

**1002472 [2010] RRTA 591 (12 July 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1002472

**DIAC REFERENCE(S):** CLF2009/165192

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Louise Nicholls

**DATE:** 12 July 2010

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), arrived in Australia [in] 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2009. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2010 for review of the delegate's decision.
5. I find that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act and that the applicant has made a valid application for review under s.412 of the Act.

### RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **CLAIMS AND EVIDENCE**

19. I have before me the Department's file, which includes the application for a protection visa and the delegate's decision record. I have also had regard to the material referred to in the delegate's decision, and other material available to me from a range of sources.

#### **Application for Protection Visa – [in] December 2009**

20. The following personal details of the applicant and the written claims are contained in the protection visa application and accompanying statement lodged [in] December 2009.
21. The applicant claims she is a citizen of the Peoples Republic of China (China) and was born in Urumqi, Xinjiang Province, China and was educated in Urumqi, Shengdu and Beijing. She is [age deleted: s.431(2)], speaks Uighur, Mandarin and English, is of Uighur ethnicity and is a Muslim. She described herself as a student.
22. The applicant has never married and her parents live in China. One sister lives in Malaysia and her remaining siblings live in China. Prior to her arrival in Australia she lived at an address in Urumqi [from] 2008 to 2009.
23. The applicant arrived in Australia [in] 2009 travelling on a Chinese passport and entered Australia on a student visa granted in Shanghai [in] 2009.
24. In the application for a protection visa the applicant claimed that:
- She left China due to discrimination, abuse and unfair treatment by Chinese authorities for reasons of her ethnicity, religion and political opinion.
  - She fears that if she returns she will be mistreated by Chinese authorities. She has suffered some mistreatment in the past and fears things may be worse because Chinese authorities have become more abusive of Uighurs since the conflict in Xinjiang in July 2009.
  - Her current activities may be used against her if she returns to China and she may be interrogated, tortured and imprisoned by authorities. She is fearful of serious mistreatment if she returns.
  - She fears the Han Chinese community and the Chinese authorities. She claims that she will be harmed because of her cultural, ethnic and religious identity and because of her peaceful protest activities. The Chinese authorities will not protect her from harm.

#### *Statement [in] February 2010*

25. The applicant submitted a detailed statement [in] February 2010.
26. The applicant stated she was born in Urumqi in Xinjiang Uighur Autonomous Region (XUAR) on [date of birth deleted: s.431(2)] and is now [age deleted: s.431(2)]. She stated

that the Uighurs have been abused, subject to discrimination and oppressed by the Chinese authorities since 1949.

27. The Chinese authorities prevent education in the Uighur language, discriminate in education and employment opportunities and restrict religious and traditional practices.
28. The applicant is a Uighur and a Muslim. Her father was a primary school teacher in Urumqi until he was sacked from his position after an incident [in] 1997 during which Chinese authorities killed hundreds of Uighurs and imprisoned thousands. Her father was accused of being involved in those incidents and was detained, questioned for about a week and mistreated during his detention. Another relative was imprisoned during this incident and served eight years imprisonment. The applicant's mother was abused by the Chinese authorities when they forced her to have a miscarriage when she was seven months pregnant in 1985.
29. She stated that the Chinese authorities employ policies such as family planning and assimilation to restrict or reduce the Uighur population. The Chinese have forced thousands of Uighur families out of the city of Kashgar and destroyed traditional family homes.
30. The applicant attended primary school from [years deleted: s.431(2)] in Urumqi. The school had Chinese and Uighur classes and teachers at the school used to abuse and discriminate against the Uighur students. She was subject to discrimination and verbal abuse and gave several detailed examples of such discrimination. She also gave several examples of religious and ethnic discrimination at school and university.
31. The applicant completed high school in July [year deleted: s.431(2)] and wanted to continue tertiary studies in her homeland but was forced to study in inner China. The Chinese authorities forced many Uighur students to go to parts of inner China to study to accelerate the process of cultural assimilation of the Uighurs.
32. In January 2003 her grandmother passed away and she wore a white scarf which would indicate she was in mourning. She was a student at the faculty of education and studying Chinese language in preparation for future studies. Her teacher came to the class and observed her with the scarf and abused her in front of the class. She questioned why the Chinese students were allowed to wear their special mourning clothes at such times and the Uighurs were not. The teacher pulled her scarf off and threw it on the floor, stepped on it and abused her again. She also pulled her hair but when the applicant complained to the faculty she was suspended for one week for acting disrespectfully to the lecturer.
33. The Chinese authorities stepped up their oppression of the Uighur people during the 2008 Olympics when they started to raid the houses of Uighurs claiming security concerns. They detained many people and were inspecting identity cards of the Uighur people. They restricted the movement of all Uighurs during the time of the Olympics.
34. The applicant returned to her home in Urumbi [in] 2008. The applicant's family home was raided [in] 2008 by police in the pre Olympic period. Four police officers entered the house at about 8 p.m. and one of them was a Uighur officer. As soon as they came in they did a complete search and found banned books and CD's.
35. Three days later police officers came to the house and took the applicant's father, her elder brother and herself to the police station in [suburb deleted: s.431(2)] for questioning. They

asked them why they were keeping banned religious books and CDs with separatist sentiments. The applicant's father told them he had no adverse intention in keeping the books and they did not know the books and the CD's were banned.

36. They asked the applicant why she was keeping CDs and books about Islam in her room and accused her of having backward and separatist ideas. She told them she was listening to CDs as music and had no separatist ideas. One officer hit her and verbally abused her. She was questioned a second time and they kept asking her why she was keeping materials and whether she had connections with any separatist groups. She was told to stay away from religious activity and they threatened they would ruin her life if she did not comply with their directions.
37. They kept the applicant and her brother in detention for about two weeks and released them after they wrote a letter of promise and paid a fine. She described the contents of the letter of promise.
38. Their family home was searched again in June 2008 and at the time they had a relative from [City A] staying as a guest. The applicant described what happened when the police and suburb committee officers came to the door. Their [relative deleted: s.431(2)] was asked to leave and returned to his place of registration.
39. The applicant claimed that there also is widespread discrimination against Uighurs in many areas, for example, in obtaining hotel or rental accommodation. The applicant gave a detailed example of her own experience when she was a student in Beijing studying English at the [University details deleted: s.431(2)] from [years deleted: s.431(2)]. [In] 2008 she was asked to leave her student hostel and she found it so difficult to find alternative accommodation she terminated her studies and returned home.
40. The applicant stated that a large number of Uighurs were killed by Chinese workers in Guangdong on 26 June 2009 and as a result hundreds of Uighur students took to the streets in July 2009 to protest his incident. The applicant received an SMS message to participate in the protest but her parents prevented her as saying the authorities would not allow a peaceful demonstration.
41. Many Uighurs were killed by police and military forces during the protests on 6, 7 and 8 July 2009. Many hundreds of Uighurs were killed by members of the Han Chinese community during those protests. The Chinese authorities did not act to protect Uighurs; they only protected the Han Chinese. The son of one of the applicant's neighbours was killed on 7 July. The applicant and her family could not leave their home for about one week due to the fear of being killed.
42. After about one week the applicant's family were running out of food and there was a period of calm and the applicant went out to buy food such as bread, vegetables and milk. When she left the house she saw three Chinese men running towards her and turned back to her home but they caught her and started hitting her. She was crying and shouting for help and a few neighbours came out and the men ran away. Her nose was bleeding and she had blood all over her body.
43. After two weeks the applicant and her family decided to go to the town of [name deleted: s.431(2)] to stay with a relative for safety reasons. They caught a bus which was stopped by police and all Uighurs taken off the bus and questioned for security reasons. They were

verbally abused at the police station but were able to establish their identity and reasons for travel but many other Uighurs on the bus remained in police detention.

44. The applicant's [relative deleted: s.431(2)] was the manager of an Internet site named [name deleted: s.431(2)] however that site was banned by Chinese authorities in 15 July because the site had presented political views and adverse opinions. At that time the Chinese authorities cut off telephone and internet access to the applicant's homeland and sealed and isolated all Uighur people from the rest of the world. The applicant was not able to contact her family and friends when she came to Australia and was concerned about their safety and well-being.
45. The applicant wanted to come to Australia to study and to escape the situation in China. She stated that Uighurs find it difficult to obtain passports which take longer to process and require approvals from various authorities. She also had to pay a bribe to get approval for her passport which took about 6 months to process. When she obtained her passport she had to sign an agreement she would not be involved in separatist activity or visit Mecca.
46. When she left Urumqi and Beijing she gave details about how she was extensively questioned and strip searched and felt she was treated like a terrorist.
47. She stated that she feared if she returned she would be abused and treated unfairly by Chinese authorities as had happened to her before she came to Australia. She feels it may even be worse than before as the Chinese authorities have become more abusive of Uighur people after the killings and abuse in Guangdong and in Xinjiang in June /July 2009. She also believes she would suffer discrimination in employment opportunities and not be able to make a living.
48. She also stated that her activities in Australia would be used as a reason by authorities to mistreat her if she returned. She fears she could be interrogated, tortured and imprisoned if she went back to China.

#### **Application for Review – [in] April 2010**

49. [In] April 2010 the applicant applied for review of the delegate's decision to refuse to grant a protection visa.
50. [In] May 2010 the applicant's representative submitted a statement made by the applicant addressing the reasons given in the delegate's refusal decision.
51. The applicant acknowledged that she obtained a tertiary education in China, however, when she finished high school she wanted to study in her home province but was forced to study in [Province 1]. She stated that the purpose of removing Uighurs from their homeland was to accelerate their assimilation but she had also experienced discrimination during her period of study.
52. With respect to the comments made that her family was in a comfortable financial position she stated that her parents made it possible for her to leave China by selling a plot of land as well as borrowing money from relatives. Her father had not had a permanent job after he was sacked in [1997] and her maternal grandparents looked after the family during difficult times. The applicant's [relative deleted: s.431(2)] is a manager in a Taiwanese company and assisted the applicant in her living and study expenses when the applicant was studying in [Province 1]. Even though the applicant's [relative] has a well paying job this does not necessarily mean

that Uighurs can easily find employment. The applicant also noted that her [relative deleted: s.431(2)] had been questioned by Chinese authorities as to the reason [her relative] was working for a Taiwanese company.

53. With respect to the applicant's claims of detention she did not receive any documents from Chinese authorities.
54. With respect to her freedom of movement to leave China she stated that getting a passport was difficult and she had to pay bribes to obtain approvals from local government authorities. It still took her six months to get a passport and she had to sign a statement saying she would not visit Mecca and would not be involved in any separatist activity. She was thoroughly checked at the airport in Urumqi and was questioned about whether she had been involved in the July 2009 incidents. She had to take off all her clothes, was searched and the border control officers threw a verse from the Koran she was carrying into the rubbish bin. She was exposed to similar treatment at the airport in Beijing. She was allowed to leave China as she was not listed as a political criminal otherwise she would not have been able to leave.
55. She has not had any high profile separatist activity because she has been living in [state deleted: s.431(2)] where there is only a small community of Uighurs. She meets other Uighur students and they discuss human rights and might establish a small association. She is improving her knowledge of human rights issues through the Internet.
56. Regarding the issue of freedom to practise her religion she stated that Chinese authorities restricted and penalised her for practising her religion during her school and university life. People working in the public service are not able to practise their religion and this meant she would never be able to get a job in the public service.
57. Although she does not attend the mosque regularly she stated that women do not usually go to the mosque in her country; they pray at home. Her attendance at the mosque once during the Eid festival is not an indication that she is not practising her religion. She prays daily in Australia and that would be impossible in China. With respect to the delegate's comments that there are religious restrictions on all religious communities in China she stated that the position for Muslim Uighurs is much worse as Chinese authorities equate the religion of the Uighurs with terrorism.
58. She also stated that if Uighur attempts to conduct any political activity outside China their life will be totally destroyed if they returned even if the activities were not regarded as high profile activities.
59. In her closing comments she stated that the mistreatment of Uighurs by the Chinese authorities increased after the July 2009 incidents. The authorities cut off telephone and Internet communication and placed the whole Uighur nation under restriction and dealt with them very harshly. Uighurs are afraid on the streets, in shops and taxis because they are abused, beaten and sometimes killed in the streets. In an environment like these she does not have to have conducted high-profile activities in order to be at serious risk of harm

*Hearing [in] May 2010*

60. The applicant appeared at a hearing before the Tribunal [in] May 2010 to give evidence and present arguments. She was assisted at hearing by an interpreter of the Uighur language and



accompanied by her advisor who is a registered migration agent. The hearing was conducted by way of video link.

61. After I gave a general introduction explaining the purpose and conduct of the hearing I asked the applicant a series of questions about her personal background and claims. I emphasised that as I was taking a fresh look at the application she should give me a detailed and accurate account of those matters.
62. The applicant was born in Urumqi in East Turkistan (Xingiang Province) on [date of birth deleted: s.431(2)] and she is now [age deleted: s.431(2)]. She grew up with parents and family in Urumqi and her parents are still alive and living in the family home. The applicant's father lost his job after the 1997 incident and the government will not allow him to work full time although he did some casual work from time to time. She has [siblings information deleted: s.431(2)].
63. She attended school in Urumqi and then spent 2 years preparation for university. She studied Mandarin at [university deleted: s.431(2)] and finished that course in [year deleted: s.431(2)].
64. She then attended university in [details deleted: s.431(2)] where she studied a course in Electronic Information. Half of the course concerned computers and the other half concerned mathematics, physics and electronic programming. She completed that course and obtained a certificate of completion.
65. She then went to East Turkistan in June 2007 and tried to find a job until September 2007 but found it impossible to obtain employment. She was told by a number of employers that they did not need any Uighurs. After trying for a long period of time she decided that knowledge of English might improve her employment prospects so she enrolled in an English preparation course at the Foreign Language Section of [university deleted: s.431(2)]. She moved to Beijing but found it almost impossible to find a place to live whilst she was studying. When she enquired about various places to stay she was told that they did not take Uighurs.
66. Eventually she found a student hostel and started her course but found life very difficult as a Uighur. In January 2008 the student hostel in which she was staying asked her to find other accommodation. She explained that the Chinese authorities were preparing for the Olympics in 2008 and had a policy of expelling Uighurs from Beijing. The person in charge of the hostel in which she had been living told her that she could not stay there because she was a Uighur and had to find another place to live. She searched the area near the university and applied for other lodgings but no one would give her a place to stay. As she could not find accommodation she had to leave the course and return to Urumqi.
67. She returned to her family home in January 2008 and did private lessons at home to improve her English. She aimed to sit for and pass an IELTS test so that she could apply for a student visa for Australia. She applied for a passport in Urumqi in 2008 and in 2009 applied for a visa with the assistance of an agent.
68. She applied for a passport in about [2008]. It was a very difficult and long process; even getting the application form was difficult. She stated that the application form for Han Chinese was quite different to that used for Uighurs. Uighurs had to get 4-5 more pages of approval stamps from various police station and other government authorities. It took 6

months before her passport was granted whereas for Han Chinese it takes 1 week in rural areas and 1 day in the city.

69. After she applied for a passport she obtained a student visa to study accounting at [university deleted: s.431(2)]. At the moment she is completing her English preparation course before she starts her degree course. She arrived in Australia [in] 2009 and it has been personally difficult for her because she did not know anyone in [state deleted: s.431(2)].
70. I asked the applicant why she applied for a protection visa. She stated that she had suffered discrimination because she was a Uighur and a Muslim. Even though she is in Australia she is afraid of returning to China because Uighurs face ever increasing repression and harm. She saw what happened to Uighurs in July 2009 and fears she could be caught up in the government's campaign against the Uighurs.
71. She believes that if she returns she will be questioned and detained. She stated that she suffered discrimination when she was younger and the situation has become worse. I put it to her that even though the pressure in Urumqi has increased not every Uighur has been affected by the crackdown. She stated that there has been a crackdown since July 2009 and a large number of people have been killed. The Chinese government does not admit that this is the case but her family have told her about these things. She stated that Uighurs returning from overseas are questioned and treated with suspicion. The Uighur population are living in a cage without any human rights. Uighurs who have lived or spent time overseas are treated as security risks and she has heard that returnees have been questioned.
72. I put it to her that she had not done anything to cause her to be arrested or detained. She stated that she belongs to a small group of Uighurs in [state deleted: s.431(2)] and they talk about their experiences in China and pray together everyday. She is concerned Chinese authorities will see this activity as a threat. If she lived in one of the bigger cities she would join the Uighur organisations because she supports their ideals.
73. She was also concerned because of what had happened to her family in 2008. [In] 2008 the Chinese authorities were preparing for the Olympics and started checking Uighurs in the region. Their house was checked twice by authorities. The first time [in] 2008 four police came to the house, searched the rooms and treated the family as if they were terrorists. They found a books on Uighers and a CD disc with songs about the Uighur Freedom movement. They took the books and disc to the police station and after 3 days they returned to the house. The police took the applicant, her elder brother and her father to the local police station. They took them by car and they asked why we were keeping those books and discs.
74. They kept asking the same questions over and over again; why was she keeping banned books about separatism? She told them the book was about Islam and the CD just had songs; it had nothing to do with separatism. At that time they pushed her very badly and she was not allowed to say anything. They did not believe her and kept the books and CD disc. They detained the applicant and her brother for 2 weeks and detained her father for 5 weeks. The applicant described her time in detention in some detail. She was released after the payment of a bribe to local police.
75. She returned to the family home but was not working at this time and did not work before she left for Australia. The family home was searched again [in] 2008 but the applicant was not home because she was staying with her sister in a town about half an hour away from her parents. Her family told her what happened during that search.

76. The applicant has a [relative's information deleted: s.431(2)] and her other siblings living in [Town 1]. Her [relatives work information deleted: s.431(2)]. I put it to her that they were all working and living relatively stable lives at the moment. She stated that even though things appear calm on the surface they face serious discrimination.
77. I put it to her that the delegate questioned her family's economic circumstances and her capacity to come to Australia as a student. She referred to her statement in which she had explained that her sister had paid her university fees and helped with other costs. Her father had also sold his land to provide financial support for the applicant. Even though she attended university she was not allowed to study in Xinjiang because authorities to force Uighurs to study elsewhere because they had a policy to assimilate and destroy Uighur culture. She stated if she returned to China she would face possible mistreatment and serious discrimination.
78. In her final remarks she stated that she fears return to China because she has lived through mistreatment and suffered discrimination and does not want to go through this again. She fears what the future might bring.
79. The applicant's representative made submissions on the application referring to a risk of mistreatment and severe discrimination. He stated that the applicant would suffer severe discrimination because she might not find employment and would find it difficult to obtain accommodation because of her Uighur status.
80. I put it to him that even though there are problems in Xinjiang not everyone is confronted by Chinese authorities. He stated that media reports were restricted and the outside world did not have an accurate account of what really took place in the Xinjiang area. He stated that the applicant faced a real chance of persecution if she returned.

## **Independent Information**

### *Background*

81. Uighurs are a highly urbanised Turkic ethnic group, concentrated in towns and cities that form an arc around the Tarim Basin of the Xinjiang Uighur Autonomous Region (XUAR). All of these areas have high Public Security Bureau and People's Liberation Army presences. Since the events of July 2009 the XUAR has witnessed a rapid rise in troop numbers and the PSB has recruited thousands of new officers. Uighurs in general are equated with separatism, religious extremism and terrorism by authorities and Han Chinese.
82. The post 5 July 2009 security sweep has resulted in the arrest and detention of over a 1000 Uighurs, however most of these are men and boys. Elsewhere in the PRC reports indicate that Uighurs are held in deep suspicion by locals and violence against Uighurs is increasingly common.
83. In the name of crushing the "three evils" of terrorism, separatism and religious extremism, Beijing has imposed severe restrictions and employed language that many Uighurs believe have contributed to a demonisation of them throughout the PRC.<sup>1</sup> Since the events of 5 July

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<sup>1</sup> Human Rights Watch 2009, *We Are Afraid to Even Look for Them: Enforced Disappearances in the Wake of Xinjiang's Protests*, October, pp.9-10.

2009 the levels of security personnel, security budget and scrutiny have increased dramatically.

84. Information is tightly controlled in the People's Republic of China: the internet is heavily restricted; all local media agencies are government owned or controlled; international media agencies are monitored; and almost no non-government organisations are allowed to operate in the country. Nowhere are such circumstances more acute than in the Xinjiang Uyghur Autonomous Region (XUAR) since the violent events in Urumqi in July 2009.<sup>2</sup> All electronic forms of communication have been restricted; international journalists are escorted; and *Xinhua*, the national news agency, has monopolised the flow of information to the rest of China.<sup>3 4</sup>
85. The exact numbers of troops and the location of all garrisons and security facilities in the province are not known, however anecdotal evidence suggests that security force numbers have increased significantly since the events of July 2009; in November 2009 the *Associated Press* described Xinjiang as “smothered in heavy security”.<sup>5</sup> It is known that the number of PSB officers in the province has also increased.
86. As well as these increased numbers, it has also been reported that authorities maintained their intensive monitoring of Uighurs throughout the province; a November 2009 report in *The Guardian* states that authorities in Xinjiang had begun a new “‘strike hard and punish’ campaign to further consolidate the fruits of maintaining stability and eliminate security dangers”. *The Guardian* suggests that this campaign is primarily designed to hunt for suspects involved in the July 2009 riots and “terror plots”.<sup>6</sup>
87. There are small populations of Uighurs in a number of eastern provinces. The primary obstacle to national relocation is the limits placed on internal migrants' ability to access health and education services due to the Hukou (household registration) system.<sup>7</sup> Relocation to the major cities of the eastern seaboard (Beijing, Shanghai, Tianjin, Guangzhou, Shenzhen, etc) is particularly difficult for non-Hukou holders, however many centres do have small Uighur communities.
88. It has been widely reported that the violent events in Urumqi in July 2009 began as a protest by Uighurs at the killing of two Uighur men at a factory in Guangdong province; “[o]n 26 June some 500 Han Chinese workers turned on around 200 Uyghur migrant co-workers,

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<sup>2</sup> Human Rights Watch 2009, *We Are Afraid to Even Look for Them: Enforced Disappearances in the Wake of Xinjiang's Protests*, October, p.4

<sup>3</sup> Grammaticas, D. 2010, 'Trekking 1,000km in China for e-mail', *BBC News*, 11 February <http://news.bbc.co.uk/2/low/asia-pacific/8506601.stm>.

<sup>4</sup> 'China arrests Uighur web journalists – CPJ' 2009, *BBC Monitoring Media*, source: Committee to Protect Journalists, New York, 2 November.

<sup>5</sup> Bodeen, C. 2009, '9 executed over China's deadly ethnic riots', *Associated Press Newswires*, 10 November.

<sup>6</sup> Branigan, T. 2009, 'China launches “strike hard” crackdown in Xinjiang', *Guardian Unlimited*, 3 November.

<sup>7</sup> All PRC citizens are required to register in the district of their birth in order to access education, health and other services. Rarely are citizens able to transfer their Hukou registration, meaning that much of the PRC's 'floating population' of over 100 million are unable to access such services.

beating two of them to death and seriously injuring 61, on the basis of a rumour that some Uyghurs had raped Han girls.”<sup>8</sup>

89. The attack on the Uighur workers in Guangdong does not appear to be an isolated case. *Radio Free Europe* reported in January 2010 that an ethnic Uighur man was attacked by a Han Chinese man in a Uighur restaurant in Shenzhen. The report states that the owner told the *South China Morning Post* that he has decided to return to Xinjiang “once police finish questioning.”<sup>9</sup> Another report in January 2010 by *Radio Free Europe* states that throughout China there has been a “surge” in attacks against ethnic Uighurs and blames the public reaction to the events in 2008 and again in July 2009 on the language and selective employment of facts used by government propaganda and the Chinese media. *Radio Free Europe* suggest that actions have promoted extremist perspectives of Uighurs to emerge among many ethnic Han; “[h]ighly racist language is commonly found in Chinese discussion threads about ethnic violence last July in the Xinjiang regional capital.” Selective use of footage and facts on the deaths of Han Chinese are cited as portraying the Han as victims rather than oppressors according to Uighur activists cited in the report; “[t]his type of biased reporting is igniting the hatred of Chinese people towards Uyghurs, and it is the reason for Uyghurs’ deaths in jails and on the streets”, states one Europe based activist.<sup>10</sup>
90. Even though there has been a recent change in the administration of the XUAR the fact that PSB numbers and the XUAR security budget have surged since the start of 2010 suggests that a change in the hitherto authoritarian approach is unlikely.
91. Despite diversity of practice, Islam is uniformly central to Uighur identity throughout Xinjiang, and “embedded in many of their daily activities, such as greetings and exclamations, mode of dress, scrupulous personal cleanliness (including the consumption of halal food), and a sense of solidarity with other Muslims in the world.”<sup>11</sup> Respected Sinologist Colin Mackerras writes that Uighurs believe that “they should be loyal Muslims” and that to be Uighur is to be Muslim.<sup>12</sup> Dru Gladney agrees, arguing that all aspects of Uighur identity, including Islam, have gained tremendous importance due to the oppressive nature of PRC policies and practice; “[e]ach marker of identity takes on salience and enhanced meaning in the context of significant opposition.”<sup>13</sup> In other words, the practice of Islam is more than faith, it is the rejection of demographic, linguistic and cultural Sinification.<sup>14</sup> It is unclear the extent to which this fusion of religion and national identity

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<sup>8</sup> Clarke, M. 2009, ‘China’s Xinjiang problem (part 1)’, Lowy Institute, 10 July <http://www.lowyinterpreter.org/post/2009/07/10/Chinas-Xinjiang-Problem-Part-1.aspx> .

<sup>9</sup> ‘Uyghur man stabbed to death in south China’ 2010, *Radio Free Europe*, 9 January.

<sup>10</sup> ‘China: Uyghur killing ‘not isolated’ 2010, *Radio Free Asia*, 19 January.

<sup>11</sup> Dwyer, A. 2005, *The Xinjiang Conflict: Uyghur Identity, Language Policy, and Political Discourse*, East-West Center Washington, Policy Studies 15, p.19.

<sup>12</sup> Mackerras, C. 2004, ‘Ethnicity in China: The case of Xinjiang’, *Harvard Asia Quarterly*, Winter.

<sup>13</sup> Gladney, D. 1990, ‘The Ethnogenesis of the Uighur’, *Central Asian Studies*, Vol 9, No 1, p.13.

<sup>14</sup> Bovingdon, G. 2004, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent*, East-West Center Washington, Policy Studies 11, p.5.

Islam is conscious, let alone coordinated, however, Naqshbandi Sufism is historically noted for its political activism throughout South and Central Asia.<sup>15</sup>

92. Uighurs employed by the state have severe religious and cultural restrictions placed on them. *Reuters* states that government employees “cannot show any visible signs of religious affiliation, such as beards or headscarves”.<sup>16</sup> *The Guardian* reports that such restrictions are particularly strict during Ramadan.<sup>17</sup> *The Associated Press* reported that as of 2008 government employees were forbidden from fasting during Ramadan and restaurants are forbidden from closing during the holy month.<sup>18</sup> Since 2008 all Uighur Muslims have been banned from performing Tarawih prayers, “special nightly prayers performed during the holy fasting month of Ramadan.”
93. Throughout the XUAR Uighur women play an important role in Islam. A 2009 article in *The Guardian* states that Uighur women are traditionally in charge of “early Islamic education in the home.”<sup>19</sup> *Radio Free Asia* echoes *The Guardian*, suggesting that far from being “second-class citizens”, women are “viewed as the principal educators in Uyghur society, responsible for educating children and passing on traditions through the family.”<sup>20</sup> Aside from women, children under the age of 18 are not permitted to attend mosques or medressahs (Islamic colleges), meaning that women become responsible for Islamic education and observances for the first eighteen years of a child’s life.<sup>21</sup> <sup>22</sup> Uighur women have informed Human Rights Watch that they are now afraid to teach their children religion in case any display of religious awareness on behalf of the children attracts the unwanted attention of authorities.<sup>23</sup>

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<sup>15</sup> Dillon, M. 2001, *Religious Minorities and China*, Minority Rights Group International, November, p.17.

<sup>16</sup> ‘China defends control over religion in Uighur region’ 2006, Uyghur Human Rights Project website, source: *Reuters*, 17 October <http://www.uhrp.org/articles/317/1/China-defends-control-over-religion-in-Uighur-region/China-defends-control-over-religion-in-Uighur-region.html>.

<sup>17</sup> Branigan, T. 2008, ‘China officials tighten restrictions on Muslim practices’, *The Guardian*, 9 September <http://www.guardian.co.uk/world/2008/sep/09/china1>

<sup>18</sup> ‘Ramadan – A Time of Repression for Uyghur Muslims’ 2008, Unrepresented Nations and Peoples Organization website, source: *The Associated Press*, 30 September <http://www.unpo.org/content/view/8725/236/>.

<sup>19</sup> Schluessel, E.T. 2009, ‘Islam in Xinjiang: an ancient rival for a young China’, *The Guardian*, 14 July <http://www.guardian.co.uk/commentisfree/belief/2009/jul/14/uyghur-china-islam>.

<sup>20</sup> Vandenbrink, R. 2009, ‘Strong Women in Uyghur History’, *Radio Free Asia*, 24 August <http://www.rfa.org/english/women/uyghur-women-08202009140517.html/in-history-08202009141230.html?textonly=1>

<sup>21</sup> ‘East Turkestan: China Bans Officials, State Employees, Children from Mosques’ 2006, Unrepresented Nations and Peoples Organization (UNPO) website, Source: *Radio Free Asia*, 7 February <http://www.unpo.org/content/view/3699/236/>

<sup>22</sup> US Commission on International Religious Freedom 2009, *Annual Report 2009 – People’s Republic of China*, May, p. 76.

<sup>23</sup> Human Rights Watch 2005, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, vol. 17, no. 2(C), April, p.59.

<http://www.hrw.org/reports/2005/china0405/china0405.pdf>

94. Uighur women intending to study Islam (known as Talip Kiz) must do so clandestinely.<sup>24</sup> Indeed, gatherings of Uighur women for religious purposes are also illegal; in April 2009 the Public Security Bureau (PSB) arrested thirty Uighur women in the Gulja suburb of Tashkowsok. *Radio Free Asia* states that authorities in the XUAR have “banned private gatherings that involve the practice of Islam on suspicion that these could promote ethnic separatism.” Eighteen of the women were reportedly freed “after eight hours of interrogation, seven were sent for forced labor for 10 days, and five were sentenced to a month in jail... A pregnant woman in the last group was released after 13 days.”<sup>25</sup> Such rules are restricted to Uighur women. Among the Hui (ethnic Chinese Muslims), women are permitted to study and become Imams (Nu Ahong) of female-only mosques (Nu Si).<sup>26</sup>

95. The Chinese authorities have recently stepped up security measures in Xinjiang Province.

Authorities near the western Silk Road city of Kashgar in China's troubled region of Xinjiang have detained a group of ethnic Uyghur women who had formed a group to study the Quran, overseas groups said. ‘(China: Police raid Quran group 2010, Radio Free Asia, 8 June <http://www.unhcr.org/refworld/docid/4c162753c.html>).

96. The role of Uighur women in religious education, culture, language and identity is understood by PRC authorities. The Uyghur Human Rights Project (UHRP) Congress believes that this knowledge is behind a recent PRC program to recruit and transfer young female Uighurs to work in factories in urban areas of eastern China. The UHRP states that so far “thousands of Uyghur women have been removed from their families and placed into substandard working conditions thousands of miles from their homes” It also states that women are intimidated into participating and that local leaders who refuse to comply with the policy are threatened “with removal from their posts” PRC government propaganda promotes the program as an opportunity for Uighur women to learn, earn and experience life; however, the UHRP states that the experience for almost all women is ‘shattering’ and they suspect sinister motives behind the policy. They interpret the policy as part of the Chinese Communist Party’s broader policies to undermine Uighur culture, religion and national identity.<sup>27</sup>

97. The Chinese authorities recently announced measures against a separatist group in Xinjiang Province however some sources have expressed some doubts about the accuracy of the information suggesting that the government authorities may have provided false information to justify further crackdowns.

**China said** Thursday its uncovering of a "terrorist" cell linked to a banned separatist movement in the country's far west underscored the enduring threat of attacks, a year after deadly ethnic riots rocked the traditionally Muslim Xinjiang region.

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<sup>24</sup> ‘Won’t Anyone Listen to Justice?’ 2008, *Radio Free Asia*, 19 November <http://www.rfa.org/english/news/uyghur/uyghur-justice-11192008165957.html>

<sup>25</sup> Hoshur, S. 2009, ‘Women Held over Party’, *Radio Free Asia*, 5 June. <http://www.rfa.org/english/news/uyghur/party-06052009144059.html>

<sup>26</sup> Almog, L. 2010 ‘The other half of the sky’, International Museum of Women website. <http://www.imow.org/economica/stories/viewStory?storyId=4799>

<sup>27</sup> Uyghur Human Rights Project 2008, ‘Deception, Pressure, and Threats: The Transfer of Young Uyghur Women to Eastern China’, World Uyghur Congress website, 8 February, pp.1-2 <http://www.uyghurcongress.de/en/wp-content/uploads/08-02-2008-Uyghru-Women.pdf>.



The gang had gathered pipe bombs, molotov cocktails, knives and other weapons to carry out attacks in southern Xinjiang cities between July and October 2009, Public Security Ministry spokesman Wu Heping told a media briefing. After the plot was revealed, gang members scattered to different parts of China and overseas, and authorities have arrested 10 suspects, he said.

Wu claimed the group was linked to the East Turkestan Islamic Movement, or ETIM, a banned organization advocating independence for Xinjiang. China says the group is allied with al-Qaida.

... The Rev. Marcus Ramsey, director of the Macau Interfaith Network that collaborated with other missionary groups to help the Uighurs escape to Cambodia, said greater transparency was needed to give the accusations credibility.

"There's no press freedom, there's no independent verification of these things so I think they have the luxury of being able to make these claims," Ramsey said in a phone interview."<sup>28</sup>

## FINDINGS AND REASONS

98. The applicant claims to fear persecution from the Han Chinese community and the Chinese authorities for reasons of her Uighur ethnicity and her Islamic religious beliefs and practices. She claimed she was mistreated [in] 2008 when her family home was searched and she was consequently detained and questioned because the family had pro separatist and religious materials in their possession. She also claims that she was attacked by a group of Han Chinese men [in] 2009 and that she only escaped serious harm because her neighbours came to her assistance on that occasion. She claimed that during the July 2009 conflict in Xinjiang that Chinese authorities did not provide reasonable non discriminatory state protection to the Uighur community. She also claimed that she and family members were taken from a bus and questioned when they were moving from Urumqi to a relative's home in July 2009. The applicant claims that she has been subject to longstanding and far-reaching discrimination and abuse in China because of her Uighur ethnicity.
99. I have considered the claims set out in the application for a protection visa and the application for review, the oral evidence given at hearing, the applicant's submissions and the documents given to the Tribunal in support of the claims.
100. I am required to determine whether the applicant has a well founded fear and if so whether what she fears amounts to persecution for a Convention related reason. My task is to consider all the evidence, make findings on material questions of fact and then to give reasons for my decision.
101. Having seen the applicant's passport and heard her evidence I accept that the applicant is a citizen of the Peoples Republic of China.
102. I accept that the applicant was born and grew up in Urumqi in Xinjiang Province and that she is of Uighur ethnicity and a Muslim. Her parents and 4 of her siblings live in China and one [sibling information deleted: s.431(2)].

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<sup>28</sup> Bodeen, Christopher 2010, 'China says terror bust underscores enduring threat', *Associated Press*, 25 June  
[http://www.google.com/hostednews/ap/article/ALeqM5gSjMTGA\\_93sjHUt2y3ACaI8ak7vQD9GHONVO2](http://www.google.com/hostednews/ap/article/ALeqM5gSjMTGA_93sjHUt2y3ACaI8ak7vQD9GHONVO2)



103. She has described a history of discrimination during her school and university year and contempt shown for her Uighur ethnicity, her religion and culture. I accept that during her school years she experienced some incidents in which teachers and authority figures in the school system in Urumqi showed a lack of respect for her cultural and religious background and beliefs.
104. The applicant claimed and I accept that when she finished school she wanted to study in Xinjiang Province but was only given the option of studying at a university in [Province 1]. She stated that the Chinese authorities were engaged in a campaign to destroy Uighur culture and to assimilate Uighurs into the dominant Han Chinese culture. This is consistent with independent country information which indicates that the Chinese authorities have undertaken a campaign to remove Uighur women from their homeland and families and to force them to work and study in other areas of China. It may be that the intention of Chinese authorities in applying this policy has been to encourage uniformity and stability in China by removing those cultural and religious factors which they consider will threaten the unity of the Chinese state. The Tribunal accepts that the applicant felt aggrieved by the policy because she wanted to undertake tertiary studies but did not want to study in [Province 1] Province. She also was unhappy during her studies because of a series of incidents in which she suffered discrimination because of her Uighur ethnicity and Muslim religion. However on the other hand there is no evidence that she was forced to undertake a tertiary education and she has been able to achieve a tertiary qualification. I do not accept that her attendance at university in [Province 1] amounts to persecution.
105. The applicant returned to Urumqi after she completed her studies in [Province 1] but was unable to find a job. I accept that in September 2007 she enrolled in an English language course at [university deleted: s.431(2)] to improve her employment prospects but had to terminate her studies [in] 2008 because she was ejected from her student accommodation because of her Uighur ethnicity. She could not find alternative accommodation for reasons of her ethnicity. I find that she suffered discrimination in Beijing in being unable to access accommodation because of her Uighur ethnicity.
106. I accept that when she returned to Urumqi [in] 2008 she was unable to find employment. I accept that [in] 2008 the applicant's family home in Urumqi was searched, she was questioned and detained for 2 weeks in the local police station because her family was in possession of materials which were suspected of being pro separatist. I accept that she suffered mistreatment at the hands of Chinese authorities for reasons of her Uighur ethnicity and imputed political opinion when she was questioned, detained and physically abused [in] 2008.
107. During the July 2009 conflict the applicant was attacked by members of the Han Chinese community and was only able to escape further serious harm when members of the Uighur community came to her assistance.
108. I accept that the applicant was subject to further mistreatment when she and her family were briefly detained and questioned when they tried to escape Urumqi in a bus to stay with relatives in another town in Xinjiang Province during the July 2009 conflict. They were treated with suspicion and mistrust during their detention.
109. I accept that the applicant applied for a passport in Xinjiang Province [in] 2008 and that it took at least 6 months before she was granted a passport due to the differential treatment of Uighurs and Han Chinese in the process of applying for a passport. The applicant stated and I

accept that she had to obtain approvals from various government agencies before her application was approved and that such approvals were not required of Han Chinese applicants. The applicant stated that in 2009 she decided to apply for a student visa for Australia and she engaged the services of an agent to facilitate that process. She obtained a visa [in] 2009.

110. The applicant claimed and I accept that she was strip searched and questioned at the airport at Urumqi and at Beijing when she left China [in] 2009 and that she had been searched because she was a Uighur.
111. The applicant claimed and I accept that throughout her lifetime she has experienced a significant degree of discrimination, abuse and mistreatment due to her Uighur ethnicity and religion. She has set out a number of examples in her written statement and I accept the accuracy of this evidence. The evidence is also consistent with the independent information on the treatment of Uighurs in China.
112. I find that each incident of discrimination that she has described and accepted by the Tribunal does not, of itself, amount to persecution. Further despite such discrimination the applicant was able to obtain a secondary and tertiary education in China and her family members have been able to obtain well paying and suitable employment in Xinjiang Province and elsewhere. Her family owned property and maintained a stable home in Urumqi. She has been able to take advantage of her educational background to obtain a student visa for Australia.
113. However, I find that the arrest, abusive questioning and detention of the applicant [in] 2008 does amount to serious harm involving systematic and discriminatory conduct by state authorities. The attack on her [in] 2009 by a group of Han Chinese men was a targeted discriminatory act of harm by members of the Han Chinese community. The questioning of her family in July 2009 during the bus incident also amounted to mistreatment by Chinese authorities. When this conduct is considered together with the discrimination suffered by the applicant in the past I accept that the applicant has suffered past mistreatment by state authorities and the Han Chinese community. I find that the various incidents of mistreatment cumulatively amounted to persecution for reasons of her Uighur ethnicity. She has also claimed persecution on the basis of her religion. I find that her Muslim religion is inextricably bound up with her Uighur ethnicity and it is appropriate to consider her religion as part of her Uighur ethnic identity as well as a separate Convention ground because the country information indicates that the manner in which Muslim Uighurs are treated may be different from other Chinese Muslims.
114. Given the findings of past mistreatment, I have considered whether the applicant would face a real chance of persecution if she returned to China for reasons of her Uighur ethnicity, her religion or her political opinion.
115. The applicant has not claimed that she is an activist or that she has become or involved in any pro separatist activities of any Uighur groups in Australia. Her evidence has been that she has lived and studied in [state deleted: s.431(2)] so has not had the opportunity to join with any activist Uighur organizations although she supports the aims of such organization and would join if she lived in Sydney or Melbourne. She has continued to follow her religion and regards herself as a practicing Muslim.
116. On the evidence before me I do not accept that if the applicant returned to China she would face immediate and targeted harm from the Chinese authorities or the Han Chinese

community. However, I have I have carefully considered the country information on the current treatment of Uighurs in China and find that if she returned she would continue to suffer significant discrimination in a number of areas including the areas of employment, cultural observances, religious observances and accommodation outside her family home. I also find that, taking into account the relevant country information, there is a greater than remote chance that she may face mistreatment for reasons of her Uigher ethnicity from members of the Han Chinese community and from Chinese authorities. Whilst she does not have a high profile as a pro-separatist activist she has been studying overseas and has previously been detained for being in possession of pro separatist materials. In view of the recent crackdowns against the Uighur community since July 2009 and significant increase in security activities by Chinese authorities in Xinjiang the Tribunal considers that the applicant may again face the prospect of further mistreatment involving questioning, detention and serious abuse in Xinjiang if she returned. The country information indicates that members of the Uighur community are currently treated with suspicion and are subject to harsh oppressive measures by the Chinese authorities. They are also subject to mistreatment by members of the Han Chinese community and the country information indicates that there has been a discriminatory failure of state protection for members of the Uighur community.

117. I find that it would not be reasonable for the applicant to relocate to another region of China because of the difficulty she would encounter in obtaining a change in her household registration (hukou) she would need to relocate to another region of China. I also find that she would experience the deep suspicion and prejudice against Uighurs held by members of the Han Chinese community in areas outside the Xinjiang Province and which has increased since the July 2009 protests in Xinjiang.
118. Accordingly I accept that she may face a real chance of persecution for reasons of her Uighur ethnicity if she returned to China now or in the foreseeable future. I am therefore satisfied that she has a well founded fear of persecution for reasons of her Uighur ethnicity, her religion and imputed political opinion.

## **CONCLUSIONS**

119. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

120. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.