

**1103329 [2011] RRTA 565 (7 July 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1103329

**DIAC REFERENCE(S):** CLF2010/76708

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Belinda Wells

**DATE:** 7 July 2011

**PLACE OF DECISION:** Adelaide

**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 China (PRC), arrived in Australia on [date deleted: s.431(2)] August 2009, departed [in] December 2009, and re-entered [in] January 2010. He applied to the Department of Immigration and Citizenship for the visa [in] June 2010. The delegate decided to refuse to grant the visa [in] March 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] April 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 Regulations.

### **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. 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**

19. The Tribunal has before it the Department’s and Tribunal’s files relating to the applicant. The Tribunal has also had regard to other material available to it from a range of sources.
20. According to the application the applicant is a [age deleted: s.431(2)] male Chinese citizen from the Uighur ethnic group whose religion was Islam, who arrived in Australia [in] August 2009 as the holder of a student visa. The applicant provided details of his current Chinese passport. The applicant states in his application that he is a student and that he has lived at one address in Urumqi, Xinjiang in China all his life before coming to Australia.
21. In his application the applicant stated that he was seeking protection in Australia so that he did not have to go back to China. He provided a statutory declaration dated [in] May 2010 in support of his application stating that he fears returning to China for the following reasons:
  - His [relative] is a Uighur human rights activist in the United States, who is a member of the World Uyghur Congress and [an active participant], and a [participating] member of the Uyghur American Association in [year deleted: s.431(2)].
  - From May 2008 he began to send information to his [relative] about the size of the Uyghur population, the number of prisons and Uyghur prisoners and many human rights abuses that have occurred in East Turkistan and other Chinese cities. His [relative] used this information in his articles. His [relative] used key words and slang when referring to such matters during telephone conversations and on the internet.
  - Since the Uighur demonstration in Urumqi on 5 July 2009 Chinese secret agencies have been searching for people that were directly or indirectly involved in the demonstration. The Chinese authorities have blamed overseas Uyghur organisations, and every Uighur person who has any possible connection with overseas Uighur organisations, especially the World Uighur Congress, is at risk.
  - His connection with his [relative], who is [a participating] member of the World Uighur Congress, puts him in great danger with the risk of execution.
  - He will continue to work with his [relative] and the Uyghur Australian Association in the future, to work towards the freedom and self-determination of Uighurs.
  - The Chinese authorities would punish him for advocating for Uighur human rights.

- As a school student in China he did not have religious freedom. However in Australia he has started to learn and practice his religion. He attends the mosque on Fridays. He would never be able to practice his religion in China.
  - In Tasmania there is no Uighur community organisation and so he has not been able to be a member of an overseas Uighur organisation. However he has a strong intention to contribute to a Uighur organisation in the future. He would not be able to do this in China.
  - The Chinese government has established comprehensive systems for monitoring telephone and internet connections used by Uighur people.
22. In his statutory declaration the applicant also refers to his involvement in organising activities for Uighurs whilst he was a high school student from 2006 to 2009, and his discussions with his Uighur friends about Uighur issues and about sending information to Uighur activists abroad.
23. The applicant also provided to the Department a submission from his representative and the following documents:
- The applicant’s Chinese passport showing arrival stamps which indicate that he arrived in Australia [in] August 2009 and [in] January 2010;
  - Email from [Mr A] to the applicant’s representative dated [in] May 2010 stating that since 2008 the applicant has played an active role in sending him information about Uighur issues.
  - Letter from Ms Rebiyah Kadeer dated [in] May 2010 stating that she is the President of the World Uyghur Congress (“WUC”) and she is writing this letter in support of the applicant. In her letter Ms Kadeer states:
 

*“I know (the applicant’s) [relative] [Mr A] in person. Since coming to the US in 1996 he actively supported and participated (in) WUC activities. He also advises us regarding WUC activities in the West Coast. In the past, he provided us (with) information from (the applicant). So I am certain that (the applicant) will be severely persecuted by the Chinese government if he were sent back to China for any reason.”*
  - Notarial certificate of birth from the Notary Public Office of XUAR dated [date deleted: s.431(2)] stating that [Mr A] was born in Urumqi on [date deleted: s.431(2)] and his father’s name is [name deleted: s.431(2)]; and
  - Household Register for an address in Urumqi dated [in] March 2006 stating that the name of the householder is [name deleted: s.431(2)], and stating that the other persons in the household are the householder’s wife and his son, who is the applicant.
24. The delegate refused the visa application [in] March 2011 after interviewing the applicant.

## **The Tribunal review**

25. [In] April 2011 the applicant applied to the Tribunal for review of the delegate's decision. The applicant was represented in relation to the review by his registered migration agent.
26. [In] June 2011 the Tribunal received a submission from the applicant's representative. [In] May 2011 the Tribunal received a statutory declaration dated [in] May 2011 in which the applicant described some of his activities in Australia and other matters, including the following:
- In Hobart he has attended a mosque and he has used the special prayer room at the University. In Adelaide he attends the mosque at [Suburb 1] and he has had even more opportunity to learn about his religion as this is the mosque which most Uighurs attend and where some of the teaching is done in the Uighur language;
  - If he returned to China and they have heard that he has been attending the mosque he would have serious problems as they perceive all Muslims to be terrorists and they would assume that he has been affiliating with "uighur terrorists" in Australia. He has been told that there are spies in their own Uighur community and it is possible that someone may have told the Chinese authorities. If he went back to China he would again have to submit to their strict regulations and he would not be able to attend the mosque as otherwise there would be serious consequences including loss of job rights and even prison.
  - In March 2011 Ms Rebiyah Kadeer came to Adelaide and he met her at a community place in [suburb deleted: s.431(2)]. He attended a meeting at which she spoke to about 50 young Uighur people and he had his photograph taken with her. Ms Kadeer also spoke to a larger, more general, meeting. The young people were able to talk to Ms Kadeer for a long time after the meeting. She is like a mother and it is unbelievable that the Chinese consider her to be a terrorist.
  - Every Friday there is a Uighur history class and he has attended some of these sessions. He previously knew some Uighur history but this is the first time that he has been able to discuss Uighur issues in an open environment.
  - He did not apply for protection earlier because he was concerned about the safety of his parents.
  - His eyes have been opened in Australia. Through his experiences at the mosque and the Uighur history lessons he now understands more about the suffering of the Uighur people and that he is part of this community, and he wants to stand up for them and seek justice for his people. He does not think that he could return to study or work in China without ending up speaking out against the injustice and the wrongs that he sees. The Chinese have prevented the Uighurs from using their names, their language and their culture, and have destroyed their history and have tried to destroy their religion.
  - It would be impossible for him to return to China "to be like a puppet again". But if he was not to be a puppet, he would end up being arrested and imprisoned.

## **The Hearing**

27. The applicant appeared before the Tribunal [in] June 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Uyghur and English languages.
28. Prior to the commencement of the hearing the applicant provided the following documents to the Tribunal:
  - Photograph of the applicant with Ms Rebiyah Kadeer; and
  - Letter from Mr Abdulghafur Momin, President of the East Turkistan Australian Association (“ETAA”), dated [in] June 2011 in which he confirms that the applicant is “no actively engaged with” the ETAA, that the applicant has pledged that he will continue to contribute to the ETAA, and that the applicant’s involvement in the ETAA will be considered as a major crime and he will face persecution if he returns to China.
29. The applicant said that he had lived in Urumqi all his life before arriving in Australia in August 2009. He described his parents’ jobs. He said that his father could not practise his religion because he was a government employee. He said that his parents are Muslims but they were busy with their work and did not have time to teach him about Islam.
30. The applicant said that he is a Muslim and he has learnt a lot about his religion since coming to Australia. He said that he doesn’t know what would happen to him if he went back to China and practised his religion. He said that he doesn’t think that he would be able to practice his religion in China. He said that when he lived in China the people his age were arrested. He said that if he attended the mosque in China the Chinese authorities would think that he and others at the mosque are terrorists who are planning something against the government.
31. The applicant said that he talks to his parents on the telephone about twice a month. He said that his parents do not tell him whether they have had any problems and he doesn’t ask.
32. The applicant said that he arrived in Adelaide about four months ago, after living in Tasmania.
33. The applicant said that almost every Friday he attends a Uighur history class which is held at [Suburb 1] Community Centre.
34. The applicant provided information about his communication with his [relative] who lives in the United States. He said that whilst he was in China he communicated with his [relative] by both telephone and email and he provided details of this. He said that around the end of 2008 he had a telephone conversation with his [relative] in which he provided some information about prisons and Uighur prisoners.
35. The applicant said that four or five years ago he and his [relative] were able to communicate using email and then around the beginning of 2009 it started getting difficult to communicate as the Chinese government began checking emails. He said that after 5 July 2009 all communication ceased as the networks and internet were blocked by the authorities. He said that the authorities would check for keywords such as “freedom”. The applicant said that he could tell when an email had been checked.

36. The applicant said that the identity documents that he has provided about his [relative] and his father show that they have the same surname.
37. The applicant said that he finished high school in June 2009. He said that at the time of the 5 July 2009 demonstrations he was in Urumqi and he was on holiday. He said that he did not participate in the protests because he was worried about his parents' safety, and also because he had already organised to come to Australia and he knew that if he participated in the protests he wouldn't be able to come to Australia.

### **Reasons for claimed fear**

38. The Tribunal asked the applicant to explain the reasons why he fears going back to China. The applicant said that any Uighur person who goes to live in another country and then returns to China is at risk. He said that he is very fortunate to have been able to come to Australia but there are many young Uighur men who are living in prison and facing torture. He said that if he goes back he'll be just like them.
39. The applicant said that he has heard that this is the case from speaking to other people. He said that he experienced discrimination at the airport himself. He said that the Chinese authorities may imprison him if he goes back or even kill him.
40. The Tribunal asked the applicant why the Chinese authorities may do that. The applicant said that it is because he has been living in Australia and so they regard him as a terrorist now. He said that the Chinese authorities do not treat people well when they consider them to be a terrorist.

### **Trip to China in December 2009**

41. The applicant said that the main reason he returned to China from [December] 2009 to [January] 2010 was to see his parents. He said that he was concerned about them as he had not had any contact with them since 5 July 2009. He said that he also wanted to get some documents from his school.
42. The applicant said that he was really scared about going back to China as he had heard that the Chinese government may arrest and persecute Uighur people who leave the country and then return. However he said that he decided to go anyway because he had to see his parents.
43. The Tribunal asked the applicant whether anything has changed since his trip to China which makes it more likely that the applicant would be harmed by the Chinese authorities. The applicant said that one day when he was at home in China by himself some people came to the house and told him that they were from the Census Office and that they were checking on the census. The applicant said that this is a common occurrence in China and he didn't think much about it at the time but later he felt concerned that these people had already known that he was a studying abroad and they were asking him about his studies.
44. The applicant said that in addition he recently met Rebiyah Kadeer when she came to Australia, and he attended the events in which she was involved, and so the Chinese authorities would truly consider him to be a terrorist.

### **Activities in Australia**



45. The applicant said that in May 2011 he met Rebiyah Kadeer when she came to Adelaide, and that he has provided a photograph of this. He said that Ms Kadeer spoke about the Uighur people's lack of freedom in East Turkistan at an event which was held at a community centre behind the [venue deleted: s.431(2)]. The applicant said that the event took place over three days and he attended all three days. The applicant said that the meeting was all about his country, East Turkistan, and different topics were discussed each day.
46. The applicant said that the event was mostly attended by Uighur people but there were also people from other nationalities present, including Uzbeks. He said that some people who are not Uighurs are interested in the Uighur people's situation and history. He said that there were photographers present and some leaders from the Uighur community videotaped the event. He said that he did not know whether there were people there from the media.
47. The applicant said that Rebiyah Kadeer was also involved in the Nawroz celebrations held one evening at a school hall. He said that he participated in that.
48. The applicant said that he decided to attend the three day event at which Rebiyah Kadeer spoke because he had heard a lot about Rebiyah Kadeer beforehand. He said that he had heard her lectures before. He said that he wanted to hear about his country and the Uighur people's history and their situation now, and what young Uighurs can do to help. The applicant said that in China he used to hear that Rebiyah Kadeer was a terrorist as the government spread false information about her, but he had realised that she was not like that. He said that she is "our mother".
49. The applicant said that he had learnt a lot from attending Rebiyah Kadeer's lectures, including the current situation of Uighurs and what youth can do to help. The Tribunal asked the applicant whether there was anything that he was planning to do to assist the Uighur people in China. The applicant said that he planned to finish his studies and to try to help the Uighur community here. He said that he would try to learn more about the country from the elders in Adelaide and let the world know about the Uigher's situation.
50. The applicant said that he has been involved in the East Turkistan Australia Association ("ETAA") in Adelaide. He said that he has attended about ten events organised by the ETAA including an event to remember soldier heroes in his country. He said that he also regularly attends the Uighur history classes on Fridays which are organised by the ETAA.
51. The Tribunal told the applicant that the letter that he has provided from the ETAA contains a misspelling, and so it is [relative]ar whether the author of the letter is stating that the applicant has been involved in ETAA activities or not. The applicant's representative said that she would provide a corrected version of the letter to the Tribunal.
52. The applicant said that he was not involved in Uighur cultural activities in Tasmania as there are not many Uighur people living in Tasmania.
53. The applicant said that in Adelaide he goes to the mosque every Friday.
54. The applicant said that it is possible that the Chinese government would know about his activities in Adelaide as he has heard that in Australia there are spies working for the Chinese government.

55. The Tribunal asked the applicant whether he undertook these various activities in Australia in order to strengthen his refugee claims, or for other reasons.
56. The applicant said that he undertook these activities because he wanted to learn the true history of his country and because he had not had the opportunity to attend a mosque in his own country. He said that he did not participate in these activities in order to help his refugee claim. He said that whether or not his involvement in these activities helps his refugee claim he will continue to be involved in them because he is Uighur and he is from East Turkistan. He said that he is proud to be Uighur and his parents would be happy that he has used his freedom in Australia to do those things.
57. The applicant said that he wants to do as much as he can to let people know about the Uighur situation and that the Uighur nation exists. He said that this is why he attends Uighur meetings and events in Australia.
58. The applicant said that whilst he has been in Australia he has provided information to his [relative] in Australia. He said that they communicate by email and Facebook about twice a week.
59. The applicant said that if he had to return to China to live he would want to do something for Uighur rights if he had the opportunity. He said that he has learnt so many things in Australia about his history and his people. He said that he did not know what he would do but if he had an opportunity to participate in an event like the 5 July 2009 protest he would do so, as now he has knowledge about his country and his people.
60. The applicant's representative said that all Uighur people in China face more than a 5% risk of serious harm, which is the test laid down in Chan's case. She said that the risk is greater for Uighur people who have left China. She said that she does not have information about what has happened to many Uigher asylum seekers who have returned, but there is information that those who have been forcibly returned to China from countries like Cambodia and Germany have been arrested and executed. She said that there is information that an asylum seeker who returned voluntarily from Australia was initially imprisoned and is now under constant surveillance.

#### **ETAA letter**

61. [In] July 2011 the Tribunal received a letter from Abdulghafur Momin, President of the ETAA, dated [in] June 2011 which states, in part:

*“(The applicant) .. is an ethnic Uighur from Chinese occupied East Turkistan. ...*

*I wish to confirm that (the applicant) .. is now actively engaged with the East Turkistan Australian Association by taking part in weekly history lessons on Fridays and other community activities namely the Nawrooz held on 26 March 2011 and Commemoration event of Barin Massacre held on 5<sup>th</sup> April 2011. He has pledged that he would be continually contributing the association in his best of abilities.*

*(The applicant's) .. personal commitment in our association will be considered as major crime and he will face serious persecution if he returns to China.”*

#### **Evidence from other sources**

62. The Tribunal obtained information about treatment of Uighur people in the Uyghur Autonomous Region (“XUAR”) in China.
63. In April 2009 Amnesty International said, in its report “Uighur Ethnic Identity under Threat in China”:

*The ethnic identity of Uighurs in western China is being systematically eroded. Government policies, including those that limit use of the Uighur language, severe restrictions on freedom of religion, and a sustained influx of Han Chinese migrants into the region, are destroying customs and, together with employment discrimination, fuelling discontent and ethnic tensions. The government has mounted an aggressive campaign that has led to the arrest and arbitrary detention of thousands of Uighurs on charges of "terrorism, separatism and religious extremism" for peacefully exercising their human rights.*

64. The Bureau of Democracy, Human Rights, and Labor in its 2010 Country Reports on PRC’s Human Rights Practices, dated 8 April 2011, stated:

*“A negative trend in key areas of the country's human rights record continued, as the government took additional steps to rein in civil society, particularly organizations and individuals involved in rights advocacy and public interest issues, and increased attempts to limit freedom of speech and to control the press, the Internet, and Internet access. Efforts to silence political activists and public interest lawyers were stepped up, and increasingly the government resorted to extralegal measures including enforced disappearance, "soft detention," and strict house arrest, including house arrest of family members, to prevent the public voicing of independent opinions. ...*

*Individuals and groups, especially those seen as politically sensitive by the government, continued to face tight restrictions on their freedom to assemble, practice religion, and travel. The government continued its severe cultural and religious repression of ethnic minorities in Xinjiang Uighur Autonomous Region (XUAR) and Tibetan areas. ...*

*... Authorities monitored telephone conversations, fax transmissions, e-mail, text messaging, and Internet communications. Authorities also opened and censored domestic and international mail. Security services routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines.*

*The monitoring and disruption of telephone and Internet communications were particularly widespread in the XUAR and Tibetan areas.*

*... According to government information, Uighur journalist Memetjan Abdulla was sentenced to life in prison in April reportedly for transmitting "subversive" information related to the July 2009 riots. Abdulla, an employee of the Uighur-language service of Chinese National Radio, was reportedly sentenced in a closed-door trial (see section 1.a.).*

*In July Uighur webmasters Dilshat Perhat, Nureli, and Nijat Azat were convicted of "endangering state security," receiving sentences of five, three, and 10 years, respectively. The verdicts were reportedly handed down at closed door trials in the Urumqi Intermediate Court.*

*...*

*The government's policy to encourage Han Chinese migration into minority areas significantly increased the population of Han in the XUAR. In recent decades the Han-Uighur ratio in the capital of Urumqi has shifted from 20 to 80 to 80 to 20 and continued to be a source of Uighur resentment. Discriminatory hiring practices gave preference to Han and discouraged job prospects for ethnic minorities. According to 2005 statistics published by XUAR officials, eight million of the XUAR's 20 million official residents were Han. Hui, Kazakh, Kyrgyz, Uighur, and other ethnic minorities constituted approximately 12 million XUAR residents. Official statistics understated the Han population, because they did not count the tens of thousands of Han Chinese who were long-term "temporary workers." While the government continued to promote Han migration into the XUAR and fill local jobs with migrant labor, overseas human rights organizations reported that local officials under direction from higher levels of government deceived and pressured young Uighur women to participate in a government-sponsored labor transfer program.*

*The XUAR government took measures to dilute expressions of Uighur identity, including reduction of education in ethnic minority languages in XUAR schools and the institution of language requirements that disadvantaged ethnic minority teachers. The government continued to apply policies that prioritized standard Chinese for instruction in school, thereby reducing or eliminating ethnic-language instruction. Graduates of minority language schools typically needed intensive Chinese study before they could handle Chinese-language course work at a university. The dominant position of standard Chinese in government, commerce, and academia put graduates of minority-language schools who lacked standard Chinese proficiency at a disadvantage.*

*During the year authorities continued to implement repressive policies in the XUAR and targeted the region's ethnic Uighur population. Officials in the XUAR continued to implement a pledge to crack down on the government-designated "three forces" of religious extremism, splittism, and terrorism and outlined efforts to launch a concentrated antiseparatist reeducation campaign.*

*It was sometimes difficult to determine whether raids, detentions, and judicial punishments directed at individuals or organizations suspected of promoting the three forces were actually used to target those peacefully seeking to express their political or religious views. The government continued to repress Uighurs expressing peaceful political dissent and independent Muslim religious leaders, often citing counterterrorism as the reason for taking action.*

*Uighurs continued to be sentenced to long prison terms, and in some cases executed, on charges of separatism and endangering state security. The government reportedly sought the repatriation of Uighurs outside the country, who faced the risk of persecution if repatriated.*

*Freedom of assembly was severely limited during the year in the XUAR.*

*In September 2009 the government announced it would demolish three buildings owned by the family of exiled Uighur leader Rebiya Kadeer, president of the World Uighur Conference. The government blamed Kadeer, a Uighur businesswoman in exile, for orchestrating the July 2009 riots in Urumqi. At year's end the buildings had not been demolished.*

*Possession of publications or audiovisual materials discussing independence or other sensitive subjects was not permitted. Uighurs who remained in prison at year's end for their peaceful expression of ideas the government found objectionable included Mehbube Ablesh, Abdulla Jamal, Adduhelil Zunun, Abdulghani Memetemin, and Nurmuhemmet Yasin.*

*During the year XUAR and national-level officials defended the campaign against the three forces of religious extremism, splittism, and terrorism and other emergency measures taken as necessary to maintain public order. Officials continued to use the threat of violence as justification for extreme security measures directed at the local population, journalists, and visiting foreigners.*

*In September 2009 state media reported that XUAR authorities approved the Information Promotion Bill, making it a criminal offense to discuss separatism on the Internet and prohibiting use of the Internet in any way that undermines national unity. The bill further bans inciting ethnic separatism or harming social stability. The bill requires Internet service providers and network operators to set up monitoring systems or strengthen existing ones and report transgressions of the law.*

*Han control of the region's political and economic institutions also contributed to heightened tension. Although government policies continued to allot economic investment in, and brought economic improvements to the XUAR, Han residents received a disproportionate share of the benefits.”*

65. In its report “Freedom in the World 2011 – China” dated 17 June 2011 Freedom House stated:

*“In the Xinjiang Uighur Autonomous Region, tightened restrictions that followed violent clashes between Uighurs and members of China's ethnic Han majority in July 2009 remained in place for much of 2010. In the 2009 unrest, police forcibly suppressed a peaceful demonstration in Urumqi by Uighurs seeking justice for Uighur factory workers killed in a brawl with Han employees in southern China. The violent police action sparked clashes between Uighurs and Han residents, and state-run media reported that 197 people were killed, though state censorship and intimidation of witnesses made it difficult to verify such figures. Xinjiang's internet access and international telephone service remained at least partially severed until May 2010, and the number of police and surveillance cameras in the region increased.*

*The crackdown following the clashes included large-scale "disappearances," imprisonment, and executions of Uighurs. Existing political indoctrination programs, curbs on Muslim religious practice, policies marginalizing use of the Uighur language in education, and government efforts to alter the region's demography continued throughout 2010, and in some instances grew worse.”*

66. On 21 July 2009 AsiaNews reported that the XUAR authorities intended to pass special laws to deal with separatism in the region:

*“Xinjiang wants to quickly pass special laws to deal with separatism in the autonomous region, Chinese newspapers reported yesterday without any explanation. This is a sign*

*that the protests that broke out on 5 July will be met with harsh measures. Officially 197 people died during the violent clashes and more 1,700 were wounded.*

*Analysts note that China already has some of the toughest anti-secession laws on the books; any new law will simply give more powers to the police and increase already harsh penalties, thus further limiting civil liberties.*

*Speaking to Xinhua Eligen Imibakhi, chairman of the Standing Committee of the Xinjiang Regional People's Congress, said that this month's protests were caused by the "three forces," namely "extremism, separatism and terrorism".*

*For years China has used this unholy trinity to justify its persecution of Uyghurs, charging them with being dangerous terrorists.*

*Chinese authorities insist that demonstrations in early July were organised by secessionist groups, not the spontaneous action of ordinary people.*

*The mouthpiece of the Communist Party, the People's Daily, yesterday blamed foreign groups like the Munich-based World Uyghur Congress (WUC) and exiled Uyghur leader Rebiya Kadeer for masterminding the violence, an accusation which Xinhua reprinted today.*

*Uyghurs have dismissed Chinese charges, saying the protests were peaceful until police intervened. ...*

*... Officially, 1,400 Uyghurs have been arrested for their involvement in the protests, a figure treated with scorn by Uyghurs, some of whom claim that as many 20,000 have been detained, including innocent passers-by caught up in the events."*

67. On 10 November 2009 Amnesty International reported that "eight Uighurs and one Han Chinese individual" were executed after "21 individuals were tried and sentenced in October in relation to the July unrest" after trials lasting less than a day. Amnesty International said that "(g)iven the large number of detentions reported by Chinese officials in connection with the unrest, dozens more trials could take place, possibly leading to more executions". It said that the China Daily had reported that the authorities have just prosecuted another 20 suspects, "for offences ranging from murder, arson, and robbery linked to the riots": Amnesty International, "Hasty Executions in China Highlight Unfair Xinjiang Trials", [www.amnesty.org/en/news-and-updates](http://www.amnesty.org/en/news-and-updates) (10 November 2009).

### **Political activities and monitoring in Australia**

68. In relation to monitoring by Chinese authorities of Uighers in Australia, DFAT advised in June 2006:

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

A2. Failure to comply with Chinese authorities expectations to provide information could possibly result in repercussions on return to China. This could include Chinese

authorities harassing individuals and/or their family members, (for example including, but not necessarily limited to, creating difficulties in pursuing education or public sector employment opportunities.)

A3. We consider there to be a small likelihood of Chinese authorities learning of individuals' PV applications in the absence of some indiscretion by the applicants. But if this information were revealed, on return to China, failed applicants would be likely to be subject to official scrutiny. In addition to possible consequences listed in paragraph 2, authorities might interview the person and might put the person concerned in administrative detention (*DIAC Country Information Service 2006, Country Information Service No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, sourced from DFAT advice of 28 June 2006).

69. In May 2006, DFAT advised on the treatment upon return of Uighurs involved in Uighur groups in Australia.

A.1. It is not possible to say definitively how Chinese authorities would treat a particular individual who returned to China after being involved in a Uighur group in Australia. It is likely that the Chinese authorities seek to monitor Uighur groups in Australia and obtain information on their membership and supporters. On return to China, it is likely that the authorities would at least put such people under surveillance and might detain them for interview. Whether the person would face more serious consequences could be influenced by whether China perceived the person's activities outside of China as amounting to criminal activities. China regards separatist activities (eg calling for Xinjiang's independence from China) as criminal, regardless of whether the person was in China or in another country when he or she carried out such activities. In determining what constitutes separatist activity, China does not make a significant distinction between non-violent political calls for Xinjiang independence and advocacy of violence (although the latter would likely attract more severe punishment).

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

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

A.2. As noted above, the consequences for the individual on return to China would be related to his or her level of involvement with the organisation outside of China, as well as the individual's behaviour on return to China. The more involved the individual had been in a Uighur organisation outside of China, the more likely that China became aware of the individual's activities (with repercussions as outlined above) (*DIMIA Country Information Service 2006, Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006).

70. In August 2006 DFAT advised in general terms on the Chinese authorities' view towards Uighurs:

A.4. In general, Chinese authorities view politically active Uighurs as more threatening than members of underground church groups. Chinese authorities are particularly concerned about politically active Uighurs because they view Uighur political activity as having separatist objectives (DIMIA Country Information Service 2006, *Country Information Report NO. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639)*, (sourced from DFAT advice of 7 August 2006).

71. Amnesty International-Canada stated in June 2005 that if the Chinese government suspects that a Uighur asylum seeker has a history of involvement in political opposition movements currently being repressed in the XUAR, “there is a strong risk of serious human rights violations, including arbitrary detention and torture or ill treatment”:

Uighurs who are suspected by the Chinese authorities to have claimed asylum will, at the very least, be questioned upon their return to China. Due to their ethnic minority status, Uighur asylum seekers who are forcibly returned are likely to be viewed by the Chinese authorities as political suspects and face arbitrary detention or imprisonment. A returnee would raise suspicion due to their expired passport, or lack of passport, and due to their lengthy absence from China without any legal travel documentation. In this context, it is important to note that Article 322 of the Chinese Criminal Law makes “illegally crossing a national boundary” an offence punishable by up to one year in prison.

In addition, if the authorities suspect a Uighur of seeking asylum abroad, and/or if they suspect a history of involvement in either political opposition movements or in the religious activities that are currently being repressed in the XUAR, then this person would come under further scrutiny. Under these circumstances, there is a strong risk of serious human rights violations, including arbitrary detention and torture or ill treatment. If a Uighur is suspected of playing a leading role in organizing “separatist”, “terrorist” or “illegal religious” activities, they would face a long period of imprisonment, or possibly the death sentence and execution (Amnesty International-Canada 2005, *Amnesty International concerns on Uighur asylum seekers and refugees*, June [http://www.amnesty.ca/Refugee/Concerns\\_Uighur\\_June2005.pdf](http://www.amnesty.ca/Refugee/Concerns_Uighur_June2005.pdf)

72. In May 2002 Amnesty International-Canada stated that “members of the Uighur community will, at the very least, be questioned by the authorities upon their return to China”:

Amnesty International is concerned about the forcible return of Uighurs to China. The China research desk at Amnesty International's International Secretariat reports that an ethnic Uighur returned to China would likely face harsher treatment than a non-Uighur returned under the same conditions. Due to their visible minority status, Uighur asylum seekers who are returned to China are likely to be viewed by the Chinese authorities as political suspects and face imprisonment. This concern has been heightened by a new political crackdown against suspected Uighur opponents and religious leaders in the Xinjiang Uighur Autonomous Region (XUAR), launched by the Chinese authorities after the 2001 September 11 attacks in the USA.

Members of the Uighur community will, at the very least, be questioned by the authorities upon their return to China. Those who departed illegally from China will raise suspicions about their absence from China. Those who authorities believe have sought political asylum are likely to be detained and tortured.



Amnesty International has documented various cases in which Uighur asylum seekers who were forcibly returned to China, were detained, reportedly tortured and in some cases sentenced to death after their return. These include the case of Yasim Kari, aged 35, and Abla Karim, who have been detained in Kashgar, China, since September 1998, when they were forcibly returned to the XUAR from Kazakhstan:

They are reported to be still detained but it is not known whether they have been charged. Amnesty International is concerned that they are reported to be detained for seeking political asylum abroad (ASA 17/18/99, p.31) (Amnesty International-Canada 2002, *Amnesty International concerns regarding Uighurs in the Xinjiang Uighur Autonomous Region (XUAR), China*, May 2002.)

## **FINDINGS AND REASONS**

73. The applicant claims that he is a Chinese citizen, and that there is a real chance that if he returns to China he will be seriously harmed by the Chinese authorities because of his Uighur ethnicity, his East Turkistan nationality, his Islamic religion, his political opinion, and his membership of a particular social group which is his family.
74. The Tribunal accepts, on the basis of the applicant's Chinese passport which was provided to the Department, that the applicant is a Chinese citizen and is outside his country of nationality.
75. The applicant claimed in his first statutory declaration and during the hearing that both whilst he was in China and since he has been in Australia he has been involved in providing information about Uighur issues to his [relative], who lives in the United States and is [involved in] the World Uyghur Congress ("WUC") headed by Ms Rebiyah Kadeer, and who provides information to the WUC. The applicant claimed in his first statutory declaration that he feared that the Chinese authorities would punish him as a result of this, including possible execution.
76. However when the Tribunal asked the applicant at hearing why he feared returning to China the applicant did not refer to the fact that he had been providing information to his [relative]. The applicant said at hearing that he feared returning to China because the Chinese authorities consider that all Uighur people living abroad are terrorists, and so all Uighurs returning to China are at risk of harm including arrest, imprisonment, torture and death because of this. The applicant said that this would be particularly be the case for him now that he had met Rebiyah Kadeer and attended an event at which she spoke.

## **Political Opinion**

77. The Tribunal considered whether there is a real chance that the applicant would be seriously harmed if he returned to China because Chinese authorities would perceive him to be a terrorist as a result of him living abroad, participating in Uighur activities in Australia including ETAA activities and an event involving speeches by Ms Rebiyah Kadeer, the president of the WUC, and practising his religion.
78. The Tribunal finds that whilst the applicant has been in Australia he has met Ms Rebiyah Kadeer and attended an event at which she spoke about Uighur issues, and that he has participated in ETAA organised events including Uighur history classes on Fridays. The Tribunal makes this finding on the basis of the photograph of the applicant with Rebiyah

Kadeer, and the letter from the ETAA dated [in] June 2011, and on the basis of the applicant's oral and written evidence about these activities as this evidence was consistent with the documentary evidence.

79. The Tribunal also finds, on the basis of the applicant's oral and written evidence, that the applicant attended a mosque and a prayer room in Hobart, and has regularly attended a mosque in Adelaide. The applicant claims that as a result of his attendance at the mosque the Chinese authorities will assume that he is terrorist and that he is associating with Uighur terrorists in Australia.
80. The Tribunal notes that these political activities have taken place in Australia rather than in China. 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 Migration 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.
81. The Tribunal accepts the applicant's evidence that he has attended these activities in Australia because he has wanted to know more about East Turkistan's history and Uighur issues. The Tribunal finds, on the basis of the applicant's evidence, that the applicant was particularly interested to meet Rebiyah Kadeer, and to hear her speak about Uighur rights, because he had heard so much about her beforehand and regarded her as the "mother" of the Uighur people, rather than as the terrorist that she has sometimes been portrayed as by the Chinese authorities.
82. The Tribunal accepts the applicant's evidence on this issue as it considered that the applicant's evidence as a whole, including his first statutory declaration dated [in] May 2010, indicates that the applicant was brought up with a Uighur identity, speaking the Uighur language, and that during the applicant's high school years he developed political views about the treatment of Uighurs in China, taking the view that the Chinese government's policies towards Uighurs were repressive, and discussing these views with a small number of Uighur friends.
83. The Tribunal also finds that the applicant's knowledge of and interest in Uighur issues has increased whilst he has been in Australia as he has become more aware of the activities of his [relative], who is a member of the World Uygher Congress.
84. The Tribunal finds, on the basis of the birth certificate and the Household Register provided to the Department, and the other evidence before it including the email from [Mr A], that the applicant has an [relative] who is a Uighur human rights activist and a member of the Uyghur American Association who provides information about Uighur issues to the World Uygher Congress.
85. The Tribunal does not make any finding about whether the applicant has provided information about Uighur issues to his [relative]. As mentioned above, the Tribunal notes that when the applicant was asked during the hearing why he feared returning to China he did not refer to his earlier claim that he had been providing information to his [relative] whilst living in China and in Australia.

86. However the Tribunal accepts the applicant's evidence that whilst he has been in Australia, where he has been able to freely access the internet, he has become much more aware of the scope of his [relative]'s activities and about Uighur issues generally.
87. The Tribunal accepts the applicant's evidence that whilst he was a school student in China he was unable to practise his Islamic religion because of his Uigher ethnicity, as this is consistent with country information on China. The Tribunal accepts the applicant's oral and written evidence that he has learnt a lot about his religion whilst living in Australia and that he is keen to continue attending the mosque at [Suburb 1] and learning about his religion, as most Uighurs in Adelaide attend this mosque and some of the teaching is provided in the Uighur language.
88. In view of these matters, the Tribunal finds that the applicant genuinely wishes to be involved in learning about Uighur and East Turkistan history, and in raising awareness of the situation of Uighurs in China, and also in learning more about and practising his Islamic religion. The Tribunal is therefore satisfied that the applicant has engaged in various activities in Australia which Chinese authorities would regard as 'political', for reasons other than that of strengthening his claim to be a refugee.
89. The Tribunal finds that there is a real chance that if the applicant returns to China the Chinese authorities would seriously harm him for reason of his political opinion. The Tribunal finds that the applicant faces a real chance of serious harm in China because of his political activities in Australia, namely his participation in an event led by Ms Rebiyah Kadeer during which he was photographed with Ms Kadeer, his participation in activities of the ETAA, and his regular attendance at the mosque.
90. The Tribunal finds on the basis of country information cited above that the Chinese government has accused exiled Uighur leader Ms Rebiyah Kadeer of masterminding the violence on 5 July 2009, and that if Chinese authorities establish that a person has been in contact with the World Uighur Youth Congress it is likely that they would consider the person to have been involved in criminal activities.
91. The Tribunal also finds on the basis of the country information that Chinese authorities perceive that any organisation which has the phrase "East Turkistan" in its name has separatist intentions, and that the ETAA would therefore be perceived as an organisation with separatist intentions. The Tribunal finds that the above cited country information indicates that since the 5 July 2009 incidents the Chinese authorities have significantly increased their efforts to suppress Uighur conduct regarded as involving "extremism, separatism and terrorism", and there is a heightened risk that the Chinese authorities would subject a Uighur person involved in an organisation such as the ETAA to treatment which constitutes serious harm.
92. The Tribunal therefore finds, on the basis of the country information set out above, that the Chinese authorities would be likely to impute a 'separatist' political opinion to the applicant if they became aware of his involvement in the activities in Australia referred to in paragraph 77 above.
93. The Tribunal accepts on the basis of country information cited above that Chinese authorities seek to monitor Uighur groups in Australia and to obtain information about their membership and supporters, and that the Chinese authorities may therefore be aware of the applicant's activities in Australia.

94. The Tribunal finds that in view of the country information on the return of persons suspected of involvement in separatist political organisations, including the DFAT report in May 2006, and the Amnesty International-Canada report in June 2005 (both cited above), there is a real chance that the applicant would be seriously harmed as a result of his activities in Australia. The Tribunal finds that given the country information cited above, the risk of serious harm is likely to have increased since the July 2009 protest in XUAR province.
95. The Tribunal finds that the Convention ground of political opinion is the essential and significant reason for the persecution feared by the applicant, the persecution involves systematic and discriminatory conduct, and the fear is well-founded.
96. The Tribunal finds that there is not an area within China where the applicant could relocate to avoid the risk of persecution. The Tribunal accepts that for the reasons set out above Chinese authorities may be aware of the applicant's involvement in the Rebiyah Kadeer event and the ETAA activities, and may identify him upon arrival at an airport in China.

## **CONCLUSIONS**

97. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa provided he satisfies the remaining criteria.

## **DECISION**

98. 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.