

1102753 [2011] RRTA 589 (13 July 2011)

DECISION RECORD

RRT CASE NUMBER: 1102753

DIAC REFERENCE(S): CLF2010/84644 & CLF2011/49208

COUNTRY OF REFERENCE: Kazakhstan

TRIBUNAL MEMBER: Giles Short

DATE: 13 July 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first and second-named applicants satisfy paragraph 36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the other applicants satisfy subparagraph 36(2)(b)(i) of the Migration Act, being members of the same family unit as the first and second-named applicants.

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2011 refusing an application by the applicants for Protection (Class XA) visas. The applicants were notified of the decision under cover of a letter dated [on the same date] and the application for review was lodged with the Tribunal on [on a further date in] March 2011. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicants, who are citizens of Kazakhstan, are a husband and wife and their two children. They arrived in Australia as visitors in June 2010 and they applied for Protection (Class XA) visas [in] June 2010.

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 a member of the same family unit as 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. Subsection 5(1) also provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person and that 'member of the family unit' has the meaning given by the Regulations for the purposes of the definition.
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. Only the applicant named first on the cover sheet (the husband, referred to in these reasons for convenience as ‘the applicant’) and his wife made specific claims under the Refugees Convention as amended by the Refugees Protocol. Their two children claimed to be members of their family unit and combined their applications with their parents’ applications as permitted by the Regulations.
14. The Tribunal has before it the Department’s files CLF2010/84644 and CLF2011/49208 relating to the applicant and his wife. The applicant and his wife appeared before the Tribunal to give evidence and present arguments [in] July 2011. The Tribunal was assisted by an interpreter in the Russian and English languages. The applicant and his wife were represented by [name and company deleted: s.431(2)], a registered migration agent (referred to for convenience in these reasons as ‘the applicant’s representative’). [Name deleted: s.431(2)] attended the hearing.

The applicant’s original application

15. The applicant is aged in his mid-thirties. In his original application and an accompanying statement he said that he had been born in Tashkent in Uzbekistan but that he had grown up in Almaty in Kazakhstan. He said that both he and his wife belonged to the Korean ethnic group. He said that he had studied at the [university and qualifications deleted: s.431(2)] in 1996.

16. The applicant said that while he had still been at school [in] December 1986 he had witnessed people of Kazakh nationality attacking vehicles in disorder sparked by the decision to replace a Kazakh with a Russian as First Secretary of the Communist Party of the Kazakh Soviet Socialist Republic. (He referred to supporting evidence which was not produced.) The applicant said that after the disintegration of the former Soviet Union many people not of Kazakh ethnicity had left Kazakhstan and Kazakhs from small cities had begun to come to Almaty.
17. The applicant said that when he had been in the first year at university he and other students had been [sent] to undertake agricultural work. He said that people who were not of Kazakh nationality had been forced to leave and he had been expelled from the university but due to the efforts of his parents he had been readmitted. He said that he had had to bear 'four years of humiliations and oppressions from nationalist adjusted Kazakhs' while at university and that he had also been repeatedly stopped in the street. He referred to one occasion in November 1993 when he had been beaten for reasons of his race and had sustained two cracked teeth.
18. The applicant said that he had [worked] from 1997 until June 1999. He said that in 1999 he had tried to set up his own business. He said that after three months there had been a robbery at the office. He said that a police team had examined the office but when he had been called to the police station a person in civilian uniform had ordered the police inspector in his presence to close the case. He said that the police inspector had asked him to write that the value of what had been stolen did not amount to more than 5,000 tenge or that it had been taken by an acquaintance who had not informed him.
19. The applicant said that he had decided to think this over but early the next day the police had come to his office and had purported to find a knife there which they had said had been used in crimes. The applicant said that he had given the police all his family savings and he had written 'the application according to the sergeant's dictation'. He said that there were numerous cases of such police lawlessness which had been highlighted in the mass media and on the Internet. (He referred to supporting evidence which was not produced.)
20. The applicant said that he had [worked] again from March 2000 until July 2000 and from April 2002 until June 2002. (There is an unexplained gap in his employment history from July 2000 until April 2002.) He said that he had become a director of another business in December 2002 and the owner in 2008 (although there is another unexplained gap in his employment history from 2006 until 2008). He said that in December 2004 he and other people from his company had been beaten because they had requested that Russian music be played in a café.
21. The applicant said that in April 2007 he had found two broken side windows in his car. He said that the police had taken statements from two Kazakhs whose cars had been vandalised in the same way but had refused to accept a statement from him. He said that on [a date in] March 2008 his elder brother [Mr A] had been attacked and beaten by young Kazakh men. (He said that a certificate from the hospital and a photograph were supplied but only the photograph was produced.) The applicant said that his brother had not reported what had happened to the police because he had been in hospital but his friend [Mr B] who had been with him had made a statement. He said that despite this the investigation had been stopped and [Mr B] had been put in prison for unknown reasons.

22. The applicant said that in November 2009 he had been stopped in a dark street by a police patrol car when he had been returning home from his office. He said that the police had searched him and had taken 8,000 tenge from his pocket. He said that on another occasion (for which he did not give a date) he had given first aid to an old woman named [name deleted: s.431(2)] who he said had subsequently demanded money from him for medicine. He said that she had told him that her brother was a public prosecutor, that her husband had served in the police and that she would send him to prison. He said that he had had no chance of a fair decision so he had agreed to give her the money she had demanded. (He referred to supporting evidence which was not produced)
23. The applicant said that at the end of August 2009 an acquaintance named [Mr C] had asked him to lease him his Konica Minolta 1050 machine to use on a Saturday and Sunday. He said that [Mr C] had come to his office accompanied by someone called [Mr D]. He said that he had let them in and had left. He said that two weeks later [Mr D] had asked him to come to the Committee of National Safety where he worked. He said that [Mr D] had told him that he would like to take his equipment or to take it 'on a term that I will print non-distributive information for him'. He said that [Mr D] had hinted that if he did not cooperate [Mr D] would find other methods to force him.
24. The applicant said that he had sometimes printed material for [Mr D] as he had been afraid for the life of his family. He said that the material which he had printed had contained information on the BTA bank, surnames, financial affairs and 'affairs against opposition' He said that after a while [Mr D] had insisted that he inform him about printing houses which printed opposition material. He said that after this he had decided to sell his business as he had been afraid to live under constant surveillance and performing tasks for the Office of the Public Prosecutor and the Committee of National Safety.
25. The applicant said that the next day he had been attacked by two Kazakhs at the entrance to his house. He said that they had struck him with a knife in his elbow. He said that in the evening [Mr D] had called him and had asked whether he had decided to cooperate with him. He said that he had decided not to go to hospital as 'all knife traumas are supervised by police' but he had been hospitalised at 'the [hospital]' as his little finger coordination had worsened. The applicant said that he feared for his life and the safety of his family. He said that he had twice attempted to seek refuge at the airport and four times they had been 'turned in DIAS' He said that 'there were many difficulties with the search of recommended people from DIAS and by the transfer'.

The further statements provided by the applicant and his wife

26. [In] August 2010 the applicant and his wife gave the Department what they said was part of the original statement submitted with the original application which had not been translated (see their letter at folio 74 of the Department's file) but which appears to be an entirely new statement from the applicant together with a statement (and Part C of the application form) from his wife. In his new statement the applicant repeated his account of his having leased one of his machines for a weekend in August 2009 and having subsequently been asked to come to the Committee of National Safety (the KNB, more commonly translated as the National Security Committee) where [Mr D] worked.
27. The applicant said that he had initially refused to carry out printing work for [Mr D] and that [Mr D] had then threatened him and his children. He said that it had not been clear to him why the KNB could not carry out its own printing work nor why it would have taken the risk

of involving him. He said that he had received orders for printing work from [Mr D] once a month. He said that on one occasion he had seen bank documents, lists of surnames and some leaflets and on another occasion he had seen sheets with the surnames 'Abilov' and 'Abljazov' who he said were known for opposition to the presidential administration.

28. The applicant said that his business had been successful and he and his wife had decided to have a family holiday in Australia. He said that when they had approached a tourist agency in February 2010 they had been told that they would not get visas if they had not first travelled to one of the countries in the Schengen area. He said that they had therefore made a trip to the Czech Republic. The applicant said that 'we yet did not have a thought to run as despite discrimination and the cases of injustice described in my statement earlier, we loved the country' He said that after returning from the Czech Republic they had used all their savings to pay for a trip to Australia.
29. The applicant said that it had been at the end of March that [Mr D] had asked him for information about 'orders of political or financial character' placed with other printing houses. He said that he had had strong business relationships with many printing houses and could have known where many things in which the KNB was interested were printed. The applicant said that [Mr D] had been interested in where copies of the newspaper 'Republic' were printed although he said that it was 'printed basically in their own printing machine' and that all the printing houses they had approached had refused to print it.
30. The applicant said that he knew of a printing house where leaflets against Nazarbayev and his relatives were printed but he could not be an informant. He said that [Mr D] had repeated the threats he had made and he had told [Mr D] that he planned to sell the business and to get another job. He said that he had referred to the fact that he was a [teacher] by training. He said that [Mr D] had told him that it was not so simple but he said that when they had next met, at the beginning of April, he had repeated that he would not cooperate with the KNB and [Mr D] had simply left.
31. The applicant said that after [Mr D] had left he had begun to ring around his acquaintances to ask if any of them would be interested in purchasing his business. He said that it had been the day after this second meeting with [Mr D] that he had been attacked by two Kazakhs and wounded in his elbow with a knife as he had described in his earlier statement. He said that in the evening [Mr D] had telephoned him and had asked about his health and some days later [Mr D] had come to see him and had told him that he could not sell the business yet. He said that [Mr D] had wanted him to call the newspaper 'Republic' and tell them that he wanted to print some 'releases' for them. He said that most probably this would have given the KNB the chance to close the newspaper before the beginning of the session of the OSCE.
32. The applicant said that he had telephoned a journalist named [Mr E] and had told him that he was being forced to become an informant to approach the newspaper 'Republic' as he had outlined. He said that he had asked [Mr E] to call his colleagues at 'Republic' to warn them without revealing his name. He said that he had then telephoned the newspaper in the presence of [Mr D] and had been told that 'in the near future circulations it is not planned to print' He said that after [Mr D] had left he had called other printing houses where his acquaintances worked and had warned them that he was being forced to become an informant.
33. The applicant said that in the middle of May [Mr D] had told him that he was an idiot if he thought that his calls to the printing houses would escape punishment. He said that [Mr D]

had struck him in the presence of his children and he had hit his head on a wall and had lost consciousness. He said that he had agreed to give [Mr D] two apartments and the equipment from his business as a bribe to ensure that he and his family would not have problems on their departure. He said that he had used the time before he had left the country to seek medical treatment for his fingers as he had described in his earlier statement.

34. The applicant's wife said in her statement that it had been in Australia that they had approached workers at the airport with a request that they direct them to 'those officers who are engaged in refugees' and that they had gone to the Department of Immigration four times and had been given forms and an address for Legal Aid. She said that in the beginning they had decided that only the applicant would put in a statement as the head of the family but after filing the application they had been told by the Red Cross that they had to tell everything.
35. The applicant's wife said that they were deeply religious and that she had studied at [Church 1] in Moscow in 1992 and for two and a half years had been a minister in [Church 1]. She said that for many years she had served as a deacon and teacher in [a Presbyterian church] in 2005 she had started to work as a deacon in a church called '[Church 2]' [near] Almaty where the pastor was named [Ms F]. She said that her husband and their daughters had visited this church as well. The applicant's wife said that this church has held house meetings and that such meetings had very often taken place at her home.
36. The applicant's wife said that the applicant's brother [Mr A] had also been a member of this church. She said that he had dreamed of opening a church in the area so that parishioners could gather freely but his church had been refused registration and he had complained to the local administration. She said that he did not know whether the attack on him in March 2008 which the applicant had described in his earlier statement had been connected with the fact that he had been actively proselytising but that his friend [Mr B] had heard the attackers abusing the church and [Mr A]' activity. She repeated that the applicant's brother had not made a complaint but that his friend [Mr B] had made a complaint and had been put in prison.
37. The applicant's wife said that in 2008 the applicant had become a partner in a printing business and had begun to print all the literature of the church. She said that when she saw 'interested people' she always tried to explain their faith and to invite them to their meetings. She said that their children had told their friends as well and the parents of their children's friends had 'sometimes made scandals because of it'.
38. The applicant's wife said that at the children's school religious studies lessons had been conducted for senior pupils but friends of their older daughter had told her about it and she had told her class about her faith. She said that the teacher had interrupted and had said that churches like theirs were sects. She said that the director of the school had summoned her and had said that her daughters were having a harmful effect on pupils and that they invited their classmates to children's meetings of a sect which was unacceptable and would lead to their expulsion if they did this again.
39. The applicant's wife said that her older daughter had not been able to restrain herself in the middle of March when there had been a lesson on 'preventive maintenance of religious extremism' and the children had been warned about the harm caused by sects. She said that after this lesson her daughter had been beaten by her classmates. She said that she and the applicant had complained to the director of the grammar school and to the city department of

national education but after this the director of the grammar school had told them that their children would not be enrolled the following year.

40. The applicant's wife said that the nieces of [Mr G], one of the heads of the city police station, had studied in class with her older daughter and had come to the children's programme. She said that subsequently their mother, [Ms H], had started to attend their meetings and had said that she wanted to be baptised. She said that this had come to the knowledge of [Mr G] and [Ms H]'s husband had forbidden her and their children from attending the church or even going out of the house. She said that subsequently a man from [Mr G]'s office had warned her 'to leave alone Kazakhs' and that 'it is better for us to pack suitcases and get out of Kazakhstan'.
41. The applicant's wife said that soon after, at the beginning of March 2010, a person who had said that he was a worker of the 'city government of internal affairs' had told [Ms F] that the city government, the police and the department of religious affairs in Almaty took strict account of such sects and cases of proselytising among Kazakhs. She said that she too had been present and had had to show her documents and that this man had told her that she was of particular interest as 'most active recruiter' because they had complaints about her proselytising among Kazakhs. The applicant's wife said that after this visit the church had begun to be visited for taxation and sanitary inspections.
42. The applicant's wife said that at this time also an elderly neighbour named [Ms I] had been ill and she had helped her and had read the Bible to her. She said that the woman's relatives had been afraid that the woman would leave her apartment and summer residence to the church and had forbidden her from visiting the woman. She said that at the end of March the woman had asked [Ms F] to come and christen her. The applicant's wife said that she had gone to the woman's flat to tidy it up before the christening and the woman's oldest daughter had come and had called the police who had detained her and had accused her of pushing the woman to leave everything to the church. She said that one of the officers who had been eating peanuts had hit her in the face and she had suffered an allergic reaction to the peanuts and had woken up in hospital.
43. The applicant's wife said that [Ms F] had advised her not to complain. She said that it had only been at this point that she had thought of not coming back from Australia. She said that as ethnic Koreans she and her husband could have tried to move to Korea but their relatives and acquaintances who had visited there had said that people had a negative attitude towards natives of North Korea who had been brought by fate to the Soviet Union. She said that the applicant's cousin had worked in Korea for two years and had said that ethnic discrimination from Kazakhs was not as bad as that from Koreans. She said that besides they had already spent all their savings to purchase the tour of Australia.
44. The applicant's wife said that at the beginning of April the applicant had disappeared for three days and when he had returned he had said that he had sold part of his equipment. She said that although they had been informed that their visas were ready in the second half of April they had only received their passports three weeks before they had actually left and their tickets had only been for [a date in] June. She said that in the intervening period the applicant had sold their apartments and they had lived with his mother before they had left.

The applicant's wife's evidence at the Departmental interview

45. The applicant's wife was interviewed by the primary decision-maker in relation to her application [in] October 2010. She said that she and her husband had gone to the Czech Republic for four days in 2010. She said that she had attended [institute deleted: s.431(2)] for two years from 1994 but she had not graduated. The applicant's wife said that she had become a believer in 1991 and that she had been baptised in [Church 1]. She said that she had resigned from her [employment] at the end of April 2010.
46. The applicant's wife said that the applicant had been being blackmailed by a business acquaintance named [Mr D] who had wanted him to work as an informer for the KNB. She said that the applicant had been forced for some time to work as an informer although he had not wanted to do so. He had been providing information about printing shops printing anti-government material including the opposition newspaper 'Republic'. She said that she had not known about this when she had been in Kazakhstan although she had been aware that her husband had been having some problems.
47. The applicant's wife said that she herself had been detained for her preaching to Kazakhs. She confirmed that she was referring to the occasion on which she had suffered an allergic reaction to the peanuts which she said had occurred at the end of March 2010. She confirmed that the church she had attended was called '[Church 2]', very near Almaty. She said that the church was registered with the Kazakh authorities and it had had about 80 members although many more had attended on some holidays. (The applicant's representative subsequently said that although the church was registered it was harassed repeatedly. She said that the applicant's wife had been persecuted because some of her converts had happened to be ethnic Kazakhs. She said that there was a widespread campaign against non-traditional churches.)
48. The applicant's wife said that it had been at Christmas that her children had invited the nieces of [Mr G] to attend their church. She said that this family had been 'traditional Muslims' and that all Kazakhs considered themselves Muslim. She said that the children had attended the church from Christmas 2009 until February 2010 when they had been forbidden to go. The applicant's wife said that a person had telephoned her and had demanded that she stop inviting Kazakhs to her church. She said that she had understood that this person was from [Mr G]'s office.
49. The applicant's wife said that it had been in November or December 2009 that she had started caring for the elderly neighbour named [Ms I] and she had last had contact with her in March 2010. She said that there had recently been programmes on television about sects and the damage they caused to the population. The primary decision-maker queried whether the applicant's wife's church would be regarded as a sect. The applicant's wife said that the direction of her church was not regarded as traditional in Kazakhstan. She said that now she and her husband were attending [Church 3] in Australia.
50. The applicant's wife said that she and her husband had intended a genuine visit to Australia. She repeated that they had been told that they needed to have travelled to one of the countries in the Schengen area which was why they had made the trip to the Czech Republic. The applicant's wife said that '[Church 2]' had held small meetings of up to 10 people in people's apartments once a week in the evenings.

The applicant's evidence at the Departmental interview

51. The primary decision-maker then interviewed the applicant. The applicant said that he had visited China to acquaint himself with the souvenir industry. He said that he had had a printing business. [Details in relation to the applicant's business deleted: s.431(2)].
52. The applicant said that he had first met [Mr D] in the last days of August 2009. He confirmed that he believed that [Mr D] was from the KNB because he had met him at their headquarters. He said that he was not sure if [Mr D] was even this man's real name. He said that it had been on [a date in] April 2010 that he had been attacked. He said that he had told [Mr D] that he did not want to see him any more. He said that [Mr D] had asked him if he was selling his printing business.
53. The applicant said that when he had got to the entrance to where he lived he had been met by two men who had hit him a few times and had gone away. He confirmed that he claimed he had been wounded in the arm. He said that previously [Mr D] had been allocating orders to his business but now he had been asking that he work for him as an informer. He said that [Mr D] had wanted information on what sort of material other printers were printing, for example opposition leaflets against Nazarbayev.
54. The applicant confirmed that he claimed that he had asked [Mr E] to inform other people about what [Mr D] had been trying to do. He said that [Mr D] had been wanting to provoke the people producing the 'Republic' newspaper. He said that he had had a proposal from the publishers of this newspaper to print for them but he had refused. He confirmed that he claimed that he had transferred two apartments and all his equipment to [Mr D].
55. The applicant said that in total this had amounted to \$150,000. He said that this had been in exchange for a guarantee that they would be let go. He said that this had been at the end of May. He said that the apartments had been transferred into some woman's name. He said that he had no idea why [Mr D] had done this. He said that he had done this because [Mr D] had hit him in front of his children.
56. The applicant said that he was fleeing 'the system' He said that [Mr D] had telephoned him before he had left and had told him that he was foolish if he thought he could oppose the system and that he should not come back. The applicant said that he had heard of similar things happening to other printers but he clarified that he meant that he knew of two other printing shops that had been closed down and someone who had been arrested but not in detail. He confirmed that he claimed that he had been targeted because he had had very good connections with many other printing shops and people had talked to him. He said that [Mr D] had been aware of his connections.
57. The applicant said that when he had applied to come to Australia he had intended a genuine visit. He said that he had no idea what political party was behind the 'Republic' newspaper and he had stayed away from politics in Kazakhstan. He said that before he had met with [Mr D] he had been able to operate freely. He said that the people distributing the 'Republic' newspaper were arrested. The applicant's representative submitted that people like the applicant could be desirable assets for the security services because he had access to printing houses.

Medical evidence

58. In letters dated [in] September 2010 a general practitioner said that the applicant had poorly controlled hypertension complicated by anxiety/depression and that his wife was suffering from a complicated pregnancy. In a letter dated [in] October 2010 a midwife said that the applicant's wife had had a miscarriage on [a date in] September 2010. In a further letter dated [in] October 2010, the general practitioner said that this had been caused by excessive stress, unstable blood pressure and 'some depressive thoughts'. In a letter dated [in] October 2010 a psychiatrist said that the applicant's wife was suffering from severe depression following the miscarriage and that she had suffered a previous episode of depression in her early twenties.

Further evidence given to the Department by the applicant's representative

59. Under cover of a submission dated [in] November 2010 the applicant's representative gave the Department copies of articles published by the Forum 18 News Service relating to freedom of religion in Kazakhstan, highlighting reference to the fact that official rhetoric describes the State-backed Muslim Board and the Russian Orthodox Church as 'traditional' faiths and that officials appear to divide other communities into those which they do not regard as threatening, such as Jews, Catholics and small communities of Buddhists, and those which they call 'sects' which include independent Muslims, Ahmadi Muslims, Protestants, Hare Krishna devotees and Jehovah's Witnesses.
60. The applicant's representative highlighted references to a group of Muslims convicted in February 2008 of attempting to blow up the Shymkent office of the KNB and the conviction in January 2009 of a Russian working for the Unification Church (the Rev Sun Myung Moon's church) for sharing her beliefs in private seminars in her flat. Forum 18 stated that all religious communities in Kazakhstan remained under surveillance by the ordinary police and the KNB and the applicant's representative highlighted reference to the case of a pastor who had been questioned in August 2009 about 'whether we compel ethnic Kazakhs to convert to Christianity' among other matters.
61. Forum 18 said that many communities had faced raids when they were meeting for worship and the applicant's representative highlighted reference to the fact that [Church 1] had faced repeated raids and investigations and that church members had been accused of espionage, storing psychotropic drugs, tax fraud and stirring up inter-religious enmity. Forum 18 also said that the KNB had tried to recruit church members as informers. It reported in December 2009 that a pastor from [Church 1] was facing charges under Article 111 of the Criminal Code ('causing severe damage to health due to negligence') because he had prayed with a woman for her health at her request.
62. [In] December 2010 the applicant's representative gave the Department a copy of an undated letter from [Ms F] of '[Church 2]' stating that the applicant's wife had served as a deacon between 2005 and 2010.
63. [In] January 2011 the Department received from the applicant's representative a copy of a Human Rights Watch report, *An Atmosphere of Quiet Repression - Freedom of Religion, Assembly and Expression in Kazakhstan* (December 2008) highlighting references to a campaign against non-traditional religions and the fact that journalists faced constant intimidating lawsuits and not infrequently direct threats to their person. Human Rights Watch noted that the authorities singled out minority religious groups characterised as 'sects'

or 'non-traditional' such as Jehovah's Witnesses, Hare Krishna devotees and independent Muslims. It noted that such religious communities as well as evangelical Christians and other Protestants faced hostile treatment by the media, harassment by the police and various administrative hurdles.

Report from a psychologist submitted to the Tribunal

64. [In] June 2011 the applicant's representative faxed to the Tribunal a copy of a report prepared by a clinical psychologist dated [in] March 2011 stating that in her opinion the applicant's wife was suffering from severe post-traumatic stress disorder and major depression. (A further copy of this report was faxed to the Tribunal[in] July 2011.)

The applicant's evidence at the hearing before me

65. At the hearing before me the applicant confirmed that all the answers in his original application to the Department of Immigration for a protection visa were correct and complete. He said that at university he had studied to be a [school teacher]. He said that he had initially worked in [vocation deleted: s.431(2)]. He confirmed that he had started a business in 1999 but he said that this had lasted only five months. He said that this business had involved [details deleted: s.431(2)]. He said that after this business had not worked out he had again worked as [vocation deleted: s.431(2)].
66. The applicant confirmed that he had started another business in 2002. He said that initially another person had invested money in this business. He said that in 2007 or 2008 he had left the business and then subsequently in 2008 he had become the sole owner of the business. He confirmed that he had had a Konica Minolta 1050 machine which he said had been the black and white machine to which he had referred at the Departmental interview and he had also had another machine, also a Konica Minolta, which was the colour machine, used for business cards, advertising posters and the like. He said that he had also had other machines to cut the paper and business cards, laminators and a binding machine. He said that his Konica Minolta 1050 machine was capable of collating and binding documents.
67. The applicant said that he had not printed newspapers. I asked him how he had known [Mr E]. He said that he had become acquainted with [Mr E] when he himself had been working [at the newspaper] where [Mr E] had been working at the time. He said that this had been in 1996 or 1997. He said that he thought [Mr E] was now working for [employer deleted: s.431(2)]. He said that when he had contacted [Mr E] in 2010 as he had described he had called him on his mobile telephone. He said that they had sometimes called each other.
68. The applicant confirmed that he had not been involved in any political parties in Kazakhstan. He said that he had not undertaken any printing work for political parties.
69. I asked the applicant what he feared would happen to him if he returned to Kazakhstan now. The applicant said that when they had been on their way to the airport to leave Kazakhstan the person from the KNB had called him and had told him that he should understand that he had gone against the government machine and that if he returned to Kazakhstan 'not me but someone else will do it' He said that the person had told him that he had given him the chance and that if he did not use it he would be an idiot. I asked the applicant why he had not mentioned this telephone conversation before. The applicant said that he had not thought that he would need to say all that in detail. He said that this person had threatened him a lot.

70. I noted that the applicant had put in a statement with his original application and he had then prepared a very detailed statement which recounted his conversations with the person from the KNB whom he had named as [Mr D]. I noted that he had also had a lengthy interview with the primary decision-maker. However he had never mentioned before that this person had called him on his way to the airport. The applicant said that this person had told him a lot of things and he had not thought that he should write about all these things. He said that he had just written that this person had been threatening him.
71. The applicant confirmed that he had only met this person for the first time in August 2009. I asked him if he had had problems with the authorities before this. The applicant said that he had been stopped by the police but this was just an everyday thing which happened to everyone. He said that he had not had serious problems.
72. I referred to the fact that in the statement accompanying his original application the applicant had said that he had had problems because he was of Korean ethnicity. The applicant said that he had just described several occasions which he had thought had been attributable to his Korean background. I noted that he had said that he had had to bear 'four years of humiliations and oppressions from nationalist adjusted Kazakhs' while at university. The applicant said that there had been some humiliations. He said that when he had been in the lift Kazakh people had come and had pressed the button for where they had wanted to go and not for where he had wanted to go and he had not been able to say anything.
73. I asked the applicant if this was the sort of thing to which he had been referring when he had said that he had suffered humiliation and oppression. The applicant said that there had been different situations. I noted that he had also said that he had been repeatedly stopped in the street because of his race. The applicant said that this was an everyday thing in Kazakhstan. He said that you could avoid them by taking a different route or not responding to people who humiliated you. He confirmed that he had been attacked in the street in November 1993. He said that he had been coming back in the evening when two young people had approached him and had beaten him up. He said that they had been speaking Kazakh and they had realised that he did not understand.
74. The applicant also referred to what he had happened in 1992 when he had gone to the collective farm. He said that he had been studying in the Russian group and at night when they had been sleeping a group of Kazakh people had come and had beaten them up. He said that there had been two Kazakhs there as well and they had not been touched. He said that he and the others who had been beaten up had got their things and had fled.
75. The applicant said that the occasion in November 1993 had been the only occasion on which he had been attacked in the street. I referred to his evidence that his brother [Mr A] had been attacked in the street [in] March 2008. The applicant said that he thought this had happened because his brother had wanted to register a church. He said that his brother had applied but his application had been rejected and he had complained. He said that he thought that this might have been the reason why his brother had been attacked or maybe it had been because of his nationality.
76. I noted that I had understood from the statement accompanying the applicant's original application that this attack had been to do with his brother's nationality but the applicant's wife had suggested in her statement that it had had to do with his brother's attempts to register a church. The applicant said that in the statement accompanying his original application he had not wanted to connect anything with Christianity. He said that he had not

wanted to involve his wife. He said that he had thought that it would be enough to say that this had happened because of his brother's nationality.

77. I asked the applicant if he feared that he would experience problems because of his nationality if he returned to Kazakhstan now. The applicant said that he thought he might have 'everyday problems' but not big problems. I put to the applicant that despite the prejudice which he had said he had encountered it appeared that he had been able to complete a university degree and he had had his own business which he had said had been successful before he had left Kazakhstan. The applicant said that this was correct.
78. I referred to the applicant's evidence that he had carried out printing work for the man from the KNB whom he had named as [Mr D] about once a month and I asked him what sort of printing this had been. The applicant said that he had seen some numbers, about some money, and sometimes he had seen some leaflets, one pile in the Kazakh language and the other in Russian. He said that it had been something for the people's uprising, something like: 'All people should take up arms and only with arms can we restore the law.' He said that he had also seen the names he had mentioned - Abilov and Ablyazov - printed there.
79. I referred to the applicant's evidence that [Mr D] had also wanted him to obtain information. The applicant said that [Mr D] had wanted him to obtain financial and political information. He said that [Mr D] had been particularly interested in the newspaper *Respublika* (Republic). He said that he had been in the circles of people involved in the printing industry with whom he had had contact outside work. He said that these had been friends or acquaintances and that they had helped each other on many occasions in business. He said that he had known that the newspaper 'Republic' was a multimedia paper. He said that he had seen that it was printed in A3 format and stapled. He said that the paper quality had been very bad but sometimes he had seen that it had been printed on good quality paper.
80. The applicant said that [Mr D] had first asked him to obtain this sort of information at the end of March 2010 and that [Mr D] had come to him with the first task at the beginning of April. He said that he had been very straightforward with [Mr D] and had told him that he was not a police officer and that he had not signed any contract with him to work as an informer. He confirmed that he claimed that he had been attacked by two Kazakhs at the entrance to his building. He said that this had been at the beginning of April 2010. He said that [Mr D] had telephoned him in the middle of day wanting to meet him but he had told [Mr D] that he was busy and that he had to go home for lunch.
81. The applicant said that when he had gone home these two people had grabbed him and had started punching him. He said that he had stumbled and had fallen on the floor. He said that they had told him that this was 'Hallo from [Mr D]' and then they had left. He said that he had felt that he was bleeding from his arm so he had quickly gone home and had bandaged his arm. He said that he had called his friend who was a doctor who had agreed to book him in without anyone noticing and had given him first aid. He said that his friend had given him the keys to his summer house and he had gone there.
82. The applicant said that [Mr D] had called him on his mobile telephone the same evening while he had been at the summer house and had asked him how he was and how his arm was. He said that it had been at this time that [Mr D] had told him to call the newspaper 'Republic' to offer to print some things for them. The applicant said that he had spent three days at the summer house. He said that he had lost track of time and he had found some alcohol at the summer house.

83. The applicant said that he had not telephoned his wife after he had been attacked. He said that he did not tell his wife about such things because her blood pressure would go up. I put to the applicant that I found it very difficult to believe that he had not even telephoned his wife to warn her given that he claimed that he had been attacked at the entrance to his own house. The applicant repeated that he did not tell his wife about such things. I put to the applicant that he had claimed that he had been concerned for the safety of his family so I would have thought that the first thing he would have done after he had been attacked would have been to call his wife, particularly since he had said that this attack had happened at his home. The applicant repeated that his wife had fragile health. He said that he had not thought that he would remain at the summer house for three days.
84. The applicant said that it had been at the end or in the middle of May that he had agreed to give [Mr D] the equipment from his business. I referred to the fact that the applicant's wife had mentioned in her statement that the applicant had disappeared for three days at the beginning of April but she had said that when he had come back he had told her that he had agreed to sell some of his equipment. The applicant said that this referred to the fact that he had decided that he had to sell his business and to do something else. He said that he had thought that if he sold his business they would lose interest in him and that this was what he had told his wife. I put to the applicant that his wife had said in her statement that he had told her that he had actually sold part of his equipment. The applicant repeated that he had merely decided to sell it.
85. The applicant confirmed that he claimed that he no longer owned the equipment now. He confirmed that he was qualified to work in Kazakhstan as a teacher, either in a college or in [details deleted: s.431(2)]. I asked the applicant what would prevent him from going back to Kazakhstan and working in this occupation where he would not be likely to be approached to become an informer. The applicant said that [Mr D] had told him himself that he had not gone against [Mr D] personally but against the government machine so either [Mr D] would finish that business or someone else would do so. He said that [Mr D] had told him that they could not let anyone go like that.
86. I put to the applicant that according to his evidence [Mr D] had let him go. The applicant said that if he had had nothing to give [Mr D] he probably would not have been allowed to go. I put to the applicant that according to his evidence the only reason [Mr D] had approached him at all had been that he had had a printing business. The applicant said that he did not know why [Mr D] had approached him. I noted that the applicant had said that he had not been involved in any political activity nor had he been involved in printing any material for any political parties nor had he been involved in printing newspapers. The applicant said that he had been approached to print some political leaflets but he had always refused.
87. I put to the applicant that there was nothing to suggest that he would be of any interest to the KNB if he were to return to Kazakhstan now, given that he no longer had a printing business. The applicant said that they had a saying in Kazakhstan that a criminal matter could always be found for a person. He said that he would be falsely accused and put in prison. He said that there was not any logic. He referred to the case of Zamanbek Nurkadilov, an opposition politician in Kazakhstan who had been found shot in the heart and the head but whose death the authorities had written off as a suicide.

The applicant's wife's evidence at the hearing before me

88. I next took evidence from the applicant's wife. She confirmed that, as she had stated in Part C of the application form, immediately before she had left Kazakhstan she had been an [employee] at a company for four years. She said that this had been a full-time job. She said that before this she had worked full-time at her husband's company. She confirmed that from 2005 she had also been a deacon at her church, '[Church 2]' near Almaty. She confirmed that this was a registered church in Kazakhstan.
89. The applicant's wife said that as a deacon she had been responsible for working with people and for all the equipment. She said that it had been a very small church and they had mainly assisted the pastor. She confirmed that the church had had about 80 members. She said that they had had services at the church on Sundays and they had had groups of young people who met on Saturdays and Wednesdays. She said that the deacons or leaders of the church had also met and they had also had meetings at home.
90. I noted that the applicant's wife had said that the church had had house meetings at which they had gathered for divine service, studied the Bible and prayed. The applicant's wife said that these meetings had been held once a week. I noted that the applicant's wife had said these meetings had involved quite small groups of people which suggested that there would have been a number of these meetings happening on different days with different groups of people. The applicant's wife said that this was correct. She repeated, however, that she had only attended such meetings once a week.
91. I referred to the applicant's wife's evidence that she had also invited people to attend the church. The applicant's wife said that when she had socialised with people she had told them about the church and what it did.
92. The applicant's wife said that she had first had serious problems as a result of her religion in March 2010. She said that before that they had had problems but they had managed to solve them. She said that two or three years previously small problems had started and they had stopped going into the street with their propaganda because practically they had been forbidden from doing this. She said that people could be very rude to them if they did this.
93. The applicant's wife said that at the end of February 2010 someone had telephoned her and had told her to leave Kazakhs in peace and to stop her propaganda, especially towards Kazakhs. She said that at the end of March when they had taken her to the police she had understood that it was serious. I put to the applicant's wife that, as I understood her evidence, these two events had been completely unconnected. The applicant's wife said that the first time when they had called her they had been different people but they had also threatened her to stop her religious propaganda. She said that although the people who had interrogated her at the police station had been different people they had told her the same.
94. I put to the applicant's wife that, as I understood her evidence, she had said that the telephone call in February had been related to the fact that she had been talking to the sister of the wife of a senior police official. She had said that the occasion in March had arisen because she had been talking to an elderly neighbour whose family had objected. The applicant's wife said that [Ms H]'s children had come to their church and after that [Ms H] herself had come to the small house groups. She said that when [Ms H] had brought her sister then she had started having problems. She said that [Ms H] had complained that her husband did not allow her and the children to go to church because he said that she was Muslim and she could

not betray her religion. She said that it had been after this that she had received the telephone call.

95. The applicant's wife said that at the beginning of March someone had come to the church and had said that he was the representative of the Department of Internal Affairs. She confirmed that this person had said that they were interested in her. She said that he had told her that her propaganda was too strong, especially for Kazakh people. She said that he had told her that they were watching what she was doing. The applicant's wife confirmed that after this the church had had some inspections even though the period for such inspections had finished.
96. The applicant's wife said that at the beginning of March her older daughter had been beaten up. She said that they had had a lesson at school about preventive measures against religious extremism. She said that they had told them these sects were very dangerous to the State and they had warned the children to be careful. She said that her daughter had said that their church was not a sect. The applicant's wife said that after the lesson had finished the children had probably argued and had had a fight. She said that her daughter had suffered a broken lip and bruises on her arms.
97. The applicant's wife said that they had gone to the principal of the school but the principal had said that she had warned them that their daughter should not talk about religion at school. She said that the principal had told them that she could not control the children. The applicant's wife said that they had then complained to the Department of Education but they had been told that neither the teacher nor the principal had done anything wrong. She said that she had thought of changing the children's school.
98. The applicant's wife said that at the end of March the neighbour with whom they had been communicating for a long time had decided to be baptised. She said that their neighbour's daughters had opposed this because they considered themselves Muslim although they did not visit the mosque. She said that they had been afraid that their mother would leave all her property and belongings to the church. She said that she did not know why they had thought this but it had maybe been because there had been programmes on television about the Protestant churches brainwashing people and taking their money and property.
99. The applicant's wife said that she had gone to their neighbour's place to clean the place, to read the Bible and to tell her about the ritual of baptising. She said that their neighbour's daughter had called the police who had told her to come with them to the police station. The applicant's wife became distressed and I indicated to her that it was not necessary for her to repeat the account she had given in her statement of what had happened. I indicated to her that the point I had been trying to make was that it seemed that these incidents to which she had referred were all unrelated.
100. I asked the applicant's wife what she feared would happen to her if she returned to Kazakhstan now. The applicant's wife said that maybe at first there would not be anything but God asked them to spread the gospel all over the world. She said that because she was a religious person she had to spread the gospel to people.
101. I indicated to the applicant's wife that I accepted that she had a commitment to proselytising but as I understood her evidence she had been doing this for quite some time in Kazakhstan. She had been involved with [Church 1] before she had been involved with her current church

and she had been involved with her current church since 2005. She had claimed that she had had the problems she had described in late February and March 2010.

102. The applicant's wife said that these had been serious problems. She said that before this there had been some problems but they had known how to solve them. She said that lately the rules had become stricter and people had been afraid of religious propaganda. She said that if she returned to Kazakhstan and people asked her questions when she was socialising she would not be able to say nothing because it was her duty to spread the gospel and to talk about Jesus. She said that she was not sure that it would stop.
103. I put to the applicant's wife that there was nothing in the independent evidence available to me to suggest that '[Church 2]' or any members of that church had experienced any problems in Kazakhstan. I noted that the applicant's representative had produced a lot of reports from organisations which monitored freedom of religion in Kazakhstan and that there was reference, for example, to problems which [Church 1] had had, but there was nothing to suggest that her church had had problems.
104. I put to the applicant's wife that '[Church 2]' had been visited by a minister from Canada in 2009 and again in November 2010. He had referred to the fact that the church could not advertise his visit and that it was well-known that the government was against 'born again' believers, but he had not suggested that the church or any of its members were having problems with the authorities in Kazakhstan ([details of article and source deleted: s.431(2)]).
105. The applicant's wife said that they could not write about such things. She said that if she had not left Kazakhstan nothing would have been written about her. She said that she did not know what they wrote or in what reports. She said that [Church 1] was a very big church and was quite famous so all their problems were quite well-known. She said that when this last incident had happened to her and she had wanted to complain she had called her pastor who had told her that it would be better for her not to do so because their church was a small one. She said that her pastor had said that there was no guarantee that anyone would help them and all the fuss would harm the church. She said that she knew people who had stopped going to church because they did not want any problems but no one knew about them and it was not written about in reports. She said that no one knew about her.
106. I put to the applicant's wife that the point I was trying to make was that these sorts of things were quite well-reported in Kazakhstan. I noted again that the applicant's representative had given the Department a lot of reports which related to instances where people like her had had problems because they had for example been proselytising. I noted that one of the reasons these things were reported was that following the collapse of the Soviet Union it was possible for ministers from Canada and the USA to visit places like Kazakhstan.
107. The applicant's wife said that there had been problems but these had been very small problems which they had been able to solve themselves so they had not been going to disturb other people. She repeated that the serious problems had started in March 2010. I noted that the applicant's wife had said that she feared being persecuted for reasons of her religion if she returned to Kazakhstan and I was trying to understand why her situation was different from that of all the other religious believers like her pastor who were still there in Kazakhstan.
108. The applicant's wife said that she had been told at the police station that she would be put in prison because of some criminal matter and no one would find out anything. She said that

[Ms F] was a pastor which meant that if someone went against her they went against the church but she herself was just a deacon and she could be punished to scare others.

Concluding submissions and remarks

109. The applicant's representative submitted that the applicant's wife had been targeted because she had overstepped unspoken boundaries. She had been quite successful in proselytising to Kazakhs and this had been the main problem. The applicant's representative said that ministers and human rights monitors came and went but people like the applicant's wife stayed in Kazakhstan. She said that if they complained there would be repercussions later for them. She submitted that all the incidents which had happened to the applicant's wife were related because in each incident she had been accused of proselytising to Muslims. She submitted that the applicant's wife had been the most successful person in her church in terms of proselytising and this had been what had made her stand out and what had made her a target.
110. The applicant's representative submitted that, while the applicant might not seem an extremely desirable asset for the security services, nevertheless he had had access to circles of people at printing houses and people who dealt with public opinion. She said that by refusing to cooperate and to become an informer and by warning the newspaper and warning other people that he was being forced to become an informer he had taken political action, however significant or insignificant it was. She said that in Kazakhstan even an insignificant offence was regarded as a huge offence against the government and the security services would not forgive such actions or such criticism. She said that if the applicant returned there she believed that the security services would retaliate.
111. I asked the applicant and his wife if there was anything they wished to add before I closed the hearing. The applicant's wife referred to the fact that she had had a miscarriage not long before the Departmental interview. She said that she was afraid that she had not been able to express herself properly at the interview. The applicant said that he was very nervous.

FINDINGS AND REASONS

112. Aspects of the evidence of the applicant and his wife in the present case cause me concern. They have presented their claims as almost completely separate from each other. Where their claims do overlap, in relation to the attack on the applicant's brother [in] March 2008, they ascribe different motives to this attack. As I put to the applicant, in the statement accompanying his original application he suggested that the motive was racial but in her statement the applicant's wife said that the applicant's brother had wanted to register a new church but the church had been refused registration and he had complained to the local administration. She said that the people who had attacked the applicant's brother had abused the church and the applicant's brother's activity.
113. At the hearing before me the applicant said that he thought that his brother had been attacked because he had wanted to register a church or maybe because of his nationality. He said that in the statement accompanying his original application he had not wanted to connect anything with Christianity. He said that he had not wanted to involve his wife. He said that he had thought that it would be enough to say that this had happened because of his brother's nationality. I accept the evidence referred to in paragraphs 58 and 64 above with regard to the applicant's and his wife's health but I do not consider that this explains the fact that the

applicant entirely omitted any reference to the religious motive for the attack on his brother from his original statement.

114. As I put to the applicant, I likewise find it difficult to accept his evidence that he made no attempt to call his wife after he claims he was attacked by two Kazakh men at the entrance to his building at the beginning of April 2010. The applicant said that he did not tell his wife about such things because her blood pressure would go up but, as I put to him, I find it very difficult to believe that he did not even telephone his wife to warn her given that he claims that he was attacked at the entrance to his own home. The applicant repeated that his wife was in fragile health but they both say that he then remained away from home for three days during which time she said in her statement she attempted to find him by ringing hospitals and even the police. The applicant said at the hearing before me that he had not thought that he would remain at the summer house for three days, that he had lost track of time and that he had found some alcohol at the summer house. However his disappearing in this fashion can hardly have helped his wife's fragile health.
115. Despite these concerns the applicant's evidence with regard to his dealings with the man from the KNB whom he knew as '[Mr D]' has been broadly consistent. I do not consider that I can find with confidence that he is not telling the truth about his past experiences in Kazakhstan. I have therefore assessed whether he has a well-founded fear of being persecuted for a Convention reason on the basis that it is possible, although not certain, that the events which he has described did take place as he has said: see *Guo*, referred to above; *Rajasundaram v Minister for Immigration and Multicultural Affairs* (1999) 51 ALD 682; *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220.
116. As I put to the applicant, given that he no longer has his printing business there is nothing to suggest that he would be of any interest to the KNB if he were to return to Kazakhstan now. He has said that he was not involved in any political activity nor was he involved in printing any material for any political parties. He was not involved in printing newspapers. However there remains the possibility that, as the applicant and his representative suggested, the applicant might be subject to reprisals because he not only refused to become an informer for the KNB but also called other printing houses where his acquaintances worked and warned them that he was being forced to become an informer.
117. The repressive nature of the current regime in Kazakhstan is well-attested (see, for example, the US State Department, *Country Reports on Human Rights Practices for 2010* in relation to Kazakhstan, Introduction and Sections 1.a, Arbitrary or Unlawful Deprivation of Life, 1.d, Arbitrary Arrest or Detention, 1.e, Denial of Fair Public Trial, 2.a, Freedom of Speech and Press, and 3, Respect for Political Rights: The Right of Citizens to Change Their Government). While the applicant bribed '[Mr D]' in order to be allowed to leave the country, I accept that there is a real chance that '[Mr D]' or someone else from the KNB might take reprisals against the applicant if he were to return to Kazakhstan now. Such reprisals might take the form of further physical attacks of the sort the applicant experienced at the beginning of April 2010 or, as the applicant himself suggested, falsely accusing him in relation to a criminal matter and putting him in prison. As referred to above, Forum 18 reports that members of [Church 1], for example, have been falsely accused of espionage, storing psychotropic drugs and tax fraud (see folio 44 of the Department's file CLF2011/49208).
118. I consider that the persecution which the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to his liberty or

significant physical harassment or ill-treatment. I consider that the applicant's imputed political opinion on the basis of his actions is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a). I further consider that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his imputed political opinion. Since the Government of Kazakhstan is responsible for the persecution which the applicant fears, I consider that there is no part of Kazakhstan to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.

119. Turning to the case of the applicant's wife, I accept that from 2005 until she left Kazakhstan she was a deacon in '[Church 2]', near Almaty. I accept that she is committed to spreading the gospel and I accept her evidence with regard to the problems she had as a result. The attitude of the current regime in Kazakhstan towards what it regards as 'non-traditional religions' - which it stigmatises as 'sects' - is likewise well-attested (see in particular the Forum 18 'Religious freedom survey, September 2009' and Chapter III of the Human Rights Watch report, *An Atmosphere of Quiet Repression - Freedom of Religion, Assembly and Expression in Kazakhstan* (December 2008), both of which the applicant's representative gave to the Department).
120. The applicant's wife has said that '[Church 2]' is registered and, as I put to her, the information available to me does not suggest that the church is having problems with the authorities in Kazakhstan ([details of article and source deleted: s.431(2)]). However I accept that, as the applicant's wife and her representative said, small churches like '[Church 2]' may not seek publicity for the problems they are encountering for fear of repercussions.
121. As I put to the applicant's wife, the incidents which she has described appear to be unrelated in the sense that the threatening telephone call at the end of February 2010 and the subsequent visit of the man who said that he was a representative of the Department of Internal Affairs were related to the fact that she had been talking to the sister of the wife of a senior police official, [Mr G], whereas the incident at the end of March arose because she was talking to an elderly neighbour whose family objected. However I accept that it is necessary to consider the cumulative effect of such incidents.
122. I accept that if the applicant's wife returns to Kazakhstan now or in the reasonably foreseeable future she will continue her attempts to spread the gospel and that there is a real chance that she will encounter problems as a result. Such problems may range from people being rude to her - which would not in itself amount to persecution - to more serious problems involving action taken by the authorities. As referred to above, Forum 18 has reported that members of [Church 1] have been falsely accused of criminal offences and that a pastor from [Church 1] was charged under Article 111 of the Criminal Code ('causing severe damage to health due to negligence') because he prayed with a woman for her health at her request (see folios 38 and 44 of the Department's file CLF2011/49208). As indicated in paragraph 120 above, I accept that many more such incidents are very likely not reported for fear of repercussions.
123. I consider that the persecution which the applicant's wife fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to her liberty or significant physical harassment or ill-treatment as occurred when she was detained in March 2010. I consider that the applicant's wife's religion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a). I further

consider that the persecution which the applicant's wife fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason, namely her religion. Since the Government of Kazakhstan is responsible for the persecution which the applicant's wife fears, I consider that there is no part of Kazakhstan to which the applicant's wife could reasonably be expected to relocate where she would be safe from the persecution which she fears.

CONCLUSIONS

124. I find that the applicant and his wife are outside their country of nationality, Kazakhstan. For the reasons given above, I find that they have a well-founded fear of being persecuted for reasons of their political opinion and religion respectively if they return to Kazakhstan now or in the reasonably foreseeable future. I find that they are unwilling, owing to their fear of persecution, to avail themselves of the protection of the Government of Kazakhstan. There is nothing in the evidence before me to suggest that either the applicant or his wife has a legally enforceable right to enter and reside in any country other than their country of nationality, Kazakhstan. I therefore find that the applicant and his wife are not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154). It follows that I am satisfied that the applicant and his wife are persons to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the applicant and his wife both satisfy the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.
125. As referred to above, the applicant's daughters did not make specific claims under the Refugees Convention as amended by the Refugees Protocol. I am not satisfied that they are persons to whom Australia has protection obligations and they therefore do not satisfy the criterion set out in paragraph 36(2)(a) for the grant of a protection visa. I am satisfied, however, that the applicant's daughters are members of the same family unit as the applicant and his wife for the purposes of subparagraph 36(2)(b)(i) of the Act. As such, the fate of their applications depends on the outcome of the applications of the applicant and his wife. As the applicant and his wife both satisfy the criterion set out in paragraph 36(2)(a), it follows that the applicant's daughters will be entitled to be granted protection visas provided they meet the criterion in subparagraph 36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

126. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first and second-named applicants satisfy paragraph 36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention; and
 - (ii) that the other applicants satisfy subparagraph 36(2)(b)(i) of the Migration Act, being members of the same family unit as the first and second-named applicants.