 52).
1319804 (Refugee) [2015]	22 September	2, 11-18, 28, 35, 38-41,	The applicant was a citizen of Sri Lanka (para 2)

AATA 3369 (Unsuccessful)	2015	43-44 and 47	The applicant claimed to fear harm based on his past political activities and his illegal departure from Sri Lanka (paras 11-18 and 28). The Tribunal did 'not accept that the applicant faces a real chance of being persecuted because of his past political activities, his illegal departure from Sri Lanka or for any other Convention reason' (para 35) The Tribunal did 'not accept the applicant's claims regarding the destruction of his brother's shop over 12 year ago caused him any problems in the past' (para 38). Nor did the Tribunal 'accept that as the shop was owned by the applicant's brother, there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia, there is real risk he will suffer significant harm in connection with the destruction of the shop, including the associated court cases' (para 38). 'In relation to the applicant's claims regarding his support of SarathFonseka during the January 2010 election, while the Tribunal accepts that there were enquiries made about the applicant on two occasions in the days after the election was held, the Tribunal notes that the applicant experienced no further problems or difficulties over a period of nearly two and a half years prior to his departure from the country because of his limited activities' (para 39).

			‘Further, the Tribunal finds on the applicant’s evidence in the hearing that he had not previously engaged in politics before that election or any time after that election’ (para 39). ‘Therefore, in circumstances where the applicant engaged in very restricted activities over a short period of time over five years ago and has not demonstrated any further interest in politics, apart from voting, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia, there is real risk he will suffer significant harm in connection with his past support of SarathFonseka by putting up posters’ (para 39). The Tribunal did ‘not accept that the applicant was subjected to any beatings in the past in Sri Lanka’ (para 40). Nor did ‘the Tribunal accept that the applicant’s family received any visits from [City 1] police after he departed the country in relation to the non-payment of any fines received whilst he was driving’ (para 40). The Tribunal noted ‘the applicant’s illegal departure from Sri Lanka and the possibility that he may be subject to a lawful penalty’ (para 41). While the Tribunal accepted on the basis of the country information, ‘that the applicant would likely face arrest

			on charges of leaving the country illegally, he may be detained briefly prior to being released on bail and he will face a penalty, the Tribunal does not accept on the country information before it, as well as having regard to the PAM3 complementary protection guidelines in relation to imprisonment and prison conditions, that he faces a real risk of being significantly harmed during this process' (para 41). 'The independent information suggests that the applicant would be detained for a brief period that may well be less than a day or at most several days and although sources indicate that prison conditions in Sri Lanka are poor, the information does not indicate that there is real chance that a person with the applicant's profile, a Sinhalese man from [City 1] who has no adverse profile, would suffer serious harm if held in remand for a short period of a few days' (para 43). 'In regard to the penalty the applicant may face', 'the Tribunal does not accept that this will manifest itself in the mandatory imposition of a term of imprisonment' (para 44). 'As such, the Tribunal does not accept that as a necessary and foreseeable consequence of the applicant's return to Sri Lanka there is a real risk he will suffer significant harm such as arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment while in detention (para 44).

			In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 47).
1509905 (Refugee) [2015] AATA 3511 (Unsuccessful)	18 September 2015	11-16, 32 and 36-40 and 42-43	The applicant was a citizen of Pakistan (para 11). The applicant claimed to fear harm based on 'his work in Karachi as a tutor for underprivileged children for a period of less than a year, 30 years ago, his drafting of letters of complaint and to the editors for members of the MQM also some 30 years ago, an imputed socio-economic profile as a result of previous commercial conflict or the recognition of previous economic success and/or perceived economic success as a result of his protracted stay in Australia' (para 12-16). The Tribunal was 'not satisfied he has a well-founded fear of persecution for a Convention reason' (para 32). The Tribunal considered whether the 'applicant would suffer significant harm based on his membership of the MQM and the limited activities he engaged in whilst he was in Karachi, which were not political in nature' (para 36). The 'Tribunal has some doubts that the applicant was in fact a member of the MQM due to inconsistencies in his evidence regarding his residence in Pakistan, however even if it accepts that he was a member of the party and that he tutored underprivileged children for a period of up to a year in Karachi and wrote letters to the editor and complaints on behalf of other members of the MQM, the Tribunal does not accept that if the applicant

			returns to the Islamabad, which is where he was living for at least ten years prior to his departure from the country, there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk he will suffer significant harm as a former member of the MQM' (para 36). 'The Tribunal refers to the fact that the applicant's association with the MQM was some thirty years ago, that he participated in tutoring children for a period of less than a year and wrote letters which did not identify him as the author and he did not engage in any political activities or continued with his membership of the party once he moved to Islamabad' (para 36). 'While the Tribunal accepts that the applicant has socialised with MQM members in Australia and that he continues to agree with the aspirations of the party, the Tribunal finds on the applicant's evidence in the hearing that he would not resume his membership or activities in support of the party' (para 36). 'In these circumstances, the Tribunal does not accept that the applicant faces any threat at all of being detained on his return to Pakistan (para 36). 'In relation to the applicant's familial association with his brother-in-law, who is a high profile or prominent businessman in Karachi, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant

			being removed from Australia to Pakistan, there is a real risk he would suffer harm as defined in subsection 36(2A) of the Act, in his home area of Islamabad. The Tribunal refers to the applicant's evidence that he did not experience any problems during the many years he was living and working in Islamabad because of his connection by marriage to his brother-in-law' (para 37). 'The Tribunal does not accept on the evidence before it that there is any reason why if the applicant returned to Islamabad, he would face a real risk of significant harm because of his brother-in-law who is residing in another part of the country' (para 37). The 'Tribunal does not accept the applicant's friendship with the brother of his brother-in-law, who died in 1986 or 1987 in Karachi at the hands of his own party members, would result in the applicant facing a real risk of significant harm on his return to Pakistan given the applicant had not previously experienced any problems in the past for his connection to him while he was living in Islamabad and the passage of time since his brother-in-law's brother's association with the MQM' (para 38). 'In regard to the applicant's claims in relation to the alleged threats he received from his former business partner and his fear of harm as a result of his alleged dispute with a prominent business person, as discussed above, the Tribunal does not accept that the applicant was in a partnership with anyone' (para 39). On the basis of the country information and the

			'applicant's individual circumstances', the Tribunal found 'that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk that he will suffer significant harm as a returnee from a Western country or as a result of being perceived to be rich' (para 40). 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 (paras 42 and 43).
1408435 (Refugee) [2015] AATA 3340 (Unsuccessful)	2 September 2015	2, 23, 36, 40, 42, 46, 49 and 54-55	The applicant was a citizen of Afghanistan (para 2). The applicant claimed to fear 'being harmed by the Taliban because he is a Hazara Shia and has lived outside the country since he was a young boy and will be identified as a Pakistani Hazara' (para 23). The applicant claimed that 'if it is discovered he has returned from Australia the Taliban will think he supports western countries. He has no familial, property or tribal links in the country and will not know how to support is young family, find a job and accommodation' (para 23). The applicant claimed that in 'Behsud, there are a lot of Kuchi who are violent towards Hazaras and Shias' (para 23). 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 54). The Tribunal's analysis of the application of s.36(2)(aa) of the Act was as follows. The Tribunal accepted 'that there have been some incidents where Hazara Shias have been targeted, and where ethnicity and religion would appear to be a factor and that ISIS have started operating in Afghanistan' (para 36). The Tribunal also took 'into account submitted country information concerning the dangers on the roads in Afghanistan outside Kabul and the major centres' (para 36). However, the Tribunal did 'not accept that all Hazara Shias in Kabul face a real chance of persecution or significant harm now or in the reasonably foreseeable future from these Sunni groups or anyone else' (para 36). The Tribunal accepted 'that the applicant is a Shia and will attend mosque and religious events; however, given the country information', the Tribunal found 'that the chance or risk he will be seriously harmed or significantly harmed is remote' (para 36). The Tribunal accepted 'that the withdrawal of troops has led to an increase in violence', but did not 'accept that the withdrawal has led to the deterioration of

			security to such an extent that the government has lost control of significant locations in Afghanistan, and most relevantly for the applicant, locations such as Kabul' (para 36). The Tribunal did not 'accept that the applicant has a real chance of serious harm or a real risk of significant harm arising from the withdrawal of foreign troops from Afghanistan, now or in the reasonably foreseeable future' (para 36). Based on country information, the Tribunal found that 'that there is societal discrimination on the basis of ethnicity and that the most common form is in terms of nepotism in favour of particular ethnic and religious communities' (para 40). The Tribunal found that country information indicated 'that although Hazaras do face societal discrimination by other ethnic groups, equally those groups face discrimination in Hazara-dominant areas' (para 40). The Tribunal took 'into account that there are two million Hazaras in Kabul representing a very substantial community in which the applicant would be able to return to and live in and seek employment and housing' (para 40). The Tribunal found that 'whilst the applicant may face unemployment due to his lack of contacts and difficulties obtaining housing in Kabul due to the cost, the country information considered as a whole does not

			indicate that there is the necessary element of intention for these circumstances to constitute either cruel or inhuman treatment or punishment or degrading treatment or punishment' (para 42). Based on this reasoning, the Tribunal did not 'accept that any of these circumstances constitute torture, the arbitrary deprivation of life or the carrying out of the death penalty' (para 42). The Tribunal found that it had 'no evidence before it that these returnees from Pakistan are being seriously or significantly harmed' (para 46). The Tribunal accepted that in Kabul there 'is poor sanitation, lack of clean water, poor infrastructure and limited health care'. However, the Tribunal did 'not accept that any of these matters creates a real risk that the applicant will suffer significant harm' (para 49). Based on the above, 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 55).
1412132 (Refugee) [2015] AATA 3333 (Unsuccessful)	26 August 2015	2, 6, 27, 29-48, 63, 69-70 and 73	The applicant was a citizen of Bangladesh (para 2). The applicant claimed to be Buddhist and to belong to a 'to a minority ethnic group in Bangladesh' (para 6). The applicant claimed to fear harm based on his religion, ethnicity, and because he 'stayed in Australia for a considerable period of time' and 'will be

			perceived as a wealthy person' (para 6). 'The applicant's first protection visa application was refused [in] August 1998 as the applicant did not satisfy the Refugee Convention criteria. That decision was made prior to the commencement of the complementary protection criteria' (para 27). 'The Tribunal proceeded on the basis that it can only consider the applicant's claims under the complementaryprotection provisions in s.36(2)(aa)' of the Act (para 29). The Tribunal 'found parts of the applicant's oral evidence very vague and inconsistent' (para 30). The Tribunal did not accept any of the applicant's evidence with regard to his claimed fear with respect to his religion, ethnicity or time spent in Australia (paras 30-48). The applicant claimed that 'the lack of adequate health care available in Bangladesh, especially mental health care in Bangladesh, amounts to persecution' (para 63). The Tribunal found that 'the inadequacies of the Bangladeshi mental health care system, that the applicant may face on return to Bangladesh, does not involve significant harm' (para 69). 'The Tribunal considers the country information indicates that any failure in providing the applicant with

			mental health care treatment or support will be due to the size and development of the Bangladeshi economy rather than any intentional act or omission, and therefore it is not cruel or inhuman treatment or punishment or degrading treatment or punishment as defined by the Act' (para 69). 'While the Tribunal accepts it may be challenging, it does not accept the applicant would be unable to find employment or shelter in Bangladesh, or that his age, or the length of time he has been away, or his mental health conditions, would adversely affect his ability to subsist. The Tribunal does not accept there is a real risk the applicant would suffer significant harm due to his mental health conditions if he was to return to Bangladesh now or in the reasonably foreseeable future' (para 70). In conclusion, the Tribunal found that the applicant did 'not satisfy the criterion set out in s.36(2)(aa) for a protection visa' (para 73).
1410810 (Refugee) [2015] AATA 3339 (Unsuccessful)	20 August 2015	2, 64, 107, 112-114, 119	The applicant was a citizen of Afghanistan (para 2). 'The applicant claimed to fear harm because of his actual and imputed anti-Taliban political opinion, his work (both past and prospective) as a [occupation] and translator, and his stay in Australia, as well as his Hazara ethnicity and Shia religion' (para 64). 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 107).

			With respect to the application of s.36(2)(aa), the Tribunal accepted 'that there has been violence against the civilian population in Kabul, that there have been a number of civilian casualties (deaths and injuries) of people caught up in the targeted attacks' (para 112). 'While the Tribunal accepts that terrorist attacks do occur in Kabul from time to time, the Tribunal considers that this is a risk that is faced by the population generally, and that the applicant is not personally at greater risk in this generalised violence context than the general population in Kabul' (para 113). The Tribunal did 'not accept that there is any particular attribute of the applicant that would lead him to be at a greater risk of harm in the generalised violence in Kabul, now and the reasonably foreseeable future' (para 113). 'Having considered the country information detailed above, and the information as provided by DFAT regarding the level of security in Kabul, including the risk of deterioration in the security situation, the Tribunal does not accept that the level of generalised violence in Kabul, now and in the reasonably foreseeable future is so widespread that the applicant faces a real risk of significant harm, as defined in the Act' (para 114). 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 119).
1413930 (Refugee) [2015] AATA 3324 (Unsuccessful)	20 August 2015	2, 77, 91, 93 and 95-96	The applicant was a citizen of Zimbabwe (para 2). The applicant claimed to fear 'harm from a number of people in Zimbabwe, including as arising from her connection with a claimed prominent member of the MDC, and the authorities' views of the (imputed) political opinions of herself and her family' (para 2). The Tribunal found that 'applicant is not a witness of truth and the applicant has exaggerated and fabricated accounts of events, as well as claimed fears, upon which she has based his protection claims' (para 77). 'The Tribunal has considered the applicant's claims individually, and on a cumulative basis, having regard to the findings that the applicant is not a credible witness concerning past or future harm feared, as well as the relevant country information, other than those claims accepted above, the Tribunal rejects all the various claims made and finds that she does not have a well-founded fear of Convention-related persecution for any of the reasons put forward by her, or on her behalf' (para 91). The Tribunal accepted that 'accepted that the applicant is a young, female former student who has studied and worked in Australia' (para 93). 'The Tribunal referred to the DFAT report,

			acknowledging that there are difficulties in the economy, but it put to the applicant that she is well-educated, resourceful, she has work experience, and she would live with her parents, and her father supports the family with his senior job' (para 95). 'Although the applicant may experience difficulties in obtaining work, the Tribunal does not accept that her circumstances amount to significant harm' (para 95). 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 96).
1413210 (Refugee) [2015] AATA 3322 (Unsuccessful)	20 August 2015	2, 6, 7, 42, 59 and 61-62	The applicant was a citizen of Syria (para 2). The applicant claimed 'that if he were to return to Syria he would be forced to join the military on arrival at the airport because he was of the Alawi faith' (para 6). The applicant claimed 'he feared being harmed as an Alawi because he would have to defend the government and he would be killed if he was captured by any opposition group' (para 6). 'He also claimed there were lots of kidnappings of people returning from overseas because they were believed to be rich. He did not know if this would be done by the government of the rebel groups' (para 7). The Tribunal did 'not find the applicant to be a reliable, credible or truthful witness', and found 'that he

			fabricated his claim in order to be granted a protection visa' (para 42). The Tribunal found 'that the applicant does not have a well-founded fear of persecution for any Convention reason either now or in the reasonably foreseeable future' (para 59). With respect to the application of s.36(2)(aa), the Tribunal took into 'account the current security situation in Syria' (para 61). The Tribunal found that 'while there is currently active fighting in parts of the country I note that the applicant's family have all remained resident in Syria which would indicate that they feel safe enough to maintain residing there. I also note that there is nothing that indicates the applicant would be targeted personally and the risk faced by the applicant on return is one faced by the population of the country generally' (para 61). Based on this reasoning, the Tribunal did 'not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Syria, there is a real risk that the applicant will suffer significant harm on the basis of these claims as outlined in the complementary protection criterion in s.36(2)(aa)' of the Act (para 62).
1408941 (Refugee) [2015] AATA 3297 (Unsuccessful)	11 August 2015	2, 12, 14-15, 32-33, 38, 40-41 and 43	The applicants (wife, husband and [children]) were citizens of the People's Republic of China (para 2).

			‘As the Applicants in this case have previously had their claims for protection assessed under s.36(2)(a) prior to the commencement of the complementary protectionlaws and have not left Australia since the final determination of their previous protection application’, the Tribunal confined its consideration to whether the applicants’ satisfied the requirements of ss.36(2)(aa)’ (para 12). The first applicant (wife) ‘made specific claims to fear harm in China, her husband and children relying on their membership of her family’ (para 14). The first applicant claimed ‘that on return to China she will be fined, ‘reviewed’ by police and may be detained. The reason for this is that she has had two children while under the legal age for marriage. Additionally, the police and government know she and her family have applied for protection visas and will see her as an enemy as they will know she said bad things about the government’ (para 15). The Tribunal accepted ‘that if she returned to China she would face a fine for breach of the family planning laws in respect of her third child and, possibly, for having her first and second children out of wedlock and below the prescribed age for child-bearing’ (para 32). However, the Tribunal was ‘not satisfied that the amount she would be required to pay, in instalments, would be excessively high in her circumstances or that she and her husband, with the support of their families,

			would not be able to pay it' (para 32). The Tribunal found 'that she would be able to register her children on her family hukou, putting them on the same footing as other children in China' and did 'not accept that she would be required to undergo a sterilisation for this purpose' (para 32). The Tribunal was 'not satisfied that the imposition of these penalties under China's family planning laws could reasonably be seen as rising to the level of significant harm in the Applicant's individual circumstances or that she would suffer any other form of harm at the hands of the authorities for this reason' (para 33). Based on country information, the Tribunal found that 'Christianity is rapidly gaining new adherents in Fujian and that the Provincial authorities have adopted a notably tolerant attitude toward religious practice' and was 'not satisfied that if the Applicant were to return to China she would be prevented from practising her religion, either in a registered church (as she did before coming to Australia) or in an unregistered church which was either directly connected with [Church 1] or was otherwise of the Pentecostalist religious faith' (para 38). Nor was the Tribunal satisfied that the first applicant's 'husband or her children would be prevented from worshipping in this way or would be at risk of harm for doing so' (para 38).

			Based on 'information from DFAT' that 'indicates that if the Chinese authorities are aware that a returnee has claimed protection abroad they may monitor him or her, but that their further interest would largely depend on the returnee's subsequent behaviour' (para 40). 'Given the Applicant's circumstances' and the above referenced 'DFAT information', the Tribunal found that 'even if the authorities were to learn that she and her family members had applied for protection in Australia, the treatment she would receive would not extend beyond questioning and, perhaps, monitoring' (para 40). The Tribunal was 'not satisfied that she would suffer any other form of punishment or harm, or 'that this treatment could reasonably be seen as rising to the level of significant harm' (para 40). 'Having considered the Applicant's claims individually and cumulatively', the Tribunal was 'not satisfied there are substantial grounds to believe that, as a necessary and foreseeable consequence of her being removed from Australia to China, there is a real risk she would suffer significant harm in terms of s.36(2)(aa) of the Act because of her breach of the family planning laws, her Christian religion or the fact that she has claimed protection in Australia' (para 41). 'As the first-named Applicant does not satisfy the criterion in s.36(2) it follows that the other Applicants also do not satisfy s.36(2) on the basis of their

			membership of the same family unit as the Applicant' (para 43).
1415234 (Refugee) [2015] AATA 3295 (Unsuccessful)	10 August 2015	2, 20, 48, 56-62 and 64	The applicant was a citizen of India (para 2). The applicant claimed the following: 1. 'He has not experienced harm in India, but has been threatened that he will be killed on his return by persons of criminal nature from his village. His brothers have been injured in 2008 and there were charges. The case is pending in the courts' (para 20). 2. 'Due to 'property/inheritance/enmity issues' his brothers have been threatened on several occasions, as has the applicant. These property issues are the cause of the problem between the families, if the applicant returns they may fear he may challenge him legally for property issues. His brother have ben to the police but no action has been taken. The applicant does not trust the police' (para 20). The Tribunal found that that the applicant did 'not have a well-founded fear of persecution for a Convention based reason, now or in the reasonably foreseeable future' (para 48). With respect to the applicant's claims under the complementary protection criteria, the Tribunal accepted 'that a fight has occurred with his brothers being involved, and that this incident is being dealt with by the police and courts in due course' (para 56).

			‘As evidenced by the documents provided by the applicant, all participants in the fight have been investigated, and bailed to appear before the court, no party, the applicant’s brothers or the opposing brothers, have been let out of the criminal proceedings by the police or the court’ (para 56). The Tribunal found that ‘this would demonstrate that the authorities are taking appropriate action in light of the fight that took place in 2008’ and the Tribunal considered ‘that the authorities have acted appropriately in the circumstances and that the lawful court processes will determine the outcome of the criminal matters in due course’ (para 56). ‘Given that the applicant’s brothers can carry on with their lives with limited restriction, aside from the court appearances, the Tribunal does not consider that the applicant, who had no involvement in the fight or any reason to be harmed because of the fight, has any risk of being harmed on return to his home village and re-establishing himself and his business, or look for work in a field of his interest’ (para 57). Therefore, the Tribunal did ‘not accept that the applicant would be harmed on return to his home village (para 57). The Tribunal did ‘not accept that the applicant, who was not a participant in the fight, would be threatened in any way because of his brother’s involvement in the fight’ (para 58).

			‘The applicant’s lack of concern with this incident is evident in both his return to his home village, with no issues arising from this visit; and in the significant delay in lodging the protection visa, lodged only when no other visa opportunity was available to him to remain in Australia’ (para 58). The Tribunal did ‘not accept that the applicant would be harmed in the aftermath of any sentence recorded against men the applicant’s brothers’ fought’ (para 59). ‘The Tribunal further does not accept that the applicant will himself become involved in any legal proceedings arising from the fight or the use of the land’ (para 60). The Tribunal considered ‘that the applicant does not have a real risk of significant harm arising from a fight between his brothers and two other men in December 2008’ (para 61). The Tribunal found ‘that the applicant does not have a real risk of significant harm arising from any sentencing outcome that may arise in the future from the incident in 2008’ (para 61). The Tribunal was ‘not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that he will suffer significant harm’ (para 62).

			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) or s.36(2)(aa) (para 64).
1410872 (Refugee) [2015] AATA 3282 (Unsuccessful)	7 August 2015	2, 9, 31, 42, 45 and 47-49	The applicant was a citizen of the People's Republic of China (para 2). The applicant claimed 'his father secured a contract for a [business] with the government and borrowed money to buy an [equipment]. After the [people] were unsuccessful in their claim for fair compensation from the government they turned against the applicant's father and 'dynamited' the [equipment]. When his father sought compensation from the government, they denied liability. The [people] then stormed the applicant's house and took their farmland as well' (para 9). 'He claims that if he is removed to China he will claim his rights and as a consequence he will be harmed and persecuted. He fears revenge against him and fears for the safety of his life' (para 9). 'The applicant was previously refused a Protection visa [in] April 2009 on the basis of the Refugees Convention' (para 31). The Tribunal 'proceeded on the basis that it can only consider his claims under the complementary protection provisions in s.36(2)(aa) of the Act' (para 31). 'Given that a period of 11 years has lapsed since the

			incident which led to the authorities interest in the applicant's father, and there has been no interest shown by the authorities in respect of this matter to any family members residing in China in recent years, the Tribunal is not satisfied there is a real risk the applicant will suffer significant harm for this reason if removed from Australia to China' (para 42). 'Given that it does not accept the applicant's claim that his brother was arrested and detained for pursuing the compensation claim for his father, the Tribunal also does not accept that the applicant will pursue the compensation if he is returned to China' (para 45). 'At the hearing before the Tribunal, the applicant claimed he will be unable to find employment if returned to China and he will suffer hardship for this reason. He also claimed that he would be unable to afford appropriate medical treatment for his mother as she has been able to access here' (para 47). The Tribunal found 'that unemployment and financial hardship do not fall within the defined meaning of significant harm in s36(2A) and s5(1) of the Act. It can only consider in this application whether there are substantial grounds for believing there is a real risk the applicant, rather than his mother, will suffer significant harm and finds that the claim relating to his mother's inability to access appropriate medical treatment will not cause significant harm to him, within the meaning of that term in s36(2A)' (para 48).

			Therefore, 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 49).
1412389 (Refugee) [2015] AATA 3160 (Unsuccessful)	22 July 2015	1, 36, 39-40 and 43	The applicant was a citizen of India (para 1). He claimed that 'because he divorced his ex-wife, her relatives have threatened to harm him and his family' (para 1). The applicant claimed that: - 'divorce is not permitted in Sikhism', - his ex-wife's 'family can use their political power as supporters of the ruling party in his home state to harm him and his family who support the opposition party', - 'he has been threatened too by the boyfriend of his ex-wife', - 'the boyfriend is connected to a terrorist group in India', and - 'he fears the relatives or boyfriend of his ex-wife will harm him if he returns to India' (para 1). The Tribunal was 'not satisfied the applicant has a well-founded fear of persecution for any Convention reason or combination of reasons, now or in the reasonably foreseeable future if he returns to India' (para 36). With respect to the application of s.36(2)(aa) of the Act to the applicant's circumstances, Tribunal accepted that 'a honour killing would be arbitrary deprivation of his life and an attempted honour killing would cause intentional severe physical pain and suffering therefore

			meets the requirements of cruel or inhuman treatment and punishment for the purpose of s.5(1)' of the Act (para 39). However, the Tribunal found that the 'evidence of the applicant does not suggest he has suffered any threats of honour killing from the Sikh community in general and he has not provided any country information to suggest honour killings occur against Sikhs who divorce' (para 39). The Tribunal considered 'there to be only a remote or speculative chance and therefore not a real risk the applicant will suffer significant harm or an honour killing from the Sikh community generally because he divorced his ex-wife if he was removed to India' (para 39). 'In relation to the balance of the applicant's claims, including the threat of harm from the relatives of his ex-wife, her boyfriend and opponents of the Congress party', the Tribunal applied its findings with respect to the whether the applicant had a well-founded fear of persecution and was not satisfied that the applicant faced a real risk of significant harm (para 40). 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 43).
1406319 (Refugee) [2015] AATA 3187	17 July 2015	2, 20, 47, 51, 52 and 55	The applicant was a citizen of Pakistan (para 2).

(Unsuccessful)			The applicant claimed to fear 'returning to Pakistan because the Taliban will kill him; they will cut his arm and legs and behead him' (para 20). 'Having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied he has a well-founded fear of persecution for reason of his Shia religion, his Bangash ethnicity or his membership of the particular social groups of Turi Shia, returnees from a western country, failed asylum seekers or Shias from Kurram Agency or for any other Convention reason if returned to Pakistan now or in the reasonably foreseeable future' (para 47). The Tribunal was 'not satisfied on the basis of the country information', 'regarding the improved security situation in the applicant's home area of Upper Kurram in Kurram Agency, FATA, and the applicant's particular profile, that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk he will suffer significant harm as a Bangash/Turi or as a result of his Shia religion or a combination of both these factors' (para 51). While the Tribunal accepted 'that there may continue to be some sectarian, militant and generalized violence in the FATA generally, based upon all the country information before it, the Tribunal does not accept that the applicant faces a real risk of significant harm because of sectarian, militant or generalized violence

			including in his home area in Upper Kurram' (para 52). The Tribunal also found, 'on the basis of the country information' and 'the applicant's individual circumstances, that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk that he will suffer significant harm as a returnee from a Western country or as a failed asylum seeker' (para 52). In concluding the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a)and s.36(2)(aa)of the Act (para 55).
1412258 (Refugee) [2015] AATA 3167 (Unsuccessful)	14 July 2015	2, 12, 14-15, 48, 50-56, 58-59, 61-62 and 65	The applicant was a citizen of Nepal (para 2). The applicant claimed that he was a homosexual and that he 'had to conceal his sexual orientation' (para 14). The applicant claimed the following: - 'that his family and neighbours are Hindu and Conservative', - 'that Nepal does not accept homosexuality and that gay people in Nepal are harassed and discriminated against', - 'he would be dismissed from work for his sexual orientation', - 'he will be disowned if he reveals his sexuality to his family and forced into an unwanted marriage', and - 'he has to hide his status when going to doctors or employers' (para 15)

			The Tribunal considered the application of s.36(2)(aa) of the Act to the applicant's circumstances based on the Federal Court decision of *SZGIZ v MIAC*[2013] FCAFC 71; (2013) 212 FCR 235 (para 12). The Tribunal was not satisfied that the applicant was 'homosexual or has ever been homosexual' (para 48). The Tribunal considered 'the alternative position that the applicant is homosexual (which the Tribunal does not accept)' (para 50). 'Based on the independent information, the Tribunal accepts that the applicant may face discrimination and negative attitudes from parts of society and his family' (para 51). The Tribunal also accepted 'that the applicant's family may be very upset at the fact that the applicant will not marry and that he is gay and he may even beenostracised' (para 51). However, the Tribunal was not satisfied, 'that the applicant's family would physically harm him' (para 51). The Tribunal was 'not satisfied that the applicant, as an adult male, would be forced by his family to marry' (para 51). The Tribunal accepted 'that disclosing his

			homosexuality may create difficulties in employment' (para 51). The Tribunal found that the 'independent information does not establish' 'that generically there is a real risk of significant harm to homosexuals in Nepal' (para 52). 'In terms of family rejection, the applicant is an adult male and has already been separated from his family for a considerable period' (para 52) The Tribunal did not consider 'in that context that any disapproval or ostracism by his family would cause or be intended to cause extreme humiliation and thus constitute degrading treatment or punishment (as a defined category of significant harm under the Act)' (para 52). The Tribunal found 'that societal disapproval in Nepal of homosexuality' would not 'lead to real risk of the applicant facing conduct that causes and is intended to cause extreme humiliation and thus degrading treatment or punishment, or any other category of significant harm' (para 52). 'The Tribunal does not consider that there is in anything in the applicant's profile, as posited by the Tribunal, such that there would be an increased risk to him' (para 52). 'In terms of employment discrimination, the Tribunal considers that there may be some hurdles in finding

			employment if he chose to reveal his sexuality but it does not think that these would be insurmountable' (para 53). The Tribunal did 'not consider that employment difficulties or discrimination would create a real risk of the applicant suffering significant harm, as defined' (para 53). 'While the Tribunal accepts that there are instances of police harassment, it is not satisfied, based on the independent evidence, that this occurs to an extent that there would be a real risk to any individual gay person facing police harassment amounting to a significant harm' (para 54). 'The Tribunal is not satisfied that there is anything in the applicant's profile, as posited by the Tribunal, such that he would be at any increased risk' (para 54). 'The Tribunal is not satisfied with the applicant's claims that what actually happens in practice is not reported by the media or more broadly' (para 55). 'The Tribunal does note the proposal in the Draft Criminal Code to make "unnatural sex". There is no clear understanding of what this term means. The proposal has been on foot for several years. The implementation of such a proposal would be inconsistent with the more liberal attitudes by government, courts and society including consideration by the government of legalising same-sex marriage and

			the Supreme Court mandating abolishing discriminatory laws against homosexuality' (para 56). 'The Tribunal, considering these factors, thinks that the chance of a law being enacted that would criminalise some sexuality and it operating to an extent that would create a real risk of significant harm to the applicant is speculative and remote' (para 56). 'Therefore, if the applicant is gay, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal, there is a real risk that he will suffer significant harm based on being homosexual' (para 58). 'In terms of the 2015 earthquakes in Nepal and the impact for the applicant should he return to Nepal, the Tribunal acknowledges this magnitude of this event and the impact it has had on Nepal, and that it would create challenges for the applicant in returning to Nepal' (para 59). 'The applicant has claimed that crime is likely to be worse in Nepal' (para 61). 'The Tribunal does not consider that the applicant has any particular profile which would raise the risk to him to a real risk of significant harm' (para 61). 'The Tribunal, therefore, finds that the applicant does not face a real risk of significant harm on return to

			Nepal as a consequence of the earthquake' (para 62). Therefore, 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 65).
1406165 (Refugee) [2015] AATA 3130 (Unsuccessful)	1 July 2015	19, 92, 97, 105, 107, 116-117 and 120-122	The applicant was a citizen of Afghanistan (para 19). The applicant claimed to fear harm based on his 'imputed political opinion arising' from 'his employment and imputed support of the Afghan Government or international interests, his being in Australia and seeking asylum, his being accused of being a spy, his religion, from Islamic State, from criminal activity in Kabul' and 'generalised violence' (para 120). The Tribunal found that the applicant did not satisfy s.36(2)(a) of the Act (para 121). Based on country information and 'the information as provided by DFAT regarding the level of security in Kabul, including the risk of deterioration in the security situation', the Tribunal did 'not accept that the level of generalised violence in Kabul, now and the reasonably foreseeable future is so widespread or so severe that almost anyone would potentially be affected by them' (para 116). Therefore the Tribunal found 'that the applicant does not face a real risk of significant harm arising from the generalised violence in Kabul' (para 117).

			With regard to the applicant's remaining claims, the Tribunal applied its findings with respect to s.36(2)(a) of the Act to its determinations under s.36(2)(aa) (paras 92, 97, 105 and 107). 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 122).