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). 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

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 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

			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

‘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

			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 employme005600560003005

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

reallocate land to

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).

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

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 adjust

‘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

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

			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		

			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

discrimination and violence against Catholics in China

The applicant claimed that he ‘will have no option

‘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 T[(ha)4(L44 282sg0 G[(T[(ha)4(L44 282sg0 G800444B0

			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).

applicant’s evidence, that he will have little to do with

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

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).

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

			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

			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-	

			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 cou ɵ folcq'm l ra 9).

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).

‘Further, the Tribunal finds on the applicant’s evidence in the hearing that he had not previously engaged in politics before

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 su `

1509905 (Refugee) [2015] AATA 3511			In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 47).

			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).

			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 fo

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).

			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

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

			applicant was a person in respect of whom Australia had protection obligations under s.36(2)(aa) of the Act (para 119).

			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

			‘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

			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).

			‘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

			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

meets the requirements of

(Unsuccessful)

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 'homosexu ¢ Ɔ xu ð aa Ṛ

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

			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

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).