

0803136 [2009] RRTA 589 (30 June 2009)

DECISION RECORD

RRT CASE NUMBER: 0803136

DIAC REFERENCE(S): CLF2008/21725

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Bronwyn Connolly

DATE DECISION SIGNED: 30 June 2009

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 applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] February 2008. The delegate decided to refuse to grant the visa [in] April 2008 and notified the applicant of the decision and his review rights by letter dated [in] April 2008.
3. The delegate refused the visa application as the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] May 2008 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the *Migration Regulations 1994* (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Parts 785 and 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:
(2) A criterion for a protection visa is that the applicant for the visa is:
(a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
(b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
(i) is mentioned in paragraph (a); and
(ii) holds a protection visa.'
7. Subsection 5(1) of the Act defines the '*Refugees Convention*' for the purposes of the Act as '*the Convention relating to the Status of Refugees done at Geneva on 28 July 1951*' and the '*Refugees Protocol*' as '*the Protocol relating to the Status of Refugees done at New York on 31 January 1967*'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.
Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a 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.'

8. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.
9. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution' Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct' Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
10. In requiring that 'persecution' must involve 'systematic and discriminatory conduct' subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of 'persecution' that an individual be the victim of a series of acts:

'A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purposes of the Convention.'

'Systematic conduct' is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute 'persecution' for the purposes of the Convention, the threat of harm to a person:

'need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution' (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
11. Thirdly, the applicant must fear persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion' Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless 'that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution' It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for*

Immigration and Ethnic Affairs v Guo (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

12. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'

A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

Information given to the Department

13. The following information about the applicant and the written claims are contained in the protection visa application and accompanying statement lodged [in] February 2008.
14. The applicant is 36 years old and according to details in his visa application he worked as a cook for a number of companies in Xianjiang Province and in the city of Urumqi until January 2008. In answer to question 41 on Part C the application form he stated that he left his country due to his fear of his life from the Chinese authorities. He also provided a photocopy of the biodata page of his passport issued by the People's Republic of China. The passport was issued [date deleted in accordance with s.431(2) of the Migration Act 1958 as it may identify the applicant] August 2007 and is valid until [date] August 2017. His passport was kept by the tour guide when he ran away from the group. He said that he was not issued a passport in the normal way as he was a Hui and a Moslem and that he had to apply through a travel agency and pay a high price for it.
15. In response to Part C, Schedule A of the application he stated he had never been convicted of any crime or offence, that he was not aware of any criminal investigation which he was the subject of and he did not know of any criminal charges currently pending against him.
16. In his application he stated he had lived at the same address from January 1998 to January 2008. He also stated that he had visited Singapore, Malaysia and Thailand in September and October 2007 for tourism purposes. The applicant is married and his wife is living in China with their son who was born [in] 2007. He had 13 years of education.
17. [In] March 2008 the applicant's representative submitted to the Department a written submission and two photographs. The submission included the following claims:
- he is a Hui and a Muslim;
 - he had wanted to go to university, but had no chance to do so as he was a Muslim;

- he worked at [a] Hotel in Guija City from January 1994 until February 1997 as a kitchen hand;
- [in] August 1989 he went with his father to a mosque in Guija where his father was second in charge. During prayers the imam made a speech about the treatment of Muslims by the authorities. The police arrived and the applicant, his father and others were taken away in trucks to the police station. His father was beaten by the police and taken away – he was detained for three years. The applicant was taken away for questioning and was detained for about three weeks. During this time he was hit, kicked and threatened. He was questioned several times and deprived of food and water. He was forced to sign a statement that he was involved in illegal activities. To force him to sign the statement he was hit on the mouth, kicked and hit with an electric baton. He was told he would be released if he provided information about his family and friends and to obtain his freedom he co-operated with the police.
- he lived in fear after this and the authorities continued to watch him;
- he was questioned often by the police and asked about the activities of people he knew;
- during Ramadan in 1990 he was forced to eat a biscuit by his teacher during fasting;
- he was hit on the face by his teacher and was suspended from school for three days for refusing to eat and during this time was forced to do political study;
- during Ramadan in 1991 or 1992 he was forced to drink water during fasting;
- he claimed that his mother was tortured and murdered during 1997;
- his father became mentally ill and was tortured during 1997;
- [in] February 1997 he attended a demonstration with his father with other Huis and with Uyghurs. He was sprayed with gas by the police. He and his father ran away and after hiding in a house for about 30 minutes, police found them and took them away in handcuffs. They were also hit. Hoods were put on their heads and they were taken to a secret location where he was hit on his head and body. He was questioned by the police and hit. He was detained for about 20 days and during this time was questioned four times and beaten. His uncle found him and paid a bond of 20,000 yuan for his release. He was required to sign a statement admitting his wrongdoings. His uncle paid a bond of 30,000 yuan for his father's release;
- his family moved to Urimqi in April 1997. He found that the situation there for Hui was similar to Guija;
- he worked as a cook at [a] Restaurant in Urimqi from September 1997 until September 2005;
- in Urimqi he met regularly with a group on a monthly basis to teach Islam to young people. In June 2003 at such a meeting the police arrived and questioned him and others about what they were doing. He and others were taken to the police station for questioning and detained for about 15 days. He was hit with a baton and tied to a chair and a lit cigarette was put on both his arms. His brother paid a bond of 20,000 yuan for his release;
- in December 2006 during prayers at the mosque he was forced to go home and when he resisted, he and two others were taken to the police station and questioned. He was beaten and he paid 2,000 yuan to be released;
- he married [in] September 2006 and his son was born [in] 2007;
- it took him two years to get a passport which he received [in] August 2007. He paid bribes to police officers to get his passport (10,000 yuan to Suburb Problem Solving Department, 30,000 yuan to another department, 30,000 yuan to the Suburban Police Station and 50,000 yuan to the Police Headquarters in Urimqi. He also paid 30,000 yuan

for travel arrangements and a deposit bond of 130,000 yuan as well as 23,400 yuan for travel documentation. He was not able to have a keep his passport after it was issued;

- he went to Malaysia for two weeks on a group tour arranged by a travel agency;
- he wanted to go to a country where he could apply for protection and to gain the trust of the authorities he went to Malaysia first. On his return from Malaysia he obtained a visa and departed for Australia and arrived in Australia [in] January 2008;
- on his first day in Australia, he rang a person called [Person 1] whose number he had obtained from a friend in China and he picked him up from the hotel at 9.30 pm;
- he has met fellow Huis in Australia;
- [in] February 2008 he attended a public meeting at which Rabiye Kadeer was talking. He had photographs taken with her. He is fearful that news of this meeting with her will come to the attention of the authorities in China. Because of this, he thinks that he could be hung by them if he returns;
- he has called his wife a few times and she told him that she was being pressured to contact him and ask him to return to China. She has been interviewed by police; and
- he was treated inhumanely because of his religious activities and his ethnic identity in China before he came to Australia. He attended meetings of Hui people in Australia and a meeting with Rabiye Kadeer. Because of this he believes that he will be tortured, imprisoned or killed if he goes back to China.

18. [In] April 2008 the applicant provided three letters to the Department. One was from [name deleted: s.431(2)] (a Hui) and one was from [name deleted: s.431(2)] (a Uyghur). The letters contained their opinions about the Hui people in Xianjiang Province in China. The third one dated [in] February 2008 was from Rebiya Kadeer, President of the Uyghur World Congress who stated that the applicant had attended her talk [in] February 2008 and that she supported his application.

The delegate's decision

19. The delegate interviewed the applicant [in] March 2008 and was not satisfied the applicant was of any interest to the authorities at the time he departed China and was not satisfied that he had experienced past persecution because of his ethnicity and religion. The applicant was unable to substantiate his claims that he was being persecuted on account of his ethnicity and religion. He was unable to provide details that he attended protest meetings of Hui in Sydney. The delegate was not satisfied that even if the applicant were to return to China, that this would form a basis from which a finding of well founded fear can be made out.

Application for review

20. The applicant lodged an application for review [in] May 2008. No further documents or submissions were lodged in support of the application at that time.

Invitation to hearing

21. [In] June 2008 an officer of the Tribunal wrote to the applicant advising that the Tribunal had considered all the material before it relating to the application, but it was unable to make a favourable decision on that information alone. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] July 2008.

The hearing

22. The applicant appeared before the Tribunal [in] July 2008 to give evidence and present arguments. The Tribunal was conducted with the assistance of an interpreter in the Mandarin and English languages.
23. The applicant was represented in relation to the review by two registered migration agents. The first appointed registered migration agent attended the hearing. The applicant was also unrepresented for a period.
24. Prior to the commencement of the hearing the applicant submitted a number of documents in support of his application.
25. The applicant submitted the following statement:

My name is [name] I live at [address] I made an application to the Department of Immigration and Citizenship (DIAC) for a Protection Visa on [date] February 2008. My application was refused by DIAC on [date] April 2008. I would like to clarify some issues and provide additional information regarding my application for a Protection Visa.

Issues in the decision record

The Delegate for the Minister for Immigration and Citizenship (The Delegate) provided several country information reports about the Hui people in the decision record. In general, the reports state that the conditions of the Hui people in other parts of China outside of the "Xinjiang" province. Those reports certainly do not reflect the real situation of the Hui people in the Xinjiang province of China. Chinese Communist regime treats the Xianjiang province 'specially', and the ethnic people who live in there are kept in a 'cage like environment'. It is extremely difficult to gather information about the real situation of the ethnic people in Xinjiang. So, I believe that, the country information provided in the decision record does not reflect the real situation of the Hui people in Xinjiang. In fact, the Chinese authorities treat all the Muslims in the Xinjiang province as terrorists. The delegate himself repeatedly stated during the interview that, the situation was extremely bad for the Uyghurs in Xinjiang, but the Hui people 'look like Chiese [sic], speak Chinese, and have the freedoms of Han Chinese. I can understand the views of the Delegate, given the information in the country reports. But, once again, I lived in Xinjiang and the reality is that, all the Muslims in Xinjiang, whether they are Uyghur, Kazak, Kirghiz, Tatar or Hui, are treated equally as bad. The Han Chinese reap all the benefits all opportunities, while the ethnic people are oppressed and suppressed by the authorities. Because of the difficulties in finding country information about the Hui people of Xinjiang province of China, I had to ask several people, who lived in Xinjiang, to write their opinion about the conditions of the Hui people and how they are treated by the authorities.

Issues raised by the delegate in DIAC decision record

I interviewed the applicant on [date] March 2008 for the purposes seeking some elaboration on his written claims. In his written claims the applicant claims he is a Hui and ethnic minority in China and a Muslim. He further claimed that he has been persecuted by the Chinese authorities on account of his ethnicity (Hui) and religion (Islam). The applicant was unable to substantiate his claims at interview. The applicant indicated at his interview that he was only an [sic] attended a protest meeting of young Hui Muslim. He was unable to provide details of where, when and what transpired at the protest meeting.

My response

As I mentioned earlier, it seems to me that the delegate mainly depended on the country information in making his decision. He believed that we, the Hui people

were ethnically Chinese and we had equal rights with the Han Chinese. The Hui people are regarded as a separate ethnic group in China as well. If we were accepted as Chinese, then we wouldn't be mentioned as one of the ethnic nationalities by the authorities in China. Also, I have provided the details regarding the activities and how my family and I were persecuted by the Chinese authorities, in my statement to DIAC.

In summary:

My father and I were detained and beaten and tortured by the Chinese authorities in August 1998. Also in about March 1990 I was suspended from school for practising my religion and I was forced to do 'political study; to change my ideology. People, who was suspended three times would lose their right to education and would be expelled from school. I was again forced to break fasting in 1991 or 1992. During the Guija massacre in appropriate 1997, my mother was murdered by the Chinese authorities under torture and my father was so badly treated that, he became mentally ill. I was accused of being a terrorist and an anti-revolutionary for participating in 'terrorist activities' as well as destroying the public order. They also forced me to accept being a terrorist. I was detained about three weeks and was released on condition of paying a bond of 20,000 yuan and signing a statement admitting guilt and promising not to get involved in similar activities in the future. My father was also released after paying 30,000 yuan bribe. I was detained and tortured by pressing cigarettes in my arms in about mid-June, 2003 for participating in the meeting, where we were learning religion. I was released after 15 days and forced to pay a fine of 5,000 yuan. In December, 2006 I was detained, beaten and fined 2,000 for discussing religious issues in the mosque. I had to pay a lot of money to obtain a passport and visa. The Han Chinese don't have any problem in obtain a passport. All the Muslim people of Xinjiang are treated like animals in this regard, and their passport [sic] are confiscated starting from 2007.

Developments after I arrived in Australia

1. Background information: While I was in China, I deposited 50,000 yuan to the Urimqi City Commercial Bank (document attached), which I believe is provided to the Australian authorities in China as proof of available funds for my visa application. I also gave 80,000 yuan to the travel department as a bond (receipt attached), which would be returned to me on my return to China. This amount would be confiscated, if I didn't go back to China. I believe that, having to pay a bond itself is an inhuman treatment and this proves the level of freedom I have in China as a Hui. The Han Chinese are not required to make such payments, and they get their visa easily. Also the ethnic people in Xinjiang province significantly differs to the treatment of people in other regions.
2. I came to Australia in the tour group on [date] January, 2008, and ran away from the group the same day.
3. On [date] January 2008, police, and officials from the travel department went to my house. My wife said that, they asked her to contact me as soon as possible and tell me to return to China, and that otherwise would be imprisoned between 15 to 20 years.
4. My wife told me that, they went to my place again to serve a complaint to the court in about end of February, 2008 to hand in court papers to my wife, which were asking me to attend the court.
5. My wife told me on the phone that, she was asked to contact me and tell me to go back to China, otherwise she would also pay the price.
6. They went to my place to serve the court papers (those court documents are attached) for the second time on about [date] June 2008 (in fact the documents indicate that, the court already had the first hearing for [date] June 2008, and they froze 124,000 yuan in my account, my father's ([name]) account and the account of [business name]).

7. According to the court papers, the travel agency is expecting me to pay 120,000 yuan on top of the 80,000 yuan bond that I had paid to them (documents attached). My understanding was that, the total amount of the bond was 80,000 yuan. This other 120,000 yuan is a total surprise to me. The travel agency told me to sign a document on behalf of my father, before I came to Australia. Now it seems to me that, they just made up a document to force my father and another person to pay this money to them. The travel agency claims that they have paid 120,000 yuan to the tour organizer, Beijing Huayan Company, and that, I caused them great loss. I totally disagree with this claim, as I was never told that I would need to pay the extra 120,000 yuan and that the total amount of bond was 200,000. I see this as an opportunistic act in my absence. The law is in the hands of the powerful people in China, and they just play the game as they wish. My wife told me that, the Chinese authorities accuse me of betraying the country and the Communist party by running away and I would be penalised heavily for this. They also have been hassling her by making phone calls, attending to my place and questioning and threatening her. My wife cries every time I talk to her on the phone. They do similar things to my father as well.
8. My wife told me that, she had to tell them that, I ran away, and that I was not contacting her anymore, in order to stop them hassling her. But they continue intimidate my wife.

In conclusion, I believe that, I would be treated unfairly and harmed by the Chinese authorities, if I have to go back to China. The reasons for this are as follows:

- I attracted the attention of the Chinese authorities during my life in China due to my activities as a Muslim Hui, and I was detained, beaten, tortured and forced to pay bribe;
- I had to pay large sums of money to be able to obtain a passport, which shows that, my freedom of travel is also in the hands of authorities. I also had to pay a 'bond', to force me to return to China, and the bond money is already confiscated. I see this as an inhuman treatment;
- the Chinese authorities have taken me to the court for baseless reasons and trying to extract money from me, and threatening to penalise me and my family members heavily;
- I was not expecting to be taken to the court and I am even more scared to go back to China now;
- I believe that, I would be taken at the input and imprisoned and tortured and even be killed for running away, which the authorities see as "betraying the country and the Party";
- I have been seeing a psychologist from the Trans-cultural Mental Health Service from a while, as well as a doctor for my psychological problems caused by the treatment of Chinese authorities before I left China. Being thousands of kilometres away, I still feel fearful from the Chinese authorities.

I believe that, I will have a chance of living a normal life in China in the circumstances above, and I would greatly appreciate if you could grant me protection against the Chinese authorities.

26. The applicant submitted the following statement from [name deleted: s.431(2)]:
I am writing this letter in support [the applicant's] claims for protection visa. As I lived in East Turkistan until September 2002, I understand the sufferings of other minority groups including Uyghurs and other ethnic groups there. These groups have been facing tremendous pressure and restriction in their struggles to maintain their national identities and culture that are under threat of extinction due to the government supported influx of Han migrants to this area. In addition, the government is exercising various hard hand policies targeting Moslem ethnic groups in East Turkistan. The Moslem people have been labelled as terrorists, Islamic

separatists and so on for their struggle to have equal rights with their Han fellow countrymen. Since most Hui people speak Chinese language they can make use of the government's minority policies and various laws to protect their rights in certain ways in many parts of China. But their situation in East Turkistan is a different story. And here most of them follow Islamic customs and culture, and even some of them stick to Islam very fast and try to propagate religion to their young generation. So the Chinese Communists consider the Hui as a threat to their totalitarian regime and strictly monitor and control the activities of some Hui people who normally go to mosques and sometimes exchange opinions with Uighur (sic) Moslems. I have known [the applicant] since the Uighur activist Rabiya Kadeer visited Australia early this year. Since then we have talked to each other several times about the situation in East Turkistan, cultural genocide of the Moslem people who share common fate and destiny under the Communist regime which denies the very basic human rights such as freedom of speech, religious freedom and so on. During the course of our conversation I found that he is an honest and truthful man and I believe his claims are genuine. I had heard tragic stories of some Hui people who sympathised and joined the Uighurs (sic) in their peaceful demonstration held in February 1997 in Ghulja for their basic human rights, which the Chinese government brutally suppressed by killing hundreds and arresting countless innocent people. No one is sure how many Uighurs or Huis were killed in this event because many people disappeared during and after that event. He got his passport by giving bribes. In East Turkistan corruption is so widespread that people say one can do anything with money. I spent myself more than 10,000 yuan to get my passport in 1997. He didn't cause the interest of Chinese authorities when he left China because he didn't have any real criminal records in computer. He was detained several times and tortured by local police because they thought he was a problem maker and incite social instability, other Hui people. For any organised demonstration or activities against the Chinese government, local officials and police face criticism or even lose their jobs. That is why they become so brutal and inhumane to political dissidents but don't put their names in records. Some Huis especially living in Ghulja, Kashgar and Hotan stick to their Moslem tradition and practice Islam very strictly for their ancestors settled down in these cities in the last several decades and have interactions with the fellow Uighurs. These people sympathise and support each other from religious grounds and because of their common destinies as second-class citizens. It is very natural that some Hui Moslems face discrimination, depressions and tortures in East Turkistan. Therefore I wish to the RRT to carefully review his claims and consider to give him protection visa from humanitarian grounds.

27. The applicant also provided a receipt written in Chinese and its certified translation. The translation states that the document is a receipt from the China Travel Services Pty Ltd dated [in] January 2008 for payment of 80,000 yuan from [the applicant] for deposit for overseas travelling which will be refunded when he returns to China on the due time.
28. The applicant also provided an indictment written in Chinese and a certified translation. The translation states that document is an (date not legible) indictment listing the plaintiff as China Travel Services Pty Ltd, the first defendant as [name deleted: s.431(2)] (the applicant), the second defendant as [the applicant's father] and the third defendant as [name] Cultural Services Pty Ltd. It requests that the first defendant pay the plaintiff the deposit of 120,000 yuan, that the second and third defendants take the 'assurant' responsibility and that the court fee be paid by the defendant. The facts are stated that the applicant joined the plaintiff's tour group to Australia and New Zealand in January 2008, the tour was between [date deleted: s.431(2)] January 2008 and [date deleted: s.431(2)] February 2008. The applicant paid the deposit of 80,000 yuan only, which was supposed to be 200,000 yuan, due to financial

difficulty. The second and third defendants guaranteed to pay the rest for the applicant if he overstayed in a foreign country. The plaintiff paid 150,000 yuan to the tour organiser, Beijing Huayan Company of [date deleted: s.431(2)] January 2008. The applicant disappeared the day the group arrived in Sydney. The applicant is still not back in China and has caused great loss to the plaintiff. By the contract, the three defendants are to pay the deposit of 120,000 yuan. The request of the plaintiff shall be upheld by the court.

29. The applicant also provided a civil court decision written in Chinese and a certified translation. The translation states the document is a civil court decision dated [in] February 2008 of the People's Court of Tianshan District, Urumchi, Xinjiang Uigur Autonomous Region, No [deleted: s.431(2)] of 2008 listing the plaintiff as China Travel Services Pty Ltd, the first defendant as [name deleted: s.431(2)] (the applicant), the second defendant as [the applicant's father] and the third defendant as [name] Cultural Services Pty Ltd. It states that the court is hearing the case of tourist contract dispute between the plaintiff and the third defendant. The plaintiff applied to the court [in] February 2008 for property preservation, requesting the preservation of the bank deposit of 124,000 yuan of the defendants. It states that [name deleted: s.431(1)] is the 'assurant' for the plaintiff with his car (Mazda [number plate deleted: s.431(2)]). It further states that the decision has been made according to Provisions 92 and 94 of the Civil Law. The bank deposit of 124,000 yuan is to be frozen, effective on the service of the court decision.
30. The applicant also provided a subpoena written in Chinese and a certified translation from the People's Court of Tianshan District, No [deleted: s.431(2)] of 2008. It was dated [in] June 2008 and signed by judges of the court.
31. The applicant's evidence at the first hearing is summarised in the following paragraphs.
32. The Tribunal asked the applicant about the protection visa application he lodged with the Department. He filled out the application form with the help of his migration agent. The Tribunal asked the applicant if he could read and write English. He stated that he could not. He wrote down the answers in Chinese and his agent completed the form. The form was read back to him. He confirmed that answers in the form were the answers he gave and all the information in the application was correct and there was nothing he wanted to change.
33. The Tribunal asked him how he communicated with his agent. He was provided with help by a friend, [Person 2], who spoke English and Chinese. She assisted him with the application and interpreted and translated for him. He met her on the morning of the second day he had arrived in Australia, that is [date deleted: s.431(2)] January 2008. She is the wife of a friend.
34. The Tribunal discussed with the applicant that he included a photocopy of the biodata pages of his passport with his protection visa application, yet in his statement attached to his visa application he said that his passport had been retained by his tour guide. The applicant confirmed that the tour guide retained his passport. The Tribunal asked him why he had a photocopy of those pages. He obtained his passport through a travel agent and they were required to hold on to his passport until he needed it. He said told the agent that he had never seen a passport and asked if he could have a look at his own passport. When he had it in his possession he took a photocopy of it in secret with the help of a friend. The Tribunal asked him why he did this. He heard that his Xinjiang identity card would not be accepted in Australia. As he planned to stay in Australia he thought it would be necessary for him to have a copy of his passport to prove that he came from Xinjiang.

35. The applicant's wife and child, his father, his elder sister and his younger brother all currently live in Urimqi. The applicant lived with his father before he married. The Tribunal asked if he had lived anywhere other than the two addresses he had listed in his protection visa application. He confirmed that these were the only places.
36. He married [in] September 2006. His wife does not work and she does not live in the home they shared before he left China. She currently stays at her mother's house or at the houses of his sister or brother. He speaks to her on the telephone about once a week.
37. His son was born [in] 2007 and he has an unofficially adopted son born in 1993.
38. The last job he held in China was as a manager at [company name deleted: s.431(2)], which was a company involved in advertising. He held this job from 2005 until January 2008. The Tribunal asked him if he held any other positions at the company. He said that sometimes he was a driver for his boss. The Tribunal asked him why he stated in his visa application that between 2005 and 2008 he said he worked as a cook. He said that he regarded his real occupation as a cook as before 2005 he had been a chef. The applicant also worked as a cook at [a] hotel in Guija City from 1994 and [a] restaurant in Urimqi from 1997.
39. The Tribunal asked about two photographs which had been submitted with his protection visa application. He stated that the photographs were of himself, a friend and Rabiya Kadeer, a person who was regarded by the Chinese authorities as a Uyghur terrorist. He met her when she spoke at a meeting in Auburn in February 2008.
40. The Tribunal asked about the statement that he had travelled to Malaysia, Singapore and Thailand in 2007. He said that he had been away in those countries for 16 days in September and October 2007. He could not remember the exact dates of his travel. The Tribunal asked him why he travelled to these countries. A travel agent arranged his passport and told him he agent would not get a visa Australia until he had travelled to other countries. He knew that he could not seek protection in these countries.
41. The Tribunal asked the applicant what he had told his wife was the purpose of his visit to these countries. Three months after they married she witnessed his treatment by the authorities and she had agreed with him he should seek protection in another country so he could offer his wife and his son a better life. She had agreed he should go to these countries in order to promote his chances of getting a visa to Australia. The Tribunal asked if the applicant had told his friends and family or employer about the reason for his trip to these countries. He said that he did not tell his family or friends about the real reason for his visit. He told his employer that he had been feeling stressed and he needed a holiday.
42. The Tribunal asked the applicant if he had told anyone about the reason for his trip to Australia. He said that he did not tell anyone other than his wife, not even his employer.
43. The Tribunal asked how he obtained his passport. He said the authorities did not agree to give him a passport, so he decided to bribe government agencies in order to have one issued. He obtained his passport [in] August 2007 and it took over two years to get it. In his province, Hui people could not get passports and the only way they could get one was to use "backdoor" methods. There were four levels of authority that he had to go through before he could get a passport: these were Street Office, the Household Committee, the local Public Security Bureau and the head office of the Public Security Bureau. As they did not agree to give him a passport directly, he bribed all four levels. To the Street Office, he gave 10,000

yuan; to the Household Committee, he gave 30,000 yuan; to the Public Security Bureau, he gave 30,000 yuan; and to the head office of the Public Security Bureau, he gave 30,000 yuan, a total of 120,000 yuan. He did not directly bribe all of these people, but did so indirectly. When he tried to obtain a passport and a visa to go to Malaysia, the authorities looked at his identity card and told him it would be impossible for him to get a passport. He asked the official from Street Office for his phone number and then invited him to dinner to discuss how a passport might be obtained. The official told him it would be difficult as he was a Muslim. He gave the official his identity card and slipped an envelope with some money into the pocket of the official's coat. He said he obtained his passport after this occurred.

44. When he sought a visa to go to Malaysia he said he was told that he would not be able to obtain it. He paid a bribe to the travel agency and he was able to obtain his visa.
45. The Tribunal asked the applicant if there had been any difficulties in obtaining his visa for Australia. The tour leader told him it would be difficult to obtain the visa. He invited her to dinner and gave her a bribe of 3,000 yuan. She said she "would try her best". About one week later his visa was issued.
46. The Tribunal asked the applicant where he obtained the money to make these payments and he said that he had sold his house and borrowed money from his friends and relatives on the excuse that he was going into business.
47. The Tribunal asked if he had experienced any difficulties in exiting China. Apart from a customs official looking at his baggage closely he did not think he had any problems. When he arrived at Beijing International Airport the tour guide took away his identity card and his passport: he only had to them in his possession for about 10 minutes during the time he was in the airport.
48. He came to Australia with a travel group and left the group at his hotel on the evening of [date deleted: s.431(2)] January 2008. He took his bag and some clothes. He slept on a bench in the park in Darling Harbour and the next day when he saw a restaurant called "North West Restaurant" went inside. He recognized some of the dishes as being from his region. He thought the restaurant was in Market City, in Haymarket. When he spoke, he said that Rima Gantsev recognised his dialect and she began to talk to him. He told her about his experiences and she said she would help him. She arranged for him to stay with some friends at [suburb deleted: s.431(2)] and helped to arrange for his migration agent and the lodgement of his visa application. He currently lives with an older couple in [suburb deleted: s.431(2)].
49. The Tribunal asked what he had done since he arrived in Australia. He attended a lecture of Rabiya Kadeer and that he had attended weekly services at his mosque because he wanted to practice his religion. The Tribunal asked if he had been meeting other Hui people as he had stated in his protection visa application. He said this referred to his meetings at the mosque where he discussed it with others what was happening in China. He did not attend any other meetings. He did not know where his mosque was or what its name was. He thought it was about 10 minutes from Chinatown, near to Central Station.
50. The Tribunal asked if he feared persecution upon his return to China. He said he would be sentenced or killed if he returned to China. He stated there were three main reasons why he feared persecution. Firstly, there were records of his activities with the authorities - this occurred because he had been detained in 1989 and in 1997. Secondly, he had obtained a passport and visa to travel to Australia - he knew this would be regarded as betrayal to his

country. Thirdly, he had participated at a meeting with Rabiya Kadeer, who the Chinese authorities regard as a terrorist. Also, he had applied for a protection from Australia.

51. The Tribunal asked if he had been detained three times as indicated in his statement with his protection visa application. He confirmed that he had been detained [in] August 1989, February 1997 and December 2006.
52. He told the Tribunal that he had had been arrested by or under the attention of the authorities almost every year. He said that when he put on his white hat and went to worship the local Public Security Bureau would often stop him and if there had been any fighting or any robberies he would be questioned. He said that he was often taken to the police station.
53. The Tribunal asked if there were any other times that he had been detained. He said that he had been detained in June 2003.
54. The Tribunal asked if he had been suspended from school. He stated twice to the Tribunal that he had not been suspended. The Tribunal asked him about the reference made in the statement that he had provided to the Tribunal on the day before the hearing. In that statement it had said that he had been suspended from school. The Tribunal asked the applicant where the information came from for this statement. It also asked if he provided information to his agent so that it could be written. The applicant said that he did not understand English. He said that he wrote it down in Chinese and that the agent translated it. He had a copy of his original statement in Chinese. He said the statement provided to the Tribunal was not read back to him. The Tribunal asked him how he knew the information in the statement was correct or not. He wrote it in Chinese and that it was translated into English. He did not know if it was correct or not. He said that he was told that if he refused to stop fasting during Ramadan at school then on the third occasion he would be expelled from school.
55. The Tribunal then asked about what has happened in August 1989. He had been at the mosque with his father, who was the second in charge of [a] mosque. He was sitting three rows from the front and was listening to a speech from the Imam which lasted about an hour. There were about 200 people there. The police came and took away many in the mosque in groups of about 20. They were taken to small rooms at the Urimqi Police Station and asked if they were organising any destructive activities or planning any political or illegal activities. . He was beaten by the police with their hands and sticks. There would usually one or two officers beating him and they beat him for 10 to 20 minutes until he could take it no more. He was interrogated every week. He was detained for more than 20 days.
56. The Tribunal asked who was had been detained with him - he said that his father had been detained with him as well as a neighbour of theirs. He was 17 years old at the time of the detention. His father was sentenced to three years because he had been responsible for organising the speech of the Imam. He was imprisoned in Urimqi Prison.
57. Whilst the applicant was detained the police officers asked him to give details about names and places of people who had been involved in the organisation - he did not tell them even though he knew the facts. The Tribunal asked him about the statement made in his submission to the Department where he said he signed a statement accepting guilt for his involvement in activities against the Communist Party. He was just told to sign it and the only thing he knew about it was that he was promising not to do anything.

58. The Tribunal asked if there were any other instances where he was under the attention of the authorities. He was under their attention almost every day. He said that he was frequently taken to the police station and asked about his father's activities. He was also taken to the police station approximately every two or three days and asked if he had been involved in any illegal activities when something had occurred in the area such as a robbery.
59. The Tribunal asked why he had not brought this to the attention of the Department or the Tribunal before this. He said that he had not mentioned these specific activities as they had not been as significant in his mind as the detentions had been. He said that he had lived in fear and that they the authorities had continued to watch him and his relatives after his detention. The Tribunal asked him why the authorities took notice of his activities. This was because Hui people are regarded by the authorities as troublemakers. Because he had been detained for 20 days in 1989 this had left a deep impression and was of significance to them. He said that by keeping an eye on him it would help police officers to get promoted and he would help them make their fortunes.
60. The Tribunal asked if he thought he was a person of adverse interest to the police. He confirmed that this was the case. The Tribunal asked how he was able to leave China in a passport in his own name. He said that the local Public Security Bureau did not know he had left China. Even though he had a passport, it may not be possible to get out of China. In the authorities' minds obtaining a passport does not mean you can necessarily leave the country. He obtained the approval of the local Public Security Bureau to obtain his passport.
61. The Tribunal asked about when he was detained in 1997. [In] February 1997 he and his father attended a rally of Uyghurs. They had been there less than half an hour when police surrounded them and used water guns to separate them. He and his father were arrested and taken to [a] Police Station. They were taken away to a warehouse. They did not know where they were taken at the beginning as they had black masks put on their faces. At the warehouse they were interrogated one by one. He was there for three weeks and was beaten by the police with electric ropes. They put a book on his chest and hit him so he would have no scars. He was able to leave when his uncle paid a bribe to the authorities.
62. The Tribunal asked about his mother's death. She was killed under torture by the police as on the morning of the rally. After he and his father were arrested the police came to get her. When his uncle obtained their release from detention he told them about her death and that he had collected her body from the police station.
63. The Tribunal asked him about when he was detained in June 2003. He said that he and about 10 other people had organised an evangelising service and that the police found out about it and arrested them and took them to the police station.
64. The Tribunal asked him about the speech that had been made by the Imam and it commented on the fact that he had been able to provide the specific wording of the speech in his submission. The Tribunal asked him how he remembered these words. He said that he was 17 years old at the time and that the words had been "carved into" his heart. The Tribunal asked him if he could repeat them for the Tribunal. He said that he could not quote the exact words now as he was nervous. He said that when he had prepared his submission he was not nervous and he could write the words down slowly. The Tribunal asked him if he was sure that they were the exact words of the Imam's speech. He said that they were, but that he was only about 80% certain of this.

65. The applicant said he had misunderstood some of the Tribunal's questions to him and because of this some of his answers were not very correct. When he was asked whether his migration agent had read his statement to him or not he thought that this referred to whether he read it to him in English. He said that he had not had it read to him in English but that the interpreter [Person 2] had interpreted it to him many times and he understood what she said. He also said that there was a misunderstanding as to the different concepts surrounding the suspension and dismissal from school. He thought that the Tribunal might have misunderstood what he has said. The Tribunal indicated that it had quoted back to him what he has said in his statement which had been provided to the Tribunal on the day before the hearing. The Tribunal asked him if he had any problems with the interpreter in the hearing. He said that he did have problems such as questions which related to him being questioned at the police station. The Tribunal reminded him of its earlier request to him that if he was unsure of any question he should ask for it to be asked again.
66. He said he was very nervous and this affected his ability to answer questions. The Tribunal noted that the applicant was hesitant and appeared nervous and anxious during his responses. The Tribunal adjourned the hearing on two occasions.
67. After February 1997 he and his father wanted to move away from Ghulja City as they were scared. His father was ill and they sold their house and decided to move to Urimqi around July or September 1997. They thought it would be better there, but they found the whole city to be socially disordered. When he worshipped in Urimqi he would often be stopped by police. Often when there were three or four of his fellow Huis in a group they would be approached by the police: these were undercover police who would take them to the police station for interrogation.
68. The Tribunal asked about his detention in 2003. His uncle paid a bribe of 50,000 yuan to the person in charge to obtain the release of his father and himself. He was detained in the police station for two weeks. He was detained following a raid by the police of a gathering that had taken place at the mosque. There were about 40 of them and the police took them away in groups of 10 to the police station. When the police saw him they asked if he was a local. He told them that he had come from Urimqi. He said that when they discovered that he had been involved in the 1997 incident they became very excited and gave him especially harsh treatment. He said that acted towards him, "like they had found a treasure" He was treated harshly and his interrogation was much stricter than for the others. Three policeman inflicted serious torture on him and burned him with cigarettes on his arms - he still has scars from this. The police did not have any records of his previous detention and because of this he was fined rather than being further detained. His brother paid 5000 yuan to the police as a fine.
69. After this the police used to wait for him on Fridays when he went to worship and would ask him to go to the police station for questioning. This could occur sometimes every three or five days, but it was not on a regular basis. He said that it was not for more interrogation and they were just asking questions about what he was doing.
70. The Tribunal asked why this was the first time that this questioning following his detention in June 2003 was being raised as it had not been previously advised to the Department or to the Tribunal. The reason he had not raised it with the Department was that he had been extremely scared when he arrived in Australia and he forgot to tell about this questioning.
71. The Tribunal asked what occurred in December 2006. On his way home from mosque with two of his friends the police had asked them to attend a police station. When they were there

they were asked what they were doing. He told them he had just been talking about everyday things. They said he could ring his family. His wife came to the police station and paid a fine of 5000 yuan to the police. He was allowed to go home after this. He said he was detained less than a day. The Tribunal asked if he had been beaten during this detention. He said that he had not been beaten. The Tribunal then asked him why he had said the in his submission to the Department that he had been beaten. He explained that this beating was not like what had happened before. This time they had hit him on the head. He thought this was very normal and a beating was only something which left a scar. He said it was his understanding that just being beaten on the head was not a beating.

72. The Tribunal asked what happened after December 2006 and he said the police stopped him and talk to him after this. This did not occur often as he seldom went out to mosque and he kept a low profile. Because of this he did not have any further contact from the police as he hid from them.
73. The Tribunal asked the applicant why he wanted to leave China. Following his mother's death and his father's illness he wanted to leave China as soon as possible. He was also very upset as to how the Hui people had been treated by the authorities.
74. The Tribunal asked him about [Person 1] who he had contacted on his arrival in Australia. He had been given his number by one of his friends in China. The Tribunal asked why he had said in his submission to the Department he had rung [Person 1] who had picked him up from the hotel at 9 p.m. He could not remember whether he had met [Person 1]. The Tribunal asked the applicant whether he had been picked up from a hotel or whether he slept on a bench in a park in Darling Harbour that night. The applicant said he could not remember. The Tribunal asked the applicant why he had put it in his submission he had met [Person 1] He made a mistake as he was very nervous when he had prepared the document. The migration agent does not speak Chinese and he does not speak English and there may have been some misunderstanding. The Tribunal asked where he thought the information about [Person 1] had come from. He said that he could not recall what he wrote and it could have been a mistake made by [Person 2].
75. The Tribunal reconfirmed with the applicant that he had not met the [Person 1] referred to in his submission. The Tribunal indicated that there was a letter supplied from [a person with the same name as Person 1] with his protection visa application. He said this [person] was [Person 2's] husband and that [name deleted; s.431(2)] was a very common name. He said that this was not the person who picked him up from his hotel - they are two different persons.
76. The Tribunal asked him how he met the [name deleted: s.431(2)] who was [Person 2's] husband. He said had met him at the restaurant on his second day in Australia.
77. The Tribunal asked him if any other family members, other than his parents, had been detained by the authorities. His younger brother and her sister were questioned by the police, but they were not detained. His brother does not worship.
78. The Tribunal asked about the statement made in his submission that the country information referred to in the delegate's decision did not reflect the actual situation. He said the information could not be true as the real situation affecting Muslims in his province was not reported in newspapers. The information was blocked from being reported by the local

authorities. So long as you could bribe people, you had some chance of not being arrested or detained, but if you did not, you had no chance.

79. The Tribunal asked why he thought he might be killed if he returned to China. According to Chinese laws, people like him who fled China would be regarded as being disloyal to the country. His name was on police records and he had bribed the officials to get his passport and visas. It would also be reported back that he had attended a lecture by Rebiya Kadeer. She is regarded by the Chinese government as a terrorist, so he might be regarded as a terrorist
80. His wife was threatened by the police and they have told her to tell him to come back to China or he would be sentenced to 15 to 20 years in prison. The first time this happened was on [date deleted: s.431(2)] January 2008, two days after he left the tour group. The police were accompanied by the travel people who were looking for their bond. He had heard about people who had been killed in the province. In the lead-up to the Olympic Games the government had a crackdown on people like him. He read this in the Chinese newspapers in Australia.
81. The Tribunal asked about the court action being taken against him and the fact that his wife had been served with a writ for him to attend court. She was also told that if she contacted him without telling the police, she and their baby would be detained.
82. The Tribunal asked about his claim he was seeing a psychologist. He sees her because he cannot sleep, because he has night sweats and he has nightmares. When he becomes nervous he gets headaches. He said he also worries about his wife and child. He is taking sleeping pills and his memory has deteriorated. He usually takes pills twice a week. If he walks along the street and hears loud noises such as police or ambulance alarms or sees the police on the street, he needs to increase his dose to a daily dose. The psychologist has diagnosed him as “living under a shadow”.
83. The Tribunal told the applicant it had concerns, in particular that that some of his evidence was inconsistent with previous statements given to the Department and to the Tribunal. He had given information to the Tribunal in the hearing which was inconsistent with previous evidence or which had not been previously given. The Tribunal gave some examples of this, he had not told the Department he had been required to attend the police station on a semi-regular basis between 2003 and 2006, he had not told the Department he had been suspended from school and about his evidence in relation to whether or not he had met with [Person 1] He had also told the Tribunal that this previous written statement might not be correct. The Tribunal said the inconsistencies and omissions might suggest to the Tribunal he had not been telling the truth and this might lead the Tribunal to conclude he was not a witness of truth. This could be a reason or part of a reason which could lead the Tribunal to a finding that it should affirm the decision under review. In relation to the written statement which the applicant stated might not be correct, the Tribunal had to consider what weight it might give it. The Tribunal told the applicant he could respond or comment on the information provided and he did not need to comment or respond immediately. The applicant stated that he did not wish to respond. He then asked the Tribunal if he could have time to verify what he had said and also what he said about [Person 1]. The Tribunal granted the applicant three weeks to respond or comment.
84. The agent said he had referred the applicant to a psychologist as the applicant had stated he felt suicidal. He would obtain a report and forward it to the Tribunal. He said that extracting

information from the applicant was difficult. He said that the applicant had difficulty in understanding some of the questions in the hearing and in providing answers.

Documents submitted after the hearing

85. [In] July 2008 the applicant wrote to the Tribunal advising that he would be representing himself instead of his migration agent as he thought that the migration agent had not effectively represented his application.
86. [In] July 2008 the applicant provided the following submission in English to the Tribunal:
I refer to my application. I attended the hearing and was advised at the hearing that I would be given another three weeks to prepare a submission for some discrepancies in my application. As I advised the Tribunal last time that I am now representing my case myself. It is difficult for me to communicate with my lawyer due to the language barrier. I will send you my comments on the issues concerned by the Tribunal during the hearing and I will have it translated in English by an accredited translator. I will fax my comments from the translator's office.
I have the following submissions to clarify the confusing issues raised during the hearing:
1. I approached a travel agency called China Travel Agency (CTA) for my travel Australia. The CTA is a government travel agency. They told me that I had better to go to Singapore, Malaysia and Thailand first so that the Australian authority would trust me more by thinking that if I didn't overstay my visa in these countries, I would not overstay in Australia. They have the following procedures:
 2. I first filled their forms for them to apply for a passport for me. They did all the passport application procedures for me and I was responsible for bribing the officials of the PSB. The PSB gave my passport directly to the travel agency and I never possessed mine passport except being able to make a photocopy of it. I did hold my password each time I pass the custom of these countries and had to return it to the tourist guide after that.
 3. I had to deposit RMB Yuan 50,000 in the bank and had a deposit certificate issued. I had to give the original certificate to the agency as evidence that I was having money in China that the purpose of obtaining an Australian visa. They cannot withdraw money with that certificate. I can do it without it. It has to be when I hold the certificate myself to withdraw the money.
 4. For my Australian visa application, what I did only was that to provide a name, gender, date of birth, residential address, employer, telephone, and annual income, countries that I have visited before in a A4 form provided by the travel agency. I never saw any Immigration forms and never signed by name on any forms. Later somebody called me from Beijing Visa Office and asked me some questions such as my name, work phone number and name of my employer and annual income and why I didn't bring my wife to go together. I told them that my wife was pregnant and was not allowed to board by the airline company. The conversation only last four to five minutes.
 5. After my Australian visa was available, I had to pay security bond of RMB Yuan 80,000 and a travel fee of RMB Yuan 23,000 to the travel agency. The former had been forfeited as I overstayed and the latter was used to cover travel expenses and was not refundable.
 6. I arrived in Australia on [date] 01/08 and lodged by protection visa application 14 days after that ([date] 02/08).
 7. I was introduced to a Turkish lawyer, who, as I was told, was expertise in Eastern Turkistan issue. My application was prepared and lodged by him. I instructed him about one week after I arrived in Australia.

8. I have never visited the lawyer's office. Each time I visited him, it was always in his home. I don't know his native language and English and he doesn't know Chinese. Our communication was conducted with the help of [Person 2]. But [Person 2] is not a professional interpreter.
9. There are two parts of the application: the falls in a statement. I provided my information in Chinese and he put it in the forms and typed it into his computer in English with the help of [Person 2]. He finally asked me to sign here and there. I took it for granted that what he typed was what I had told him.
10. There is a second statement at the RRT stage. I was told to sign it but I didn't know what it was about. I provided some information and documents to lawyer and it could be that he prepared a statement himself accordingly.
11. In the statement he made a mistake by writing 1998 instead of 1989 when I was first detained.
12. From the way my application was prepared, there must be some differences between what I told the lawyer and what he wrote down. [Person 2] might summarise what I had told her and the lawyer might summarise what [Person 2] interpreted to him. I never had a chance to have statements to be read back in Chinese to me before it was lodged. That was my situation immediately before the hearing.
13. My application was lodged on [date] 02/08. It was just the form itself. The statement was not provided to the department until [date] 03/08. I have to say that my application was prepared in a hurry. It was difficult for me to recall some many things in a short time, which happened many years ago.
14. I did recall more things after statement was provided. But the lawyer said it unnecessary to add more as it was already enough information. He only felt it necessary to add more after my application was refused by the Department.
15. I didn't mention that I was often called to be questioned by the police in my primary application because I thought it less important when I have information of my three detentions. The way I thought to prepare my application was to pick up important things first, which may not be the way of thinking in Australia. But I am from a different culture and our own way of thinking. I wish that I would be distrusted just because I have a different way of thinking.
16. I did inform the Department that I was suspended from school in my first statement to the DIAC at paragraph 34, which was overlooked by the Tribunal.
17. I admit that I said in paragraph 75 a statement that I was picked up by [Person 1] from my hotel after arrived in Australia while during the hearing I said I had never seen this [Person 1], which is a discrepancy to the Tribunal.
18. What actually happened was that I planned for [Person 1] to pick me up from the hotel and I was never able to contact him. So I had to leave the hotel myself and stepped on Darling Harbour for the night.
19. It was somehow put by my lawyer for a different meaning and I was given a copy of the statement after he finished it. In order to find out the meaning of the statement, I have it translated into Chinese. But now I found that paragraph 75 of the Chinese version was not translated I then questioned the translator why he failed to do it after the hearing, he explained to me that he was not able to do it as it was not English and he didn't know what language it was. So I didn't have a chance to check out the improper content in paragraph 75 before the hearing. Now I was able to get a copy of the statement same as the one kept by the Tribunal, which is different from the version I have in paragraph 75.
20. The Mr [name] who wrote a letter for is [Person 2's] husband. [Name] is one of the most popular surnames in Hui Ethnic.

I am not sure I have covered everything but I have to fax my submission to you today as it is the deadline. I will supply additional information in a few days if I have. Attached is a page of my statement containing paragraph 75 given by my lawyer and also the Chinese version of that page.

87. [In] August 2008 the applicant appointed a new agent.
88. [In] June 2009 the applicant's agent provided the Tribunal with a copy of a psychological report on the applicant dated [in] July 2008, which, in summary, stated:
- the applicant reported symptoms of palpitation, sweating, agoraphobia, sleep disturbance, flashbacks, loss of interest, depression and anxiety following his experiences in China. The psychologist reported that his symptoms are consistent with symptoms of post traumatic stress disorder;
 - the applicant had difficulty in expression and required prompting for details;
 - the applicant was despondent, but is strongly against suicide as this is contrary to his religious beliefs;
 - the applicant had difficulty concentrating and remembering times and events which occurred in the past;
 - the applicant reported having trouble thinking, concentrating and sleeping and also that he lost track of time. He reported waking from bad dreams about being beaten up or witnessing his father being beaten up;
 - the applicant reported that he has been staying away from public places as far as possible as seeing police officers on the street or hearing sirens upsets him. He reported feeling as if it was watched all the time;
 - the applicant attends mosque every week as this is his interest and his belief; and
 - the psychologist reported that the applicant is too scared to talk about his experiences out of fear, but that he would benefit from further sessions to deal with any unresolved emotional issues needing intervention.

Independent information

Treatment of Huis in China

99. The Tribunal notes that when referring to the Hui ethnic group in China, many writers refer to their relationship to other Muslim populations in the country, especially the Uyghurs. The Tribunal notes that information relating to the treatment of Uyghurs in the Xinjiang Uyghur Autonomous Region may have application to the treatment of the Hui ethnic group in that province.
100. In 2001, Michael Dillon commented on the relations between the Turkic speaking Muslims in Xinjiang (Uyghur and Kazak) and the Hui, in a large report on religious minorities in China:

Almost all the Muslims whose first language is not Chinese are found in the Xinjiang Uyghur Autonomous Region (Eastern Turkestan). Most are speakers of Turkic languages, mainly Uyghur and Kazakh... There are also Hui communities in Xinjiang. Because the authorities see their religious beliefs as tied closely to separatist ideas, the Turkic-speaking Muslims are subject to greater controls and are far less free to practise and express their faith than are the Hui. At times when Hui mosques have been open and busy with worshippers, Uyghur and Kazak mosques remained closed, even in the Xinjiang capital Urumqi (Dillon, M. 2001, *Religious Minorities and China*, Minority Rights Group International, p.17 –

101. Mosques in Xinjiang attended by Hui Chinese belonging to the “Sala Sufi Muslim order” were closed in late 2005 following a ban in August 2005 of this religious group. Religious literature was also seized. A 26 September 2005 Forum 18 News service provides the following details:

Forum 18 News Service has been unable to find out why the government of the Ili-Kazakh Autonomous Prefecture of China’s north-western Xinjiang Region banned the Sala Sufi Muslim order as a “dangerous” group in August. “I’m not prepared to voice an opinion on whether or not this order is harmful,” a professor from Beijing’s Institute of Nationalities told Forum 18. But she denied that if any practitioners had been arrested it was for their religious beliefs. The German-based World Uyghur Congress says 179 people have been held. Local Muslim Abdu Raheman told Forum 18 that the practitioners were seized by the security services. “There was no court case against them, so no-one knows how long they will spend behind bars.” He views the moves – which also include closures of mosques and seizures of religious literature – as part of a campaign against local Huis, ethnic Chinese Muslims. “The religious practices of the Huis bring out the international nature of Islam, and that aggravates the authorities.”

...Raheman has confirmed to Forum 18 News Service that the government of the Ili-Kazakh Autonomous Prefecture of China’s north-western Xinjiang-Uyghur Autonomous Region banned the Sala movement – a local Sufi Muslim order – in August and that an unknown number of its followers have been arrested. “It wasn’t the police who arrested them, but the security services,” he told Forum 18 on 21 September in Ghulja (Yining in Chinese), the capital of the prefecture which lies close to the border with Kazakhstan “There was no court case against them, so no-one knows how long they will spend behind bars.” He said that virtually all of those arrested were Huis, ethnic Chinese Muslims who make up about eight per cent of the prefecture’s population.

The local paper, the Yili Daily, reported last month that high-ranking prefectural officials held a special work conference on the Sala “threat” on 17 August. Zhang Yun, who is in charge of supervising the prefecture’s religious affairs, warned government and communist party officials of the “dangerous” nature of Sala and said it had to be banned along with other illegal religions. Sala leaders were accused of “cheating and deceiving the masses, and inciting them to worship their religious leaders”, and of pressuring followers to make donations to the organisation. Officials also accused its leaders of encouraging “trans-provincial worship” and “threatening social stability”. However, official publications made no mention of any arrests. The German-based World Uyghur Congress later reported that 179 practitioners had been arrested.

...Raheman believes the authorities are restricting the rights of Muslims of all ethnic background but are particularly harsh with the Huis. “The authorities want to suggest that Islam is the national religion of Turkish-speaking people who live in China – the Uyghurs, Kazakhs and Kyrgyz,” he claimed. “The only thing distinguishing the Huis from other Chinese is their faith. The religious practices of the Huis bring out the international nature of Islam, and that aggravates the authorities.”

He also confirmed that the authorities have launched a campaign to track down unauthorised religious literature. “The security services are searching for unauthorised religious books in Islamic bookshops and in private homes,” he reported. “I personally know four Huis who have been arrested because they were found to have ancient religious books in Uyghur.”

89. The evidence available suggests that in China Muslims experience restrictions in their religious freedom. The UK Home Office, for example, acknowledges in its April 2001 *China Country Assessment* that while:

Islamic religious activities are not hindered or harassed on a regular basis to a great extent ... in areas with a large Muslim population such as Xinjiang, officials do restrict religious education and the building of mosques. [UK Home Office 2001, *China Assessment*, April, paras. 5.195-5.196]

90. The US State Department's 1999 and 2000 *Annual Reports on International Religious Freedom* also highlight the religious restrictions imposed on Muslims in Xinjiang. The 1999 report, for example, noted that:

.. in Xinjiang, officials continue to restrict the building of mosques and the religious education of youths under the age of 18. After a series of violent incidents in Xinjiang in 1997, police cracked down on Muslim religious activity and places of worship, and local authorities issued regulations further restricting religious activities and teaching. [US State Department 1999, *Annual Report on International Religious Freedom: China*, 9 September]

Monitoring Chinese Nationals whilst overseas

91. In respect of monitoring in Australia by Chinese authorities, DFAT advised in June 2006, the following information was available in respect of Uyghurs (and may be applicable to Huis):

A1. It is likely that Chinese authorities seek to monitor Uighur groups in Australia and obtain information on their membership and supporters (see CX154325 [see below]). In pursuing information, Chinese authorities would not necessarily exclude sources who do not have a political profile. It is therefore conceivable that Chinese authorities would approach Uighur secondary school students to inform on the Chinese Uighur Community in Australia.

A2. Failure to comply with Chinese authorities expectations to provide information could possibly result in repercussions on return to China This could include Chinese authorities harrassing (sic) individuals and/or their family members, (for example including, but not necessarily limited to, creating difficulties in pursuing education or public sector employment opportunities.)

A3. We consider there to be a small likelihood of Chinese authorities learning of individuals' PV applications in the absence of some indiscretion by the applicants. But if this information were revealed, on return to China, failed applicants would be likely to be subject to official scrutiny. In addition to possible consequences listed in paragraph 2, authorities might interview the person and might put the person concerned in administrative detention

(DIAC Country Information Service 2006, *Country Information Service No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, (sourced from DFAT advice of 28 June 2006), 29 June).

92. Xinjiang Uighur Autonomous Region (XUAR), in the northwest of China, is tightly controlled by the Chinese authorities. The US State Department's *Country Report on Human Rights Practices* – (released 11 March 2008) states that:

..The government tightly controlled the practice of Islam, and official repression in the XUAR targeted at Uighur Muslims tightened in some areas. Regulations restricting Muslims' religious activity, teaching, and places of worship continued to be implemented forcefully in the XUAR. The government continued to repress Uighur Muslims, sometimes citing counterterrorism as the basis for taking action that was repressive. XUAR authorities detained and arrested persons engaged in unauthorized religious activities. The government reportedly continued to limit access to mosques, detain citizens for possession of unauthorized religious texts, imprison citizens for religious activities determined to be "extremist," force Muslims who were fasting to eat during Ramadan, and confiscate Muslims' passports in an effort to strengthen control over Muslim pilgrimages. In addition the XUAR government maintained the most severe legal restrictions in China on children's right to practice religion. In recent years XUAR authorities detained and arrested persons engaged in unauthorized religious activities

and charged them with a range of offenses, including state security crimes. Xinjiang authorities often charged religious believers with committing the "three evils" of terrorism, separatism, and extremism. XUAR authorities prohibited women, children, CCP members, and government workers from entering mosques.

...In addition to the restrictions on practicing religion placed on party members and government officials throughout the country, teachers, professors, and university students in the XUAR were sometimes not allowed to practice religion openly. A local party secretary, Zhang Zhengrong, reportedly called on schools to strengthen propaganda education during Ramadan and to put a stop to activities including fasting and professing a religion. The Kashgar Teachers College reportedly implemented a series of measures to prevent students from observing Ramadan, including imposing communal meals and requiring students to obtain permission to leave campus. School authorities also made students gather for a school assembly at a time of day coinciding with Friday prayers.

...Authorities continued to prohibit the teaching of Islam to elementary and middle school-age children in some areas, although children studied Arabic and the Koran without restriction in many others. Local officials stated that school-age children may not study religion or enter mosques in the XUAR.

93. According to the US Department of State *International Religious Freedom Report 2008* (released 19 September 2008) (<http://www.state.gov/g/drl/rls/irf/2008/108404.htm>):

XUAR authorities continued to restrict Muslim religious activity, sometimes citing counterterrorism as the basis for taking repressive action. In recent years XUAR authorities detained and formally arrested persons engaged in unauthorized religious activities and charged them with a range of offenses, including state security crimes. They often charged religious believers with committing the "three evils" of terrorism, separatism, and extremism. Because authorities often did not distinguish carefully among those involved in peaceful activities in support of independence, "illegal" religious activities, and violent terrorism, it was often difficult to determine whether particular raids, detentions, arrests, or judicial punishments targeted those peacefully seeking political goals, those seeking to worship, or those engaged in violence.

The Government reportedly continued to detain Uighur Muslim citizens for possession of unauthorized religious texts, imprison them for religious activities determined to be "extremist," and prevent them from observing certain sacred religious traditions. Compared to other provinces and autonomous regions, the XUAR government maintained the severest legal restrictions on a child's right to practice religion, and XUAR authorities in a few areas prohibited women, children, CCP members, and government workers from entering mosques. Tight controls on religion in the XUAR reportedly affected followers of other religions as well.

The Government of the XUAR often prohibited public expressions of faith by teachers, professors, and university students, including during Ramadan. Some local officials reportedly called on schools to strengthen propaganda education during Ramadan and put a stop to activities including fasting and professing a religion.

94. Referring to the policy of assimilation and restriction of the local language use in Xinjiang, the Human Rights in China 2007 report *China: Minority Exclusion, Marginalization and Rising Tensions* comments that:

While ...the XUAR maintain majority ...Uyghur populations ...there have recently been significant changes in the ratios. Population transfers have an adverse effect on minority groups' opportunities to benefit from economic development, and are a major source of

cultural integration and assimilation in these regions. ...In XUAR, Han and Uyghurs make up 41 per cent and 44 per cent of the provincial population respectively. (p.24)

...Given the growth of Mandarin use in schools, businesses and public forums, minority children have limited opportunities to become fluent in their own language. ...Uyghur languages are increasingly restricted to home use, given their decreasing use in the public domain....In XUAR, a Uyghur activist reported that the Uyghur language had been banned in schools throughout the region... (p.27)

95. A New York Times Article states:

<http://www.nytimes.com/2008/10/19/world/asia/19xinjiang.html?pagewanted=2>

To be a practicing Muslim in the vast autonomous region of northwestern China called Xinjiang is to live under an intricate series of laws and regulations intended to control the spread and practice of Islam, the predominant religion among the **Uighurs**, a Turkic people uneasy with Chinese rule.

The edicts touch on every facet of a Muslim's way of life. Official versions of the Koran are the only legal ones. Imams may not teach the Koran in private, and studying Arabic is allowed only at special government schools. Two of Islam's five pillars — the sacred fasting month of **Ramadan** and the pilgrimage to Mecca called the hajj — are also carefully controlled. Students and government workers are compelled to eat during Ramadan, and the passports of Uighurs have been confiscated across Xinjiang to force them to join government-run hajj tours rather than travel illegally to Mecca on their own. Government workers are not permitted to practice Islam, which means the slightest sign of devotion, a head scarf on a woman, for example, could lead to a firing.

The Chinese government, which is officially atheist, recognizes five religions — Islam, Protestantism, Catholicism, Taoism and Buddhism — and tightly regulates their administration and practice. Its oversight in Xinjiang, though, is especially vigilant because it worries about separatist activity in the region. Some officials contend that insurgent groups in Xinjiang pose one of the biggest security threats to China, and the government says the “three forces” of separatism, terrorism and religious extremism threaten to destabilize the region. But outside scholars of Xinjiang and terrorism experts argue that heavy-handed tactics like the restrictions on Islam will only radicalize more Uighurs. Many of the rules have been on the books for years, but some local governments in Xinjiang have publicly highlighted them in the past seven weeks by posting the laws on Web sites or hanging banners in towns. Those moves coincided with Ramadan, which ran from September to early October, and came on the heels of a series of attacks in August that left at least 22 security officers and one civilian dead, according to official reports. The deadliest attack was a murky ambush in Kashgar that witnesses said involved men in police uniforms fighting each other.

The attacks were the biggest wave of violence in Xinjiang since the 1990s. In recent months, Wang Lequan, the long-serving party secretary of Xinjiang, and Nuer Baikeli, the chairman of the region, have given hard-line speeches indicating that a crackdown will soon begin. Mr. Wang said the government was engaged in a “life or death” struggle in Xinjiang. Mr. Baikeli signaled that government control of religious activities would tighten, asserting that “the religious issue has been the barometer of stability in Xinjiang.”

Anti-China forces in the West and separatist forces are trying to carry out “illegal religious activities and agitate religious fever,” he said, and “the field of religion has become an increasingly important battlefield against enemies.” Uighurs are the largest ethnic group in Xinjiang, accounting for 46 percent of the population of 19 million. Many say Han Chinese, the country's dominant ethnic group, discriminate against them based on the most obvious differences between the groups: language and religion.

The government restrictions are posted inside mosques and elsewhere across Xinjiang. In particular, officials take great pains to publicize the law prohibiting Muslims from arranging their own trips for the hajj. Signs painted on mud-brick walls in the winding alleyways of old Kashgar warn against making illegal pilgrimages. A red banner hanging on a large mosque in the Uighur area of Urumqi, the regional capital, says, "Implement the policy of organized and planned pilgrimage; individual pilgrimage is forbidden."

Critics say the government is trying to restrict the movements of Uighurs and prevent them from coming into contact with other Muslims, fearing that such exchanges could build a pan-Islamic identity in Xinjiang. About two years ago, the government began confiscating the passports of Uighurs across the region, angering many people here. Now virtually no Uighurs have passports, though they can apply for them for short trips. The new restriction has made life especially difficult for businessmen who travel to neighboring countries. To get a passport to go on an official hajj tour or a business trip, applicants must leave a deposit of nearly \$6,000.

Treatment of Chinese Muslim Nationals upon return to China

96. In a May 2006 DFAT advice on the return of members of Uighur associations to China included information on the likelihood of Uighurs being monitored in Australia (and this may be applicable to Huis):

A.1. It is not possible to say definitively how Chinese authorities would treat a particular individual who returned to China after being involved in a Uighur group in Australia. It is likely that the Chinese authorities seek to monitor Uighur groups in Australia and obtain information on their membership and supporters. On return to China, it is likely that the authorities would at least put such people under surveillance and might detain them for interview.

Whether the person would face more serious consequences could be influenced by whether China perceived the person's activities outside of China as amounting to criminal activities. China regards separatist activities (eg calling for Xinjiang's independence from China) as criminal, regardless of whether the person was in China or in another country when he or she carried out such activities. In determining what constitutes separatist activity, China does not make a significant distinction between non-violent political calls for Xinjiang independence and advocacy of violence (although the latter would likely attract more severe punishment).

If the Chinese authorities establish that the person has been in contact with any of the four East Turkistan organisations which China considers to be terrorist organisations (the East Turkistan Liberation Organisation, the East Turkistan Islamic Movement, the World Uighur Youth Congress and the East Turkistan Information Centre), it is likely that the Chinese authorities would consider that the individual has been involved in criminal activities. The use of "East Turkistan" in naming an organisation would be perceived by China as indicating that an organisation has separatist intentions.

Depending on the level of the individual's involvement in Uighur organisations, if on return to China the individual renounced his or her previous political sentiment and promised to cease any political activity, the Chinese authorities might act more leniently – for example, the authorities might interview the person and possibly put him or her in administrative detention (re-education through labour) for a period. On the other hand, if the individual continued to be politically active, he or she would likely face more serious consequences.

A.2. As noted above, the consequences for the individual on return to China would be related to his or her level of involvement with the organisation outside of China, as well as the individual's behaviour on return to China. The more involved the individual had been in a Uighur organisation outside of China, the more likely that China became aware of the individual's activities (with repercussions as outlined above)

(DIAC Country Information Service 2006, *Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006).

97. On monitoring Chinese nationals overseas, Amnesty International in Canada reported in June 2005 that:

The China research team at our international secretariat has informed us that while they do not have verifiable evidence that the Chinese authorities monitor the activities of Chinese activists overseas; including Uighur and Tibetan nationalists, political dissidents and Falun Gong practitioners; it is their view that it is highly likely that monitoring takes place (Amnesty International Canada 2005, *Amnesty International concerns on Uighur asylum seekers and refugees*, June, p.4).

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FINDINGS AND REASONS

99. The Tribunal finds that the applicant is a citizen of the People's Republic of China based on the evidence given by the applicant at the hearing and photocopied pages of his Chinese passport submitted to the Tribunal and will assess his claims on this basis. The Tribunal finds that the applicant is outside his country of nationality. There is no evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality.
100. The Tribunal accepts that the applicant's name is [deleted:s.431(2)] and he was born on [date of birth deleted: s.431(2)]. The Tribunal accepts that he is a Hui from Xinjiang Province (XUAR) in China. In considering the applicant's claims the Tribunal accepts that the applicant is a Muslim. The Tribunal accepts that the applicant has been attending mosque in Australia regularly since January 2008.
101. The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at paragraph 196). However, the

Handbook also states (at paragraph 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".

102. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
103. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true. (see *MIMA v Rajalingam* (1999) 93 FCR 220).
104. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v Milgea* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
105. In considering the applicant's claim that he faces the risk of persecution if he returns to China now or in the foreseeable future for reasons of his religion, ethnicity or political belief the Tribunal has had regard to the country information. The country information indicates that there is freedom of religion in China. However, the country information also indicates that the practical reality is that freedom of religion is conditional on a number of factors. The Tribunal accepts the country information that the authorities in Xianjiang Province in China are restrictive in their attitude to the free expression of religious beliefs, particularly in relation to Muslims and those persons who contravene particular requirements can be detained and harassed. The Tribunal accepts that policies implemented by the local government in Xianjiang Province have resulted in persons of Hui ethnicity being discriminated against and harmed. The Tribunal accepts that the applicant was seriously affected by government policies and practices which inhibited his ability to practise his religion freely or to learn the culture and language because of his Hui ethnicity.

The credibility of the applicant

106. At the hearing the Tribunal expressed its concerns with some of the applicant's evidence and told the applicant that this was relevant because inconsistencies and omissions might suggest that the applicant was not a witness of truth.
107. The Tribunal accepts that the applicant was anxious and nervous during the hearing and he had difficulty understanding the questions. The Tribunal accepts that the applicant had difficulty understanding the interpreter in the hearing.
108. The Tribunal accepts the evidence contained in psychological report that the applicant had difficulty answering questions, that he had difficulty in expression and required prompting for details and that he had difficulty concentrating and remembering times and events. The Tribunal also accepts the evidence contained in psychological report that the applicant is too scared to talk about his experiences out of fear.

109. The Tribunal has considered the applicant's evidence contained in his response to the Tribunal of [date deleted: s.431(2)] July 2008. The Tribunal accepts that the applicant was not given the opportunity by his migration agent to check information contained in statements and applications provided to the Department and to the Tribunal. The Tribunal accepts that the inconsistencies and omissions in the applicant's evidence identified by the Tribunal at the hearing were the result of incorrect statements and information provided to the Department and to the Tribunal by the first appointed migration agent and possibly compounded by persons who attempted translation of the applicant's evidence written in Chinese. Accordingly, the Tribunal accepts the evidence provided by way of explanation to the Tribunal in his statement of [date deleted: s.431(2)] July 2008 and it does not draw any adverse inference on matters which the Tribunal considered might be inconsistencies and omissions in the applicant's evidence at hearing. In making its findings in relation to the applicant's claims, the Tribunal places no weight on evidence which it considered at the Tribunal might be inconsistent or which it considered might have been omitted.
110. Having considered the evidence as a whole including his evidence at the hearing, his applications and his written submissions, supported by documentary evidence, the Tribunal finds the applicant to be a credible witness.
111. The applicant's claim, at the time he lodged his application for a protection visa, is that he might be killed if he returned to China. According to Chinese laws, people like him who fled China would be regarded as being disloyal to the country. His name was on police records and he had bribed the officials to get his passport. It would also be reported back that he had attended a lecture by Rebiya Kadeer. She is regarded by the Chinese government as a terrorist, so he might be regarded as a terrorist. The applicant also claimed that he would be persecuted because he is Hui Muslim. The applicant claims that it is impossible to return to China because he would be arrested and detained and possibly hurt or killed.
112. The Tribunal accepts that the applicant obtained a passport in August 2007 and visited Singapore, Malaysia and Thailand as he was advised that this would be viewed favourably if he should seek a visa to Australia. The Tribunal accepts that the applicant bribed the authorities in order that he could obtain his passport and his visas. The Tribunal accepts the applicant's evidence as to how he obtained his passport and what information he gave to his agent in order to obtain the passport and his visas. The Tribunal also accepts the applicant's evidence in relation to how he came to be in possession of a photocopy of his passport.
113. The Tribunal accepts that the applicant and his father were arrested and detained in 1989, 1997, 2003 and 2006 and that his father was also detained on some of these occasions. The Tribunal accepts the applicant's evidence that he and his father were beaten by the authorities when they were detained and that they were required to sign forms which said that they would not undertake anti-government actions. The Tribunal also accepts that between arrests and detentions the applicant was the subject of attention by the police and local authorities and that he was often questioned and taken to a local police station. The Tribunal accepts that the applicant and his father were released from detention upon the payment of bribes by family members. The Tribunal accepts that the applicant sold his house and moved away to escape persecution and attention.
114. The Tribunal accepts that the applicant's mother died whilst he and his father were arrested and detained in 1987. The Tribunal accepts that the applicant's father became mentally ill as a result.

115. The Tribunal accepts that the applicant's wife has been harassed and pressured by the local authorities and police to reveal to them his whereabouts and requests that he return to China to answer complaints against him in court. The Tribunal accepts that the applicant has been required to pay a bond for his visit to Australia and that this may now be forfeited because he has not returned, together with the fact that funds in the bank accounts of himself, his father and his employer have been frozen because of his actions in not returning to his China.
116. The Tribunal accepts that the applicant suffered from discrimination in education in China for his ethnicity or religion. The Tribunal accepts that the applicant was suspended for reasons of him practising his religious beliefs whilst he was at high school
117. The Tribunal accepts the applicant's evidence in relation to his escape from the tour group in Australia and in befriending [Person 2] and her husband, [name deleted: s.431(2)].
118. The Tribunal accepts the evidence of the psychologist from the Trans-cultural Mental Health Service as to the effects that the persecution, arrest and detention has had upon the applicant. The Tribunal accepts that the applicant is also seeing a doctor for his psychological problems caused by his treatment at the hands of the Chinese authorities before he left China.
119. The Tribunal accepts that the applicant was able to use his own passport to exit China as he had bribed officials in order to ensure that his exit would not be detected. The Tribunal accepts that applicant's passport and ID card were held by the tour guide when he arrived in Australia.
120. The Tribunal accepts that Huis can find employment difficult to obtain in Xianjiang Province because of their ethnicity. The Tribunal is not satisfied that the applicant suffered serious harm in employment, as the evidence before it does not suggest that he was denied the right to employment.
121. There are significant ongoing human rights abuses against Huis and Muslims in Xianjiang Province. The country information before the Tribunal indicates that the authorities may characterise those engaged in peaceful nationalistic or cultural activities as Hui or Uyghur terrorists and they may impute terrorist or separatist intentions to peaceful political or cultural activities.
122. The Tribunal is satisfied that the Chinese authorities monitor Hui and Uyghur nationals in Australia. The Tribunal accepts that the applicant might be considered to be a supporter of Hui or Uyghur groups by reason of attending the lecture by Rebiya Kadeer in February 2008. The Tribunal has considered whether the applicant has become involved in these activities for the purpose of strengthening his claim to be a refugee. The Tribunal accepts that the applicant arrived in Australia alone and sought out local Uyghurs and has become involved with a Uyghur group. The Tribunal accepts that it is plausible that a young Hui on arrival in Australia might connect with local Uyghurs and hold or develop political views in relation to the human rights of the Huis or Uyghurs in Xianjiang Province. The Tribunal accepts that the applicant has participated in anti-Chinese government activities in Australia with a local Uyghur group and that participation in these activities would bring him to the attention of the authorities should he return to China.
123. The Tribunal is of the view that the applicant's motives in becoming involved with local Huis and Uyghurs in Australia and developing political views in relation to the human rights of the Huis and Uyghurs in Xianjiang Province is activity undertaken not only to enhance his claims

to refugee status, but also to express his views in relation to the treatment of Huis and Uyghurs in Xianjiang Province.

124. The Tribunal accepts the applicant's evidence that he has been attending mosque in Australia on a weekly basis since he arrived in Australia as he is a devout Muslim intent on practising his religion.
125. Section 91R(3) requires a decision maker to disregard any conduct engaged in by the person in Australia unless the decision-maker is satisfied that the conduct was otherwise than for the purpose of strengthening the person's claim to be a refugee. If the Tribunal is unable to make finding with certainty it must give the applicant the benefit of the doubt. As Tribunal is unable to be satisfied with certainty that the applicant's conduct in Australia was "otherwise than for the purpose of strengthening his claim to be a refugee", it gives him the benefit of the doubt. Section 91R(3) of the Act is not enlivened.
126. Pursuant to section 91R(1)(a) of the Act the claimed fear of being persecuted must be for reasons of race, religion, nationality, membership of a particular social group or political opinion. The reason must be the essential and significant reason or the reasons must be the essential and significant reasons for the persecution.
127. The Tribunal will consider the applicant's claim that he has a well-founded fear of being persecuted for reasons of his Hui ethnicity and Muslim religion and his political views. The applicant claims that he is a refugee on the basis of his Hui ethnicity and Muslim religion and his political views.
128. The Tribunal accepts that the applicant fears returning to China and accepts that the applicant fears that he will be killed, beaten or be detained by the authorities because of his Hui ethnicity and Muslim religion and his political views.
129. The Tribunal accepts that he was questioned, arrested and detained by organs of the Chinese government for reasons of his Hui ethnicity and Muslim religion and his political views and that there is a real chance that he will be persecuted for reasons of his Hui ethnicity and Muslim religion and his political views. The Tribunal also accepts that the applicant might be persecuted for reasons of having lodged a protection visa in Australia.
130. The Tribunal accepts that the applicant departed China for the reasons he has claimed.
131. The Tribunal is satisfied that as a consequence of his activities in Australia the applicant could be regarded as a separatist in China. In light of the country information, the Tribunal is satisfied that there is a real chance that the applicant would be subject to serious harm amounting to persecution, including arrest and detention for reasons of his political opinion as well as his Hui ethnicity and Muslim religion if he were to return to China within the reasonably foreseeable future.
132. The Tribunal is satisfied that the applicant was persecuted for reasons of his Hui ethnicity and Muslim religion. The Tribunal is satisfied that the applicant has been harmed in the past for reasons of his Hui ethnicity and Muslim religion. The Tribunal accepts as true that the applicant has been persecuted in China and that there is a real chance that he will be persecuted in China if he returns there. The Tribunal accepts that he cannot or will not return to China because he fears being persecuted there, now or in the reasonably foreseeable future, due to his political opinion as well as his Hui ethnicity and Muslim religion.

133. The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of China, other than his province. As the applicant may be detained upon his return to China for his activities in Australia, or to be sought out by Chinese authorities, The Tribunal is satisfied the applicant has a well-founded fear in relation to the country as a whole.
134. The Tribunal finds that the applicant was persecuted or discriminated against because of his Hui ethnicity and Muslim religion in China. The Tribunal accepts that he has been adversely affected because of his Hui ethnicity and Muslim religion.
135. At the time of decision the Tribunal finds that there is a real chance that the applicant will face serious harm for reasons of his political opinion as well as his Hui ethnicity and Muslim religion, either now or in the reasonably foreseeable future, if he returns to his country.
136. The Tribunal finds that the applicant has a well-founded fear of being persecuted in China for reasons of his political opinion as well as his Hui ethnicity and Muslim religion.
137. For the above reasons the Tribunal is satisfied, on all the evidence before it, that the applicant has a well-founded fear of being persecuted within the meaning of the Convention.

CONCLUSIONS

138. 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

139. 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.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. prrt44