

1502282 (Refugee) [2016] AATA 4062 (7 July 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1502282

COUNTRY OF REFERENCE: Uzbekistan

MEMBER: John Godfrey

DATE: 7 July 2016

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 07 July 2016 at 3:24pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Uzbekistan, applied for the visa [in] November 2013 and the delegate refused to grant the visa [in] January 2015.
3. The applicant appeared before the Tribunal on 22 June 2016 to give evidence and present arguments.

CONSIDERATION OF CLAIMS AND EVIDENCE

4. The issue in this case is whether Australia has protection obligations in respect of the applicant. For the following reasons, the Tribunal has concluded that the decision under review should be set aside.
5. The relevant law is at Attachment A.

Nationality

6. The applicant first arrived in Australia on an Uzbekistan passport, a copy of which was provided to the Department of Immigration. The Tribunal is satisfied that the applicant is a national of Uzbekistan and has assessed his claims against Uzbekistan.

Background

7. The applicant was born in Tashkent, Uzbekistan, on [date]. He is single. He gave his religion as Islam. The applicant's mother, [and siblings] still live in Uzbekistan. The applicant's father disappeared in 2013. The applicant completed school in Uzbekistan in [year].
8. The applicant travelled to Australia on a student visa [subclass] [in] February 2008 and departed [in] December 2009. He was issued with a further student visa [subclass] [in] January 2010 and departed again [in] June 2011 after completing [a course]. The applicant was issued a further student visa [subclass] [in] July 2011 and departed a third time [in] March 2013. He withdrew from both courses he studied at that time.
9. The applicant returned to Uzbekistan. He was detained and beaten in Uzbekistan after his father's disappearance. He travelled to Australia on another [subclass] visa [in] August 2013. He applied for a protection visa [in] November 2013.

Claims before the Department

Statement with the Protection Visa application

10. The applicant provided a statement with his application. He stated that: "He came to Australia to study [his specified course] to help his work for his father's [products] business in Uzbekistan. When he returned to Uzbekistan in March 2013 he had a one-way ticket because he did not expect to return to Australia. He started working in Tashkent with enthusiasm and found friends and a social life. He looked after his father's [retail business] while his father managed the [product] farm. His father never wanted him to visit the farm. Even his mother and [sibling] did not go to the farm. He remembered going horse riding and

fishing there in his childhood, and he missed it. His father could not use his mobile phone at the farm because there was no coverage, but they had a landline. One day his [sibling] got sick. Despite constantly phoning he could not reach his father, so he drove out to the farm in less than two hours. He ran into the farmhouse and saw a group of about five or six people kneeling in the living room, praying. He saw his father and yelled at him that he was needed at the hospital in Tashkent. They left together quickly, but the applicant was so stressed that he never asked his father who the people were or what they were doing, and his father never explained. His [sibling] recovered and was released from hospital.

11. The applicant's father returned to the farm and the applicant forgot about the day. .About two weeks later he had a day off work. He met up with his friends who asked if his family still had horses on their farm. He replied that they did, and on the spur of the moment four of them decided to go to the farm for riding and fishing. The applicant's father was not at the farm. The applicant knew he was in [a city] buying supplies.
12. The applicant had a key to the farmhouse. He was putting drinks and food into the fridge when he heard a noise upstairs. He found three men with white robes and beards upstairs. He asked what they were doing there. One politely replied that the applicant should ask his father, as they cannot explain some things. The applicant remembered the day from two weeks before. He saw Korans lying on tables and guessed they were very religious men. His father had not mentioned guests at the farm, but he did not tell the applicant much anyway, and was often anxious and reading the Koran. The applicant was not very religious, but he noticed his father praying several times a day, and he guessed that people became more spiritual as they aged. The applicant guessed his father had fellow worshippers over. He was about to leave when two of his friends came up the stairs and saw the men. The applicant told his friends to go downstairs. He and his friends went riding, but when they came back to the farmhouse to eat his father was there. He told them to go back to Tashkent. The applicant objected, but his father was very angry told them they must leave immediately. His friends were very disappointed and asked the applicant a lot of questions on the way back to Tashkent
13. The applicant worked for two days, but could not stop thinking about the men in the house. The applicant's father returned from Tashkent and talked to the applicant. He explained that the five men at the farmhouse were religious. They wanted to go on hajj to Mecca, but it was currently impossible. One of them was once the imam of a mosque in [another city] that the government closed down. He father said he did not want the applicant to know any more because it would be dangerous for him. He wanted to know if the applicant's friends talked about the men. He told the applicant never to go to the farmhouse again without his permission.
14. Several days later a friend of the applicant asked him to lunch. He asked the applicant if he could meet with the people he saw at the farmhouse. He told the applicant he was religious and that he realised the men at the farmhouse had a deep knowledge of the Koran and he was unable to access the information anywhere else. He said Islam had many schools and directions and these men might be from the one he was searching for. The applicant said that he would have to ask his father, who had prohibited him from returning to the farmhouse. The applicant said that he apologised and said the men were probably gone by now.
15. When the applicant got back to the [business] his [worker] told him some expensive items had been stolen. The applicant became so preoccupied that he forgot to ask his father about his friend's request. The next day his father brought home a bag of books that he hid in the room of the applicant's [sibling]. His father did not come home that evening. Nobody they rang knew where he was.

16. The applicant went to the farmhouse. It was empty and everything was overturned, floorboards lifted, and some walls had holes in them. The applicant returned to Tashkent and found two police officers questioning his mother. The police beat the applicant and took him away. At the police station, where they beat him with rubber batons, then they handcuffed him to a railing. Different police officers came and interrogated the applicant. The applicant still does not know what has happened to his father or where his [sibling] is.
17. His friend came into the police station. He was a [security] officer. He laughed at the applicant and told him he had taken photos at the farmhouse. He told the applicant that he had told the [security service] about the applicant's dismay over the extent of corruption in Uzbekistan and his criticism of Karimov. While he was being interrogated the police told the applicant that they had discovered religious robes at his father's farm and a lot of items associated with a prohibited sect of Islam. They did not tell the applicant which sect, but it was not state-approved.
18. The applicant fears he will be harmed by the Uzbek authorities because of his association with his father, who was associated with religious people. His father told him that the group were not radicals but only wanted to pray as Islam prescribes, to make a pilgrimage and wear their robes. Authorities found the Korans hidden in the room of the applicant's [sibling]. The [security] officer who was once the applicant's friend, [Mr A], offered to release the applicant for \$[amount]. The applicant signed a confession that the religious men were at the farm and Korans had been found in his house. He was shown signed confessions by other friends of his who had been at the farm. After the applicant was released [Mr A] told him to leave Uzbekistan because if he stayed it would not only be him dealing with the applicant. [Mr A] said he would withdraw the deal if the applicant did not leave immediately. The applicant would then be interrogated further and charged as an accomplice of his father. His mother begged the applicant to leave. He left Uzbekistan. His mother had to sell the business to survive. He phones her sometimes, but she has had no more news of his father."

The Protection Visa Interview

19. The applicant attended an interview [in] June 2014. The Tribunal has listened to the recording of the interview.
20. The applicant said that the events occurred [over a range of dates in] July 2013. The applicant stated that when he was arrested by police it was about 5pm. When he was beaten at the police station he was beaten on his chest and sides, not his face. The delegate asked the applicant how long he was handcuffed for. He replied that he had lost track of time, but he thought it was about 8 hours, or perhaps 5 or 6 hours. He said that the next day [Mr A] came to him with a written confession to sign and asked him to pay a bribe of \$[amount] for his release. He said that he phoned his mother and they got the money together. He was released on [a date in] July 2013 and he left Uzbekistan [days later].
21. The applicant was asked where his [sibling, named] was. He replied that [his sibling] was in Uzbekistan. [That sibling] had not disappeared or been arrested. [The sibling] was the black sheep of the family who had chosen to be with a [partner of different ethnicity] despite the negative effect this had on the family's reputation. The applicant was asked if he had any trouble departing Uzbekistan. He replied that he had no difficulty departing the airport. He left Uzbekistan [shortly] after he bought an airline ticket.
22. He still has not heard anything from his father. The Uzbek authorities still question his mother on a regular basis about his father. His mother is thinking of divorcing his father.

23. The applicant was asked why he had waited four months after returning to Australia before lodging a Protection visa application. He replied that he was looking for ways to get money to finish his studies when he returned to Australia. He wanted to stay here long enough for things to change in Uzbekistan. He had wanted to apply for a [different] visa. He did research and found out about Protection visas. The delegate asked the applicant about the four applications he had made for [Country 1] visas. He said the most recent was in Australia after he last returned here. The applicant had applied that he thought his father might have gone to [Country 1]. He doesn't know if he is there. He thinks his father might still be on the run.

Post protection Visa interview Submission

24. The applicant's then representative provided a post-interview submission. It was submitted that the applicant fears persecution based on his imputed political opinion and membership of a particular social group (his family). She said that the applicant's father was providing shelter for devout Muslims and the applicant was a suspect by association. The applicant had also argued with law enforcement officers and unwittingly criticized Uzbekistan regime while talking to his friends about Australia and its values.
25. It was further submitted that the applicant's experience is entirely consistent with how others have been and continue to be treated in Uzbekistan in the course of state sanctioned persecution. There is no possible recourse for the applicant against his persecution within Uzbekistan. It was contended that the applicant had taken prompt steps to flee the country after it became clear to him that persecution would continue indefinitely. There was no reason to disbelieve any part of the applicant's account.
26. The applicant's then representative provided a copy of the Human Rights Watch report "No one left to witness" dated 2011, with the submission.

FINDINGS AND REASONS

Country of reference

27. The applicant provided a copy of his passport to the Department. The Tribunal accepts that the applicant is a citizen of Uzbekistan. The Tribunal accepts that the applicant has no right to citizenship or residence in a third country.

Does the applicant have a well-founded fear of persecution for a Convention reason if he was to return to Uzbekistan now or in the reasonably foreseeable future?

Is the applicant credible?

28. The Tribunal accepts the difficulties of proof faced by applicants for refugee status and complementary protection. 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'.
29. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraphs 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt.
30. However, a decision maker is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made

out. In addition, The Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

31. In this case, for the reasons outlined below, the Tribunal found the applicant to be credible when discussing his claims.

Was the applicant's father suspected of harbouring members of a banned Islamic sect?

32. The Tribunal notes that the delegate said that he found the applicant's account of his father's religious history and motivation in helping a proscribed Islamic group to be vague and unconvincing. The delegate noted that the applicant was unable to provide any detail about the Islamic group his father was supporting.
33. The delegate acknowledged in the decision record that the applicant's account of his claims was broadly consistent with the country information but added that his testimony at the hearing gave the impression of a rehearsed account rather than a recounting of a lived experience as it lacked any substantive detail. The Tribunal listened to the departmental interview in full. It notes that the applicant, who was clearly nervous, was asked to recount his story but that there was no attempt to ask questions designed to flesh out the applicant's account.
34. At the hearing the applicant explained that his father was a businessman. He owned a [business], which he had inherited from the applicant's grandfather. He said that his father also owned a [products] farm and a [size] farm an hour or so drive from Tashkent. The applicant asked the applicant when his father had obtained the farm. He said that he was unsure because his father had the farm when the applicant was young. The Tribunal said that it would have had to have been acquired after the breakup of the Soviet Union, given Soviet era land ownership laws. The applicant said that he did not know but he assumed that was the case.
35. The applicant said that the [products] farm was on [a land feature on] the property. His father employed people, about [number range], on a seasonal basis to help him run the [products] farm. The applicant said that the farm itself had cattle and horses. There were people who worked with his father on the farm proper. The applicant added that it was about a kilometre drive from the gate to the farm to the farm house. There was always someone there to look after the horses and the cattle. It was a [size] farm house.
36. The Tribunal asked the applicant about his father's religion. He said that his father had not been that religious when the applicant was growing up. He said that his father was a good person and he helped people when he could. He said that his interest in religion had increased during the years before his disappearance. He said his father had attended the mosque regularly and prayed during the day more often.
37. The Tribunal asked the applicant if his father had completed the hajj. The applicant said that his father had been to Mecca five times. The Tribunal asked if that number of visits had brought his father to the attention of the authorities. The applicant said that he did not know. The applicant said that the Uzbekistan Government was concerned about the activities of Muslim sects and took action against them. He said that membership of these sects was prohibited.
38. The Tribunal asked about the first visit the applicant made to the family farm. The applicant said that it was no big deal. He had gone to the farm because his [sibling] was ill and his

father needed to know. He said that there were people there praying and he had noted that they appeared a bit weird but he did not think much about it. He was just concerned to tell his father about his [sibling]. He said that they had appeared to be [ethnic group] and were dressed in [that ethnic group's] type clothes.

39. The Tribunal asked about the second visit. The applicant said that he and his former school friends used to meet in the neighbourhood. He said that one of them, [Mr A], had said that it would be a good idea to go to the farm and ride horses around. The applicant said that he was all for it. He said that he could not disrespect his father by drinking alcohol at his home in Tashkent. He said that he had gone to the farm with his friends with a supply of beer when he knew his father would not be there.
40. The applicant said that at the farm he had put the beer in the fridge and had heard a noise upstairs. He said that he went upstairs and saw the same people as before. He said that he was surprised. He asked them who they were. They had said that they had said they were working there. The applicant said that [Mr A] had come up the stairs to see what was going on and had seen the men. He said that because the people were there he and his friends went back to Tashkent.
41. The applicant said that when he saw his father in Tashkent that night his father had been angry with him. The applicant said that made him angry too. He said that his father had made him feel like he was still a small child. The applicant said he had thought he was being told off because of the beer he had taken to drink at the farm. He said that he was happier when he found out his father was angry for another reason.
42. The applicant said that his father had told him that the men were religious and that they were having problems for that reason. He said that his father said that he had given the men jobs and accommodation in the farmhouse and had allowed them to pray because they were forbidden to do so anywhere else.
43. The applicant said that a week or so later [Mr A] had met up with him. He said that [Mr A] had asked him a lot of questions about the men at the farmhouse. The applicant said that at first it seemed nothing out of the ordinary but [Mr A] had kept on about it. He had said [Mr A] appeared to be interested in religion which the applicant thought strange because [Mr A] liked to drink and was not at all religious. [Mr A] said that he wanted the applicant to take him to the farm to meet the men. The applicant had not agreed to do this.
44. The Tribunal asked about his next trip to the farm. The applicant said that a week or so later his father had not returned home as scheduled from the farm. The applicant had driven out to the farm to make sure he was alright. The applicant said that when he got there the farm gate was open, which was not right. He said there was no sign of any of the workers. Inside, he said, the house was a mess. It looked like someone had robbed the house. The applicant said that he was worried for his father and so had returned to Tashkent.
45. The applicant said that since the incident in 2013 the farm had fallen into disrepair. It was still owned by his father but it was run down. The [business] has also been left disused. The applicant said that the family home in Tashkent had been sold and his mother and [sibling] were now being looked after by his [other sibling]. The Tribunal noted that the applicant had said that his [other sibling] had been estranged from his family. The applicant said that this was true, the estrangement had happened after his [sibling] married [a partner of different ethnicity]. The applicant said that his [sibling] had since divorced [that partner] and he was reconciled with [their] mother and [sibling].

46. The Tribunal asked the applicant if his [sibling] had any problems with the Uzbek authorities. He said that [they] did not. He said that his [sibling] was a modern person and not at all religious.
47. The Tribunal asked the applicant if he had heard anything about his father's whereabouts since he was interviewed by the Department. The applicant said that he had not. He said that the family still did not know where his father was, or even if he was alive. There had no news since the incident in July 2013.
48. The Tribunal asked if his family had tried to make enquiries of the Uzbekistan Government to find his father. The applicant said that from time to time the applicant's mother receives a visit from the Uzbek authorities. She is asked about her husband's whereabouts and about the applicant's whereabouts. The applicant said that these visits usually coincided when there were heightened security concerns. The last visit had been just before the hearing. He said that a high level [foreign] Government delegation had been about to visit Tashkent¹. The Tribunal said that if the Uzbek authorities were questioning his mother about his father it would seem to indicate that they did not know where he was.

Country Information

49. The Tribunal has considered the recent country information about the human rights situation in Uzbekistan. It notes that the US State Department Country Report on Terrorism in 2014 said of Uzbekistan: *"Uzbekistani law enforcement authorities frequently use the term 'terrorism' or 'extremism' interchangeably and view alleged ties to what the government considers extremist organisations as grounds for arrest, prosecution and convictions of many people who would not be considered terrorists outside Uzbekistan. 'Religious extremism' is the primary justification for Uzbekistan's seemingly indiscriminate police actions against religious adherents, especially Muslims... The government brands some Islamic groups it broadly determines to deviate from the state-sponsored version of Islam as extremist and criminalised membership in such groups, even when groups clearly espouse non-violent ideology..."*
50. The Tribunal also notes that Human Rights Watch in its January 2016 report noted that: *"Thousands of people are imprisoned on politically motivated charges, torture is endemic... Muslims who practice outside strict state controls are persecuted... More than 12,000 persons are currently imprisoned on vague charges related to 'extremism'..."*
51. The Tribunal also notes and gives weight to the US Committee on International Religious Freedom Report of 2016 states that: *"The Government of Uzbekistan continues to enforce a highly restrictive religion law and impose severe restrictions on all independent religious activity, particularly by Muslims... the USCIRF again recommends in 2016 that Uzbekistan be designated a country of particular concern... The 1998 Law on Freedom of Conscience and Religious Organisations severely limits the rights of all religious groups and facilitates Government control of religious activity, particularly of the majority Muslim community. The law criminalises unregistered religious activity, requires official approval of the content, production and distribution of religious publications bans minors from religious organisations, allows only clerics, and not lay people to wear religious clothing in public and prohibits proselytising... The Uzbek government actively represses individuals, groups, mosques... that do not conform to officially-prescribed religious practices or for alleged association with extremist political programs... the government has used vague anti-extremist laws against peaceful religious adherents and others who pose no credible security threat..."*

¹ [Deleted.]

52. The Tribunal also notes, consistent with the applicant's evidence at hearing, that [a foreign delegation] began a visit to Uzbekistan the day before the hearing.

Finding

53. The Tribunal accepts that the applicant's father was religious and that his regular pilgrimages to Mecca over recent years would have brought him to the attention of the Uzbekistani authorities.
54. The Tribunal accepts that the applicant's father employed a group of men who were religious to work on the family farm and provided them with accommodation there. The Tribunal also accepts as credible the applicant's account of his encounter with the men working on the family farm outside Tashkent and his conversation with his father about why the men were there.
55. The Tribunal notes that the delegate found the applicant's inadvertent involvement in the claimed illegal activity of his father to rely on a series of events and circumstances, while plausible in isolation, were unlikely to the point of implausibility when taken together.
56. The Tribunal has reached a different conclusion on the evidence before it. Given the country information just cited about the Uzbekistan Government concerns about religious extremism the Tribunal accepts as credible the applicant's evidence at the hearing that one of the applicant's friends from his school days, [Mr A], was working for the [security service], something that the applicant was unaware of, and it was this friend who had initiated the trip to the farm, triggering the events that followed.
57. The Tribunal accepts that the applicant's father disappeared shortly after the applicant visited the farm with some of his friends. The Tribunal notes that the applicant and his family have not heard anything of his father since July 2013.
58. The Tribunal accepts that since his father's disappearance the farm has not been worked, the [business] has been left vacant and his mother and [sibling] have moved house.
59. The Tribunal finds it significant that the applicant's mother is still visited by Uzbekistani security officials as part of their security precautions before any significant State visit or event. This indicates that the applicant's father, and the applicant himself, are of ongoing interest to them.
60. The Tribunal finds that the applicant's father was of interest to the Uzbekistan authorities because of his religious beliefs and because of his imputed political opinion because he was providing shelter to Muslims who were at risk of persecution for their beliefs at the time of his disappearance in 2013Pro

Was the applicant detained by Uzbekistani security forces in July 2013?

61. The Tribunal asked what happened when he returned to his home having found the farm ransacked and his father missing. The applicant said that when he got home his mother was being roughly questioned by two plain clothes officials. He said that his [sibling] was [distressed]. He said that he had tried to intervene. He was immediately questioned and then taken away for further questioning.
62. The applicant said that he was taken to an office of the [agency]. The applicant said that the [agency] was the Uzbek [security service]. He said that they had a reputation for being very ruthless. He said that he was questioned about his father's whereabouts and about who was at the farm. The applicant said that he wanted to explain to the Tribunal that he felt he could

die in detention. He said that he was asked questions and he was beaten. He said that the people who were interrogating him were very professional. He said that one punch to his chest caused him to throw up. They did not have to hit him too much. The applicant said that he had been prepared to say or do anything to survive. He said that his problem was that he was being asked questions he could not answer. Not because he did not want to, but because he just did not know. So the beating continued. The applicant said that he was being continually asked about the farm and the people there. The applicant said this went on for about ten hours.

Finding

63. The Tribunal accepts as consistent with the country information that the applicant was detained by Uzbekistani security service personnel for a number of hours. It accepts also that during this time he was interrogated about his father, the farm and about the people he had seen there. The Tribunal further accepts that he was beaten during the interrogation.

Is the applicant's account of his release from detention and his departure from Uzbekistan credible?

64. At the hearing the Tribunal noted that the applicant had signed a confession. It asked what the confession had said. The applicant said that the confession was in Uzbek. The applicant said that he had been educated in private schools where the language used was Russian. He said that he spoke Russian at home. He said that he could not read or write Uzbek, although he added that he and his father sometimes conversed in Uzbek. The applicant said he had signed the confession without knowing what he was signing. He said he was desperate to get out alive.
65. The Tribunal asked how the applicant had felt when he realised that [Mr A] was involved and that it was [Mr A] who had wanted the bribe. The applicant said that in one way he was not surprised, although he had not known that [Mr A] worked for the security services. On the other hand he was relieved that [Mr A] was giving him a way out of a dangerous situation.
66. The Tribunal asked the applicant how his mother had been able to raise the \$[amount] bribe to be released. The applicant said that his family was well off. He said that the Tribunal should understand that in Uzbekistan almost everything was paid for in cash, especially in US dollars. The amount was not inordinate.
67. The Tribunal asked if the applicant had been treated for the injuries he suffered while being beaten. He said that the men who beat him were professional. He had few obvious injuries but he had received treatment.
68. The Tribunal asked the applicant if he had any problems leaving through the airport on his departure. The applicant said that it was usual practice for people on return to immediately apply for an exit permit. With an exit permit he encountered no problem when he left. The applicant added that he was initially travelling to [a named country], so he had no problems.

Finding

69. The Tribunal accepts as credible the applicant's account of his interrogation and his willingness to say or do anything to be released. The Tribunal found the applicant to be credible when describing his detention and his release from custody. The Tribunal accepts that the applicant, from a family connected enough to be able to acquire a [size] farm just after Uzbekistan became an independent country, received a private education and that his schooling was conducted in Russian. It accepts as credible that the applicant did not know what he had confessed to having done, given he could not read Uzbek.

70. The Tribunal notes the country information about the levels of corruption in Uzbekistan and accepts as credible that it was his former school friend who arranged for his release in return for a substantial bribe.
71. The Tribunal notes the country information that Uzbekistan still requires citizens travelling abroad have a valid exit permit. The Tribunal accepts the applicant's evidence that he had applied for an exit visa on his return from Australia in 2013 and that enabled him to leave the country quickly.

Do the applicant's attempts to obtain a visa to travel to [Country 1] undermine the applicant's credibility when discussing his claims?

72. The delegate noted that departmental records showed that the applicant made unsuccessful visa applications to visit [Country 1] on [three dates in] 2013 in Tashkent and again in Sydney [in] August 2013. The delegate concluded that the frequency and persistence of his applications in Tashkent suggested that he was looking to leave Uzbekistan soon after his return from Australia in March 2013.
73. At the hearing The Tribunal said that it wanted to discuss the four attempts that the applicant made to obtain a visa to enter [Country 1]. It noted that the first application had been made [in] May 2013. The applicant said that his father had obtained a visa to enter [Country 1] to attend a [meeting]. He said that his father had wanted the applicant to accompany him there and to act as his interpreter. The applicant had gone to the [Country 1] Embassy and he had requested a [temporary] Visa. He said that he was not told his application was not for the right visa. The applicant said that his father had then gone to the [Country 1] Embassy, confirmed that his visa was still valid, and explained why he wanted his son to accompany him to [Country 1]. His father had said that he was told by the Embassy that the applicant should re-apply. The applicant did so [in] June. The applicant said that he was again told he should apply for a different visa. He said at the time he did not realise that his first visa was shown as rejected. He realised later that he had been refused because he had already lodged a [temporary] visa application. The applicant said that he applied again [in] July. With two earlier failed attempts he was again told that the current application was not approved.
74. The Tribunal asked why he had again applied when he arrived in Australia. He said that when he again tried it was pointed out that he had applied three times in Uzbekistan and so the visa was refused.

Finding

75. The Tribunal accepts that the applicant applied four times for a visa to travel to [Country 1]. The Tribunal accepts as credible that his father's intention was that his son should travel with him to act as his interpreter at a [meeting]. The Tribunal also accepts as credible that because the applicant applied separately from his father he was refused a visa because he had applied for a [specific temporary] visa not a [different] visa. The Tribunal accepts as credible that his subsequent applications were rejected on the basis of the first rejection. The Tribunal also accepts that the application made in Australia was because he had hoped that his father had managed to leave Uzbekistan and travel to [Country 1].
76. The Tribunal draws no adverse conclusion about the credibility of the applicant's overall claims because he had applied to travel to [Country 1] on four occasions.

Is the delay in applying for a protection visa in Australia relevant?

77. The Tribunal asked the applicant to explain why he had not applied for a protection visa until four months after his arrival in Australia. The applicant said that he had known about boat people and the controversy they caused. He said that he did not identify with the boat people. He did not see himself as someone who needed assistance since he thought he could resume his studies and qualify for residency in that way. When he realised he could not study again, he applied for a protection visa. The applicant said that he had not wanted to be considered a dole bludger.
78. The Tribunal accepts the applicant's explanation to be credible. It notes that he had studied in Australia for six years before the events in Uzbekistan in 2013. He had a reasonable expectation he could resume his studies. Once he realised that he could not study he had applied for protection. The Tribunal does not consider a four month delay to be significant in this case. The Tribunal does not draw any adverse conclusion from the short delay in applying for a protection visa.
79. At the hearing the Tribunal asked the applicant what he feared would happen to him if he was to return to Uzbekistan. The applicant said that his visa was expired and that his passport was about to expire. On arrival he would face immediate questioning. This would result in the authorities discovering that he had been detained and released and that his father had disappeared. He would be questioned and treated again as he had been treated in 2013. He would be considered someone opposed to the regime that was associated with Islamic groups. He would also be imputed with a political opinion because he had sought asylum in Australia.
80. The Tribunal asked the applicant about the questions the Uzbek authorities asked about him when they went to his family home. He said that his mother had said that they ask why he has not returned to Uzbekistan given that his exit visa has expired. The applicant explained that every Uzbek citizen has to have an exit visa before being allowed to leave the country. He said that this exit visa also had a time limit within which the person should return.
81. The Tribunal asked the applicant if he had been questioned by the authorities on arrival and departure from Tashkent. He said that everyone was. He said people are stopped at the airport. If a person had stayed away longer than the exit permit allowed they would be questioned about their reasons for doing so. They would also be asked if they had applied for asylum while abroad. The applicant referred to the case of four Uzbek nationals who had gone to Norway and their permits had expired. They had been accused of applying for protection. They had all been detained because one of them had applied for refugee status in Norway. He said that this had been reported on the BBC at the time.

Findings

82. The Tribunal notes and gives weight to the country information about the use of exit visas in Uzbekistan. It also notes the Human Rights watch report of January 2016 detailing the arrest, torture and conviction of six failed asylum seekers from Norway in December 2014.
83. The Tribunal accepts that the applicant would be questioned about overstaying his exit visa if he was to return to Uzbekistan. The Tribunal also accepts that this questioning would lead to further questioning about his father and his whereabouts. The Tribunal would also be asked whether he had applied for asylum in Australia.
84. The Tribunal has accepted that the applicant's father employed and sheltered a number of men who were seeking sanctuary at the family farm. It has also accepted that the applicant was aware of the presence of these men. It has further accepted that the applicant's father and the men disappeared after the farm was ransacked.

85. The Tribunal accepted that the applicant was detained and beaten by Uzbekistani security services before being released after paying a bribe.
86. The Tribunal has also accepted that the applicant's family is still on a list of persons of interest whenever there is a security alert in Uzbekistan.
87. The Tribunal has been guided in considering this matter by the discussion of the "real chance" test in the *Chan v MIEA (1989) 169 CLR 379*. It has considered whether the risk to the applicant is far-fetched, remote or insubstantial and it is satisfied, on the evidence presented above, that it is not. On the basis of all of all the evidence before it the Tribunal finds that there is a real chance that the applicant will be persecuted now or in the reasonably foreseeable future for reason of his imputed political opinion and his imputed religion, and that his fear of persecution in Uzbekistan is well founded.

Conclusion

88. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

89. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

John Godfrey
Member

ATTACHMENT A

Relevant Law

1. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
3. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
4. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
5. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
6. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
7. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of

the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Credibility

9. The Tribunal accepts the difficulties of proof faced by applicants for refugee status and complementary protection. 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'.
10. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraphs 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt.
11. However, a decision maker is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, The Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.
12. 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):
13. 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)The Full Court noted that 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 .
14. If 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 v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 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.