COMPLEMENTARY PROTECTION IN AUSTRALIA

REFUGEE REVIEW TRIBUNAL

Last updated 4 December 2015

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

On 1 July 2015, the Refugee Review Tribunal (RRT) was merged with the Administrative Appeals Tribunal (AAT). Previous RRT decisions can be found in the separate RRT table (archived on the Kaldor Centre website). Pre-

The Tribunal also did not ‘accept that the overcrowding and ‘other problems’ were ‘intended to cause’ extreme humiliation as required by the definition of degrading

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

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

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

The Tribunal accepted ‘on basis of the country information that Tamils in Sri Lanka have historically faced a degree of harassment and discrimination on account of their ethnicity and may continue to do so, such as difficulties in accessing employment and disproportionate monitoring by security forces’ (para 62).

that he is a Tamil male or young Tamil male from the East or because his brother nominated for TNA (or

that ‘that returnees are not mistreated’, the Tribunal did not accept that ‘questioning at the airport, being charged and bailed or payment of fine, or held on remand for a short period constitutes significant harm’ (para 89).

The Tribunal ‘also accepted that the applicant may be remanded in conditions which are cramped, uncomfortable and unsanitary, but the tribunal does not accept that spending up to a fortnight in such conditions amounts to “significant harm” as defined in subsection 36(2A) of the

			had protection obligations under s.36(2)(a) and s.36(2)(aa) of the Act (para 96).
1309930 [2015] RRTA 249 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/249.html (Unsuccesful)	1 May 2015	1, 53, 56-57, 59 and 61	The applicant was a citizen of Sri Lanka (para 1). The applicant claimed that 'he was harmed in the past by the Sri Lankan authorities because he was restricted from fishing' and 'he was attacked by Singhalese fisherman because he was a spokesperson for Tamil fishermen' (para 1). He claimed that he feared 'he will be harmed again if he returns to Sri Lanka because he will be considered a troublemaker' (para 1). The applicant claimed to fear that 'he will be harmed

follows.

Discrimination

Based on country information, the Tribunal accepted

the north or east of Sri Lanka, he is an orphan, has an implied pro-LTTE, was a businessman, applied for asylum in Australia and because he departed Sri Lanka illegally' (para 1).

The Tribunal was not satisfied the applicant had a 'well-founded fear of persecution for any Convention reason or combination of reasons, now, or in the reasonably foreseeable future if he returns to Sri Lanka' (para 53).

The application of s.36(2)(aa) of the Act the applicant's claims was as follows.

Discrimination

The Tribunal, on the basis of country information, accepted 'that Tamils in Sri Lanka have historically

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

return to Sri Lanka', such as 'persons suspected of certain links with the LTTE; certain opposition politicians and political activists; certain journalists and other media

			Therefore the Tribunal found 'that there are no substantial grounds for believing that there is a real risk that the applicant would be significantly harmed as a result of his illegal departure from Sri Lanka' (para 85). In conclusion, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of the Act (para 91).
1319289 [2015] RRTA 162 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/162.html (Unsuccessful)	22 April 2015	2, 9, 12, 48, 50-53 and 55	The applicant was a citizen of Sri Lanka (para 9). 'The applicant claimed to fear harm on the basis of his Tamil ethnicity, his political opinion and his membership of the particular social groups "Tamil failed asylum seekers" and "Tamil fishermen"' (para 2). The Tribunal did 'not accept there to be a real chance [redacted] by [redacted]ve [redacted] his [redacted] has [redacted] is

			(para 51). Based on country information, the Tribunal accepted 'that prison conditions in Sri Lanka are generally poor and overcrowded' (para 51). However the Tribunal did 'not accept on the evidence before it that there is a real risk the applicant would be subjected to treatment constituting significant harm as that term is exhaustively defined in section 36(2A), either during his questioning at the airport or during the short period that he would spend on remand awaiting a bail hearing' (para 51). The applicant claimed that 'applicant and his relatives were required to obtain a navy pass before fishing in both [Town 1] and Trincomalee' (para 12). The Tribunal 'considered whether the fishing restrictions that may be imposed on the applicant constitute significant harm' (para 52). The Tribunal 'found that the applicant and his family members have been granted the necessary permissions in the past and will continue to be granted those permissions in the future' (para 52). Therefore, the Tribunal did 'not accept there to be a real

			risk the applicant will suffer significant harm for reason of being required to obtain such fishing permissions as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka' (para 53). In concluding, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) and s.36(2)(aa) of the Act (para 55).
1409569 [2015] RRTA 189 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/189.html (Unsuccessful)	22 April 2015	12, 13, 15, 16, 35, 59-67, 70, 74, 76-77, 79-83 and 85	The applicant was a citizen of Fiji (para 15). The applicant's husband was of 'Indo Fijian ethnicity', and the applicant was '

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

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

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

1412755 [2015] RRTA 216 http://www.austlii.edu.au/a			substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there is a risk that she will suffer significant harm on the basis of criminal acts or corruption' (para 83). In conclusion, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under the complementary protection criteria (para 85).

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

found guilty' (para 35).

The Tribunal accepted that the 'applicant may spend up to a fortnight in jail on remand, in conditions that are

Therefore, the Tribunal was not satisfied that there were ‘substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there would be a real risk that he would suffer harm which would amount to significant harm’ (para 39).

In concluding, the Tribunal said it was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under

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

foreseeable future there will be any issue with the applicant obtaining from or returning to the navy a fishing pass or permit' (para 100).

Nor did the Tribunal accept that there was a 'real chance or risk that the local naval command in [Village 1], or an individual naval officer, would now or in the reasonably foreseeable future target and offer serious or significant harm to the applicant because he had returned a fishing pass late more than three years ago' (para 101).

'The applicant stated that after he left [Village 1] and before he left Sri Lanka there were several enquiries as to his whereabouts' (para 102).

The Tribunal was not satisfied that 'these were anything other than routine or that they reflected any intention to persecute the applicant' (para 102).

The Tribunal was 'satisfied that at the time he left Sri Lanka the applicant did not have an LTTE profile or any adverse profile with relevance now or in the reasonably foreseeable future' (para 105).

The Tribunal accepted 'that there may have been

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

that during such period there is no real risk of the infliction of significant harm' (para 121).

The Tribunal was 'satisfied that any punishment the applicant would face for illegal departure would be under a law of general application and is not disproportionate or arbitrary and does not amount to persecution for a Convention reason' (para 123).

The applicant also 'expressed concern about medical treatment for his [child] who was apparently disfigured by burns some time ago' (para 124).

The Tribunal was 'satisfied that the applicant's [child] has not been denied medical treatment, for a Convention or any other reason' (para 124).

The Tribunal did not 'accept that the applicant's [child] has been denied medical treatment (or that any shortcomings in medical treatment generally available amount to infliction of significant harm)' (para 127).

The applicant claimed that because he was 'returning from overseas it will be suspected that he has a lot of money and will be detained and tortured until he pays' (para 128).

			inconsistent with the DFAT advice that returnees are released when brought before a magistrate after brief detention'. The Tribunal was not satisfied that there were substantial grounds for believing that there was a real risk that this would occur (para 128). Based on the above reasoning, the Tribunal was not satisfied that there were substantial grounds for believing that the applicant would face a real risk of significant harm upon return to Sri Lanka (para 129). Therefore the applicant did not satisfy the criteria set out in s.36(2)(a) and s.36(2)(aa) of the Act (para 130 and 131).
1411512, 1411514 [2015] RRTA 138 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/138.html (Unsuccessful) See also 1411884 [2015] RRTA 77 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/77.html (Unsuccessful); 1402432 [2015] RRTA 72	26 February 2015	2, 3, 35, 38, 53, 66-7, 72, 90-1, 93 and 96-100	The applicants were a married Indian couple from the State of Punjab (paras 2 and 3) who feared harm by their families because they had married within the same *gotrareW*nB10JETf(earf(earf(earf(earf(ETe(),(

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relationships in India' (para 66).

Therefore, the Tribunal found 'that the harm the applicants would face would amount to serious harm capable of amounting to persecution for the purposes of s.91R(1)(b) of the Act' (para 66).

'Having regard to the very significant number of "honour killings" still occurring in India for reason of mixed or inter-caste marriage and same-*gotra* marriage, the Tribunal finds that the protection available to the applicants cannot be considered consistent with "international standards"[32] and that the applicants could not expect that a reasonable level of protection would be available to them' (para 72).

On the evidence before it, the Tribunal found that state protection would not be available to the wife applicant or the husband applicant' (para 72).

However, the Tribunal found that there was 'not a real

bother to pursue this matter in the event of return to

However, the Tribunal found that there was

1403522 [2015] RRTA 73 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/73.html (Unsuccessful)	16 February 2015	2, 5-6, 17, 20-23 and 26-27	The applicant was a citizen of the People's Republic of China and feared harm from Chinese officials and the police because he 'lodged objections' against what he claimed was unfair treatment by officials in relation to

The Tribunal found that the ‘only continuing harassment’ the applicant complained of was that officials asked his wife for ‘small amounts of money or meals’ (para 21).

The Tribunal found that ‘this harassment is far too minor to amount to either serious harm or significant harm – the applicant and his family have not been reduced to being unable to subsist by reason of this harassment’ (para 21).

The Tribunal also found that even if the business had closed down, ‘the applicant has proved himself able to be employed throughout his life (except while he father was ill) and to provide for his family’ (para 22).

The Tribunal also found that the applicant’s delay and timing in lodging a protection visa application after arriving in Australia was not ‘consistent with a genuine fear of serious or significant harm’ (para 23).

In concluding, the Tribunal found that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) of

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			Act (para 79).
1218366 [2015] RRTA 41 www.austlii.edu.au/au/cases/cth/RRTA/2015/41.html (Unsuccessful)	10 February 2015	2, 4, 6, 20-29 and 31	The applicants (father and child) 0.599n1bnd(.)5(htmleW

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

that the applicant's first husband was killed because he

With respect to the applicant's claim that her injuries made her more 'vulnerable to crimes including

Therefore, the Tribunal found that the disadvantage the applicant would face in this regard, and as a member of the social group ‘women in Nepal’ or ‘unmarried, widowed, and divorced women’, did not constitute persecution as defined in s.91R(1) and (2) of the Act (para 46).

In considering the applicant’s claims on a cumulative basis, the Tribunal found that the applicant did not meet the criteria specified in s.36(2)(a) of the Act. (para 48)

Based on the Tribunal’s earlier reasoning, the Tribunal found that the applicant did not ‘face a real risk of being targeted and harmed’ because she was ‘known as a person who opposed the Maoists, and/or because her husband was a soldier in the Nepalese army and was killed in 2004’ (para 52).

Based on the above reasoning, the Tribunal also found that ‘being subjected to extortion demands’ did not

The Tribunal accepted that the applicant's first husband's family were hostile towards her and had treated her 'harshly in the past', and asked her for money (para 54).

However, the Tribunal noted that the applicant's own famibmib 445.5ET5the TJeribmnohnohsis4(3(3(h)-4T5t

			removed from Australia to Nepal', she faced a real risk of suffering significant harm for any reason (para 56). The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s.36(2)(a) or s.36(2)(aa) (para 58).
1500655 [2015] RRTA 60 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/60.html (Unsuccessful)	6 February 2015	1, 30-34, 37-41 and 43	The applicant was a citizen of Fiji and claimed to fear harm based on'access to medical treatment and financial and other support' in Fiji, and 'not being treated well by members of the public or the government because of his long absence from the country and as a person deported due to character issues' (para 1). The Tribunal accepted that the applicant had various medical conditions and that 'at some point as he gets older he may need treatment for one or both of these conditions' (para 30). The applicant did not claim that he would be denied the necessary treatment in Fiji for any reason if it was available. Therefore the Tribunal found 'that any lack of access to treatment for his physical condition would not constitute persecution, as persecution requires serious harm which is systematic and discriminatory' (para 30). The Tribunal accepted that the applicant took 'buprenorphine on a daily basis', and that he may not

harmed at all' was 'remote' (para 33).

Based on the above, the Tribunal found that the applicant did not 'have a well-founded fear of being persecuted for a Convention reason in Fiji' (para 34).

The Tribunal found that there was no evidence and that the applicant did not claim that he would be deprived of his life, that the death penalty would be carried out on him or that he would be tortured (para 37).

The Tribunal accepted that the applicant was a Muslim (para 36). However, based on country information, the Tribunal did not accept ‘that there was a festival of Muharram in Calcutta, in 1994 or 1995, there were big riots in various different suburbs’ or that ‘the applicant had to flee Calcutta for a few weeks in order to avoid being harmed’ (para 36).

The Tribunal found that the applicant ‘had no adverse religious or political profile in India prior to departing for Australia’ and that ‘the applicant did not flee India fearing harm but came to study in Australia’ (para 37).

The applicant claimed that ‘he was not happy with the Indian government system, he does not want to be a victim, it is corrupt, there is no law in India, nobody follows it and nobody listens and so he does not want to

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

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

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

would suffer harm for this reason (para 34).

The Tribunal was not satisfied that the applicant's parents would be 'arrested, harassed or detained for practising Christianity in China' such that the applicant would be denied care by his parents (para 34).

Having found that there was no real chance that the applicant would suffer serious harm for reasons of his 'particular social group or his religion', the Tribunal found that the applicant did not have a 'well founded fear of persecution for these reasons' (para 35).

Based on the findings that the applicant would be 'able to obtain a *hukou* after the compensation fee' had been paid and that the Tribunal did not consider 'any harm the applicant's mother may suffer', but the effect that it may have had on her son, the applicant, the Tribunal did not accept that the imposition of China's family planning laws on the applicant's mother mg ch

obligations under s.36(2)(aa) of the Act (para 54). This was based on the following reasoning.

The Tribunal did not accept that:

- there was a real risk that the applicant would suffer 'significant harm as a result of his having worked briefly for an NGO, [Organisation 4]' (para 49),
- the applicant was 'forced to quit this job because he was receiving threatening telephone calls' or because he was a Shia Muslim (para 49),
- there was 'a real risk that the only employment he will be able to obtain will require him to work in areas where h

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

dinner and hung out with other young people associated with the Future Movement in [Village 1], Tripoli and

The Tribunal was not satisfied that there was a real risk that the applicant would ‘face significant harm in Egypt arising from his conversion to Shiism, his adherence to Shia faith, or his political opinion’ if he returned to Egypt, based on the following reasoning (para 35).

It was accepted by the Tribunal that the applicant ‘might face some limitation in the practice of his faith’ (para 35).

However, the Tribunal was not satisfied that such limitations raised

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

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returned to Lebanon (para 38).

Based on country information, the Tribunal accepted that there was ‘widespread societal discrimination against women in Egyptian society’ and that ‘as an elderly woman on her own’, the applicant was more ‘vulnerable to harassment and that she may have been harassed for this reason’. However, the Tribunal was

Tribunal was also satisfied that the applicant would be able to obtain a further Registration Certificate (para 73).

Given that the applicant had ‘been prepared (and been able) to return to India on a number of occasions since 2005’ and ‘the lack of available objective country information to indicate that a Tibetan living in India

			In concluding, the Tribunal found that the applicant had a right to enter and reside in India and had not taken all possible steps to avail himself of that right (para 88). Therefore, the Tribunal found that Australia did not have protection obligations in respect of the applicant (para 90).
1407197 [2015] RRTA 29 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/29.html (Unsuccessful)	18 January 2015	3, 4, 13-17, 21, 26-28, 31-32, and 35-36	The applicant was a citizen of Nepal and claimed to

had an inter-caste marriage in the past' (para 21).

While the Tribunal accepted that the applicant's status as a 'divorced woman' may hinder her ability to remarry in Nepal, the Tribunal was not satisfied that 'hindrances to remarrying, or even an inability to

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

harm was remote (para 101).

Based on the above reasoning, the Tribunal found that the applicant did ‘not have a well-founded fear of being persecuted in India for the Convention reason of

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

			Since the applicant's family lived in a city, the Tribunal did not accept that 'any members of the khap panchayat would learn of the applicant's marriage by some other means or issue a decree against him' (para 36). The Tribunal did not accept that the applicant's family would report him to the khap panchayat (para 36). As a separate and independent finding, the Tribunal found that the applicant could have 'safely and reasonably' relocated to another part of India, since the harm the applicant feared from his own family and the khap panchayat was localised to his home district of [City 1] in Haryana state (paras 38 and 39). In concluding, the Tribunal found that the applicant did not meet the criteria in s.36(2)(a) of the Act (para 47). The Tribunal relied on the above reasoning to also find that the applicant was not a person in respect of whom Australia had protection obligations under s.36(2)(aa) of the Act (para 48).
1408161 [2015] RRTA 11 http://www.austlii.edu.au/au/cases/cth/RRTA/2015/11.html (Unsuccessful)	5 January 2015	22-23, 25, 29, 46-47, 49-50, 54-56, 58-59 and 62-63	[redacted]of India and claimed to fear [redacted]ily (para 25). [redacted]nd his [Ms A] married 0018⋊

relationship because he was a Hindu of [a certain] caste and she was a Sikh of [a certain] caste' (para 22).

'Once they were in Australi

family would seriously harm the applicant in the reasonably foreseeable future because they blame him

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

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

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

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

1404941 [2014] RRTA 865

http://www.austlii.edu.au/au/cases/cth/RRTA/2014/865

(Unsuccessful)

			for the same reasons that the Tribunal found that there was not a real chance that the applicant husband would suffer serious harm in Vietnam, the Tribunal also found that there was not a real risk that he would suffer significant harm (para 31). The Tribunal found that 'while there may be societal discrimination' against people with disabilities in Vietnam, in the case of the particular applicant, such discrimination did not reach the level of significant harm (para 32). Further the Tribunal found that 'whatever discrimination he may encounter', 'he would have the 'support of family in Vietnam to assist him with that (para 32). In concluding the Tribunal found that the applicants did not satisfy the criteria set out in the Act for a protection visa (para 36).
1408557 [2014] RRTA 846 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/84			

The applicant stated that he moved to southern Kerela to get away from his family, but his brother contacted his employer in southern Kerela and convinced the employer to no longer employ the applicant. The applicant then moved to Chennai. The applicant claimed that his brother also hindered his work opportunities in Chennai (paras 29 and 32).

The applicant stated that if he were to return to India, ‘he had an uncle who was in the “centp ” i

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

1406452 [2014] RRTA 874	11 December 2014	28, 30, 37-40 and 42	The applicant was a citizen of Fiji and claimed to fear harm based on her political opinion (para 28). The Tribunal accepted that there were 'a lot of difficulties in Fiji when it was led by a military government', that the applicant feared the military and 'it was difficult to express her own opinion' (para 30). However, the Tribunal was not satisfied that a 'difficulty to express an opinion or living in Fiji under the military government' amounted to serious harm (para 30). That is the Tribunal found that there was 'no threat to the applicant's life or liberty', and that the 'applicant did not suffer physical harassment or physical ill-treatment or economic hardship that threatened her capacity to subsist' (para 30). Further the Tribunal found that she was 'not denied access to basic services, where the denial threatened her capacity to subsist nor was she denied the capacity to earn a livelihood of any kind, where the denial threatened her capacity to subsist' (para 30). The Tribunal accepted that the applicant had 'been involved a ʻ ¾ k ɣ l	
http://www.austlii.edu.au/au/cases/cth/RRTA/2014/874.html				
(Unsuccessful)				

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

			s.36(2)(aa) of the Act' (para 42)
1407914 [2014] RRTA 854 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/854.html (Unsuccessful)	4 December 2014	2, 11, 35-54, 62 and 64	

			shop (para 62). The Tribunal did not accept that the applicants faced a real risk of significant harm upon return to Nepal, whether from criminal activity or the general security situation (para 62). Therefore, the Tribunal found that the applicants did not satisfy the criteria set out in ss.36(2)(a) or (aa) for a protection visa. It followed that none of the applicants were able to satisfy the criteria set out in s.36(2)(b) or (c) (para 64).
1319201 [2014] RRTA 835 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/835.html (Unsuccessful)	2 December 2014	2, 18, and 22-47	The applicant was a citizen of Pakistan and claimed to fear harm 'from Sunni extremists operating in the FATA region' (para 2). The applicant stated that although his wife, parents, [iT6ots,

his return to Parachinar or the Upper Kurram (para 22).

However, the Tribunal found that based on country information and the applicant's evidence, it was

- required to change his conduct in Islamabad or Rawalpindi in terms of his practice of his religion, in order to avoid harm (para 41).

The Tribunal accepted that Pakistani authorities had

persecution because of her political opinion or for any

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

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

			The Tribunal found that it was not satisfied that the applicant was a person in respect of whom Australia had protection obligations (para 53).
1406176 [2014] RRTA 813 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/813.html Unsuccessful	25 November 2014	14, 20, 53, 56-59 and 61	The applicant was a citizen of Nepal and claimed to fear harm based on threats he and his mother had received from the Maoist rebel party, including death threats (para 14(a)). The applicant claimed that he had also

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

Therefore, the Tribunal did not accept that there was a real chance that the applicant would suffer serious harm in China for ‘reasons of having attended the [Christian Church] in [Suburb 4] or for becoming a Christian in Australia or for any other matter’ (para 64).

With regard to the applicant’s claim to fear harm based on his criminal record in China, the Tribunal accepted ‘that in 1993 he was convicted of assaulting a police officer and sentenced to six years in prison in China but was released early in 1998’ (para 65).

Based on the applicant’s evidence ‘and in the absence of independent information to indicate that, in the recent past, people with criminal records or people convicted of criminal offences or people who had been imprisoned had been denied access to basic services or denied the capacity to earn a livelihood or otherwise been subjected to harm of the type set out in s.91R(2)’, the Tribunal did not accept that there was a real chance that the applicant would suffer serious harm if he returned to China (para 65).

Therefore, the Tribunal did not accept that there was a

1314106 [2014] RRTA 796 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/796.html Unsuccessful	13 November 2014	2, 10, 20, 27, 36-39 and 41	The applicant was a citizen of Pakistan and claimed to fear harm fr

the applicant to relocate to an area of Pakistan outside Parachinar and FATA, such as Islamabad or Rawalpindi and in such areas that there was ‘not a real chance that the applicant would be persecuted for reasons of his religion, ethnicity, membership of the Turi tribe, or imputed political opinion or for any other Convention reason’ (paras 37).

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

received two threats, in March and October 2007, but did not accept that she received the claimed threat in 2010 (paras 15, 20 and 36).

Also, the Tribunal did not accept that the confrontation with [student A's] mother in March 2007 went any further or that the threat in October 2007 was connected with the confrontation in March (para 50).

The Tribunal did not accept that the first named applicant or her family were a 'target', based on the fact that the first named applicant 'remained in the Philippines for 3 ½ years after the initial confrontation, undertaking the same job and living for most of that time in the same house' and had spent another three years in Australia (para 52).

The 'Tribunal noted that although there were relatively high levels of generalised violence in the Philippines, it appeared to be random and would not be targeted at her, but rather something to which anyone in the Philippines might be subjected' (para 54).

Therefore, the Tribunal did not accept that the first named applicant or her family would be targeted on return to the Philippines as a result of the confrontation in 2007. The Tribunal found that if the first named applicant or her family were caught up in generalised violence, the Tribunal was satisfied that this would not

involve systematic and discriminatory conduct and accordingly Article 1A(2) of the Refugee Convention would not apply in accordance with s 91R(1)(c) of the Act (para 44).

With respect to the complementary protection criteria, on the basis of the findings set out above, the Tribunal found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to the Philippines, that there was a real risk that they would suffer significant harm (para 58).

Also, the Tribunal found that if the first named applicant were to be caught up in generalised violence in the Philippines, 'this would be a risk faced by the population of the Philippines generally and is not faced by the first named applicant personally (para 61).

In concluding, the Tribunal found that there were not substantial gthat dlubrepbed D4DNNa8%DEtbb

			applicants satisfied ss.36(2)(b) and (c) of the Act (para 62).
1406290 [2014] RRTA 815 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/815.html Unsuccessful	11 November 2014	37-38, 57, 59, 64, 66, 68, 69 and 71	The applicants (husband and wife) were citizens of Fiji and of Indian ethnicity (paras 38 and 57). The applicant wife did not submit an individual claim for protection (para 37). The applicant husband claimed to fear harm on account of his race, religion or imputed political opinion arising from his son's activities (i.e. being a supporter of the Labor government and holding religious gatherings at the family home)(paras 57 and 59).

			repeated travel to Australia' and, in any event, the Tribunal found that the applicant husband 'would be able to stay with relatives on a long term basis' (para 69). Therefore, the Tribunal was not satisfied that either of the applicants were persons in respect of whom Australia had protection obligations and accordingly neither applicant was found to satisfy ss.36(2)(b) and (c) of the Act (para 71).
1404760 [2014] RRTA 769 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/769.html Unsuccessful	31 October 2014	2, 28, 29, 30 and 31	The applicants (father, mother and daughter) were citizens of Lebanon and claimed to fear harm based on the 'sectarian conflict in their neighbourhood in Tripoli' and 'the economic downturn as a result of the conflict and influx of Syrian refugees' (paras 2 and 29). The applicant father and daughter both had physical49.38

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

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The Tribunal accepted that the applicant:

- ‘may have been subjected to name-calling and other forms of harassment as a child because of

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

"associate" official language to Hindi, and 'is used predominantly by educated and professional groups, the media, and in administrative contexts') (para 56). Also, the applicant wife had some understanding of both English and Hindi (para 56).

The Tribunal also relied upon the fact that the applicant wife was Hindu (the predominant religion in India) and 'that Sikhs are present throughout the country and are able to practise their religion without restriction and that they have indiscriminate access to employment' (para 57).

The Tribunal also relied on independent country information which indicated 'that unemployment is low in India and the country is experiencing substantial economic growth' (para 58). The Tribunal did not accept that the applicant husband would not be able to 'obtain employment in the light of his educational history and past work experience which would be sufficient to support himself and his family' (para 58).

Also, the applicants had been 'receiving ongoing financial support for a substantial period' from the applicant husband

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

			have been taken near the applicant's village during the 2000 coup', the Tribunal was not satisfied that such a search would constitute significant harm as set out in s 36(2A) of the Act (paras 53 and 54). With respect to the applicant's claim of harm based on a 'lower standard of living in Fiji', the Tribunal found that 'although he stated that it is easier to make money in Australia, the applicant's evidence to the Tribunal did not indicate that, in his individual circumstances, the lower standard of living in Fiji' constituted significant harm pursuant to 36(2A) of the Act (paras 55-58). In concluding, the Tribunal found the 'applicant was not a person in respect of whom Australia has protection obligations' under s.36(2)(aa) of the Act (para 61).
1407713 [2014] RRTA 702 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/702.html Unsuccessful	24 September 2014	2, 18-20, 30, 48, 50 and 54	The applicant was a citizen of Fiji and claimed that he faced harm there on the basis of his membership to the

significant harm from government authorities because of their political involvement in Fiji and on account of being involved in anti-Fijian government activities in Australia (para 18). The applicant further claimed that he feared returning to Fiji because he found 'information relating to a plot to kill' Fiji's Prime Minister (para 20).

The Tribunal was not satisfied that the applicant or his wife had 'suffered any of the claimed harm for any of the claimed reasons, including any actual or perceived association with [Mr A], or that he is of any interest to the

The Tribunal accepted that the applicant mother and her family had been ‘affected by natural disasters and her son was almost a victim of one of those disasters’. The Tribunal also accepted that the family had concerns for their safety, particularly as they had been robbed (para 41).

The Tribunal found that one of the reasons that they were robbed was because they owned a business. Since the applicants no longer owned the [business], the Tribunal concluded that the applicants did not face a real risk of significant harm based on this ground (para 41).

The Tribunal also found that the applicants would be able to ‘re-establish themselves upon their return to the Philippines’, even though they no longer had a business or a home. The Tribunal considered ‘that the generalised crime and natural disasters are matters which affect the Filipino population generally and are

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

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

1404202 [2014] RRTA 683 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/683.html			The Tribunal did not accept that 'the discrimination faced by the applicants as non-ethnic Malaysians (sic) constituted significant harm'. In making this assessment the Tribunal did not accept that the 'lost opportunities the applicants claim to have suffered could reasonably be described as cruel or inhuman, or intended to cause extreme humiliation which is unreasonable, in circumstances where they are both educated to college levels and have worked in a variety of occupations in Malaysia and more recently Australia' (para 62).

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

discrimination while studying or in the process of

company which he was unable to repay’ (para 3).

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

With respect to his political views and activities, at his interview with the delegate the ‘applicant claimed that during the Revolution he associated with a group of people who advocated passive resistance and were against killings. He claimed that in effect he took a position against both the Islamists and the army’. He further claimed that being a lecturer at university put him in a leadership position’ and that he ‘led a demonstration to the radio and TV station’ (para 18).

The applicant also claimed that people had broken into

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

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

evidence with respect to the main factors for the applicant's departure from Sri Lanka (para 37).

With respect to the applicant's fear that he would be detained and abused in detention on account of being a 'failed asylum seeker', the Tribunal found that

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

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

The applicants were found to satisfy s 36(2)(aa) of the Act.

1318956 [2014] RRTA 562	23 July 2014	50

http://www.austlii.edu.au/au/cases/cth/RRTA/2014/562.html

(Unsuccessful)

This case relates to:

- the meaning of 'significant harm';
- whether 'significant harm' encompass lack of access to health care/medical treatment.

The applicant was a national of Indonesia. He feared harm as he had certain health problems and 'did not know' if he could obtain the medication and treatment required to address his health problems. He had no financial support in Indonesia (para 35).

The Tribunal found that the risk of the applicant not being able to obtain medication was not a real one 'because he will be able to access some form of government provided medical assistance, either through community health centres or government funded health insurance despite any financial difficulties he may face on his return to Indonesia' (para 49).

However, the Tribunal went on to note that, even if it accepted that the risk of not obtaining medication was real, and that '

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

homosexual' (para 49).

The Tribunal accepted that 'should the applicant return to his family home, there is a real chance or risk that his father might again assault him and might be able to arrange for the applicant to be arrested and detained for a period' (para 54). However, the Tribunal observed that 'the applicant is not constrained on return to

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

(Unsuccessful)

harm from her estranged husband because of domestic violence and from the Vietnamese authorities because she was a Catholic and for being as a failed asylum seeker (para 1).

The Tribunal rejected her claims for protection as a refugee. The applicant also claimed she would suffered

			circumstances as cruel or inhuman in nature for the purpose of limb (b) of that definition. The Tribunal accepts the harassment and discrimination may cause some humiliation to the first named applicant, but is not satisfied that the harassment and discrimination would cause extreme humiliation which is unreasonable. Therefore, the Tribunal is not satisfied any harm arising from the harassment or discrimination will amount to significant harm.' The applicant also claimed she would suffer significant harm as a result of facing stigma or societal discrimination arising from her being separated or considered divorced or being considered to be single as well as her having children born out of wedlock (para 100). The Tribunal rejected this claim, stating (paras 100–01): 'The Tribunal notes the country information there is social discrimination against single mothers in Vietnam. The Tribunal accepts there is likely to be social discrimination as a woman with children born out of wedlock or because she is separated from her estranged husband or an adulteress. The Tribunal accepts that discrimination may cause some humiliation to the first named applicant. The Tribunal accepts too as she is from a rural area of Vietnam, where society is more conservative. The Tribunal considers the only relevant head of significant harm to that issue is degrading

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

			mechanisms in place to assist low-income earners to repay debts from private money lenders, the Tribunal finds that the level of protection offered by the South Korean authorities reduces the risk of significant harm to the applicant to less than a real risk. Accordingly, the Tribunal is satisfied that there are not substantial grounds for believing the applicant faces a real risk of significant harm from debt collectors in the future in South Korea.'
1212347 [2014] RRTA 390 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/390.html (Unsuccessful)	26 March 2014	10, 61–5	This case relates to: the meaning of 'significant harm' The applicant was a Sri Lankan national with Tamil ethnicity. He feared that certain armed men were looking for him because his brother had been involved with the Liberation Tigers of Tamil Elam. He also claimed to fear harm from the Sri Lankan authorities as he was Tamil and had departed Sri Lanka illegally. The Tribunal rejected his claims for protection as a refugee as well as under the complementary protection regime. Regarding significant harm arising as a result of his Tamil ethnicity, the Tribunal noted (para 62): 'The Tribunal accepted … that Tamils in Sri Lanka have historically faced a degree of harassment and discrimination on account of their ethnicity and may continue to do so, such as difficulties in accessing employment and disproportionate monitoring by

			security forces. The Tribunal has had regard to whether that harassment and discrimination amounts to significant harm. The Tribunal considers the only relevant forms of significant harm are torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. On the evidence before it, the Tribunal is not satisfied the harassment of or discrimination towards Tamils involves severe physical pain or suffering, therefore it does not meet the definition of torture in s.5(1). Similarly, the harassment and discrimination cannot meet limb (a) in the definition in s.5(1) of cruel or inhuman treatment or punishment, nor could the harassment or discrimination be reasonably regarded in all the circumstances as cruel or inhuman in nature for the purpose of limb (b) of that definition. The Tribunal accepts the harassment and discrimination may cause some humiliation to the applicant, but is not satisfied that the harassment and discrimination would cause extreme humiliation which is unreasonable. Therefore, the Tribunal is not satisfied any harm arising from the harassment or discrimination will amount to significant harm.' Regarding his illegal departure, the Tribunal noted (para 63): 'The Tribunal has had regard to whether the harm the applicant may suffer arising from his committing offences under the IEA amounts to significant harm, in particular, his bail conditions, being detained for a short

period while on remand and imposition of a fine. The Tribunal considers the only relevant forms of significant harm are torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. On the evidence before it, the Tribunal is not satisfied

			relocate within Malaysia (para 71). As such, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there was a real risk that he would suffer significant harm (para 72).
1217887 [2014] RRTA 12 http://www.austlii.edu.au/au/cases/cth/RRTA/2014/12.html	15 January 2014	21, 28–9, 45– 54, 71–7, 91	This case relates to the meaning of 'significant harm' army deserter laws of general application and individual risk

armed forces – faced a real chance of persecution at the hands of Hezbollah, Shia Muslims, Alawites, Syrian agents or anybody else (para 55). The Tribunal was not satisfied that the Lebanese armed forces engaged in sectarian violence or that the applicant had been given orders to shoot Sunnis but not Alawites in Tripoli or Sunnis but not Shias in the south of Beirut (para 58).

			grounds for believing that as a necessary and foreseeable consequence of being removed to Lebanon, there was a real risk that the applicant would not only be imprisoned for 2 to 5 years but while in prison he would be subjected to treatment amounting to torture or cruel or inhuman treatment or punishment, namely: 'being detained incommunicado for a period of time up to several months; being insulted, humiliated, threatened and beaten with electric cables, hoses, or sticks, being punched and kicked on all parts of the body; being forced to remain standing for long periods; being deprived of sleep as well as toilet facilities; being subject to the Balanco suspension or falaqa (blows to the soles of the feet); and/or being exposed naked' (para 91).
1305442 [2013] RRTA 887 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/887.html	23 December 2013	13, 16, 22, 27–9, 37, 40–5	[redacted]

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

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

(although he had a Sinhalese last name). The applicant and his father were involved with the United National Party (UNP) (in opposition to the Sri Lankan government). The applicant claimed his father was physically attacked for this. He claimed supporters of the government tried to set fire to the applicant's house (paras 28

Tribunal was not satisfied that the essential and significant motivation for the harmed feared could be attributed to a Convention ground (para 79).

Complementary protection claim (paras 80–6)
The Tribunal found that the conditions in prisons in Sri Lanka were such that there was a real risk that the applicant would suffer harm beyond being deprived of his liberty in accordance with a lawful sanction relating to an alleged offence. The Tribunal further found that the treatment the applicant might face would also involve the intentional infliction of pain or suffering or extreme humiliation which was unreasonable (para 82). The Tribunal accepted the applicant's evidence td l Ď d

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

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

income to support himself and his large family (para

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

(c) *Risk faced by population generally and not by applicant personally*: The Tribunal took account of the Department of Immigration – PAM3 Refugee and Humanitarian – Complementary Protection Guidelines, which stated that s 36(2B)(c) should be interpreted to mean that the particular individual must face a real risk in light of the individual's specific circumstances, although it was not necessary to show that an individual had been or would be 'singled out' or targeted (para 88). The

1219395 [2013] RRTA 633 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/633.html	26 June 2013	32–48

This case relates to:

- the meaning of ‘significant harm’
- cruel or inhuman treatment or punishment
- ‘prayer camps’

The applicant was a national of Ghana. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment – if removed.

Refugee claim (paras 15–31)
The Tribunal accepted that the applicant developed a mental illness following his parents’ death and that if he returned to Ghana, he could be forcibly placed into a government psychiatric hospital or ‘prayer camp’ (paras 15–17).

The Tribunal accepted that persons with mental illness in Ghana constituted a particular social group, since they had a characteristic common to all members (mental illness) and the possession of this characteristic distinguished the group from society at large (paras 19–20). The Tribunal considered country information indicating that there were significant inadequacies in Ghana’s mental health care system (paras 22–7). However, the Tribunal was not satisfied that this amounted to persecution for reason of the applicant’s

with mental illness:

‘Where there are inadequacies in a health care system this does not amount to persecution as persecution must involve systematic and discriminatory conduct by a person or persons. This implies selective, non-random harassment – it must be deliberate, premeditated and motivated. I am not satisfied that the government policy is deliberate or premeditated but is instead a result of lack of funds and initiative. Furthermore it appears as if Ghana is attempting to improve the situation for mentally ill patients …’ (para 28)

The Tribunal concluded that the applicant did not face a real chance of persecution from the state for reason of his membership of a particular social group or any other Convention reason (paras 28–9).

The applicant also claimed that he faced a real chance of persecution at the hands of Islamic groups. However, on the basis of country information, the Tribunal rejected this claim (paras 30–1).

Complementary protection

generally: ‘The applicant faces a real risk because he is mentally ill. His position is particularly vulnerable given that he has no family or

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

been returned from Australia (para 35). On the basis of country information, the Tribunal found that the *I&E Act* was a law of general application and was not applied in a discriminatory manner (paras 40–1). The Tribunal further found that the punishment for unlawful departure was most likely to be a fine and not a custodial sentence (para 42).

The Tribunal found that, even if the applicant experienced short-term imprisonment on remand before applying for bail, or a fine as a result of being found guilty under the *I&E Act*, and even if this harm amounted to 'serious harm' (which the Tribunal doubted), it did not amount to persecution for a Convention reason because it involved the enforcement of a generally applicable law (para 44).

Unlawful departure from Sri Lanka complementary protection claim (paras 45–71)
Based on country information, the Tribunal considered that the chance of bail not being granted to the applicant to be remote and far- c-

that that remand prisoners in Sri Lanka faced poor conditions, including overcrowding, unhygienic conditions, insufficient medical care, and incidents of maltreatment (para 54).

Arbitrary deprivation of life or death penalty
The Tribunal did not consider that there was a real risk that the applicant would be arbitrarily deprived of his life or would face the death penalty if remanded in custody upon his arrival in Sri Lanka (para 55). This was because there was 'no persuasive evidence before [the Tribunal] to suggest that these things will occur' (para 55).

Torture
The Tribunal did not consider that there was a real risk that the applicant would suffer torture if remanded in custody upon his arrival in Sri Lanka (paras 56–7). This was because the UNHCR Guidelines did not suggest that returnees *per se* were at risk of torture, and the

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

In respect of each of the grounds in s 36(2B):

(a) *Relocation*: The Tribunal accepted the applicant's claim that relocating within Nepal would not provide him with safety, since the persons that he feared had demonstrated that they had the resources, ability and persistence to travel considerable distances to find him (para 38).

(b) *State protection*: The Tribunal considered country information indicating that the authorities in Nepal had limited resources, that the police were prone to corruption, and that a witness protection program was not available in Nepal (para 36). On this basis, the Tribunal was not satisfied that the applicant could obtain protection from the state such that there would not be a real risk of significant harm (para 38).

(c) *Risk faced by population generally and not by applicant personally*: The Tribunal found that the

paramilitary group in February 2006; and that during this time of relative peace in the area, the applicant rebuilt the farm for about five years (para 15). The Tribunal accepted that, in 2011, when [Mr A] was re-arming, the applicant received a condolence card (commonly used as a death threat in Colombia), telephone threats and demands for payment (paras 16–19).

The Tribunal found that the physical ill-treatment suffered by the applicant in the past constituted serious harm (paras 27, 31). The Tribunal considered whether there was a real chance that the applicant would face

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

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

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

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

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

student visa and her Chinese passport. That may expose her to the risk of a severe psychological reaction, although the necessary element of intention on the part of the authorities may be lacking.' (para 191)

			Tribunal noted the involvement of corrupt officials in the activities of gangs seeking to extort money, and the fact that the authorities took no effective action when the applicant's family sought help in the past (para 197). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal was satisfied that the real risk of significant harm was faced by the applicant personally, and not the population generally (para 197).
1215009 [2013] RRTA 288 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/288.html	9 April 2013	15–25	This case relates to: the meaning of 'significant harm' arbitrary deprivation of life meaning of risk faced by applicant 'personally' relocation (reasonableness) The applicant was an Assyrian Christian from Harasta, a city in the province of Damascus in Syria. He was not

not satisfied that the applicant had a well-founded fear of persecution for reason of his religion or any other Convention reason (para 13).

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

Moreover, on the country information available to it, the Tribunal was not satisfied that 'the government, caught in a bloody civil war and fighting for survival, would persecute everyone who returns from abroad and who happens to be a Sunni Muslim' (para 16).

Complementary protection claim (paras 18–29)
The Tribunal noted that Syria was in the midst of a civil conflict which had killed tens of thousands of people (para 19). The Tribunal also noted that the applicant was from Talkalakh, and that this was near the 'border' between government and rebel-held areas of the country (para 20). The Tribunal referred to country information indicating that the town was divided in half between government and rebel forces and that there was a 'tentative ceasefire' in place (paras 20–1). The Tribunal also referred to recent reports of heavy fighting and civilian deaths in Homs (para 22).

Based on the applicant's evidence and the country information, the Tribunal was satisfied that the applicant faced a real risk of significant harm – namely, arbitrary deprivation of life – in the area of Talkalakh and Homs, because of the continued hostilities between the opposing sides in the civil war (para 23).

In respect of each of the grounds in s 36(2B):
(a) *Relocation*: Th

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

However, the Tribunal was not satisfied that the applicant would be considered to hold anti-government political views, given her age and given that she had not been involved in political activities either in Syria or Australia (para 23).

Further, the Tribunal was not satisfied that the applicant would be identified as a failed asylum seeker, given that she left Syria on a student visa to Australia and would be returning to Syria to apply for a partner visa to Australia (the applicant married an Australian ci4 sA7©7

consistent with the applicant's claim (para 29). The country information showed that the area of Homs was affected by fighting and civilian deaths (paras 30–1).

Hence, on the basis of country information and the applicant's evidence, the Tribunal was satisfied that the applicant faced a real risk of significant harm – arbitrary deprivation of life – in the area of [Town 1] and Homs because of the continued hostilities between the opposing sides in the civil war (q,BTathe 32[(1)-4().)

such as [Town 1] and Homs, some parts of the country were firmly under rebel control and others under government control. Hence, the Tribunal found that the real risk of significant harm faced by the applicant was not faced by the entire population of Syria generally (para 35).

(c) *State protection*: In light of country information about the dire security situation in Syria and the fact

The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and

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

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

include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 95).

In respect of each of the grounds in s 36(2B):

(a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 99). The Tribunal considered a number of factors supporting the

101). The Tribunal therefore did not consider it reasonable for the applicant to relocate to Kabul. Moreover, the Tribunal found that these factors would also be applicable to other areas of Afghanistan (paras 102).

(b) *State protection*: There was authoritative information indicating that state protection was, on the whole, not available in Afghanistan, and there was no evidence that the applicant would be able to access state protection that would remove the real risk of significant harm (para 98).

(c) *Risk faced by population generally and not by applicant personally*: Persons of all ethnic groups (that is, the population of the country) faced a real risk of harm on the roads surrounding Malistan. However, the risk of harm was also faced by the applicant personally in his particular circumstances. Accordingly, the Tribunal found that the applicant was not excluded by the operation of s 36(2B)(c) (paras 96–7).

Editorial note: The reasoning in this case is similar to that for 1300935 [2013] RRTA 865; 1303849 [2013]

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

In respect of each of the grounds in s 36(2B):

(a) *Relocation*: The third applicant was vulnerable and not able to move about freely on her own. Hence, it would not be reasonable for her to relocate to avoid [Mr D] and his reach (para 72).

Refugee claim (paras 80–90)
The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion.

The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 36–47, 61–4). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 80–2), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 83).

However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 83–

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

to relocate to Kabul (relying in part on UNHCR Guidelines on relocation): namely, lack of family links; widespread unemployment limiting the applicant's ability to meet basic needs; existence of insurgent attacks; the applicant's

			Editorial note: The reasoning in this case is similar to that for 1300431 [2013] RRTA 863; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1220444 [2013] RRTA 97; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1218999 [2013] RRTA 864 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/864.html	6 March 2013	135–48	This case relates to: the meaning of 'significant harm' arbitrary deprivation of life

because he was a Hazara Shia (para 125). However, the Tribunal did not accept this claim. This was in

(para 176). Rather, the applicant was being targeted by members of [Ms C]'s tribe due to their perceptions of what he had done and for revenge (para 176).

The Tribunal also found that the applicant had lived a ‘settled and happy’ life in Iraq, that he was

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

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

religion as a Muslim, and actual and imputed political opinion as a Uighur activist who has voiced her opposition to discriminatory practices at university and elsewhere, participated demonstrations in Urumqi, and posted online criticism of Chinese policies and practices. The applicant claimed that Chinese authorities at various levels had targeted her in the past. Her claims of past harm included having had adverse comments recorded on her personal file, threats of expulsion from university, being forced to write confessions and undergoing political training, being threated with imprisonment without trial, and finding difficulties obtaining a passport. The applicant claimed she was forced to spend about two years in hiding in Urumqi, with consequential psychological harm (para 102).

The Tribunal did not accept the applicant's stated

While noting that the applicant had undertaken those activities for the purposes of strengthening her claim, the Tribunal did accept that the applicant had attended a protest in Australia and that she went to a number of other Uighur meetings in Sydney (para 122).

The Tribunal disregarded the applicant's conduct in Australia when assessing whether she had a well-founded fear of Convention-related persecution (s.91R(3)), but there was no corresponding requirement to disregard the applicant's conduct in Australia when assessing her eligibility for complementary protection under s.36(2)(aa).

The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed.

Refugee claim (paras 79–87)
The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race, religion and imputed political opinion.

The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 34–45, 59–62). The Tribunal found that, on the whole, these reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion. The applicant therefore did not face persecution simply as a Hazara Shia in Afghanistan (paras 79–81), although the Tribunal recognised that it was necessary to consider the applicant's individual circumstances to determine whether he might be at risk (para 82).

However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that 1 720.(

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

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

to return to his village in [District 1] (paras 126–7).

Independent reports indicated that travel along key roads was dangerous, as militant groups including the Taliban regularly set up checkpoints and conducted ambushes (para 124). The Tribunal found that, in returning to his village, the applicant would be required to travel along roads that independent evidence indicated were dangerous and volatile (para 126). Without any connection to, or support or protection from, an established family or group, there was a real chance that he would suffer serious harm (para 126).

Moreover, if the applicant did return to his village, it was likely that he would be viewed with hostile suspicion, given the length of his absence and his foreign accent (para 126). It was more than likely that unknown persons resided on his family's land. In light of independent information regarding land disputes involving people who attempt to return and reclaim land, the Tribunal considered it reasonable to assume that any attempt by the applicant to return to and reside in his village, or to reclaim his land, would be met with suspicion and hostile opposition (para 126).

Even if the applicant were able to re-establish himself in his village, the Tribunal found that it was likely that he would have to travel to various places throughout the district in order to find work, and in so doing, place

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

Kabul was not a reasonable option for the applicant (para 132).

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

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blood feuds

The applicant was a citizen of Albania. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm if removed, including arbitrary loss of life.

Refugee claim (paras 61–80)
The applicant was a relative of [Mr A], who was closely associated with [Mr A] and had lived with [Mr A] in Shkoder for most of the time since 2005 (para 71). [Mr A] had shot [Mr B], a relative of [Mr A] who co-owned a bar with [Mr A] (para 70).

The Tribunal considered independent country reports of blood feuds taking place in Albania based on the principles of the Kanun, which stipulated blood revenge for major offences, including intentional murder (para 69). On the basis of this country information and that provided by the applicant, the Tribunal accepted that there was a blood feud between [Mr A] and [Mr B], that this blood feud extended to their respective familial or clan groups (para 70), and that there was a real chance that the applicant might be killed by [Mr B] or his clan, due to the applicant's association with [Mr A] (para 74). The Tribunal found that this was a form of 'serious harm' and 'system Ş s was a form rm

quality, in the sense that the willingness or ability of Albanian law enforcement authorities was compromised by the fact that they were weak, ineffectual and corrupt (para 74). On the basis of this, the Tribunal found that the applicant had a well-founded fear of persecution.

With respect to the relevant Convention nexus for the serious harm, the Tribunal considered that the applicant formed part of the particular social group, ‘male members of [Mr A’s family] threatened with death as a result of a blood feud with [Mr B’s family]’ (para 77). The Tribunal accepted that the essential and significant reason for the applicant’s well-founded fear of persecution was his membership of this particular social group (para 78).

However, the Tribunal found that the applicant was not a refugee because of the operation of s 91S of the Act. That section provides that a person who is pursued because he or she is a relative of a person who is targeted for a non-Convention reason does not fall wit

			the population generally.

in Ghazni and that government control of the predominantly Hazara districts had reduced the ability of individuals and groups to act on long-running feuds (para 71). There was moreover no evidence of forcible recruitment into Hazara militias. Based on this information and the very long time (17 years) that had elapsed since the applicant had left Jaghori, the Tribunal did not accept that the applicant faced a real

applicant was a refugee (paras 75–81):

Harm in Jaghori: The Tribunal reviewed country information indicating that Jaghori was 100% Hazara, the roads inside the district were safe, and there were no recent reports of Taliban incursions into the district. Based on this information, the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 75).

Harm on the roads surrounding Jaghori: The Tribunal reviewed country information indicating that the route to Jaghori through Qarabagh was highly insecure due to high levels of Taliban and criminal activity. Moreover, although the alternative route through Bamiyan appeared to be relatively safe, it was regularly inaccessible in winter (para 76). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 78). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 78). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 79). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular

laJaghori was dangerous for allf anynni

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

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

for a Convention reason (para 79).

1214218 [2013] RRTA 92			(para 81). Editorial note: The reasoning in this case is similar to that of 1300431 [2013] RRTA 863; 1300935 [2013] RRTA 865; 1303849 [2013] RRTA 469; 1301427 [2013] RRTA 623; 1220694 [2013] RRTA 171; 1220697 [2013] RRTA 98; 1217778 [2013] RRTA 67; 1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.

would be reasonable for the applicant to relocate to Kabul (paras 141–9). However, having regard to the

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

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

Jaghori (para 140).

Independent reports indicated that travel along these roads was dangerous, as militant groups including the Taliban regularly set up checkpoints and conducted ambushes (para 137). For a number of reasons, the Tribunal considered it likely that the applicant would be required to travel on these dangerous roads. If the applicant was to be returned to his village in Jaghori, he would have to travel on these roads from Kabul (para 139). In the event that the applicant was able to safely return to his village, the Tribunal considered it likely that he would again engage in occasional taxi work, driving passengers to various places in Jaghori and throughout Ghazni (para 139). Moreover, the Tribunal considered it reasonable to assume that, from time to time, the applicant would be required to travel to Ghazni City to obtain supplies and 4(ndt5(tra)6 Tm[(re)-(

reasonable for him to relocate and reside in Kabul, if he faces no real risk of harm there.' (para 144) The Tribunal noted that relocation would be extremely difficult for the applicant, since he did not have any relatives or contacts in Kabul. He therefore lacked familial or social networks in Kabul, and the ability to access support and assistance. Moreover, there was increasing insecurity and violence, high unemployment and lack of access to basic services in Kabul. In these circumstances, the Tribunal found that relocation to Kabul was not a reasonable option for the applicant

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

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

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

insurgent attacks; and the relative difficulty of adapting to and integrating into Kabul, given the

			1216094 [2012] RRTA 1155; 1216720 [2012] RRTA 1141; 1215936 [2012] RRTA 1140; 1213303 [2012] RRTA 859.
1215348 [2013] RRTA 55 http://www.austlii.edu.au/au/cases/cth/RRTA/2013/55.html	2 January 2013	109–17	This case relates to: the meaning of 'significant harm' cruel, inhuman or degrading treatment land dispute The applicant was a Hazara Shia from Afghanistan. He was not recognised as a refugee, but there were

country who would be regarded as a foreign1 Tm0Tp

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

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

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

http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1122.html

cruel or inhuman treatment or punishment
degrading treatment or punishment
loan sharks/money lenders

The applicant was a national of Malaysia. He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed.

Refugee claim (paras 73–90)

(para 90). The applicant claimed that he feared serious harm at the hands of the Malaysian loan sharks, or the Malaysian authorities, on the following Convention grounds (paras 40, 46).

Indian ethnicity and Hindu religion harm from Ah Long: The applicant's representative had submitted that as an Indian Malay, the applicant was at risk of 'more serious harm' from loan sharks 'given the country information about ongoing discrimination and abuse against ethnic minorities in Malaysia' (para 81). Although the Tribunal accepted country information relating to discrimination against Indian Malays in Malaysia, the Tribunal found that that evidence did not establish that any harm inflicted on the applicant by loan sharks would be essentially and significantly motivated by his race or religion (para 81).

Indian ethnicity and Hindu religion – denial of state protection from Ah Long: The Tribunal found no information suggesting that state authorities in

: The Tribunal was not satisfied that these groups constituted particular social groups. Individuals from a variety of

evidence, the Tribunal was not satisfied that the applicant would be subject to serious harm, including detention and mistreatment, for reason of the charges laid and dismissed against him in Australia (para 89).

Complementary protection claim (paras 91–6)
The Tribunal was satisfied that 'there is a real risk that the applicant will be subjected to assault, significant harassment, and various forms of punishment for his failure to meet his financial obligations to Ah Long', amounting to cruel or inhuman treatment or punishment or degrading treatment or punishment (para 92). (See also para 78: Ah Long operatives were 'prepared to adopt violent means, including assault, inflicting injury, causing serious damage to property, false imprisonment and significant harassment to enforce their demands' (para 78)).

In respect of each of the grounds in s 36(2B):
(a) *Relocation*: The Tribunal accepted the applicant's argument that, given police corruption and police connections with Ah Long, the applicant could be located elsewhere in the country through his identity card, which was required for most transactions in Malaysia. It would not be reasonable to expect the applicant to live his life or conduct his affairs in hiding. Hence, the Tribunal found that it would not be reasonable for the applicant to relocate to an area

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

risk that he would suffer significant harm – namely, cruel or inhuman treatment or punishment, or degrading treatment or punishment – if removed.

Refugee claim (paras 71–9)
The applicant claimed that he faced persecution as a Hazara Shia, on the grounds of race and religion.

The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 28–39, 53–6). The Tribunal found that, on the whole, these reports failed to specifically identify

lack of targeting of the applicant in the past (in Jaghori), the Tribunal did not accept that the applicant faced a real chance of persecution in Jaghori from the Taliban, Lashkar-e-Jhangvi or any other Sunni group (para 74).
Harm on the roads surrounding Jaghori: The

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roads outside Jaghori (para 77). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 78). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 78).

population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration

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

political opinion (para 108).

: The Tribunal accepted that the applicant's brother worked for an NGO, and for this reason, his brother was taken (and presumably killed) by the Taliban (para 132). The Tribunal also accepted that a message was subsequently delivered or circulated in the local area, stating that the Taliban had killed the applicant's brother because he was working for the NGO and warning that any payments he had received from the NGO were non-Muslim or halal (para 133). However, the Tribunal was not satisfied that the message constituted a threat to kill other members of the family, rather than a statement of the consequences for the brother of his actions and a warning for the family not to profit from the victim's earnings from the NGO (para 133). Hence, the Tribunal was not satisfied that the applicant would be individually targeted by the Taliban for this reason (para .1 o4( ).

accept the suggestion that [Relative 4] might provide false information to the Taliban in order to lead them to target the applicant for a Convention reason (para 138).
Illegal movements: The Tribunal was not satisfied

personal land dispute between them (paras 141–2).

Complementary protection claim (paras 143–50)
The Tribunal accepted that there was ill-feeling between the applicae " ʌ

			(c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the risk was faced by the applicant personally and not as a member of some wider group or by the population of the country generally (para 145).
1216720 [2012] RRTA 1141 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1141.html	30 November 2012	78–85	This case relates to: the meaning of 'significant harm' cruel or inhuman treatment or punishment d

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

Complementary protection claim (paras 78–85)
Given the country information indicating a substantial amount of targeting of persons on the roads surrounding Malistan, and given the Tribunal's findings regarding the applicant's need to travel outside Malistan, the Tribunal found that there were substantial grounds for believing that as a necessary and foreseeable risk of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm on the roads surrounding Malistan. This significant harm could include cruel or inhuman treatment or punishment, or degrading treatment or punishment (para 78).

In respect of each of the grounds in s 36(2B):
(a) *Relocation*: The Tribunal found that the risk of harm was localiz ډ m ډ

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

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

safe, it was regularly inaccessible in winter (paras 72–3). The Tribunal accepted that the applicant might have to occasionally travel outside Jaghori through dangerous areas for work and for other reasons, such as obtaining medical care (para 73). Hence, the Tribunal accepted that the applicant faced a real risk of persecution on the roads outside Jaghori (para 73). However, the Tribunal was not satisfied that the persecution was for a Convention reason (para 74). This was because of authoritative country reports indicating that travel on the roads surrounding Jaghori was dangerous for all ethnic groups and a lack of clear evidence of targeting of any particular ethnic group (para 74).

(a) *Relocation*: The Tribunal found that the risk of harm was localized to roads surrounding the applicant's home, and that the applicant would not face a risk of significant harm in Kabul (para 79). The Tribunal considered a number of factors supporting the reasonableness of relocation to Kabul, including the fact that Hazaras constituted 25–40% of the population of Kabul; there was a growing middle class; new arrivals could integrate relatively easily, given the existence of a cohesive Hazara community; the existence of IOM reintegration assistance plans for returnees; and the applicant's

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

Hazaragi with an identifiable Pakistani accent (para 100). He was not recognised as a refugee, but there were substantial grounds for believing that there was a real risk that he would suffer significant harm.

Refugee claim (paras 75–96)
The applicant claimed that he would face persecution as a Hazara and a Shia on the basis of his ethnicity and religion (para 41).

The Tribunal reviewed authoritative independent country reports dealing with persecution in Afghanistan (paras 80–5). These reports failed to specifically identify Hazaras and Shias in Afghanistan as groups generally subjected to persecution by reason of their ethnicity and religion, and the Tribunal hence did not accept that Hazaras and Shias in Afghanistan were generally subjected to persecution, either by the Taliban or Pashtuns (para 87). The applicant therefore did not face persecution simply as a Hazara and a Shia in Afghanistan (para 88), although the Tribunal recognised that the applicant might be a refugee on the basis of his individual circumstances (paras 89).

However, having regard to the applicant's individual circumstances, the Tribunal was not satisfied that the applicant was a refugee (paras 90–6):

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

> *Membership of particular social groups*: namely, young moderate Muslims; moderate young people; young people who do not adhere to fundamentalism; western style young Iraqis; tailors who design western garments; sportsmen; Iraqi Athletes (para 85);

However, the Tribunal had significant difficulties with the applicant's credibility in relation to these claims (paras 84, 87–92), and was not satisfied that his claims gave rise to a well-founded fear of persecution on return to Iraq for any Convention reason (paras 93–6).

Complementary protection (paras 97–101)

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

that there is a real risk that the applicant would face significant harm … .' (para 100).

In respect of each of the grounds in s 36(2B), the Tribunal found that:
(a) *Relocation*: 'For a matter with tribal ramific

consequence of the applicant being removed to Afghanistan, there was a real risk that he would suffer significant harm (paras 83–6).

In respect of each of the grounds in s 36(2B), the Tribunal found that:

(a) *Relocation and state protection*: '[T]he majority of land disputes are family conflicts over inheritance and … if a person involved in such a dispute were to return to Afghanistan and return to his home area he would be at risk. … [I]f a person such as the applicant involved in such a dispute settled in a major city … the problem would still exist. The person who had caused the problem might well

First and second applicants were citizens of Pakistan. First applicant was born into a traditional Pashtun family and betrothed ‘from birth’ to a first cousin. She travelled to Australia and married second applicant. The protection claims made by first and second applicants were based on fear of the harm that would be directed at them by the man to whom first applicant was betrothed. Second applicant had been threatened at gunpoint, beaten and injured by the man to whom first applicant was betrothed, and hospitalized (paras 53–4).

Neither applicant was recognised as a refugee, but there were substantial grounds for believing that there was a real risk that each applicant would suffer significant harm.

Refugee claim (first applicant) (paras 56–73)
First applicant claimed to have a well-founded fear of persecution for reason of membership of a particular social group:

‘Western educated / " " tir y#te

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

Convention reason or that her fear for that reason would be well-founded (para 72).

Second applicant did not make a refugee claim (para 82).

1213303 [2012] RRTA 859			(b) *State protection*: The Tribunal accepted the published evidence about the inability and unwillingness of the police and judiciary to protect would be victims of honour killings, to charge perpetrators after the fact and to impose any meaningful sentences on them (para 80). (c) *Risk faced by population generally and not by applicant personally*: The Tribunal accepted that the significant harm feared was specific to the first and second applicants, not to the general population of Pakistan (para 80). In relation to the second applicant, who had been attacked and threatened by the man to whom first applicant was betrothed, the Tribunal accepted that there were substantial grounds for believing that as a necessary and foreseeable consequence of his removal to Pakistan, there was a real risk that he would suffer significant harm (para 82).

of significant harm in Kabul (para 110). However, it would be unreasonable for the applicant to relocate to Kabul because of: lack of family links in Kabul; widespread unemployment limiting the applicant's ability to meet basic needs, exacerbated by applicant's limited work skills; the need to support his wife and children, making it more difficult to adapt to and integrate into Kabul; and the general lack of security (paras 109–113).

(b) *State protection*: 'Authoritative information from the UNHCR indicates that state protection is on the whole not available in Afgh-2(s)4(e4.46 T7t4t4t4t4t4t

in attempting to return to his village, the applicant would face significant harm including but not limited to cruel and humiliating treatment, as a result of adverse attention intentionally directed towards him, in his village or *en route* (para 96; see harms set out above).

In respect of each of the grounds in s 36(2B):

(a) *Relocation*: The Tribunal considered whether it would be reasonable for the applicant to relocate to the large urban centre of Kabul, with its very large Hazara population (para 100). However, it found that it would not be reasonable in the sense of practicable for the applicant to relocate to and subsist in Kabul because of language, documentation and support networks. The combination of these factors would make the applicant relatively conspicuous and make it difficult for him to obtain employment, and therefore accommodation (para 101).

(b) *State protection*: The Tribunal accepted that state protection in Afghanistan was variable and unreliable and that it was not safe to assume that the applicant could obtain, from Afghanistan authorities, protection such that there would not be a real risk that the applicant would suffer significant harm (para 99).

(c) *Risk faced by population generally and not by*

			personally and not one faced by the population of the country generally, because it arose principally in relation to the personal circumstances of his lengthy absence from Afghanistan and return with a strong Pakistan accent and ignorance regarding life in Afghanistan, as well as possible ramifications in relation to land (para 98).
1205075 [2012] RRTA 851 http://www.austlii.edu.au/au/cases/cth/RRTA/2012/851.html	19 September 2012	114–18	This case relates to: the meaning of 'significant harm' section 91R(3) ('contrived' refugee claims)

refugee: s 91R(3), *Act*. Hence, the Tribunal was 'not satisfied that there is a real chance that the applicant will suffer serious harm for reasons of her political opinion, imputed political opinion, membership of a particular social group or for any reason upon her return to China' (para 113).

Complementary protection (paras 114–18)
However, the Tribunal accepted the applicant's complementary protection claim because s 91R(3) does not apply to complementary protection claims (para 114).

'[A]lthough the Tribunal has found that the applicant's claims to be a genuine Falun Gong practitioner are contrived and that she will not practise Falun Gong upon her return to China, the Tribunal accepts that there are substantial grounds for believing that she will have been identified as a Falun Gong practitioner and will be *perceived* to be a Falun Gong practitioner by the Chinese authorities upon her removal from Australia to China. The Tribunal is, therefore, satisfied, having regard to the considerable level of the applicant's involvement, and the independent evidence indicating the monitoring of Falun Gong activists in Australia, that there are substantial grounds for believing that the applicant's involvement in Falun Gong activities in Australia will be known by the Chinese authorities and that she will be perceived to be a genuine Falun Gong

practitioner … . Falun Gong practitioners are at considerable risk of serious mistreatment including arrest, detention, harassment and physical harm. The Tribunal is satisfied that such mistreatment amounts to significant harm as it may include torture, cruel or inhuman treatment or degrading treatment or punishment' (para 118).

emotionally fragile, lonely, effectively estranged from her daughter and brother, suffered from several medical problems and was generally vulnerable (para 139).

(b) *State protection*: 'Having

reports of friends of alleged Christian converts and proselytisers being targeted by the authorities due to their association with them.

In any case, the Tribunal did not accept that Mr A had been a Christian, nor that the applicant had assisted him (paras 80–2).

Complementary protection

While there was no Convention reason for the persecution that applicant would face on the roads to Jaghori, the Tribunal noted that the country information did indicate substantial targeting on the roads of persons of all ethnic groups for reasons associated with criminality by the Taliban and other groups. In light of this information, there were substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia there would be a real risk of the applicant suffering significant harm on the roads surrounding Jaghori para 83).

With respect to whether the risk was faced by the population generally (s.36(2B)(c)), the Tribunal noted: ‘This is a peculiarly worded provision as it is difficult to imagine a harm that is faced by a population of a country generally and not by a person personally. The

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

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

Further, the applicant's mistreatment associated with his breach of the curfew may have been an isolated incident, but nevertheless amounted to degrading treatment or punishment. There were substantial grounds for believing that there was a real risk that such significant harm would be repeated on the applicant if he returned to Nigeria. [125]

: There are three circumstances in which there is taken *not* to be a real risk that a non-citizen will suffer significant harm:

> where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm;
>
> where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
>
> the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally. [126]

Based on the country information available to it, the Tribunal found that the significant harm which the applicant had a real risk of being subjected to was not isolated to a particular part of Nigeria. The Tribunal therefore foun

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

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