0807987 [2009] RRTA 591 (9 June 2009)

DECISION RECORD

RRT CASE NUMBER:	0807987
DIAC REFERENCE(S):	CLF2008/114311
COUNTRY OF REFERENCE:	Russian Federation
TRIBUNAL MEMBER:	Giles Short
DATE:	9 June 2009
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship [in] October 2008 refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter dated [in] October 2008 and the application for review was lodged with the Tribunal on 21 November 2008. I am satisfied that the Tribunal has jurisdiction to review the decision.

2. The applicant is a citizen of the Russian Federation. He arrived in Australia in June 2008 and he applied for a Protection (Class XA) visa [in] July 2008.

RELEVANT LAW

3. 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 Part 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.'

4. 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.

5. 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.'

6. 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.

7. 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.

8. 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.'

9. '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)

10. 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.

11. 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.'

12. 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

13. The Tribunal has before it the Department's file CLF2008/114311 relating to the applicant. The applicant appeared before the Tribunal by video conference [in] January 2009 to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Russian and English languages. The applicant was represented by [name deleted in accordance with s.431(2) of the Migration Act 1958 as it may identify the applicant, a registered migration agent. [representative's name deleted: s431(2)] attended the hearing.

The applicant's original application

14. The applicant is aged in his early forties. According to the details in his original application he had lived all his life in Ulan-Ude in Buryatia, one of the republics within the Russian Federation, before coming to Australia. He said that his family name was [name deleted: s.431(2)] He said that he belonged to the Soyot ethnic group and that he was a Buddhist by religion. He said that he had completed a degree as a Bachelor of Sport Education (Boxing) in 1996 while working as a turner at an [company type deleted: s431(2)] factory and as a trainer-coach at a sports club. He said that from 1997 until 2004 he had been director and coach at a private fitness centre. He said that he had continued living in Ulan-Ude until 2006.

15. In a statement accompanying his original application the applicant said that he was a member of the 'Nizhnenovgorodskoy organization "The Committee against tortures"', and that he had taken part in meetings and protest actions against the violation of human rights. He said that his activity had attracted the attention of 'punitive organs' and they had 'faked a criminal action' against him. He said that the militia (police) had beaten him, tortured him and threatened to kill him. He said that he had spent three months in gaol.

16. The applicant said that he had also been discriminated against because he was a Soyot. He said that the Soyots were a little nation in the north of the Republic of Buryatia and that they

had been oppressed since the occupation of Siberia by the Russians. He said that they were not allowed to live in cities and they could not get medical services or education. He said, however, that he had received a higher education due to his success in sport.

17. The applicant said that due to the prosecution he had lost his business and his flat. He said that in order to pass Customs and the frontier he had changed his name to his mother's family name and had paid money for a passport and other documents. He said that he had come to Australia on a student visa because 'there were no other opportunities'. He said that he could have been arrested at any time. He said that although he had left Russia through Mongolia and Korea he had not asked for protection in either country. He said that Mongolia was not democratic and 'they have a treaty with Russia about extradition of deserters' and that Korea did not give refuge to anybody and 'besides the mentality is different and it would be difficult for me to assimilate'.

18. The applicant attached a document together with a translation which is described as a 'court decision' delivered in Ulan-Ude in April 2005. It says that [in] April 1999 the applicant (named as [name deleted: s.431(2)]) rented a basement in [Organisation A] which he used as an athletic hall and that he purchased training and athletic equipment. It says that [in] October 2004 he removed the property (including the athletic equipment) to another address. It says that [in] October 2004 [Person 1], demanded the return of the equipment but that the applicant refused because all the property had been purchased by him. It says that a criminal case was instituted against the applicant [in] December 2004 according to Article 158.1 of the Criminal Law but the case was abandoned [in] March 2005 because it was impossible to prove that all the equipment had been acquired by the [Organisation A].

19. In his answers to questions 41 to 45 on Part C of the application form (seeking his reasons for claiming to be a refugee) the applicant said that he had left Russia because his life had been threatened or endangered and he had been left without means of survival. He said that his apartment and his business or sports centre had been confiscated. He said that the bank had confiscated his apartment which had been collateral for the business which had been confiscated by the authorities.

20. The applicant said that he feared that if he returned to Russia he would be killed. He said that the Prosecutor's Office would put him in gaol and that in gaol there were a variety of means to get rid of someone. He said that he knew lots of other people who had suffered. He said that he had never committed any crimes but the Prosecutor's Office had imprisoned him to improve their statistics. He said that he had written to many authorities in Russia including the Attorney-General's Department in Moscow concerning his persecution but they had never replied to his letters nor had they tried to stop the persecution.

21. The applicant said in Schedule A to Part C of the application form that [Person 1] had contacted the Prosecutor's Office in April 2004 and that the Prosecutor's Office had accused him of stealing property. He said that the court had dismissed the allegation 'but the prosecution continued' In answer to question 6 on Part B of the form he said that in January 2005 he had been charged and placed in gaol. He said that he had been acquitted 'but the charges still stand' or that he had been acquitted once but that 'the other charges' were still open.

The applicant's evidence given to the Department

22. A note on the Department's file states that the applicant attended an office of the Department [in] July 2008 and talked to a Russian-speaking officer there. He said that he had had his own personal training business in Russia and that he had hired a sports hall from a local [organisation], signing a contract with [Person 1]. He said that as his business had been going well [Person 1] had wanted a share of the profits. The applicant said that rather than pay more money to [Person 1] he had torn up the contract and had moved his sports equipment back to his home. He said that he had then been visited by the militia who had repossessed the equipment and had told him that [Person 1] had accused him of stealing it.

23. The applicant said that the matter had gone to court and he had won but his equipment had not been returned and he had needed the equipment to continue working. He said that he had frequently been held up by the militia and released with no precise allegations. He said that he believed that this had been happening, and that his equipment had not been returned, because [Person 1] was a close friend of the local prosecutor. He said that the local prosecutor had recently been successful in getting a political appointment. The applicant said that he had also been beaten up and harassed by a gang run by the son of [Person 1].

24. The applicant was interviewed by the primary decision-maker in relation to his application [in] September 2008. The applicant confirmed his name as given in his passport. He said that he had changed his name in 2007. He said that he had been issued with a new internal passport in the new name. He said that he had no documents showing his previous name. The applicant said that he had been assisted by an interpreter when he had completed his original application and that there were no mistakes which he wished to correct. He said that he had travelled by bus to Mongolia and from there by air to Australia.

25. The applicant said that he had not been working at the time he had applied for his Australian student visa. He said that he had paid $US5,000 for the English language course in which he had been enrolled. He said that he had also paid 10,000 roubles to the agent in Vladivostok who had arranged the visa and 5,000 to 6,000 to a doctor for the necessary medical checks. He said that he had been able to pay for this visa because he had had savings from when he had been working. The applicant said that he had had his own business but this had ceased in around 2005. He said that he had obtained a false document from a friend to say that he was working in order to obtain the visa. He said that the bank statement which he had produced had been genuine.

26. The applicant confirmed that he claimed that he had been charged with theft in 2004 and that he had spent three months in prison. He said that he could not remember when this had been. He then said that it had been in July or August but he could not remember the year. He said that he thought that it had been in 2006 or 2007. He said that he had been in prison because he had been charged. The primary decision-maker noted that the document which the applicant had produced said that he had been charged in 2004 and acquitted in 2005. The applicant said that in Russia it was possible to be put in prison even after you had been acquitted. He said that he had been released from prison and then he had gone to court. He said that the court had again acquitted him. He then said that the court had only acquitted him once but he repeated that he had been imprisoned after he had been acquitted. He said that the case had been fabricated by the Prosecutor's Office.

27. The applicant said that after he had been released from prison he had written letters to the local prosecutors and district prosecutors and even to the Committee of Physical Culture and

Sport because his property - boxing gear and the like - had been confiscated in 2004. He said that he had been renting the hall from [Organisation A] but everything else had belonged to him. He said, however, that they had come and had taken everything away. He said that even when he had been acquitted nothing had been returned to him. He said that the Prosecutor's Office had created a case out of nothing. The applicant said that they had taken his business away, and he had lost his flat which had been mortgaged. He said that they had continued to harass him.

28. The applicant said that he had been in touch with an organisation in Nizhniy Novgorod as he had said in the statement accompanying his original application but he had been involved in meetings in Ulan-Ude relating to events in that city. He referred to one incident in which the police had fired on some young men, killing one of them. He said that this was the sort of incident they had discussed. He said that no one had been punished for this incident. The applicant said that the organisation in Nizhniy Novgorod had met to talk about these sorts of incidents as well.

29. The applicant said that there had been no formal connection between the group to which he had belonged in Ulan-Ude and the organisation in Nizhniy Novgorod but he had been in contact with the lady in charge of that organisation, [name deleted: s.431(2)], by telephone and on the Internet. He said that there had been three people besides himself involved in the group in Ulan-Ude The applicant said that he had started the group in Ulan-Ude in 2004, before he had been charged, but he said that he had always been against the system in Russia and had written letters of complaint to the authorities and things like that. He said that this was how he had got noticed because people had thought that there was someone high up protecting him.

30. The primary decision-maker referred to the fact that the applicant's visa had been issued [in] May 2008 but that he had not left Russia until [date deleted: s.431(2)] June 2008. The applicant claimed that he had delayed his departure because the agent who had obtained his visa had told him that his enrolment in his course had yet to be confirmed. The primary decision-maker put to the applicant that he would have required a confirmed enrolment before his visa would have been issued. The applicant then said that the agent had had all the documents and he had not been able to buy the ticket until the agent had sent all the paperwork back to him.

31. The applicant confirmed that he claimed that if he returned to Russia he would be put in gaol and killed. He said that people simply disappeared in Russia He said that this would happen because he was a big problem for the Prosecutor's Office. He repeated that the case against him was still active. The applicant referred to the fact that his father was a well-qualified [type deleted: s431(2)] engineer: he put together [machines deleted: s431(2)]. He said that his father's salary was $US200 a month whereas the Mayor of the city, whose official salary was $US500, was able to buy two Landcruisers a month, worth $US80,000 each. He said that this was how it worked in Russia.

The applicant's evidence at the hearing before me

32. [In] January 2009 the applicant's representative sought that the hearing scheduled [in] January be postponed on the basis that the applicant was seeking further documents from Russia The applicant's representative was advised that I had not agreed to the postponement of the hearing but that the documents which the applicant was seeking could be discussed at the hearing.

33. At the beginning of the hearing before me the applicant's representative reiterated his request that the hearing be adjourned because the applicant was still waiting for some documents. I stressed to the applicant that this was his opportunity to give evidence and to present arguments in relation to his application for review. I noted that if he wanted additional time to obtain documents he could ask for time and we could discuss the documents which he was seeking. However the first thing I needed to do was to take evidence from him in relation to his claims and I indicated that I did not believe that he needed documents in order to give that evidence. The applicant said that he wished to proceed with the hearing on the basis that all he needed to do at the hearing was to give oral evidence, not to produce any documents. He said that he was seeking two documents stating that he had been in prison and a third document stating that he had been receiving treatment for trauma as result of what had happened to him in prison.

34. The applicant said that he had had the assistance of an interpreter when he had prepared his original application to the Department of Immigration for a protection visa. He said that he thought that all the answers in that application were correct and complete. He said that the statement accompanying that application had been translated in Russia from something he had written in Russian. He said that the statement accurately reflected his claims for refugee status. The applicant's representative said that in the preceding two days the applicant had prepared a further statement which had been translated and which he wished to tender. I noted that this document should have been provided to the Tribunal prior to the hearing. The applicant's representative said that he had become aware of the statement only 12 hours previously. He said that he would fax the statement to the Tribunal later that day.

35. The applicant confirmed that he had been born in Ulan-Ude, the capital of Buryatia and that he was from the Soyot ethnic group. He said that this was on his father's side. He confirmed that he had completed a Bachelor of Sport Education degree in 1996 and that he had subsequently started his own fitness centre in Ulan-Ude. He said that this had been in 1999. He said that this had been located in [Organisation A]. He said that the business had operated at [Organisation A] until 2004. He said that the business had not continued at any other location after that.

36. The applicant confirmed that he had been falsely accused of stealing sports equipment from [Organisation A]. I noted that he had produced a court document which said that he had been charged [in] December 2004 and that the case against him had ended [in] March 2005. The applicant said that it had not finished. He said that the court had decided that he was not guilty but the prosecutors had not closed the matter. I noted that the court document which the applicant had produced said that the case had ceased [in] March 2005 because it had been impossible to prove that all the equipment had been acquired by [Organisation A] The applicant said that the prosecution had lodged more documents after that and they had wanted to continue, maybe to appeal or something.

37. I noted that the document suggested that the court had indicated that this was a civil matter and not really a criminal matter at all. The applicant said that according to Article 158 of the Criminal Law of the Russian Federation, which related to stealing in very big quantities, it was a criminal matter. I noted that the document which the applicant had produced said that he had been charged under this Article but it said that the case had ceased [in] March 2005. It said that the court had explained to [Person 1], that the matter might be tried in a civil trial. The applicant said that he was quite confused. I noted that I was just referring to the document which he himself had produced. The applicant said that he did not have a copy of the document. I asked the applicant if he had a copy of the documents which he had

submitted with his original application. The applicant's representative said that the applicant had submitted a lot of the papers himself and that he had only been partially involved in the application at the time. He said that he did not have a full set of the documents which had been lodged by the applicant. He said that he had been proposing to wait until the end of the matter when he could make a submission on this matter.

38. I noted again that the document to which I was referring was a document which the applicant himself had produced to the Department relating to the court case which had been brought against him. I noted that the document said that the case was a criminal case brought under Article 158 of the Criminal Law. It said that the charge had been brought [in] December 2004 and that the case had ceased [in] March 2005. As we had discussed it said that the case had ceased because it had been impossible to prove that all the equipment had been acquired by [Organisation A]. I asked the applicant if there was anything about the document which he said was not correct. The applicant said that he did not remember exactly but he remembered that there had been this matter which had ceased but then later the prosecutor had wanted to restart the case with some new evidence or something.

39. I noted that the applicant had said in his original application that he had been put in gaol in January 2005. The applicant said that this was not correct. He said that he had been in gaol from [date deleted: s.431(2)] December 2004 until [date deleted: s.431(2)] April 2005. I noted that this would suggest that he had spent four months in gaol. The applicant agreed. I noted that previously he had said that he had spent three months in gaol. The applicant said that when he had been interviewed by the primary decision-maker he had been under psychological pressure and stress. I noted that I was not referring to what he had said at the interview with the Department but what he had said in the statement accompanying his original application. I noted that he had said that 'I spent in jail 3 months' The applicant said that he had made a mistake. He said that he did not apply to the Department of Immigration every day. I put to him that I thought he would have remembered how long he had been in gaol. The applicant referred again to his psychological situation. The applicant's representative said that he would address this matter also in his submission.

40. The applicant said that this was the only occasion on which he had been put in gaol but after that he had been arrested again. He said that in 2006 he had been charged with resisting arrest. He said that he had not in fact resisted but this had been what he had been charged with. He said that he had not had to appear in court on this charge. He said that he had not in fact been charged with the offence. He said that they had just arrested him and had kept him there. He said that they had talked with him, saying 'Stop your activities', and then they had let him go. He said that on this occasion he had been detained from [date deleted: s.431(2)] September to [date deleted: s.431(2)] October 2006. The applicant said that they had not only kept him there but they had beaten him up. He confirmed that the police had arrested him and had kept him somewhere for over a month but he had not been charged with any offence. He repeated that he had not resisted arrest: he had gone to the police station voluntarily.

41. I noted that since I did not have the new statement which the applicant's representative said that he had made this was the first I had heard of the applicant being arrested in 2006. The applicant said that he had been standing at a bus stop when a police car had approached and a policeman had approached him and had asked him if he would like to go to the police station with them. The applicant said that he had told the policeman that he did not want to do so. He said that they had told him that he would be like a witness for some shooting or something. He said that they had asked him for his identification He said that the majority of

people did not carry their (internal) passports with them and there was no rule in Russia that one had to carry such passports with one unless one was in somewhere like Chechnya or one was a driving a car. He said that because he had not had his passport with him he had had to go with them to the police station.

42. The applicant confirmed that he claimed that they had then kept him at the police station for more than a month. He said that he thought this had happened because of his activity as a member of the Nizhniy Novgorod Committee Against Torture. The applicant confirmed that he claimed that he had been a member of the Committee. I asked him if the Committee had had a branch in Ulan-Ude. He said that they did not have any branches or any territorial restrictions. I put to him that the Committee did have branches, not in Ulan-Ude but in other places (Committee Against Torture, 'General Information', downloaded from http://www.pytkam.net/web/index.php?go=Content&id=279, accessed 13 January 2009). I asked the applicant in what sense he had been a member. He said that he had registered through the Internet. I noted that when he had been interviewed by the primary decision-maker he had said that he had been in contact with the Committee but that the group to which he had belonged had been separate. The applicant repeated that the Committee had not had branches but it had appeared to be separate. He said that all the branches were in the European part of Russia, before the Ural mountains, and that after the Ural mountains there was nothing.

43. The applicant confirmed that he claimed that he had been a member of the Committee and that it was because of his activities as a member of the Committee that he had been arrested in 2006. He said that he had told the Committee Against Torture that he had been arrested for this reason and that the Committee would know all about his case. I noted that the applicant had not produced anything at all from the Committee in support of his application. The applicant said that he did not have many documents. I noted that he had said that he had been in contact with the Committee, that he had registered with the Committee through the Internet and that the Committee knew all about the problems he had had in Ulan-Ude The applicant said that when all the problems had started this Committee had not helped him with anything. He suggested that they could have found some solicitor for him or they could have organised a resistance movement or strike or something. He said that the Committee stated that they helped the victims of torture and injustice so he should have been able to rely on this too.

44. I asked the applicant if he had any objection to the Tribunal contacting the Committee and asking for information about his case. The applicant said that he had no objection and he confirmed that they knew all the details about his case. I noted that what the applicant was saying was quite different from what he had said when he had been interviewed by the Department, namely that he had been in contact with the Committee but that the organisation with which he had been involved had been completely separate. The applicant said that it had been a separate organisation but they had been in contact with the Committee.

45. The applicant confirmed that after the case against him had ended the sports equipment had not been returned to him. He said that this was what he had meant in the statement accompanying his original application when he had said that his business had been confiscated. The applicant said that he had not been able to re-establish his business because although the case had finished the prosecutors had wanted to continue the case because they had said that they had found fresh evidence and on this ground they had not allowed him to take the equipment and this equipment had been required to run the business. I noted that he had had thousands of dollars available to him because he had used this to purchase an

education visa to come to Australia The applicant said that he had thought that if he bought new equipment they could have confiscated it again. I asked the applicant why he had thought that this would occur. The applicant said that this had already happened once so he had not been able to exclude the possibility that it would happen again.

46. I asked the applicant what he had done for a living between April 2005 and June 2008. The applicant said that he had had casual earnings: he had bought cars in Vladivostok and had sold them in Ulan-Ude on several occasions. The applicant confirmed that he had continued living at the same address in [street name deleted: s.431(2)], Ulan-Ude until 2006 and that, as he had told the primary decision-maker, this was his flat. He confirmed that he claimed that the bank had taken his flat because it had been mortgaged. He said that he had not been able to pay the bank the money for the mortgage because he had borrowed money for the equipment which had been confiscated. I noted that as we had discussed the applicant had had thousands of dollars in savings which he had used to pay for the education visa which he had used to come to Australia The applicant said that he had not really had that much money and that after the bank had taken his flat he had lived with friends.

47. I asked the applicant if he had experienced any further problems with the police or the prosecutor's office after the incident he had described when he had been arrested in 2006. The applicant said that he had also been arrested in 2007. I noted that the applicant had not mentioned this to the Department or the Tribunal before. The applicant said that [in] January 2007 the police had come to his home - his friend's place - and had taken him to the police station. He said that they had accused him of keeping marijuana. He said that he had been kept at the police station until [date deleted: s.431(2)] February. He said that they had done this deliberately: they had put the hashish there. He said that they had done all the tests but because he had never used hashish they had had no evidence against him and they had had to let him go eventually.

48. The applicant said that he had been detained from [date deleted: s.431(2)] December 2004 until [date deleted: s.431(2)] April 2005, from [date deleted: s.431(2)] September (not [date deleted: s.431(2)] September as he had said earlier) to [date deleted: 431(2)] October 2006 and from [date deleted: s.431(2)] January to [date deleted: s.431(2)] February 2007. He said that these were the only occasions on which he claimed he had been arrested or detained in Russia. He said that nothing had happened to him after February 2007. I asked the applicant why he said that he feared that he would be put in gaol and killed if he returned to Russia now. The applicant said that the prosecution had some evidence about him. I noted that by his account the prosecution had not done anything about his case since 2005. The applicant said that the prosecution had not done anything but the police had done it on the advice of the prosecution. I noted that the applicant had said that the police had arrested him in 2006 because of his involvement in the Committee Against Torture. The applicant said that this Committee also investigated all the methods where the prosecution was involved as well.

49. I asked the applicant if he was saying that the Prosecutor's Office had also objected to his activities with the Committee Against Torture and they had ordered the police to arrest him. The applicant said that this was correct and that the police had told him this. He said that the prosecution had had an interest in this case but they had not really had any evidence. He said that they had wanted to continue because [Person 1] had been a friend of the Prosecutor of the Republic.

50. I referred to the fact that before the applicant had lodged his application for a protection visa he had talked to a Russian-speaking officer of the Department of Immigration. He had told

her that the dispute over the sports equipment had arisen because [Person 1] had wanted a share of the profits from his business. The applicant said that this was correct. I noted that in the statement accompanying his original application, however, he had said that the law enforcement authorities had fabricated the case against him because of his involvement in the Nizhniy Novgorod Committee against Torture. I put to the applicant that these were two different things.

51. I noted that, as we had discussed, at the Departmental interview he had said that he had had no formal connection with the Nizhniy Novgorod Committee against Torture. The applicant said that he had not met them face to face. I noted that he had told me earlier in the hearing that he had been a member of the Committee. The applicant said that they had communicated through the Internet. I put to the applicant that he had referred at the hearing before me to two occasions on which he claimed he had been arrested and detained, neither of which had been mentioned in his original application. The applicant said that it was the first time he had ever asked for refugee status so he had not known what facts he should give. He said that he had thought this was enough. I noted that the applicant had been assisted by his representative and that there were questions on the application form which it was expected applicants would answer. I put to the applicant that if he raised completely new claims at the hearing before the Tribunal it made it difficult to believe that they were true. The applicant indicated that he understood.

52. I noted the applicant had said that he was obtaining further documents from Russia. The applicant said that he was expecting them. I noted that he had said that two of the documents related to the periods he had spent in prison. The applicant said that these were official documents issued by the authorities in Russia I noted that he had claimed that he had been detained unlawfully. The applicant said that he had been arrested on the basis of a false accusation but they had still detained him and had given him some sort of a paper to say that he had been detained. I noted that if he had been detained lawfully they would have been obliged to bring him before a court (US State Department, *Country Reports on Human Rights Practices for 2007* in relation to Russia, Section 1.d, Arbitrary Arrest or Detention - Arrest and Detention). The applicant said that in Russia they could detain you for 38 days or even more, just to clarify something, and they did not need to bring you before a court.

53. The applicant confirmed that he claimed that on these occasions they had given him a piece of paper to say that he had been detained. I noted that he had said that the other document related to the effects of the treatment he had received in prison. The applicant said that this document was from a hospital clinic in Ulan-Ude. He said that a friend in Ulan-Ude was sending him these documents but that his friend had not sent them yet because part of these documents had to be registered at the Post Office and his friend had been afraid that they would be checked. He said that his friend had been afraid that he would be asked questions.

54. I asked the applicant why he had not simply had the documents scanned and sent to him via the Internet as he had done with the documents he had produced with his original application. The applicant said that the primary decision-maker had told him that originals were required. I noted that I had not told the applicant this and I was the person making the decision on his application. I noted that his representative had told the Tribunal that he was expecting these documents but now he was saying that they had not even been sent yet. The applicant said that he was expecting them: they could be sent to him any day. I put to the applicant that this was not satisfactory: he had been in Australia for seven months but he was saying he was still waiting for these documents. The applicant said that he would call his friend and would ask

him to send him these documents via the Internet. He said that a fortnight would be sufficient.

55. I gave the applicant and his representative until [date deleted: s.431(2)] January 2009 to produce these documents and to make further submissions. The applicant's representative agreed that this was the most appropriate way to proceed. I asked the applicant's representative if there were any matters which he thought we had not covered in the course of the hearing. The applicant's representative referred to the fact that the applicant's father was an ethnic Soyot and he said that this might provide an additional basis for his claims. I asked the applicant whether there was anything further he wanted to say to me before I closed the hearing. The applicant referred again to the fact that the primary decision-maker had told him that originals of the documents on which relied were required and that it was difficult to obtain such originals. I noted again that I would be happy to receive copies of these documents. The applicant's representative said that they would endeavour to provide the documents to the Tribunal as soon as possible but in any event by close of business on [date deleted: s.431(2)] January.

Post-hearing correspondence

56. [In] January 2009 the applicant's representative faxed to the Tribunal the further statement from the applicant to which reference had been made at the hearing the previous day. In that statement the applicant said that he had been a member of the Committee Against Torture since 2002 and that he had repeatedly protested against torture and injustice committed by the police, the Prosecutor's Office and the courts in the Republic of Buryatia. He said that the authorities had insistently asked him to stop his activity in the organisation. He said that he had been arrested on a criminal charge fabricated by the prosecutor and that he had been in prison from [date deleted: s.431(2)] January 2004 until [date deleted: s.431(2)] April 2005. He said that since the investigation had not been able to find any criminality in his actions he had been freed and the criminal case had been closed.

57. The applicant said that he had continued his activity in the organisation. He said that he had been repeatedly summoned to report to the police on invented pretexts and they had conducted interrogations. He said that [in] September 2006 he had been taken to the police station, ostensibly for resisting a police officer, and he had been subjected to physical abuse and beatings there. He said that he had been forced to admit contacts with extremist organisations named 'Russian March' and Patriots of Russia' and 'youth cells of the Communist Party'. He said that the interrogations and abuse had been carried out by a prosecutorial investigator. He said that after he had been released he had had to go to hospital because of the wounds he had received while he had been detained. He said that he had written a statement about what had happened but the Prosecutor's Office had closed the case so it had never got to court.

58. The applicant said that [in] January 2007 he had been arrested at home and had been accused of storing drugs. He said that the police had planted drugs on him and had given false evidence. He said that once again he had been beaten by officials of the prosecutor's office. He said that they had not proved anything and they had been obliged to release him. He said that a Police Major had told him that if he did not stop his activity in the human rights organisation he would have big problems in the future. He said that the Police Major had also promised 'numerous problems for me living in the city' He said that in the course of these events his business and accommodation had been taken away from him, his mother had passed away and his life had been threatened by dangers. He said that his letters to the

Prosecutor-General and the Public Chamber had gone unanswered. He said that he had decided to leave Russia as he could find no protection there.

59. In a submission received [in] January 2009 the applicant's representative stated that the applicant had made all efforts to obtain the documents which he had agreed he would provide to the Tribunal by that date but that he had not been able to do so. The applicant's representative complained that the applicant had not been allowed to 'put his case' at the hearing [in] January 2009 by which he said that he meant that the applicant should have been allowed to put forward in his own words all of the grounds in support of the application before the Tribunal asked him any questions. The applicant's representative also submitted that because the review was *de novo* the fact that a person might or might not have lied to the Department was not relevant to the Tribunal's review.

60. The applicant's representative addressed a number of issues which he said he believed had been raised with the applicant. He said that the applicant had been asked for evidence of where he was born and that he had also been asked where his father was born. No such questions were asked. As referred to above the applicant confirmed that he himself had been born in Ulan-Ude, the capital of Buryatia, and that he was from the Soyot ethnic group on his father's side. The applicant's representative said that the Tribunal had suggested that the applicant's fitness centre had closed down because it was poorly managed. No such suggestion was made. The applicant's representative submitted that whether the applicant had or had not tried to re-establish his business was not relevant to whether the applicant had been the subject of political persecution. With respect, the applicant claimed in the statement accompanying his original application that he had lost his business as a result of the prosecution for stealing the sports equipment and it is therefore clearly relevant to the review whether he was in fact deprived of a livelihood as a result of persecution or whether he could have re-established his business but chose not to do so.

61. The applicant's representative submitted that the fact that the applicant could not remember all the details about the charges which had been brought against him in 2005 and that he could not remember exactly how many days he had been in prison did not mean that he had not been charged or that he had not been in prison. He said that it was the applicant's contention that the charge was a sham and he said that this was why there was little or no documentation about the charge. With respect, the applicant himself submitted with his original application a document in relation to the criminal case which had been brought against him in 2005 which clearly identifies the article of the Criminal Law under which the case was brought although I note that the applicant's representative said that at the hearing that he had not retained a copy of this document when lodging the application.

62. The applicant's representative submitted that the fact that the applicant's claims regarding his arrests in 2006 and 2007 were completely new claims did not mean that they were fictitious but he did not advance any explanation as to why these claims had not been raised before. The applicant's representative referred to the applicant's claim that he was a member of the Committee Against Torture although he also submitted that even if the applicant had not been a member of the Committee Against Torture this would not mean that he had not been subject to political persecution.

63. The applicant's representative submitted (with regard to the Tribunal's questions in relation to how the applicant had supported himself after his business had closed) that 'the applicant's financial position is not a relevant consideration when it comes to deciding whether the applicant was or was not the subject of political persecution'. With respect, as referred to

above, it is relevant to whether the applicant was denied the capacity to earn a livelihood by the closure of his fitness centre and thus to whether he suffered persecution involving 'serious harm' as required by paragraph 91R(1)(b) of the Act.

64. The applicant's representative submitted that a very wealthy individual could be subject to political persecution, a proposition which is undoubtedly true but of no obvious relevance to the present case. The applicant does not claim to be a very wealthy person: he claims that the persecution to which he was subjected included the loss of his business and his flat (because he was unable to pay the mortgage). It is in that context that I asked questions regarding his financial position and how he had supported himself after he claimed his fitness centre had closed because the sporting equipment had not been returned to him. The applicant's representative added that it was the applicant's submission that his flat had been confiscated because of his political views. However the applicant himself has said, as referred to above, that the bank took his flat because he was unable to pay the mortgage.

65. On 3 March 2009 the applicant's representative contacted the Tribunal to advise that the documents which had been meant to be forwarded to the Tribunal by [date deleted: s.431(2)] January 2009 were now available. He subsequently faxed to the Tribunal copies of two documents in Russian, without translations.

66. In the meanwhile, as discussed at the hearing, the Tribunal had asked the Australian Department of Foreign Affairs and Trade (DFAT) to contact the Nizhniy Novgorod Committee against Torture to ask if the applicant had ever been a member of that Committee and, if so, about his activities and any adverse treatment he might have suffered from the authorities. The Vice-chairperson of the Committee, Olga Sadovskaya, informed the Department [in] February 2009 that the applicant had never worked for or been a member of the Committee either under the name [deleted: s.431(2)] or the name [deleted: s.431(2)] (DFAT Report No. 966, dated 23 February 2009).

67. [In] March 2009 the Tribunal wrote to the applicant in accordance with section 424A of the Act inviting him to comment on information that the Tribunal considered would, subject to any comments he might make, be the reason, or a part of the reason, for affirming the decision under review. The applicant's representative responded on his behalf in a submission dated [in] March 2009. Reference is made to the information mentioned in the Tribunal's letter and the response received from applicant's representative so far as relevant below.

68. [In] May 2009 the applicant's representative wrote to the Principal Member of the Tribunal claiming that 'there were a number of procedural errors including a reasonable apprehension of bias' and further that 'it appeared that the Member was acting under dictation'. He asked that I excuse myself from proceeding any further in the matter and that there be a new hearing. The Principal Member responded to this letter [in] May 2009 rejecting the applicant's representative's complaints.

FINDINGS AND REASONS

Alleged legal errors

69. In his submission dated [in] March 2009 the applicant's representative argued that the Tribunal had committed a number of legal errors in the course of the review. He complained that I had conducted 'what can best be described as a Spanish style inquisition of the

applicant' at the hearing and that he, as the applicant's representative, had been 'effectively excluded from the discussion'. He reiterated the view he had outlined in his submission received by the Tribunal [in] January 2009, namely that the applicant had been denied procedural fairness. As referred to above, he submitted that the applicant should have been allowed to put forward in his own words all of the grounds in support of the application before the Tribunal asked him any questions. The applicant's representative also submitted that because the review was *de novo* the fact that a person might or might not have lied to the Department was not relevant to the Tribunal's review.

70. With respect, the complaints made by the applicant's representative reflect his lack of familiarity with the legal framework within which the Tribunal operates. While it is true that the Tribunal's review is a *de novo* review in the sense that the Tribunal is not confined to the material that was before the primary decision-maker nor is it bound by the decision taken by the primary decision-maker, this does not mean that the Tribunal is obliged to disregard what the applicant may or may not have said to the Department. To the contrary, the Secretary of the Department is obliged to give to the Tribunal each document in the Secretary's possession or control that is considered by the Secretary to be relevant to the review of the decision and the Tribunal is required to consider whether it should decide the review in the applicant's favour on the basis of the material before it prior to inviting the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review: see subsection 418(3) and section 425 of the Act. The role of the Tribunal is to determine whether, on the totality of the evidence and other material available to it, it is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention: see *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 555 per O'Connor, Branson and Marshall JJ.

71. It is well-established that proceedings before the Tribunal are not adversarial but inquisitorial in character: see *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63 at [40] per Gleeson CJ, Kirby, Hayne, Callinan and Heydon JJ. In that case the High Court quoted with approval what had been said by the Full Court of the Federal Court in *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591-592 per Northrop, Miles and French JJ:

> 'Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material.'

72. In the present case, not only were the applicant and his representative given every opportunity to put information and submissions to me in support of the applicant's contention that he is a person to whom Australia has protection obligations under the Refugees Convention but I also identified to the applicant in the course of the hearing before me those areas where I had problems with his evidence and the Tribunal wrote to the applicant after the hearing in accordance with section 424A of the Act inviting him to comment on or respond to information that the Tribunal considered would, subject to any comments he might make, be the reason, or a part of the reason, for affirming the decision under review.

73. As referred to above, the applicant's representative complained that it appeared that I was 'acting under dictation', apparently on the basis that the Tribunal's letter had been signed by an officer of the Tribunal rather than by me. As the Principal Member stated in his response to the applicant's representative, this complaint is misconceived: the letter was sent on my instructions. The applicant's representative also complained that the terms in which the letter was cast gave rise to a reasonable apprehension of bias because 'there are statements to the effect that if the RRT does not accept certain claims which have been made by the applicant to the RRT, then the RRT will be refusing the application'. As the Principal Member stated in his response to the applicant's representative, the Tribunal is required by section 424A of the Act to put certain information to the applicant, to ensure, so far as is reasonably practicable, that the applicant understands why the information is relevant to the review and to invite the applicant to comment on or to respond to that information. So far from it being a legal error to write to the applicant in this way, the Tribunal would have fallen into jurisdictional error if it had failed to comply with section 424A.

74. The applicant's representative also complained with regard to the inquiries which the Tribunal had made of the Nizhniy Novgorod Committee against Torture. He complained that in making such inquiries the Tribunal had 'taken up the role of an opponent instead of that of an independent arbiter in this matter' However, as referred to above, it is well-established that proceedings before the Tribunal are not adversarial but inquisitorial in character and the Tribunal has the power (and in some circumstances may have a duty: see *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70 per Wilcox J) to make inquiries in relation to matters relevant to the review.

75. The applicant's representative submitted that merely by making the inquiry of the Nizhniy Novgorod Committee against Torture the Tribunal had demonstrated that it was biased against the applicant but it must be obvious that if, as the applicant had claimed at the hearing before me, the Committee had known all about his case and had been able to confirm his account, the outcome of the Tribunal's inquiries would have been entirely positive for the applicant.

76. The applicant's representative also submitted that the outcome of the inquiries which the Tribunal had made of the Nizhniy Novgorod Committee against Torture was hearsay evidence and therefore inadmissible. However, as the Principal Member pointed out in his response to the applicant's representative, the Tribunal is not bound by the rules of evidence: see paragraph 420(2)(a) of the Act.

77. The applicant's representative also complained that 'the applicant has not been given the opportunity to examine/test the skills of the interpreter' although he added that the applicant 'has not been advised as to whether an interpreter was in fact used'. It is unclear what to make of this complaint because, as the applicant's representative would be aware (since the applicant was provided with a copy of the response under cover of the Tribunal's section 424A letter), Olga Sadovskaya, the Deputy Chairperson of the Committee, provided the Australian Embassy in Moscow with a statement in Russian to the effect that the applicant had never worked for or been a member of the Committee either under the name [deleted: s.431(2)] or the name [deleted: s.431(2)] (DFAT Report No. 966, dated 23 February 2009). As the Principal Member stated in his response to the applicant's representative, if the applicant wished to question the accuracy of the translation of this letter the applicant had the opportunity to do so in responding to the Tribunal's section 424A letter.

78. As referred to above, the applicant's representative asked that I excuse myself from proceeding any further in the matter and that there be a new hearing with a new Tribunal Member. As I have said, I consider that the complaints made by the applicant's representative reflect his lack of familiarity with the legal framework within which the Tribunal operates and I do not accept that there has been any denial of procedural fairness in this case. I note that the Principal Member in his response to the applicant's representative did not accept that there was substance to any of the applicant's representative's complaints and declined to reconstitute the case to another Member.

Credibility

79. I accept that, as Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for'. However this should not lead to 'an uncritical acceptance of any and all allegations made by suppliants'. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

> 'Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another' (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)

80. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

> 'in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.'

81. If, however, the Tribunal has 'no real doubt' that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O'Connor, Branson and Marshall JJ) observed in *Kopalapillai*, referred to above, at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant's testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a 'positive state of disbelief' before making an adverse credibility assessment in a refugee case.

82. In the present case, as I put to the applicant in the course of the hearing before me, I have difficulty in accepting his claims regarding his involvement in the Nizhniy Novgorod Committee against Torture and the persecution which he claims to have suffered as a result of that involvement. As discussed at the hearing and as referred to in the Tribunal's section 424A letter, in the statement accompanying his original application the applicant said that he was a member of the 'Nizhnenovgorodskoy organization "The Committee against tortures"', that he had taken part in meetings and protest actions against the violation of human rights and that his activity had attracted the attention of 'punitive organs' When the applicant was

interviewed by the primary decision-maker, however, he said that he had started a group in Ulan-Ude in 2004, before he claimed he had been charged with theft, that three people besides himself had been involved in this group and that it had had no formal connection with the organisation in Nizhniy Novgorod. He said that he had been in contact with the lady in charge of the organisation in Nizhniy Novgorod, whom he named as Tamara Sidikhina, by telephone and on the Internet.

83. At the hearing before me [in] January 2009 the applicant confirmed that he claimed that he had been a member of the Nizhniy Novgorod Committee Against Torture. He said that he had registered through the Internet, that he had told the Committee Against Torture that he had been arrested because of his activities as a member of the Committee and that the Committee would know all about his case. The applicant also said that he had no objection to the Tribunal contacting the Committee and asking for information about his case.

84. In the applicant's further statement to which reference was made at the hearing and which his representative faxed to the Tribunal on the day after the hearing, the applicant again said that he had been a member of the Committee Against Torture since 2002 and he said that the authorities had insistently asked him to stop his activity in that organisation. In his submission which the Tribunal received [in] January 2009 the applicant's representative also referred to the applicant's evidence at the hearing before me that he was a member of the Committee and that the Committee was well aware of his case although, somewhat curiously, the applicant's representative added that, even if the applicant had not been a member of the Committee Against Torture this would not mean that he had not been subject to political persecution. As the Tribunal stated in its section 424A letter, while this statement is undoubtedly true, its relevance to the applicant's case is not immediately obvious since, as the applicant's representative recognised, the applicant has given evidence to the Tribunal that he was a member of the Committee.

85. As had been discussed at the hearing before me, the Tribunal contacted the Nizhniy Novgorod Committee Against Torture after the hearing, initially directly and, when that proved unsuccessful, through the Australian Department of Foreign Affairs and Trade. [In] February 2009 the Department replied, stating that it had contacted Olga Sadovskaya, the Deputy Chairperson of the Committee, who said that she had been with the Committee since its inception, that she had never heard of the applicant either under the name [deleted: s.431(2)] or the name [deleted: s.431(2)] and that she had checked the Committee's membership roll to make sure that she was not mistaken. She provided the Australian Embassy in Moscow with a statement to the effect that the applicant had never been a member of, or worked for, the Committee (see DFAT Report No. 966, 23 February 2009, a copy of which was provided to the applicant under cover of the Tribunal's section 424A letter as referred to above).

86. In its section 424A letter the Tribunal stated that this information was relevant to the review because it suggested that the applicant had never been a member of the Nizhniy Novgorod Committee Against Torture and that he could not therefore have been asked by the authorities to stop his activities as a member of that organisation nor could he have been targeted by the authorities for false arrest and imprisonment because of his activities as a member of that organisation. The Tribunal stated that this information was also relevant to the applicant's overall credibility.

87. In his submission dated [in] March 2009 the applicant's representative argued that there was no inconsistency in the applicant's evidence because '[w]hen the applicant referred to the fact

that he took part in meetings/protests the reference was to the meetings/protests which were organized by the Ulan-Ude group not the Nizhnenovgorodskoy group'. He repeated that the fact that the applicant had not had contact with the 'Nizhnenovgorodskoy group' did not mean that he had not been persecuted. With respect, it must surely be obvious that if the applicant gives evidence that he was a member of the Nizhniy Novgorod Committee Against Torture and that he was persecuted for reasons of his activities as a member of that organisation and if the Tribunal finds that the applicant was never in fact a member of, or worked for, the Nizhniy Novgorod Committee Against Torture, this is relevant to the applicant's credibility and whether the Tribunal accepts that the applicant was persecuted for the reasons he claims.

88. With regard to the inquiries the Tribunal had made of the Nizhniy Novgorod Committee Against Torture the applicant's representative asked why the applicant had not been given the opportunity to contact the group and he submitted that the applicant should have been given the opportunity to cross-examine the Deputy Chairperson of the Committee. With respect, these submissions made by the applicant's representative once again reflect his lack of familiarity with the legal framework within which the Tribunal operates. The Deputy Chairperson of the Committee is not a witness before the Tribunal but even if she were the applicant would not be entitled to cross-examine her (see paragraph 427(6)(b) of the Act). There has never been anything to prevent the applicant from contacting the Nizhniy Novgorod Committee Against Torture himself and the applicant could have submitted evidence from the Committee at any time if he wished. It is not the role of the Tribunal to make the applicant's case for him.

89. The applicant's representative submitted (apparently on the basis of the alleged legal errors dealt with above) that the information from the Nizhniy Novgorod Committee Against Torture had been obtained 'unlawfully'. Since for the reasons given above I do not accept that the Tribunal has erred in law in obtaining this information I do not accept the contention that the information was obtained unlawfully. The applicant's representative also said that 'the applicant must dispute the authenticity of the comments made by the vice chairperson' and he questioned how the applicant could be sure that these comments were in fact made by the Deputy Chairperson. As referred to above, the Deputy Chairperson not only spoke to the Australian Embassy in Moscow but she provided the Embassy with a statement, a copy of which was given to the applicant along with the Tribunal's section 424A letter. The applicant's representative must be taken to be alleging either that someone at the Committee masqueraded as the Deputy Chairperson and forged the statement in the Deputy Chairperson's name or that the entire account of the inquiries which were made and the statement which was provided are a complete fabrication. The applicant's representative has not referred to any evidence on which such allegations might be based and I reject these allegations. I accept that the Australian Department of Foreign Affairs and Trade did in fact contact Olga Sadovskaya, the Deputy Chairperson of the Committee, that she provided the Department with the advice set out in the Department's report and that she provided the Australian Embassy in Moscow with the statement a copy of which was attached to the Department's report (DFAT Report No. 966, 23 February 2009).

90. The applicant's representative said that the applicant had advised him that he was a member of the 'Nizhnenovgorodskoy group' and that he had emailed his application to the group. The applicant's representative submitted that the applicant could still be a member of the group even though the group had no record of his membership of the group and he also referred to the fact that people might describe themselves as sympathisers with an

organisation even though they might not formally be members of the organisation. He reiterated his point that the applicant could have been the subject of persecution even if he had not been a member of the group.

91. With respect, the Tribunal can only make its decision on the basis of the claims advanced by the applicant, not on the basis of claims which the applicant might have made but did not make. The applicant claimed at the hearing before me not only that he had been a member of the Nizhniy Novgorod Committee Against Torture but also that he had told the Committee that he had been arrested because of his activities as a member of the Committee and that the Committee would know all about his case. He did not claim that his only contact had been to email a membership application to the Committee, he did not claim that he had only been a sympathiser, not a member, and he did not claim that he had been persecuted for reasons other than his claimed activities as a member of the Committee. It is in this context that I consider that the inconsistencies in the applicant's own evidence and the information obtained from the Nizhniy Novgorod Committee Against Torture stating that the applicant had never been a member of, or worked for, the Committee cast doubt both on the applicant's claims that he was a member of the Committee and that he was persecuted for reasons of his activities as a member of the Committee and on his overall credibility.

92. Secondly, as referred to in the course of the hearing on 15 January 2009 and in the Tribunal's section 424A letter, a note on the Department's file states that the applicant attended an office of the Department [in] July 2008 and talked to a Russian-speaking officer there. (A copy of the note with the name of the officer deleted was provided to the applicant under cover of the Tribunal's section 424A letter.) According to the officer's note the applicant said that he had had his own personal training business in Russia and that he had hired a sports hall from [Organisation A], signing a contract with [Person 1]. He said that as his business had been going well [Person 1] had wanted a share of the profits. The applicant said that rather than pay more money to [Person 1] he had torn up the contract and had moved his sports equipment back to his home. He said that he had then been visited by the militia (police) who had repossessed the equipment and had told him that [Person 1] had accused him of stealing it. The applicant said that the matter had gone to court and he had won but his equipment had not been returned and he had needed the equipment to continue working. He said that he had frequently been held up by the militia and released with no precise allegations. The applicant said that he believed that this had been happening, and that his equipment had not been returned, because [Person 1] was a close friend of the local prosecutor. He said that he had also been beaten up and harassed by a gang run by the son of [Person 1].

93. In its section 424A letter the Tribunal stated that this information was relevant to the review because, while it was consistent with the document headed 'Court Decision' a copy of which (together with a translation) the applicant had submitted with his original application, it suggested that the reason why the applicant had been charged with stealing the sports equipment, why the sports equipment had not been returned and why he had subsequently been harassed by the police was that [Person 1] (who had wanted a share of the profits of the applicant's personal training business) was a close friend of the local prosecutor. The Tribunal stated that this information once again cast doubt on the applicant's claims that he had been targeted by the authorities for false arrest and imprisonment because of his activities as a member of the Nizhniy Novgorod Committee Against Torture or indeed any other activities in which he might have taken part protesting against violations of human rights in

Russia. The Tribunal stated that, once again, this information was also relevant to the applicant's overall credibility.

94. In his submission dated [in] March 2009 the applicant's representative argued that it was not possible to explain what the motives of either '[Person 1] or the police commissioner' had been because the motives had not been reduced to writing and that the fact that the applicant had been involved in a contractual dispute with [Person 1] did not preclude the 'police commissioner' from acting for a political purpose. He added that it was conceivable for the parties to have been acting for more than one purpose. He said that it was the applicant's contention that the authorities had used the contractual dispute as a pretext to engage in various forms of harassment so that while it might have appeared on its face to have been a contractual dispute this did not exclude the authorities having acted for some other purpose.

95. While it may obviously be difficult on occasion to determine the motives of an applicant's persecutors this is something which the Tribunal is required to do because, as set out above, the definition of a refugee in the Refugees Convention requires that an applicant fear being persecuted 'for reasons of race, religion, nationality, membership of a particular social group or political opinion' Furthermore, as set out above, paragraph 91R(1)(a) requires that one or more of the five reasons mentioned in Article 1A(2) of the Refugees Convention must be the essential and significant reason for the persecution which an applicant fears. While, therefore, as the applicant's representative said, it is obviously conceivable that an applicant's persecutors may have had more than one motive, the applicant will only be entitled to the grant of a protection visa if one or more of the five reasons mentioned in Article 1A(2) of the Refugees Convention is the essential and significant reason for the persecution which the applicant fears.

96. The relevance of what the applicant told the Russian-speaking officer when he visited an office of the Department [in] July 2008 is that, as set out in the Tribunal's section 424A letter, it suggests that the reason why the applicant was charged with stealing the sports equipment, why the sports equipment was not returned and why the applicant was subsequently harassed by the police was that [Person 1] was a close friend of the local prosecutor. The applicant did not suggest that the prosecutor or the police had in fact acted for a political purpose nor did he say (as the applicant's representative says he now contends) that the authorities had used the contractual dispute as a pretext to engage in various forms of harassment. I consider that what the applicant told the Russian-speaking officer once again casts doubt on the applicant's claims that he was targeted by the authorities for false arrest and imprisonment because of his activities as a member of the Nizhniy Novgorod Committee Against Torture or indeed any other activities in which he may have taken part protesting against violations of human rights in Russia. Once again I consider that this information is also relevant to the applicant's overall credibility.

97. Thirdly, as likewise referred to in the Tribunal's section 424A letter, in the statement accompanying the applicant's original application he said that he had spent three months in gaol as a result of the false criminal case brought against him in 2004. He produced a copy of a document in Russian (without a translation) relating to his detention from [date deleted: s.431(2)] January 2005 to [date deleted: s.431(2)] April 2005 (see folio 8 of the Department's file CLF2008/114311). In answer to question 6 on Part B of the application form for a protection visa the applicant said that in January 2005 he had been charged and placed in gaol. When he was interviewed by the primary decision-maker he confirmed that he claimed that he had been charged with theft in 2004 and that he had spent three months in prison although he was vague as to when this had been. At the hearing before me, however, the

applicant said that he had been in gaol from [date deleted: s.431(2)] December 2004 until [date deleted: s.431(2)] April 2005, meaning that he had spent four months in gaol. As I put to him, it is difficult to accept that he would not remember whether he spent three months or four months in gaol. In the further statement which the applicant's representative submitted to the Tribunal on the day after the hearing the applicant said that he had been in prison from [date deleted: s.431(2)] January 2004 until [date deleted: s.431(2)] April 2005. As the Tribunal noted in its section 424A letter, even if the reference to 2004 is a mistake for 2005 this would still be inconsistent with the applicant's evidence at the hearing. In its section 424A letter the Tribunal stated that this information was relevant to the review because these inconsistencies in the applicant's evidence cast doubt on his claim that he had spent time in gaol as a result of a false criminal case brought against him. The Tribunal stated that, once again, this information was also relevant to the applicant's overall credibility.

98. In his submission dated [in] March 2009 the applicant's representative argued that the fact that the applicant might have given an incorrect date as to when he was imprisoned did not mean that he had not been imprisoned. With respect, the issue is not whether the applicant gave an incorrect date but whether he claims to have spent three months in gaol (as he said in the statement accompanying his original application) or four months (as he said at the hearing before me). I note that in his submission dated [in] March 2009 the applicant's representative did not suggest that he had obtained further instructions from the applicant on this point nor did he address the reference to [date deleted: s.431(2)] January 2004 in the applicant's further statement. He submitted that the applicant might never have spent a single day in gaol and yet still could have been persecuted. While this statement is true it ignores, once again, the fact that the applicant does claim to have spent time in gaol. As I put to the applicant in the course of the hearing before me, I find it difficult to accept that, if it were true that he had spent time in gaol, he would not remember whether he had spent three months or four months in gaol.

99. The applicant's representative also submitted that '[a]n inconsistent statement does not deny the fact that the applicant was the subject of persecution' and that, even if an applicant was shown to have lied about a matter this did not mean that the applicant was not the subject of persecution. Once again these are truisms but they ignore the fact that in most cases that come before the Tribunal (as in this case) the applicant's own evidence provides the basis for the application for a protection visa. If the applicant's own evidence is not believed and there is no other evidence to suggest that there is a real chance that the applicant will be persecuted for one or more of the five Convention reasons if he or she returns to his or her country of nationality then the Tribunal may conclude that the applicant is not a person to whom Australia owes protection obligations and is therefore not entitled to be granted a protection visa.

100. Prior inconsistent statements are obviously relevant to whether an applicant can be believed although the Tribunal must of course consider any explanations which are advanced for any inconsistencies. In the present case, as referred to above, when I raised the inconsistency with regard to whether the applicant had spent three months or four months in gaol with him in the course of the hearing before me he said that when he had been interviewed by the primary decision-maker he had been under psychological pressure and stress. When I noted that I was referring not to what he had said at the interview with the Department but to what he had said in the statement accompanying his original application the applicant said that he had made a mistake and that he did not apply to the Department of Immigration every day. As I indicated to him, I find it difficult to accept that he would have made a mistake about

whether he had spent three months or four months in gaol. The applicant referred again to his psychological situation and in his submission dated [in] March 2009 the applicant's representative argued that the applicant was 'under a considerable amount of stress due to the acts of persecution'. He submitted that '[i]ndividuals who are the subject of imprisonment, who are under stress do not think as coherently as one would expect an individual to be' and that it was therefore 'quite conceivable for the applicant to forget about a term of imprisonment' because '[m]ost individuals would attempt to erase such an event from their memory'.

101. With respect, the applicant did not forget about a term of imprisonment. He said in the statement accompanying his original application that he had spent three months in gaol and he produced a document in support of that claim. He said at the hearing before me that he had spent four months in gaol. After the hearing his representative produced a further statement in which he said that he had been in prison from [date deleted: s.431(2)] January 2004 until [date deleted: s.431(2)] April 2005 which would suggest either that he was in gaol for a year and three months or (assuming the reference to '2004' to be a misprint) that he was in gaol for three months, thus contradicting his evidence at the hearing. The applicant's representative has not attempted to convey to the Tribunal whether the applicant now claims that he spent three months or four months in gaol, nor is there any expert evidence before me to suggest that the applicant is suffering from any psychological condition which might explain this inconsistency in his evidence. I consider that the inconsistency in the applicant's evidence with regard to whether he spent three months or four months in gaol casts doubt on his claim that he spent time in gaol as a result of a false criminal case brought against him. Once again I consider that this information is also relevant to the applicant's overall credibility.

102. Fourthly, as was also referred to in the Tribunal's section 424A letter, while the applicant told the officer of the Department to whom he spoke in July 2008, as referred to above, that even after the criminal case had been closed he had frequently been held up by the militia and released with no precise allegations, he did not mention in his original application or at the interview with the primary decision-maker that he claimed that he had been detained by the authorities in Russia on any occasion other than the occasion referred to above when he claimed to have spent three months in gaol as a result of a false criminal case. At the hearing before me, however, the applicant claimed for the first time that he had been detained by the police on two subsequent occasions, from [date deleted: s.431(2)] September or [date deleted: s.431(2)] September to [date deleted: s.431(2)] October 2006 and from [date deleted: s.431(2)] January to [date deleted: s.431(2)] February 2007. As referred to above, when I noted that these claims had not been mentioned in the applicant's original application he said that this was the first time he had ever asked for refugee status so he had not known what facts he should give. However, as I noted, the applicant was assisted by a representative who is a registered migration agent in preparing his application.

103. In its section 424A letter the Tribunal stated that this information was relevant to the review because the fact that these two subsequent occasions on which the applicant claimed he had been arrested and detained had not been mentioned in his original application cast doubt on whether his evidence in that regard was true and on whether he had in fact been arrested and detained in 2006 and 2007 as he had claimed. The Tribunal stated that, once again, this information was also relevant to the applicant's overall credibility.

104. In his submission dated [in] March 2009 the applicant's representative did not seek to advance any further explanations on behalf of the applicant for his failure to mention these

claimed arrests and detentions at an earlier stage. He argued that the applicant was perfectly entitled to put new evidence before the Tribunal which had not been before the primary decision-maker and that the fact that new information was provided to the Tribunal in this way did not mean that the new information was wrong or incorrect. Once again this is perfectly true so far as it goes but the Tribunal is required to make findings with regard to the claims advanced by an applicant and in considering whether new claims advanced for the first time before the Tribunal are true the Tribunal is perfectly entitled to take into account the fact that the applicant did not raise the claims at an earlier stage provided that it has regard to any explanations advanced by the applicant for his or her failure to mention the new claims at an earlier stage: see, for example, *Abebe v Commonwealth of Australia* (1998) 197 CLR 510 at [84] per Gleeson CJ and McHugh J where they said that, given the inconsistencies and admitted lies in the applicant's various accounts of her arrest and detention and the fact that she had told the South African authorities when applying for refugee status there that she had never been arrested or detained, it was open to the Tribunal to find that it could not rely on her evidence about her arrest and detention.

105. In its section 424A letter the Tribunal referred to the fact that on 3 March 2009 the applicant's representative had faxed to the Tribunal copies of two documents in Russian without translations or any comment or explanation as to the significance of the documents in question. (The applicant's representative telephoned the Tribunal prior to faxing the documents and said that the documents which had been meant to be forwarded to the Tribunal by [date deleted: s.431(2)] January 2009 were now available but he provided no further information in his covering fax. The only information which the applicant provided at the hearing before me about the documents which he said he was waiting to receive from Russia was that two of the documents were official documents issued by the authorities in Russia to say that he had been detained and that the other document was from a hospital clinic in Ulan-Ude and related to the effects of the treatment he had received in prison.) In its section 424A letter the Tribunal noted that it appeared that the two documents which had been submitted to the Tribunal related to the applicant's claimed arrest and detention in 2006. In his submission dated [in] March 2009 the applicant's representative did not refer to these documents nor did he take up the invitation to comment further on their significance. In its section 424A letter the Tribunal stated that it might give greater weight to the view it formed of the applicant's credibility than it did to these documents or the documents which the applicant had submitted with his original application.

106. For the reasons given above I do not accept that the applicant is a witness of truth. I do not accept that he is telling the truth about his claimed involvement in the Nizhniy Novgorod Committee Against Torture or in protesting against violations of human rights in Russia more generally. I accept that, as reflected in the information obtained from the Nizhniy Novgorod Committee Against Torture, the applicant was never a member of, or worked for, the Committee. I reject the applicant's claims that he was a member of the Committee, that the Committee knew all about his case and that he was persecuted for reasons of his activities as a member of the Committee. Having regard to the view I have formed of the applicant's credibility I do not accept that, as the applicant said when he was interviewed by the primary decision-maker, he has always been against the system in Russia and wrote letters to the authorities and things like that, nor that he started a group in Ulan-Ude, nor that he took part in meetings and protest actions against the violation of human rights.

107. As referred to above, the applicant has submitted documents to the Department and to the Tribunal in support of his claims to have been detained in 2005 and 2006. While translations

have not been provided of all of these documents I consider that it is clear that the untranslated document a copy of which the applicant produced to the Department (at folio 8 of the Department's file CLF2008/114311) relates to the period which he claims to have spent in gaol in 2005 and that the two documents copies of which the applicant's representative faxed to the Tribunal [in] March 2009 are two of the documents to which the applicant himself referred in the course of the hearing before me, namely a document relating to the period which he claims to have spent in gaol in 2006 and a document from a hospital clinic in Ulan-Ude relating to the effects of the treatment he received in gaol in 2006. I accept that, as the applicant said at the hearing before me, he sought to produce these documents to provide corroboration in respect of his claims that he was detained.

108. However I give greater weight to the view I have formed of the applicant's credibility than I do to these documents and I do not consider that the corroboration afforded by these documents outweighs the problems I have with the applicant's own evidence. Having regard to the view I have formed of the applicant's credibility, I do not accept that the applicant was put in gaol on false criminal charges in 2004, 2005, 2006 or 2007, as he claims, nor that on any of these occasions he was interrogated or beaten or tortured, nor that the militia (police) threatened to kill him, nor that he was told to cease his activities, nor that on any of these occasions he had to go to hospital after he was released to seek treatment for the wounds he had sustained while he was detained. I do not accept that there is a real chance that the applicant will be gaoled or killed, as he claims, if he returns to Russia now or in the reasonably foreseeable future.

109. I accept that, as the applicant told the Russian-speaking officer of the Department to whom he spoke [in] July 2008, the applicant had his own personal fitness training business which was located in [Organisation A], that the business was going so well that [Person 1] asked for a share of the profits, that the applicant then removed his sports equipment from the [organisation name deleted: s.431(2)] and that [Person 1] accused him of stealing the equipment. I accept that, as reflected in the document headed 'Court Decision' which the applicant submitted with his original application, the criminal case ceased [in] March 2005 because it was impossible to prove that the equipment in question had been acquired by [Organisation A] I do not accept that, despite the criminal case having ceased, it somehow continued or remains open, as the applicant has claimed. I accept that, as the applicant told the Russian-speaking officer of the Department to whom he spoke [in] July 2008, his sports equipment was not returned and he was subsequently harassed by the militia (police) because [Person 1] was a close friend of the local prosecutor and that he was also beaten up and harassed by a gang run by the son of [Person 1] I accept that, as the applicant said, the bank took his flat because he was unable to pay the mortgage but I do not accept that the applicant was deprived of a livelihood as a result of his sports equipment not having been returned to him. I find that the applicant had a considerable sum in savings which he used to pay for the expenses associated with his application for the education visa which he used to come to Australia and that he also had casual earnings from buying cars in Vladivostok and selling them in Ulan-Ude as he described at the hearing before me.

110. Having regard to the view I have formed of the applicant's credibility, I find that the significant and essential reason why the applicant was charged with stealing the sports equipment, why the sports equipment was not returned and why the applicant was subsequently harassed by the police was that [Person 1] was a close friend of the local prosecutor. I do not accept that, as the applicant's representative said in his submission received by the Tribunal [in] January 2009, the applicant's flat was confiscated because of his

political views. As I have said above, I accept that, as the applicant himself has said, the bank took the applicant's flat because he was unable to pay the mortgage. I do not accept that, as required by paragraph 91R(1)(a) of the Act, one or more of the five Convention reasons is the essential and significant reason for the persecution which the applicant fears. I do not accept, in particular, that the applicant was singled out and persecuted in the past because of his claimed involvement in the Nizhniy Novgorod Committee Against Torture or any similar organisation or group in Ulan-Ude or in protesting against violations of human rights in Russia more generally. I do not accept on the evidence before me that there is a real chance that the applicant will become involved in such activities if he returns to Russia now or in the reasonably foreseeable future. I do not accept, therefore, that there is a real chance that the applicant will be persecuted for reasons of his real or imputed political opinion, his claimed membership of the Nizhniy Novgorod Committee Against Torture or his membership of any similar organisation or group in Ulan-Ude, if he returns to Russia now or in the reasonably foreseeable future.

111. I have considered whether the applicant's case involves a selective and discriminatory withholding of State protection for a Convention reason of the sort referred to in *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1. However, as the High Court emphasised in that case, in this context it is not sufficient to show maladministration, incompetence or ineptitude by the police or that the failure is due to a shortage of resources: what is required is State toleration or condonation of the persecution in question and systematic discriminatory implementation of the law: see *Khawar* per Gleeson CJ at [26] and per McHugh and Gummow JJ at [84] to [87]. Having regard to my findings of fact above I consider that it is clear that the authorities in Russia failed to protect the applicant from being harassed and beaten up because [Person 1] was a close friend of the local prosecutor and not because of the applicant's race, religion, nationality or political opinion or his membership of any particular social group in Russia for the purposes of the Convention.

112. As referred to in the Tribunal's section 424A letter, at the conclusion of the hearing [in] January 2009 the applicant's representative said that the fact that the applicant's father was an ethnic Soyot might provide an additional basis for the applicant's claims. As the Tribunal observed, it is true that in the statement accompanying the applicant's original application he said that he had also been discriminated against because he was a Soyot, that Soyots were not allowed to live in cities and that they could not get medical services or education. However the applicant said that he had received a higher education due to his success in sport. In his original application itself he said that he had been educated and had lived and worked all his life in the city of Ulan-Ude He said that he had had his own fitness centre from 1997 to 2004 (at the hearing before me he said from 1999 to 2004) and he told the officer of the Department to whom he spoke [in] July 2008 that his business had been going so well that [Person 1] where the business was located had wanted a share of the profits. When the applicant was interviewed by the primary decision-maker he said that his father was a well-qualified aviation engineer who put together aircraft. In his submission dated [in] March 2009 responding to the Tribunal's section 424A letter the applicant's representative did not comment on or respond to this information on behalf of the applicant.

113. At no time has the applicant himself suggested that the events which he claims prompted him to leave Russia had anything to do with his race as a Soyot. He has suggested, as referred to above, that they stemmed from the fact that [Person 1] of [Organisation A] where his fitness centre was located wanted a share of the profits from his business or from the fact that the authorities wanted him to cease his activities as a member of the Nizhniy Novgorod

Committee Against Torture or more generally in protesting against violations of human rights. For the reasons given above I prefer the former explanation and I reject the latter explanation. Having regard to the applicant's own evidence I do not accept that the applicant has been discriminated against in the past because he is a Soyot, that Soyots are not allowed to live in cities and that they are unable to get medical services or education. I accept the applicant's evidence that his father, an ethnic Soyot, is a well-qualified aviation engineer, that the applicant himself lived all his life in the city of Ulan-Ude, that he received a higher education and that his personal fitness training business was going well until he got into a dispute with [Person 1] of the [organisation] where the business was located. I do not accept that there is a real chance that the applicant will be discriminated against or otherwise persecuted for reasons of his race as a Soyot if he returns to Russia now or in the reasonable foreseeable future.

CONCLUSIONS

114. For the reasons given above I do not accept that the applicant has a well-founded fear of being persecuted for a Convention reason if he returns to Russia now or in the reasonably foreseeable future. It follows that I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Consequently the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Act for the grant of a protection visa.

DECISION

115. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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