

1106553 [2012] RRTA 40 (31 January 2012)

DECISION RECORD

RRT CASE NUMBER: 1106553

DIAC REFERENCE: CLF2010/172865

COUNTRY OF REFERENCE: Uzbekistan

TRIBUNAL MEMBER: Jonathon Duignan

DATE: 31 January 2012

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Uzbekistan, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2010 and applied to the Department of Immigration and Citizenship for the visa [in] December 2010. The delegate decided to refuse to grant the visa [in] June 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the tribunal [in] June 2011 for review of the delegate's decision.
5. The tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
 - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The tribunal has had regard to material contained on tribunal case file 1106553, material contained on departmental case file CLF2010/172865, evidence given at a hearing before it and material available to it from a range of other sources as referred to in this decision.
21. In the application lodged with the department, the applicant is identified as a [age deleted: s.431(2)] year old national of Uzbekistan and no other country. He is identified as being an adherent of the religion of Scientology and his fear of being harmed in Uzbekistan arises from this. The application indicates that the applicant left Uzbekistan because he was persecuted by authorities as a result of his conversion from Islam to Scientology. There was no Scientology church in Uzbekistan but fellow members met privately and discussed news. The applicant sought to translate a Russian Scientology text to Uzbek, but was sought by authorities, detained, beaten and tortured.
22. The applicant only applied for protection after some months in Australia because he did not know anyone in Australia and could not trust anyone. He had been told that he should prepare a written statement which he was doing. Only after meeting a person and them agreeing to translate the application was the applicant able to apply for asylum. His friend who would translate the story was travelling overseas and the applicant asked that the department await his return for the statement to be translated. The applicant feared being caught and put in gaol or killed by authorities in Uzbekistan. He was fearful of security service officers and people who were ignorant and hateful towards other religions. The applicant feared harm from even those who were not very religious in Uzbekistan and those who did not understand Scientology, noting that even Russians hated Scientologists. Authorities in Uzbekistan had tortured the applicant and also informed his neighbours that he was a sectarian and brainwasher.
23. The applicant subsequently supplied a written statement referring to questions from the application and his experiences in Uzbekistan in the following terms:

1. Why you left the country?

Dear Sirs,

I was forced to leave Uzbekistan. It was not my choice; I am not a migrant who just seeks better life. My life was good - I was a director of a [product] factory, I had a house with a huge piece of land, a good car; I was a family man with a lovely wife and three kids. We had a good life. This good life became possible because after a period of unemployment I found my purpose in life - all thanks to new life outlook, new ways to live. When I lost my job I was very depressed because I had a family to care for and I felt so low as a man, as husband, as father and provider. My youngest was only [age deleted; s.431(2)] years old when I lost my job, my wife could not work because she was looking after 2 kids and felt like a failure. Then in November 2006 I met a Tajik woman in a day hospital when I was sitting in a queue and we talked. I had terrible insomnia, could not sleep because of my worries and was totally exhausted. My stress led to acute gastritis and I had to visit a doctor. The doctor said that I have to avoid stress and to see a psychologist for my depression. When I left a doctor that woman who was seen by a doctor before me was still there in the corridor. She asked me if I was reassured by the doctor. I said no, he advised me to avoid stress and to take anti-inflammatory medicine. But easy to say - avoid stress, how could I when I did not know how to feed my family. I was not religious, I attended mosque only twice a year and only because it was customary for people born in Muslim family. I was Muslim by birth, not by choice. That woman [Ms A] told me that I am fully capable of curing myself without any medicine and psychologists. We talked for a couple of hours and only at night I realized that my pain had subsided and I felt a bit better. It was like a ray of sunshine on a very cloudy cold day.

[Ms A] rang me next day and I told her that she should work as a psychologist; she had a way with words. She answered that she was suicidal two years ago and only her faith and help of her books brought her back from the deepest depression and desire to end her life. She suggested a meeting and said that she will help me. I told my wife about this woman and said that I want us all to meet. My wife agreed and we met with [Ms A]. We went to a park where our kids played and we talked. [Ms A] told us about her religion called Scientology, how this religion helped her and many others to turn their lives to the better. I told her that she is Tajik, she must be a Muslim. She answered that she was born as a Muslim but when her husband died her faith did not help, she tried to commit suicide and was saved by a friend who came to her house without invitation after he felt that he needs to see [Ms A] urgently. That friend of hers was Russian man from Moscow. He stayed with her for two weeks and introduced her to his religion, gave her books in Russian and advised to study them. Now she was visiting her relative in [Town 1]. She was over 60 but looked like she was in her forties, her eyes shone and she was radiant and happy. My wife was not impressed but I was very interested. I felt that this meeting is more than help to cure my gastritis and depression. I felt that this is a new life for me.

When we met next [Ms A] gave me a book "Route to Happiness" to read. I do not know Russian language too well and the book contained some difficult expressions. But I nevertheless read it and the more I read the more I was calming down. When I finished reading I tried to read it to me wife but she was not interested and I just read it again.

I realized that by concentrating on my negative thoughts I was putting a barrier for new ways, so I started working on myself. It was difficult not to think about my problems but I tried and tried and in a month I found that I have enough strength to present myself to employers, I became more confident and strong. I had a long way

ahead but I felt that I can start this new route. I felt ready to look for new opportunities and I understood that I am not useless and a failure, it was a way for me to find myself. I went for an interview and I was accepted. Very quickly I became a supervisor and then a director. I could not believe it - only two months ago I was unemployed and so unhappy but now I was a director of a good company with great salary and huge potential. My salary was 90 000 soms, which is about 45 dollars but commissions and bonuses were much higher and I felt proud and very happy. I always smiled and I saw that it attracts people; my newfound confidence was helping me to get new customers and new contracts. This is how I came to Scientology.

The biggest problem for me was inability to communicate with [Ms A] and other knowledgeable people. She returned to [her home] and she was scared to discuss things on the phone and I was so busy at work that I could not go and see her. Then in [date] my wife and I had a baby and my happiness was incredible. I felt like I had a huge and bright future for myself and my kids. [Ms A] sent me a new book and I eagerly read it. It took me one year to go through it, the language was quite specific and difficult but I worked on it. I did not have much time with my demanding and expanding work and three kids but I treasured every moment that I spent reading the book. I asked [Ms A] to introduce me to Scientologists in [Town 1], or even in [Town 2] so I could communicate with them but she declined, saying that it is dangerous for them and for me, too. It was not a good time, she said. I was living with new ideas since January 2007 when I found a job but I felt like I know nothing, I craved knowledge but language barriers and inability to talk to other people made me feel like I am stuck with having learnt just letter A from the whole alphabet. I was extremely busy at work and often worked for weeks without a day off, so I could not just take a week and go to Moscow to visit a proper church. Also, my Russian language is not good at all, when I was reading books I missed a lot because I could not translate many words and I could not understand many things. Then I started writing what I could understand and it made things easier.

Then my boss at work lost his brother and started taking time off work, started drinking and I could see that his life was disintegrating. They were close with his twin brother and he could not cope. I talked to him and gradually he started to understand that by grieving and destroying his own life he is hurting his parents and other siblings, his children and his wife. When I first gave him some pieces of paper with my translations he did not want to read them, saying that he hates everything religious and does not have any faith if his brother was taken from his so cruelly. Then I talked to him, he would not listen but gradually he started listening a bit and then agreed to read. He said that if this is some kind of religious propaganda he is not going to read but I assured him that this is for anyone who is feeling lost or aggrieved.

The change in him was noticeable. In just couple of months he started working again, started even smiling, told me that he is stronger and determined to live so his brother would had been proud of him. These principles saved my life, they saved my boss's life and I felt that this is my calling to spread them. I knew that I have not even started touching the whole teaching but even those little pieces of knowledge were saving lives and I decided to translate what I could into Uzbek. I translated our main prayer. I dedicated my little free time to translating. It was incredibly difficult but I felt good about it. Then sometime in February 2010 [Ms A] gave me a phone number of a person called [Ms B]. [Ms B] was a Scientologist who later introduced me to [Ms C] and [Mr D]. These people met from time to time and read books, tried to translate difficult parts, tried to explain some things to each other how we understood them. Since then my life has changed. We met privately at one another's houses to discuss things and to read books. [Ms C] and [Mr D] were new to Scientology but [Ms B]

visited fellow Scientologists in Moscow and brought new books and DVDs. When I told them that I am translating what I learnt, [Ms B] said that this is a good idea, she asked me to bring my translations and we will copy them and start spreading everywhere. I asked why we do not have a church in Uzbekistan. [Ms B] and [Ms A] told me that there were some people in [Town 2] who tried to register a church but they either disappeared (hopefully, fled to Russia) or were in prison, [Ms A] personally knew two of them. That is why registering our church was not possible but we could meet in private and also we could start talking to people and give them translated works. We decided to disseminate those papers to those who we knew have life difficulties and whom these basic principles could help. But because my translating work was not nearly finished and neither of our group had better Russian language we waited until we all decide that we have some kind of finished work. So far I had only 8 translated pages of the selected passages from the texts.

My neighbours's daughter [Ms E] was badly injured in the car accident some time ago; her back was broken and she was paralysed from the waist down. She was so depressed that her parents watched her around the clock fearing that she will commit suicide, they told me that they removed anything sharp within her reach, made sure that her wheelchair cannot reach other rooms, they installed thresholds, etc. Still, she tried to hang herself on her bathroom robe's belt, she hid all her medication and then tried to swallow all at once but just got her stomach pumped and she repeated that she will not live. She was due to be married only two weeks after the crash and her fiance did not stand by her, he left her as soon as the doctors said that there is little hope that she will regain her mobility and ever have children.

I asked her father if I might talk to her. He was surprised but let me chat with [Ms E]. I talked to her about my own experience, how I came to the inner calm and understanding. She did not believe me that one day she will be smiling and grateful to be alive. It took me several weeks but she started smiling and reading texts that I gave her. Of course, these were my translations. It was only 2 months later that she asked for more and her parents could not thank me enough, they said that I saved her. She started to draw and I was amazed by her works, they were so filled with light and joy and I started to look whom to talk to about her exhibition. In May I found a room at her school for her exhibition and the director agreed to hold a school fete with [Ms E]'s works so proceeds will go to the school budget. [Ms E] spent all her time painting. She asked me so many questions about Scientology and I was so upset to tell her that I have extremely limited knowledge. She was now smiling very often and her parents thanked me for my help.

On the day of her exhibition she was so happy. It was just a school hall, with chipped paint on walls, worn out linoleum and rickety chairs. The attendees were schoolchildren and their parents. It was not a glamorous do with champagne and journalists but [Ms E] smiled nonstop, she was very happy and her joy radiated off her like sunshine. People asked her lots of questions; they were buying her works for several sums which were almost nothing but it was the spirit that amazed me. Then I thought - why I am amazed, I did not expect anything less from Scientology. Even little texts went a long way to her healing and peace. Then the school director approached me and asked what [Ms E] was talking about. I came closer and overheard her telling several people about Scientology. She was giving them my name and phone number. Turned out she was asked how she managed to turn her life around from a full despair to such achievement and she credited me and Scientology for her return to life. I did not like the tone of some people; they were quite aggressive and asked how Muslim girl could turn to some strange foreign religion. I did not know what to do and made up some questions to distract them all.

I could not sleep that night because of worries. I was right - next day was ok but the day after was a beginning of a nightmare and even my religion could not save me.

2. What do you fear may happen to you if you go back to that country?

Everything that has already happened to me after that school exhibition. The exhibition was [in] May. I received summon next Monday. I went to the police as requested. There were 2 people who started to interrogate me in regards to my association with the known espionage organization. They were talking about Scientology. I am not going to, recall now what I told them and what they replied. I tried to protect my religion and my right to choose any faith and live in accordance with it. They claimed that this is a fascist and spying organization and I am not only helping them to collect intelligence (???I!!), but also actively converting Muslims into harmful foreign religion. I heard about it a lot from [Ms B] and [Ms A] but I never expected it to happen to me. They searched me and found my translations and unfinished pages. They also found a text which I was translating. I was on my way to work and told the boss that I will be late because I was called to the police department. On my way to work I normally used to work on texts translation. When they found it they said that if I do not divulge names and addresses of my fellows in faith I will regret that I was ever born. I had no intention to divulge anything, there were only 4 of us in [Town 1] and I could not betray them but eventually after they broke my nose and squished my fingers, I gave them names of [Ms B], [Ms C] and [Mr D]. Two days later they let me go and said that this is just a beginning; they will investigate my involvement further and they give me a guarantee that I will be punished. I went home to find my wife and my parents in tears. They were also questioned and searched and they were terrified. After that I was called to police department several times and every time I went there was asked to write new and new details of my involvement. They did not believe that there were only 4 of us, said that copies of my translated texts were circulating for a while and they were looking for the one who was behind it. Then our neighbours started a hate campaign against me. They screamed that police warned them about me - a traitor of Uzbekistan, of its traditions and faith, foreign spy. Once two men from the neighbourhood beat me with sticks and stabbed me with a knife. Dead animals thrown through my windows, faeces smeared on my door, abusive collages - I cannot list all things that were very scary and threatening. My wife and children lived at her parents' place by then because they were scared. I went to live at my former classmate's place - he was away working in Russia and I was looking after his unit. My fellows told me that they are being treated the same way and we decided not to meet and to talk for a while, we had to survive. Then at the beginning of June [Ms E]'s parents rang me and said that they and [Ms E] were interrogated and scared into giving evidence against me, as if I was trying to convert them and other people into foreign faith and asked questions about [Town 1] people at power ([Ms E]'s father used to work in city administration). They begged me for forgiveness and I said that I understand and do not hold any offense. I knew what methods police used to extract confessions. [Ms E]'s father said that they will be forever grateful for my help and he wants to help in return. He knows someone who could help me to escape Uzbekistan. That person works for some kind of human rights organizations and helps people to escape Uzbekistan when they are in danger of persecution. He asked for some documents and said that if I am granted a visa I should go and stay overseas until everything settles down. He admitted that it is unlikely, though. I spoke with my wife and my parents and we all agreed that I should leave. I asked if my letter to the highest authorities in [Town 2] might help but [Ms E]'s father said that he knows this machine too well, I am already under its tyres and this is a matter of time when I will be either in prison or dead. So this is what might happen if I ever go back to Uzbekistan.

3. Who do you think may harm/mistreat you if you go back?

The same people who mistreated me before I left - the police and people who are not that devoted Muslims but deny others to choose their religion. Here in Sydney I attend the church and see people of so many ethnicities and previous faiths. But in Uzbekistan people might never go to a mosque but they will kill someone who converts to other religion.

4. Why do you think this will happen to you if you go back?

It will happen again because I regard myself as a Scientologist. Also they will target me because they think that I tried to convert other people to Scientology. What I did was not converting people. It was emotional help. I was saved by these books so why should I withdraw help from others? If they became interested it did not mean betraying their faith, it meant that they are evolving; they are taking pro-active position on order to escape depression, alcoholism, suicidal thoughts and in order to improve their lives. Do I regard myself a Scientologist or not, the authorities do not tolerate this religion, they do not let people choose their religion freely. I tried to look up a Scientology website when I had an access to a computer in Uzbekistan but all pages are blocked. Is this a freedom? I have a broken nose, I have been stabbed, I had been beaten, threatened and abused. All this is only because I tried to help people and because I wanted to exercise my Constitutional right to choose a religion.

5. Do you think the authorities of that country can and will protect you if you go back? If not, why not?

If it was not because of the authorities I would have been living with my family. I would have been healthy and happy. I would have still been working, getting well paid, living at my own place and seeing my kids every day. Now I am scared and scarred, I miss my family and I work hard for several dollars. I might never have my own place again. I might never see my family again. I have no friends. My only consolation here is my church and occasional conversations with my family. If I stayed my family would have suffered more.

After I left my boss had police searching my working office, they said that they are looking for me and made him to sign a paper that he will inform where I am or whatever will become known to him about me. He is still grateful to me for my help when he was very depressed and he notified me and even sent me a paper from police requesting him to divulge information.

No, these authorities will not protect me. They started my persecutions; they pointed at me and told neighbours that I am a traitor. They severely injured me. They are the power that I am afraid of.

24. The applicant was interviewed by an officer of the department [in] February 2011 at which his claims were discussed. The applicant provided information consistent with his written statement at that interview. The delegate was concerned about material included with the applications for visas lodged in the applicant's names before he travelled to Australia. Two documents were provided in the applicant's name, being:

- a medical certificate dated [May] 2010 through [organisation deleted: s.431(2)] in the applicant's name which noted he was healthy. These certifications were made by various physicians.

- a statement issued by the Ministry of Internal Affairs of Uzbekistan, [Town 1] Department of Internal Affairs in the applicant's name and giving his date of birth and issued [in] May 2010. This indicated that the applicant had not been convicted in Uzbekistan and was issued in respect of a person leaving the country.

25. The delegate subsequently wrote to the applicant seeking comments on the fact that the police certificate and doctor's certificate issued in his name were issued at the time of his claimed release from detention and mistreatment by police. It was seen as improbable that the applicant would seek a certificate from police shortly after his release by them and that he would be certified as healthy at the time when he claims to have been detained, beaten and otherwise physically mistreated.

26. The applicant's adviser provided verbatim comments on the information put to him by the delegate from the applicant in the following terms:

1. I was not aware of my first application for a visa. As I said in my statement [Ms E]'s father offered me help in leaving Uzbekistan (actually, it was his suggestion), he said he knows someone who can arrange it. I do remember now signing some forms and giving him copies of my documents. It might have happen even at the end of May, because I remember that it was not school season, but kids in Uzbekistan finish school after 20 May so he could have rang me even then. Definitely, the school was over. I think that that person was in contact with [Mr F] who brought us here and he might have lodged an application without telling me. I paid money, signed some papers, gave copies of my documents. I did not give him my passport, though. He did not tell me that my application was refused or when and how he lodged it Unfortunately, everything can be bought and sold in Uzbekistan, any documents. If this person [Mr F] charged these huge money from everyone for helping to get a visa he could have produced or bought any documents. I did not know him before but he said that he successfully sends people to America and Canada and England.

2. I did not say that I did not know that I was travelling to Australia. It is impossible to go abroad and not know where to. Maybe it was misunderstanding. I meant that [Mr F] advised us to say at the Uzbekistan border that we do not know if we will be travelling to Australia, we might just do our stop on our way and end up not going to Australia. he said this way it will be safer if the authorities think that we might not be travelling all the way. Silly or not, I do not know, at that time everything was unreal and scary and stressful, so I did what he told me to do and did not ask questions, My religion did not help me much at that time, I was scared and confused, was afraid for my family. I lost my intelligence and common sense at that time. I was a wreck and was grateful that someone takes care of me. It could be held against me that [Mr F] or whoever produced false documents or false information about colleges. But I told the truth to the Department, I did not say that yes, I was going to attend colleges and I worked in that organization I preferred to say the truth. If he could manufacture false document once, he could have done it numerous times. We do not know about visas and he claimed at the plane that he works with many embassies for years and sent a lot of people abroad. I paid a lot of money and was uncomfortable when he told me that I have to say that we work for his company so as soon as I had the chance I told the truth.

3. I never worked for his [company] or whatever. You could call my boss and verify that I worked for the [factory]. This is truth and I see no point in saying that I worked there if I did not I am sure that his company is false. I also never asked Uzbek police for any certificates If I wanted to lie I would not have that stupid saying that I

was in detention in the same time as I obtained a clear police certificate. I am confused and scared but I am not dumb. If I wanted to lie I could have said that I was detained later than the certificate was issued. I am sure you will see the truth. I cannot be punished for someone else's actions. He wanted to help, [Mr F] wanted to help, too. I paid money, because I was scared. I did not care what was submitted and I did not ask and nobody told me, anyway. I know one thing - I did not lie to the Department of Immigration. If I unwittingly lied by producing false papers I was not aware of these papers and I never said that I worked for his company or obtained police certificate. Because of such bribery and lots of false papers you might think that all people who come from Uzbekistan are liars No, it is not true. People can do desperate actions when they desperate and I was in such position that my life was in danger. Like people who come here by boat - they have no documents, they breached a law by coming here illegally but they are recognized as refugees. I think that many people who are genuinely scared do not have means or time or money to organize their escape well. If I told the Embassy that I am scared would they have given me a visa? No, they would not and it would be the end for me. So I was relieved that someone was helping me Please, do not think that all people want to come to Australia because wages here are better. Yes, you get more money but you paid more for everything. I am without friends here (just my church), without my relatives. I cannot work at a good job, I have to work hard physically and have to live in a shared tiny flat with other people because money that I am paid is not nearly enough for a life similar to what I had in Uzbekistan. I have to learn new language, to adapt to new culture and why would anyone do it? My life was good until I did what I did. If I happened to be in the same situation again I would still helped [Ms E]. I think that I improved her life.

4. The same with medical certificate. Maybe the person who helped me paid some money for police and doctor for these certificates or maybe he typed these certificates on the computer. I really do not know. What terrifies me that it throws a shadow on my claims and this is huge injustice, this is impossible that just because of some papers that I am not aware of, my life can be in danger again. I do not believe that system here works like this, that this huge governmental machine is just that - a machine and I am nobody, not human being, just a piece of paper. When I first heard about this letter asking for comments I spent a week in bed with huge blood pressure because I could not believe that my life depend on some papers, on some dishonest people. Actually, they tried to help me and if they produced some false papers it was to save me. They charged money, yes, but they had to buy these papers, I think. I am confused and do not know what to think. I wish my English was better so I could undergo auditing to clear my mind. I am sick and stressed. I am very scared. I am human being, I am scared and I am asking for protection. I cannot believe that once again I will be reduced to nothing.

5. I asked my wife to send me summon that she received for me and a medical certificate but I never received them, though she said that they were sent.

...I would like to stress that I am a genuine refuge and now I am living in fear again. I cannot believe that something that was beyond my control can affect my life and freedom. Please, do not make a mistake, it will devastate me. It will be so unfair and so terrible.

27. The applicant's adviser also provided written submissions and supporting documents which argued that the applicant was at risk of serious harm in Uzbekistan by reason of his following the teaching of Scientology. She argued that he was at risk of physical violence and intimidation as well as arbitrary detention in Uzbekistan, noting that the situation for Muslims

who converted to other religions was seen as worsening in recent years in Uzbekistan. She drew material from the following documents to support her arguments:

- the United States Department of State *Country reports on human rights practices 2009*;
 - the United States Department of State, *International Religious Freedom Report 2009*;
 - and provided a copy of the Human Rights Watch report, *Nowhere to turn: Torture and ill-treatment in Uzbekistan*, November 2007.
28. The delegate was not satisfied that the applicant was a person owed protection obligations by Australia and refused him the grant of a visa. The applicant sought review of that decision.
 29. The applicant attended a hearing before the tribunal on [two occasions in] December 2011 at which he discussed his claims. The applicant spoke about the relatively limited role that Islam played in the life of his family when growing up. He explained that he would only attend the mosque twice per year with his family and he spoke generally about beliefs and practices in the Islamic faith including the practise of Ramadan and its timing.
 30. The applicant explained that he became attracted to Scientology during a difficult period in his life when he was seeking medical assistance. He met a woman who followed Scientology and began to learn of it from her in the terms outlined in his written statement provided to the department. The applicant explained that much of the material he had access to in Uzbekistan was in Russian language which was not his first language and he had worked to translate this to Uzbek. He noted that Russian internet sites about Scientology were blocked in Uzbekistan and could not be accessed.
 31. The applicant referred to his understanding of the principles of Scientology belief, noting that it dealt with how one should live one's life and relate to others. He noted that since coming to Australia he had seen films about Scientology, noting that these showed people indulging in unacceptable behaviour before taking on Scientology. The applicant was aware of the role of L Ron Hubbard in the faith and was able to recall some dates of significance in Scientology practice.
 32. After his arrival in Australia the applicant looked for a Scientology centre to contact and did so some six weeks after he arrived in Australia. He then attended regularly having made contact with a Russian speaker at the centre. Documents relevant to his study were sought from Russia and the applicant had copies of these at the hearing which he presented. The applicant also presented a card sent in his name from the international Scientology centre in the United States.
 33. Subsequent to the hearing, the applicant provided a letter from [the Legal Officer] of the Church of Scientology in Sydney who indicated that the applicant was a parishioner of the church of Scientology and had been actively participating in church activities since [November] 2010. This included attending church international events, studying scriptures at seminars, home studying church scriptures on book and DVD and sharing his understanding with other parishioners.
 34. The most recent United States Department of State, *International Religious Freedom Report* covers the period July to December 2010 and in respect of Uzbekistan it notes:

The constitution protects religious freedom; however, other laws and policies restrict religious freedom and, in practice, the government generally enforced these restrictions.

There was no change in the status of respect for religious freedom by the government during the reporting period. The government generally enforced existing legal restrictions on religious freedom. The law restricts the religious freedom of unregistered groups and prohibits many activities, such as proselytizing; many members of minority religious groups faced heavy fines and short jail terms for violations of these laws. The government continues to deal harshly with Muslims who discuss religious issues outside of sanctioned mosques. However, the government did not interfere with worshippers at sanctioned mosques and permitted the regular operation of religious groups traditionally practicing in the country, including the Muslim, Jewish, Catholic, and Russian Orthodox communities.

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. However, society generally is tolerant of religious groups, and religious groups were generally tolerant of each other....

... The law provides for freedom of worship, freedom from religious persecution, separation of church and state, and the right to establish schools and train clergy; however, the law grants those rights only to registered groups. It also restricts religious rights that are judged to be in conflict with national security, prohibits proselytizing, bans religious subjects in public schools, prohibits the private teaching of religious principles, and requires religious groups to obtain a license to publish or distribute materials. The Committee on Religious Affairs (CRA), a government agency accountable to the Cabinet of Ministers, must approve all religious literature. A Council for Confessions exists under the CRA to discuss ensuring compliance with the law, the rights of religious organizations and believers, and other issues related to religion. The committee includes representatives from various Muslim, Christian, and Jewish groups....

... The law requires all religious groups to register and provides strict and burdensome criteria for registration. Among its requirements, the law stipulates that each group must present a list of at least 100 citizen members to the local branch of the Ministry of Justice (MOJ). The CRA oversees registered religious activity.

The criminal and administrative codes contain stiff penalties for violating the law and other statutes on religious activities. In addition to the prohibited activities that include organizing an illegal religious group, the law also proscribes persuading others to join such a group and drawing minors into a religious organization without the permission of their parents. Any religious service conducted by an unregistered religious organization is illegal.

The criminal code formally distinguishes between "illegal" groups, which are those that are not registered properly, and "prohibited" groups viewed as extremist, which the government bans altogether. The code makes it a criminal offense, punishable by up to five years in prison, to organize an illegal religious group or to resume the activities of such a group after it has been denied registration or ordered to disband. In addition the code punishes participation in such a group with up to three years in prison. The code also provides penalties of up to 20 years in prison for "organizing or participating" in the activities of religious extremist, fundamentalist, separatist, or other prohibited groups. The law increases the fines for repeat violations of the law on religious activity up to 200 to 300 times the minimum monthly wage of approximately 49,735 soums (\$30). After a person is punished under the

administrative code, he or she may be tried under the criminal code for a repeat offense.

The law punishes "illegal production, storage, import, or distribution of materials of religious content," with a fine of 20 to 100 times the minimum monthly wage for individuals or 50 to 100 times the minimum monthly wage for officials of organizations, together with confiscation of the materials and the "corresponding means of producing and distributing them." The criminal code also imposes a fine of 100 to 200 times the minimum monthly wage or corrective labor of up to three years.

The law prohibits religious groups from training religious personnel if the group does not have a registered central administrative body. Registration of a central body requires registered religious groups to be present in eight of the 14 provinces (including Karakalpakstan and Tashkent City). There are six entities that may legally train religious personnel. The law limits religious instruction to officially sanctioned religious schools and state-approved instructors. The law permits no private religious instruction and imposes fines for violations. The law also prohibits the teaching of religious subjects in public schools. Article 14 of the religion law prohibits the wearing of "cult robes" (religious clothing) in public places by all except "those serving in religious organizations."

35. In addition to reports of severe activity against Muslims which the Uzbek government identified as being involved in what it terms extremists activity, the most recent Report notes the following in respect of minority religions in Uzbekistan:

Several members of minority religious groups were sentenced to 15-day jail terms under the administrative code and others given heavy fines. Forum 18 reported that between January and September, 22 members of religious minorities received jail terms of three to 15 days, including 19 Protestants and three Jehovah's Witnesses. This compares with 25 persons in 2009.

On March 9, a court in the Syrdarya region sentenced Tohar Haydarov to 10 years' imprisonment on questionable drug-related charges. Haydarov was a member of the Baptist Council of Churches but not part of a registered congregation. Friends who saw Haydarov briefly outside of the courtroom following his trial reported his face was swollen from apparent beatings. An appellate court rejected Haydarov's initial appeal of the conviction, and the Supreme Court had issued no decision on his appeal by the end of the reporting period.

There were no developments in the case of Pastor Dmitry Shestakov, leader of a registered Full Gospel Pentecostal congregation, who remained in a Navoi labor camp serving a four-year sentence for his 2007 convictions on charges of "organizing an illegal religious group," "inciting religious hatred," and "distributing extremist religious literature;" the October 2009 conviction of Evangelical Baptist Union's chairman, a camp director, and the camp's accountant on criminal charges related to the operation of a summer camp for children; or the April sentencing by a Termez court of Protestants Azamat Rajapov and Abdusattor Kurbonov to 15 days in jail for "unauthorized religious activity."

On February 23, a court convicted 13 members of an unregistered Baptist church located in Almalyk of the unauthorized teaching of religion and fined them each 3.2 million soums (\$1,939) following a police raid on a private home. Police confiscated religious literature, including Bibles. In a protest letter to the court, the defendants alleged more than 60 violations of the law during the arrest and investigation against them, including that police beat several of the defendants at the time of arrest.

Raids against unregistered church gatherings and social gatherings of those belonging to registered churches continued. Several news sources reported that following a police raid of a social gathering in a private home on July 28, a Tashkent court on July 29 found 13 members of an unregistered Baptist group guilty of charges related to attending an unauthorized public gathering. The court sentenced nine persons to three days' detention, one person to five days' detention, and imposed fines on three additional participants worth 80 times the minimum wage or 3,014,400 soums (\$1,827). Police reportedly raided a meeting of members of the same church again on August 4. Four of those convicted appealed their convictions, but the Tashkent Criminal Court on August 20 upheld the earlier decisions.

There was no further information on the July 2009 raid of the officially registered Tashkent Bahai Center. Officials took six adults and 15 youth between the ages of 14 and 17 years old into custody for questioning. Two of the adults were arrested and detained for 15 days for resisting authorities and four others were fined 13,000 soums (\$8) for holding an unsanctioned meeting. In August 2009 officials again entered the center unannounced, demanding to see customs declarations for all books.

There were no developments in the May 16 raid of the Tashkent City Church of Christ during its Sunday service. Authorities questioned congregants and confiscated computers, CDs, DVDs, religious literature, and money from a collection box. One church leader and two employees were convicted of unauthorized teaching of religion and conducting illegal religious activity, while five other church members were convicted of lesser charges. Three of the defendants were sentenced to 15 days in jail; all were fined between 65,600 and 2.6 million soums (between \$40 and \$1,575).

On June 23, police reportedly raided a house in Chirchik where members of the unregistered Full Gospel Church were present, confiscating books, CDs, DVDs, notebooks, and a computer.

There were no further developments in the following cases of authorities raiding religious services, homes, or other religious gatherings: the August 2009 raid of the worship service at the registered Donam Protestant Church in Tashkent; the January raid of a Christmas celebration of the registered Holiness Full Gospel Protestant Church held in a private home in Tashkent's Yangiyul District; the March raid of 11 houses in Kagan belonging to Jehovah's Witnesses during the commemoration of the death of Jesus Christ; the April raid of two programs organized by Tashkent-based Protestant churches; the April raid of a private home in Tashkent where 10 Pentecostal women were celebrating a birthday; or the June raid of a youth meeting held by an unregistered Pentecostal congregation in Chirchik.

Authorities fined several persons illegally possessing or distributing religious materials. Forum 18 reported seven separate cases against Protestants for such activities during the reporting period, with courts imposing fines of between 119,000 and 396,000 soums (\$72 to \$240) against 18 different individuals throughout various regions of the country. In most of these cases, the court ordered the confiscated materials destroyed. In one notable case, a Tashkent court on September 30 found Murat Jalalov guilty of illegally possessing religious materials following a raid on his home in which police confiscated 75 DVDs and CDs. After the CRA reportedly determined that a film about the life of Jesus could be used among local ethnicities for missionary purposes, the court imposed a fine of approximately three million soums (\$1,818) and ordered the confiscated materials destroyed.

On November 9, border guards stopped a group of 23 Baptist youth and their chaperones as the group returned from a church meeting in Kazakhstan. Border

guards confiscated books and magazines but returned Bibles belonging to the youth. On November 29, customs officials detained three persons suspected of attempting to bring in illegal religious literature, confiscating 30 books of nine different titles that were considered to have a missionary purpose, as well as dozens of CDs. On December 1, the state press reported that authorities had confiscated religious materials from three individuals, confiscating many CDs and movies from one traveler arriving in Samarkand from Moscow; seven books from an Uzbek citizen in the Navoi airport; and more than 30 books in Tashkent that were considered to be missionary works.

Forum 18 reported two cases in June in which courts found three Baptists guilty of illegally possessing and distributing religious literature. A Fergana City Criminal Court imposed fines of 99,000 soums (\$60) against two persons and an Angren court imposed a fine of 165,000 soums (\$99), ordering books and DVDs destroyed.

In April an Andijon court sentenced Muhammadjon Yusupov to seven years in prison for keeping 10 illegal religious books in his home.

There were several reports in which authorities deported or canceled the visas of members of religious minority groups due to their believed religious activities or affiliation. Foreign nationals affected included Protestants from Great Britain, South Korea, and the United States, and one Bahai member from Kazakhstan.

There were no developments in the cases against eight members of the unregistered Greater Grace Protestant Church in Samarkand found guilty of teaching religion illegally in January; the cases against 17 Protestants in Urgench found guilty of possessing religious literature in October 2009; the cases against 11 persons in Surhandarya found guilty of teaching religion illegally and holding an unsanctioned religious meeting in October 2009; and 13 cases against individuals from various Protestant groups during the previous reporting period. Fines from these incidents ranged from 66,000 to 1.7 million soums (\$40 to \$1,030).

There were reports that officials have threatened lawyers who represented defendants accused of charges related to religion that they were at risk of losing their licenses.

36. In respect of possible treatment if one is detained by security authorities in Uzbekistan, the most recent *Country reports on human rights practices* published by the United States Department of State on 8 April 2011 states that:

... Human rights problems included citizens' inability to change their government peacefully; tightly controlled electoral processes with limited opportunities for choice; instances of torture and mistreatment of detainees by security forces; incommunicado and prolonged detention; occasional life-threatening prison conditions; arbitrary arrest and detention; denial of due process and fair trial; restrictions on freedom of speech, press, assembly, and association; governmental control of civil society activity; restrictions on religious freedom including harassment and imprisonment of religious minority group members; restrictions on freedom of movement for citizens; violence against women; and government-compelled forced labor in cotton harvesting. Human rights activists and journalists who criticized the government were subject to physical attack, harassment, arbitrary arrest, and politically motivated prosecution and detention....

... Although the constitution and law prohibit such practices, law enforcement and security officers routinely beat and otherwise mistreated detainees to obtain confessions or incriminating information. Sources reported that torture and abuse

were common in prisons, pretrial facilities, and local police and security service precincts. Reported methods of torture included severe beatings, denial of food, sexual abuse, tying and hanging by the hands, and electric shock. Family members of prisoners reported several cases of medical abuse, and one person reportedly remained in forced psychiatric treatment. The government reported that during the first six months of the year, it opened 226 criminal cases against 285 employees of law enforcement bodies. Of these, 75 persons were accused of charges related to abuse of power, and four were charged with torture or other brutal or degrading treatment. The remaining cases were for unspecified offenses. During the first nine months of the year, the government dismissed and brought criminal charges against 186 employees of law enforcement bodies for unstated reasons.

37. *Religious Bodies in Australia – A Comprehensive Guide* by R. Ward and R. Humphries provides the following information on the Church of Scientology:

The first Church of Scientology was established in 1954 in Los Angeles, California, USA. Its founder was author L. Ron Hubbard (1911-86). He had previously outlined his philosophy in a best-selling book published in 1950 under the title *Dianetics: The Modern Science of Mental Health*.

Scientology is defined as the study and handling of the spirit in relationship to itself, universes and other life. It is said to be a route, or way, rather than an assertive body of knowledge. Through its activities and studies one may find the truth for himself, it is maintained. The term 'Scientology' means 'knowing how to know'.

...The church asserts that man is an immortal spiritual being. His experience extends well beyond a single lifetime. His capabilities are unlimited, even if not presently realised. Further, it is held that man is basically good, and that his spiritual salvation depends upon himself and his fellows and his attainment of brotherhood with the universe.

Scientology seeks the full rehabilitation of man's innate spiritual self – his capabilities, his awareness and his certainty of his own immortality.

The primary means by which the basic truths of Scientology are applied to the rehabilitation of the human spirit is called auditing. It is the central practice of Scientology and it is delivered by an auditor ('one who listens'). It is maintained that in Scientology the auditor does not offer solutions, advice or evaluation to the individual student. The latter can only improve his conditions if he is allowed to find his own answers to life's problems. Scientology auditors help individuals to accomplish this goal by guiding them to examine their existence through a carefully structured series of steps. It is said that by following these steps, individuals can improve their ability to face what they are and where they are – peeling away the layers of experience that have weighed so heavily upon them. In this process, auditors employ an electro-psychometer, or E-Meter. Through its usage, it is claimed, auditors help isolate areas of spiritual travail or upset that exist below a person's current awareness. Once brought to light, such trouble areas can then be examined by the individual student.

FINDINGS AND REASONS

38. The tribunal accepts that the applicant is a national of Uzbekistan as claimed and that this is the country against which his fears of return should be assessed. The applicant has presented a passport issued by the authorities of that country in his claimed identity and was familiar

with areas of the country in which he claimed to have lived consistent with a person who was born and educated there as claimed.

39. The applicant fears serious harm in Uzbekistan by reasons of his claimed adherence to the teachings of the Church of Scientology, a world-wide organisation. He claims to have previously been of interest to authorities in Uzbekistan because of his following such teachings and his involvement with a group which produced written material about the religion.
40. Having considered the applicant's claims the tribunal has reached the view that, while there would be some reason to possibly doubt the authenticity of the claims made, that there is not sufficient concern with the claims as presented to be confident that they are not true. Having considered the presentation of the applicant's claims over time, the independent evidence of his involvement in relevant activities in Australia the tribunal has reached the view that the applicant is being truthful about his past activities and experiences in Uzbekistan and his motivation in following the teachings of Scientology after his arrival here. In the tribunal's view, these matters give rise to a real prospect that if the applicant were returned to Uzbekistan at the current time that he would be of adverse interest to authorities by reason of his involvement with the Church of Scientology.
41. The delegate was concerned about documentation presented with the applications lodged overseas in an attempt to obtain visas for the applicant to travel to Australia. Two of these documents do indicate that the applicant was healthy and happy to contact authorities in May 2010 which would undermine his claims. The tribunal, does however accept that it is possible, and indeed probable, that these documents were organised by those assisting the applicant's departure and do not truthfully represent the information contained in them. In the situation where the applicant was leaving Uzbekistan in the circumstance claimed, it is entirely plausible that those assisting him got fraudulently prepared documents to assist his visa application and that he would have no knowledge of them.
42. Against this issue, the applicant relatively soon after his arrival in Australia commenced his involvement with a Scientology centre and has provided a broadly consistent account of his circumstances since the time of the presentation of his application to the present time. He provided an outline of his claims in the application lodged with the department and a detailed statement of his circumstances shortly after. He has provided detailed and consistent evidence about his circumstances in an interview with the department and in the hearing before the tribunal consistent with those accounts. In his hearing before the tribunal he appeared genuine in his evidence and was able to give it in an unprompted and confident way. He has also now been able to provide independent evidence from the Church of Scientology in Sydney about his involvement with the group relatively soon after his arrival in Australia. These factors tend to count in his favour and support the truth of the claims made and in the tribunal's view outweigh concerns about the possible veracity of the claims.
43. In respect of the applicant's conduct of associating with the Church of Scientology in Sydney, the tribunal has considered this in the context of s.91R(3) and concluded that as it accepts that he became genuinely associated with Scientology in Uzbekistan, his conduct in continuing that association in Australia was for a purpose other than strengthening his claim to be a refugee. In the tribunal's view, this conduct was because he genuinely had found assistance through the group and wished to continue that association. This being the case, regard should be had to that conduct in considering relevant matters in connection with the application.

44. In respect of whether the applicant's association with Scientology gives rise to a fear of harm, for reasons of religion or membership of a particular social group, the High Court considered the meaning of "religion" in the context of Australian Constitutional law, in *Church of the New Faith v The Commissioner of Pay-Roll Tax (Victoria)*,⁷² a case concerning the question as to whether Scientology constituted a religion for taxation purposes. The Court's conclusions in determining that Scientology was a "religion" are conveniently summarised in Butterworths *Australian Legal Dictionary* where "religion" is defined as:

A system of ideas and practices, usually involving a belief in the supernatural. ... There exists no formularised legal criterion, whether of inclusion or exclusion, for determining whether a given system constitutes a religion. However, indicia derived from empirical observation of accepted religions can be used as guidelines, some of which are: that there is belief in the supernatural; that the system of ideas relates to the place of humanity in the universe and its relationship with the supernatural; that the ideas are accepted by adherents as requiring the observation of particular codes of conduct; that the adherents constitute an identifiable group; and that they see the system as constituting a religion.

45. In the tribunal's view, the reasoning of the High Court as applied in the context of refugee law would support the conclusion that Scientology is a religion. The available information about Scientology indicates that it incorporates the relevant belief in the supernatural and involves a consideration of ideas and codes of conduct in its practice. Adherents clearly identify with the group through meetings, discussion and sharing of thoughts and in the tribunal's view these indicia give it the quality of a religion.

46. The tribunal accepts that if the applicant were to continue to follow the beliefs of Scientology on return to Uzbekistan there would be a real risk of his coming to serious harm. The tribunal accepts that he is already known to authorities for his adherence to the beliefs of Scientology and the available information about circumstances in Uzbekistan indicates a strong, continuing and very high level of interest by authorities in unregistered and prohibited religions. There is nothing which indicates that Scientology is registered within Uzbekistan and in the tribunal's view, the possession of literature associated with it, any attempt to distribute such material and meetings of like-minded members or attempts to recruit others would likely attract official interest and sanction. It is clear from the available country information that the faith-based activities are the subject of the highest level of scrutiny by security authorities in Uzbekistan and that it is entirely probable that the applicant would come to the attention of authorities. His claims about his mistreatment by the general population is also supported by the available country information, and the general societal censure of those who convert from Islam is another element which may see him brought to the attention of authorities. Members of the general population who become aware of the applicant's beliefs may themselves complain to authorities. In the tribunal's view, the essential and significant reason for any official interest in him is because the applicant would be seen as associated with an unregistered religion in the country. This is a sufficient nexus with the Convention reasons.

47. The available country information also indicates that once one comes to the attention of authorities, arbitrary detention and significant personal harms are frequently a result. The most recent United States Department of State Reports detail physical abuse and mistreatment of detainees very commonly and the frequent and continuing detention of those deemed in contravention of restrictions on religious practice.

48. In the tribunal's view, then, the applicant is a person who holds well-founded fear of being persecuted essentially and significantly for reasons of his religion if he returns to Uzbekistan. This risk extends to the country as a whole because the available country information indicates that risks extend throughout the country. While he may initially be at risk only in the area in which he is currently known, the possibility that those with whom he came into contact in other areas would be hostile to him and generate probable official interest is not one which in the tribunal's view is remote.
49. As a result, it is the view of the tribunal that the applicant is owed protection obligations by Australia. This being the criterion in dispute it is appropriate to return the matter to the department with relevant directions in order that the application can be considered in respect of remaining criteria for the visa sought.

DECISION

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