

**0906880 [2009] RRTA 1190 (4 December 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0906880

**DIAC REFERENCE(S):** CLF2009/58847

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

**TRIBUNAL MEMBER:** Mary Urquhart

**DATE:** 4 December 2009

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons 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 decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of China (PRC) arrived in Australia [in] April 2009 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] May 2009. The delegate decided to refuse to grant the visas [in] August 2009 and notified the applicants of the decision and their review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention
4. The applicants applied to the Tribunal [in] August 2009 for review of the delegate's decisions.
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 applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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'

10. 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.
11. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. 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.

17. 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.
18. 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.
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 before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The first named applicant appeared before the Tribunal [in] November and [in] November 2009 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's sister [Ms A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Uighur and English languages.
22. The applicants were represented in relation to the review by their registered migration agent.

### **Primary application**

#### *History*

23. The applicants arrived in Australia [in] April 2009 on Chinese passports as the holders of Class TR subclass 676 (Tourist) visas. [In] May 2009 the applicants lodged the current application for Protection (Class XA) visas.
24. In a statutory declaration in support of the applications the first named applicant states as follows:

I [Applicant 1] of [address], Victoria Australia, Hereby declare:

My first name is in my own language [name]. I was born on [date] in Urumchi, China. My son's first name is [name] in our language and his family name [name]. The Chinese turn the Uighur names all around and give us Chinese names and also make our first name our family name and the family name as the give name. So for example my son's name in Chinese is [name]. We do not like to use these names but we are forced to and they are given to us as an insult to our Uighur identity.

When we got our passports I asked from the Chinese office staff why our names are all over the place and they were very rude to me and told me I should just be happy that I got my passport. We could not say anything as we were very afraid they would not give us the passports so we left.

Before the Olympics the Chinese authorities confiscated all the Uighurs passports including mine, my sons, my husbands and my mum's passports. After the Olympics just me and my son got our passports back but we had to pay bribes of 5000 Yuan. The others still do not have their passports as we do not have enough" money for the bribes.

When I was in school the environment was very very bad for Uighurs compared to how the Han students were treated. The resources for the Uighurs were very limited and the conditions were very bad. I went to a college after I finished secondary school and I had to study one year in Chinese language before I could start the course and then the rest of the course was in mandarin. The accommodation for the Uighurs was very poor and we had a separate canteen from the Han Chinese and the food was no good. I received a diploma in machinery to do with [type deleted: s.431(2)].

We all faced discrimination the whole of our lives. My father worked 35 years since he was 14 years of age as a butcher for the Government shops and when he stopped work he should have got the retirement payment but he received just a very small living allowance paid each month until he turned 60. When he turned 60 he got a little bit more but still not enough. He has now passed away. My mother now survives on a small pension of about 600 Yuan per month and my sister in Australia supports her financially.

I got work with the [company] in [location], Urumchi. It is the most rich company in Xinjiang and pays good wages. Because of this there are lots of Chinese people who are brought in from inner China and even though there are many many Uighurs who are qualified to work they are not given employment because they are Uighur. I managed to get work as a factory worker but the job is way below my qualification. My parents had to pay 60,000 Yuan bribes to get me this job.

My husband had to work for 9 years as a casual staff member whereas the Chinese with same qualifications start straight away as permanent staff. He is also given the worst and heavy jobs and 12 hours a day in jobs that do not match his qualifications.

In the working place we are forced to sit the exams every month in Chinese. The exams are sort of related to the work but is not practical. It is very difficult for those of us who are Uighurs as we have studied all our school in Uighur language and we are not used to mandarin. If we fail the exam we have our wages docked. If we fail 3 times we get sacked. These days if a Uighur is sacked he/she is replaced by the Chinese. They also will not let more than 2 or 3 Uighurs work together in the one section of the work place.

I am the only Uighur where I work and I am always given the most heavy and dirty job in the work place. I even get asked to do all the menial tasks like washing other staff dishes - I am just like a slave.

Once I was sick with a temperature of 39 and I phone the factory but they told me I had to come even if I was just crawling I had to work. I could not go to work and they took from my wages 300 Yuan for one day. They told me if I did this again I would lose my job. It is very easy for Han Chinese to take sick leave without losing pay or getting into trouble. Every day I go to work I feel like I am going to jail.

My son has to go to the Chinese language kindergarten and if we do not send him there they tell us he cannot go to school because he will not know mandarin. All our children are now forced to learn mandarin. At kindergarten he sometimes comes home with scratches and bruises and if I talk to the teacher they do not care and gets upset when he has to go to kindergarten. The other children even only 4 years old call him "dirty" and say to the Uighur children they should go away. The teachers do not encourage the Uighur children and call our son and other Uighur students "stupid."

In Ramadan last year I was fasting but one of my colleagues discovered that I was fasting and she reported me. I was called to the office and asked why I was fasting. I was told I could not practice any religious beliefs in the work place. They forced me to drink some water. They also spoke to me about relatives in other countries and I was made to report to another office if I ever left Shihua town.

My brother invited me to come to Australia. I posted the forms from Urumchi to China and they posted the passport and visa back to me. When I was leaving China at Shanghai airport I was the only Uighur on the flight. They took me to a small room and stripped me naked. They did not tell me what they were searching for but it was very humiliating for me. There were two ladies and one man. They went through everything in my luggage. It all took about one hour then they let me on the plane - everyone was waiting for me to board the plane!!

Re our family history

We have a cousin, [name] from my mother's family who was 8 months pregnant but because it was her third child they killed the child in her stomach and forced an abortion. [Name] is now very sick physically and psychologically.

One of our cousins husband, [name], was killed in Barin in 1989 because he participated in the demonstrations. The Chinese Government were looking for him and he was hiding for one year and tried to escape to Pakistan with a small group of others and they were shot and killed. He left two little children 4years and 3 year old. His wife - our cousin - has suffered a lot and has never married again.

Another cousin, [Person A], is very religious and grew a beard but the Chinese authorities arrested him and took him to the police station and tortured him just because of his beard and forced him to shave his beard and he was fined 2000 Yuan and then he was released. 2000 Yuan for a country person is very very difficult to get.

My brother [name] was studying English in Beijing. One day he was standing in the bus station and a Chinese lady suddenly said she had lost her purse and turned round and accused my brother as he was Uighur. Every Chinese man in the station abused him verbally and called the police. He was handcuffed and arrested and he stayed in the police station. He showed his student ID card but they still did not believe it. He was put in a very dirty and smelly prison cell for 4 hours and then released without even an apology. He discontinued his studies because of this incident and returned to Urumchi. Now he is in Australia (he came on a spouse visa).

In about March 2008, before the Olympics, my sister [Ms A] and her husband are running a business in China and her husband was talking to our [relative] in Australia on the phone about their financial needs in the business and my [relative] agreed to send some money - \$ AUD 50,000. The authorities taped the conversation and they arrested my [Ms A]'s husband and asked him why he was being sent money from Australia just before the Olympics. He told them it was simply for his business but they did not believe him. They kept him in prison for two days and then they took his

ID card and he had to report to the authorities wherever he went until after the Olympics.

As he is a business man he normally travels a lot and he was put under very strict surveillance. Then just before the Olympics they detained him again for a whole month until the Olympics had completed. They beat him and tortured him while he was in prison. After this my sister spent 200,000yuan to have him released. If she had not paid that money he would still be held as a political prisoner. Their business was ruined and they lost lots of money. My sister had a sort of breakdown and was in hospital for more than one month and is still in and out of hospital and under medical treatment. When my [relative] was released he had had his hair shaved and had lost a lot of weight but he would not talk much. He told my sister what had happened and she told me about it all just because we came to Australia. Now their lives are fear as still they are under surveillance.

I could not tell any of this to my sister and brother in Australia until I was here as it is not safe to talk over the phone.

Before I came to Australia I only told my mother and sister that I was coming here but I did not tell my friends or my cousins that I was coming to Australia because I was afraid someone might give me trouble to get the visa.

I did not have the intention to remain in Australia but when I arrived and was with my and her husband I found out how active they were with the East Turkistan Community and the World Uighur Congress. I did not know that my [relative] was [a] Uighur Community [official] in [location] and is a member of the Uighur World Conference. I believe the Chinese authorities must have known this and it is the reason we have faced so much problems in the past couple of years. Now I am even more afraid as I believe the Chinese authorities would know I am staying with my sister and her husband and on return to China they would arrest me and interrogate me harshly and even hold me as a political prisoner. None of us in China knew anything about [the] activities here in Australia.

I am tired from all the discrimination we face as Uighurs in China. I fear for my sons- he has no future in China except a future of discrimination and persecution. Even at 4 years of age he faces verbal and physical abuse because of being Uighur and he gets very sad.

I am terrified of returning to China because if fear the authorities will arrest me and torture me and interrogate me about the work of my [relative]. I am sure now that this may have been the reason my [relative] in China was treated so harshly when the authorities found out that [Person B] was going to send him money from Australia. How much worse it will be for me if I have been living with [Person B]?

Now I am in Australia I am amazed at the freedom here. For the first time in my life I feel like a human being. I am looking forward to joining in celebrations with my community and being able to join in eid celebrations openly and freely. I hope my son will be attend school here and be free of the discrimination and harsh treatment just because he is Uighur.

25. The delegate found that the applicants do not have a genuine fear of harm and that there is not a real chance of persecution occurring and therefore the applicants' fear of persecution, as defined under the Refugees Convention, is not well founded. The delegate further found that the applicants have engaged in conduct in Australia for the purpose of strengthening the claims to be a refugee s.9IR (3) of the *Migration Act*.

26. In a submission to the Tribunal received [in]10 November 2009 the first named applicant states:

“My name is [Applicant 1]. I made a Protection Visa application to the Department of Immigration and Citizenship on 6 May, 2009 with my son [Applicant 2], and my application was refused by the departmental officer for various reasons on 4 August 2009.

I am writing this statement to clarify some issues about my Protection Visa application. Firstly, it was my sister, who is not a professional interpreter or translator, who interpreted in preparing my initial statement to Department of Immigration and Citizenship (DIAC). I believe that some issues were not covered in the way I would have liked in my application. Secondly, I would like to clarify some issues in the DIAC refusal letter and some issues that came up during my DIAC interview.

Issues that I would like to clarify in the DIAC decision letter and the DIAC interview

Also I do not agree with the Case Officer, when she says: “*Applicant one has detailed a number of grievances in relation to her employment. She states that her job is not commensurate with her training, and that her parents paid a bribe to enable her to get the job. Applicant one has also stated that her job is well paid and this is supported by the evidence she provided with her Tourist visa application. I accept applicant one's claims to have experienced poor treatment in the workplace. However, there is no evidence she has been denied basic employment. Accordingly, I am not satisfied applicant one has been denied the capacity to subsist or would be denied that capacity In the future*”.

Firstly, my parents had to pay high bribes to the authorities to get a job for me. I believe that, under normal circumstances my chances of getting employment would be very slim, due to my ethnicity as a Uighur and I would be denied the capacity to subsist.

Also, I have no firm trust to the Chinese authorities that they wouldn't sack me from my job; especially after I visited Australia and participated in the various activities, which the Chinese authorities would regard as separatist illegal activities. Accordingly, I fear that I would be questioned, imprisoned, and tortured if I have to go back to China, let alone keeping my job.

Also, I was discriminated against by the Chinese authorities in regards to advancement in my position.

The case Officer states that “*I am satisfied that denial of religious freedom, imprisonment, assault, torture and interrogation may involve a threat to the applicants' liberty and significant physical ill-treatment.*” I also believe that I would be questioned, tortured, imprisoned and denied religious freedom and would be exposed to severe physical abuse.

I would like to stress again that, after the riots in Urumqi, the telephone and internet communication were cut off, and my people were totally isolated from the world. Only very lately it has become possible sometimes to make a phone call successfully; but internet communication is still cut off. I believe that, they do this, so that people wouldn't send evidence of the killings, mistreatment and abuse of the Uighurs during the July incidents to the outside world. One can tell how the Uighur people are being



abused and mistreated just because of this isolation in the 21st century by a country, who is a permanent member in the United Nations.

I am very disappointed that the Case Officer states that I am required to disregard any activities undertaken in Australia purely for the purposes of strengthening a person's claim to be a refugee. *“At interview applicant one stated that she has participated in rallies against the Chinese authorities crackdown on the protestors in Urumchi in early July and provided photographs of herself and her son at a demonstration. Applicant one has made no claims that she took part in any political activities in China, and has not outlined her political views apart from her objection to the Chinese military repression of the Uighur protest in July. In the circumstances, I consider her involvement in Uighur political activities in Australia is conduct designed to strengthen her refugee claims and have discounted it pursuant to Section 91R(3)”*.

First of all, I would like to state that, I have been very sincere and genuine in all of my activities that I participated. I need to say that, many Uighurs have been fearful to participate in the activities of the Uighur associations in Australia or the World Uighur Congress, because they were scared that they would be targeted by the Chinese authorities if they went back. Even many Uighurs who are Australian citizens were scared. The Uighurs were also scared that, their relatives in Eastern Turkistan would be targeted and abused by the authorities if they were involved in activities.

After the June and July incidents in Guangdong and Urumqi, almost all Uighurs threw away that fear in their minds, as they saw how our people were killed and abused by the Chinese, and almost everybody participated in the activities to protest the conduct of the Chinese authorities, I was one of those Uighurs, and I state that, my involvement in those protests and all of my other activities were genuine.

In regards to my political views, I can say the following: firstly I am not a communist; and I believe in freedom and democracy. As a Uighur, I believe that, my people are being abused, mistreated and discriminated against for being Uighur and Muslims. I am against such treatment of my people. Even though the Chinese named my country as “Xinjiang Uighur Autonomous Region”, there is no real autonomy for us and all power is concentrated in the hands of the Chinese. They deny or restrict all kinds of freedoms and rights to my people, such as freedom of religion, freedom of opinion, freedom to travel and freedom of setting up an association and conducting political activity, education in mother language, equal education and employment rights etc. Also, I am against the family planning policies of the Chinese authorities and the mass migration of the Chinese to my country; because they treat us inhumanely and take over all we have. I am also against the Chinese authorities exploiting our natural resources, while all benefit flows to the Chinese and we cannot do anything about it.

The Case Officer states that *“Applicant one claims that all workers in her company are required to take monthly examinations, the examinations are in Mandarin which means the Han Chinese find them very simple but the Uighurs find the examinations difficult and have their wages docked if they fail. As all the workers are required to undertake the tests, I do not consider they are discriminatory I accept that the Uighur workers may find them more difficult because Mandarin is not their mother tongue. However, I do not consider it is discriminatory for a large organisation to require all its staff to be able to communicate in a common language, most workplaces in Australia would expect their staff to be able to communicate in English. Therefore, I am not satisfied that these examinations are discriminatory.”*

I do not agree with her viewpoint for various reasons. Firstly, they make people to sit such exams, who started working in their position before such exams were introduced. Secondly, I believe that cutting from an employee's wage for not passing an exam in the above circumstances is a discriminatory thing. Thirdly, I agree that workplaces would expect their staff to be able to communicate in the common language. But please remember that, my country is an autonomous region of China, and the Uighurs are supposed to use the powers of autonomy. The autonomy rights are only on the paper. It is the Chinese authorities who make those decisions for us. Another point is that, the authorities either sack the people when they cannot pass the exam for 3 times.

I failed such an exam twice in 1999, and I was forced to work without pay for 6 months; and I was given a 'warning' that I would be sacked if I failed for the third time. Unfortunately, behind all this practices, the Chinese authorities aim to exterminate the Uighurs altogether from the face of the earth.

Like all Uighurs, I believe that the authorities do this intentionally to get rid of the Uighurs in the workforce. Also, I believe that the authorities should at least give the people an opportunity to get some training, rather than treat them in such a way. I do not believe that a workplace in Australia would treat its workers in a similar fashion, if the Chinese authorities sincerely regard us as its citizens, then they should care about our problems and give us an opportunity to get training. Because once we lose our job, it would be almost impossible to get a job again, and we do not have a 'Centrelink' to go to like in Australia.

The case Officer states that *“The applicants claim their passports were confiscated during the Olympics. However, the applicants were able to get their passports back and leave the country lawfully. I am not satisfied that the confiscation of their passports amounts to serious harm”*.

I would like to note that, it is not just me and my son, whose passports were confiscated; it is the whole Uighur nation. I regard this as an unacceptable abuse and discrimination. I also would like to note that, getting passports is a nightmare for Uighurs, and we are force to pay high bribes and beg from the authorities to get a passport. Also we have to provide several documents from various authorities to permit us to obtain a passport. Such things are not requested from the Chinese people.

It is stated in the decision record that *“Applicant one states that she was strip searched prior to boarding the plane to Australia, While the presence of a male officer, in addition to the female officers, shows a lack of sensitivity, a search in itself maybe a legitimate part of international aviation security arrangements”*.

I agree that such searches would be conducted for security reasons, but the authorities treat Uighurs in such a way, as they regard all Uighurs as 'separatists and terrorists', so we are being discriminated in all aspects of life, including such security searches.

The Case Officer states that *“I accept that the applicants may continue to experience some level of discrimination on return to China due to being Uighurs. Therefore, I have also considered whether this discrimination is sufficiently serious, persistent and systematic as to amount to serious harm. Considering the totality of the applicants' situation, I am not satisfied that the discrimination they may experience amounts to serious harm. I am not satisfied the applicants are at real risk of serious harm in the foreseeable future due to their Uighur ethnicity”*.

I believe that, the level of discrimination I would be exposed on return to China would be very serious and systematic, rather than just 'some'. I was abused and discriminated before I came to Australia already. Also, I believe that the activities that I was involved in Australia have heightened the risk of being harmed significantly.

The Case Officer states: *“I consider applicant two is too young to hold a religious belief, although he may be imputed with a religious belief consistent with his parents' beliefs. Applicant one has not detailed her religious beliefs or practices in either China or Australia, apart from the observance of Ramadan. At interview she stated that in her tradition women did not attend mosques, except during Ramadan”*.

I understand that, my son is too young to express a religious belief. But he is old enough to watch and learn from us the way we believe in the religion and he would be exposed similar discriminative treatment by the Chinese authorities in the future for being a Muslim.

Regarding my religious practices in China and in Australia I can state the follows: there are 2 main practices for Muslims: praying and fasting. I used to pray secretly at home, when it was possible. Fasting is a Muslim religious practice that one can practice without people noticing (except in China, as the authorities force us to eat or drink something to find out if we are fasting). Also, I used to help the needy people as part of my religious beliefs, when I was in China.

In Australia, I felt that, I had been kept in a cage all my life. I was able to conduct all my religious activities freely for the first time in my life. For example, I was able to fast the whole month during this Ramadan, and attend Eid activities without any fear and intimidation. Also, I am able to pray freely every day, and I have been learning about my religion after I came to Australia. Such activities are regarded as illegal by the Chinese authorities, and I would be questioned, sacked from my job, beaten and imprisoned in China, if I practiced my religion the same way as I did here.

The Case Officer states that *“Applicant one stated that on one occasion when she was fasting during Ramadan at work, she was compelled break the fast by drinking a glass of water. This is a clear violation of her religious freedom. However, this is the only incident of ill-treatment due to her religion which the applicant has cited”*.

I do not agree with this viewpoint, because I was also threatened to be expelled from work if I continued fasting. The authorities pressured me in between earning a livelihood for me and my family, and my religion. As a result, I started fasting secretly, and I had to break fasting when I was forced to, believing that God would forgive me (I provided how I was treated after this incident in detail in paragraph 38.)

During my interview I was asked: *“You had your passport in May 2007. Why did you wait until April 2009 to come to Australia?”*

Unfortunately, the Chinese authorities put a lot of pressure and abuse on Uighurs, and we are not able to develop proper skills to perform in an interview, and I couldn't answer the questions as good as I could.

I would have liked to leave China as soon as I received my passport; but the authorities confiscated my passport only one month after (in June 2007) I received it. They did this to the whole nation of Uighurs Even this alone shows the discriminatory attitude of the Chinese authorities towards the Uighurs. I could only

get my passport back in December 2008 and I had to pay 5000Yuan to get my own passport back.

Another issue is that, I came to Australia and stayed with my sister's family and [a relative] is [an official] of a Uighur organization in [location]. On top of that, I was involved in several activities (details given below) that the Chinese authorities regard as separatist activities. I am very scared that this situation would put my life in danger.

The Issues, which I believe were not covered in my Initial statement to DIAC

I was able to attend the mosque with my parents during the Ramadan when I was a child. At that time, there was not this much Chinese in our country, and the pressure on us was not this much. As their population increased, their oppression also increased. The level of abuse, and discrimination skyrocketed after the terrorist attack in America. The Chinese authorities used this as an opportunity to accuse the whole nation of Uighurs as separatists and terrorists for being Muslim.

I was accepted as a student in the [education provider deleted] in Urumqi in September 1991. This was a boarding school. My parents were religious people, and they wanted us to be the same. There is no religious freedom for Uighurs in China. So, I was secretly praying (namaz) in my bed.

It was about April-May 1992. I was in the dormitory, and a classmate of mine came and told me that, the principal wanted me in his office. I went to the office at once. Then he asked me why I was conducting illegal religious activity in the dormitory and that whether I didn't know that the religious activities at school were forbidden? Then he said things like 'You are being brainwashed with religion? I am giving you a warning: you are suspended from the school for two weeks, and you will have to political study during this period. He threatened that I would have no place at school, if I continued my activity. I was forced to memorize the rules of the school which showed being Muslim as a backward activity, and pushed people to dump the religion altogether. It also promoted communism, and forced me to dump my religion. I was forced to write a letter of promise (vadenname) saying that I made a mistake by conducting religious activity and that I would promise not to do something similar. I was also forced to read this letter in front of the school assembly. One other condition was that, I would be expelled from the school, and I would be fined 5000Yuan, if I continued practicing religion.

In order for us to have a baby, we need to get permission from the family planning authorities. Also, we have to wait for 3 years in order to fall pregnant for our 2nd child. I got married on [date] 10.2002. I got pregnant one month later in November the same year. I went to the family planning office of my workplace. I told the lady working there [name] that I was pregnant. She said to me: "You are not allowed to give birth to a baby yet. You have got married only recently." She then forced me to go to the hospital, to end my pregnancy. I did it without any choice, and I still feel very sad about it.

I gave birth to my 1st child in July 2004. I got pregnant again after about 8 months after this, and once again I went to the family planning office. I was told that, I had to wait for 3 years before having my 2d child and I was forced to end my pregnancy for the 2nd time. I didn't mention this issue in my first statement, thinking that it wouldn't be important in my application.

How I was treated when I practiced fasting in 2008: I was fasting secretly in September 2008, My workmate reported me, and my supervisor ([name]) called me to his Office and said that things like 'you are not allowed to believe in religion. It is a backward belief. We need to apply care for you.' Then he forced me to drink water. He also reported me to the police. When I came home, two police officers came and said that, they needed to question me, and they took me away.

I was questioned several times on that night; they asked me which organization I belonged to, why I was conducting religious activity etc. I told them that I was doing it purely as a religious activity and wanted to know why the authorities were interfering with my very personal and peaceful activity. At that moment, one officer hit me several times and pulled my hair with force, shaking my head sideways; saying that I should just do what the authorities tell me without questioning.

They also asked me about the activities of my relatives in Australia. I told them that, my sister was a nurse, and her brother was doing building work. They insisted on their activities, but there was nothing I could tell them. Because my sister and I could never talk freely about what they do in Australia, such as politics, or religious or human rights activities, as the authorities listen to our calls, they never believed me and tortured me all night, by not letting me sit down or sleep. I was released after 2 days. I was also fined by 1500Yuan.

About my son

During my interview I was asked to tell about my son's experiences that I feared for him to return to China.

I was forced to send my son to the child care at the age of 2. This is because, they would brainwash him much easily at that age. This is another policy of the Chinese system to assimilate us and destroy our identity.

Also my son was being mistreated by his teachers in the kindergarten and he used to cry every single day before going to kindergarten and after the school. My son was beaten and taunted in kindergarten many times only because he was an Uighur I made a complaint, but nothing was done about it. My son was also abused verbally (eg, 'stupid', 'no brain', 'son of a dirty Uighur'). The Chinese don't like Uighurs, whether it is a child or an adult. For them, a good Uighur is a dead one.

If it was up to me, I would never send my son to the Chinese child care at the age of 2. Instead I would wait until he was 4-5 years of age, and he would be fluent in his mother language. If I didn't send my son, then they would penalize us.

The case officer states the following about my son in the decision record. 'While applicant one may prefer that her son be educated in his mother tongue, it is not unusual for governments to require children to be educated in the country's main language. Applicant two is not being denied an education, he is being offered an education in Mandarin which will give him more opportunities than an education in the Uighur language. I am not satisfied the applicants have been or will be, denied access to basic educational services. Accordingly, I am not satisfied the applicants will experience serious harm in relation to their education in the future.'

I do not agree with this point of view. Given the general situation of Uighurs in my country, where we have no freedom including the freedom of religion, freedom of opinion, freedom of assembly, and where we are being discriminated in employment opportunities. I believe that a very dark future is waiting for my son, like all other

Uighur children. I believe that, at the end, my son would either be assimilated or be treated like a slave or he would spend his life in misery like millions of other Uighurs. He may even be killed like many young Uighurs, such as during the very recent June/July incidents in Guangdong and Urumqi. The current situation in my country is a mirror of how my son would be treated if he went back.

I fear very much that, he would be tortured, imprisoned and even be killed like many other Uighurs in the current political environment of my country under the Chinese communist regime.

Also, I believe that, my son would be denied access to employment in the future only because of being an Uighur, even if he was given access to education in the Chinese language. I can tell this because, I observe and hear that many Uighurs are out of work even though they were educated in the Chinese language. In fact nowadays, the authorities and the private employers openly tell the face of the Uighurs that 'they don't employ Uighurs'.

I arrived in Australia with my son on [date] April 2009, and he started attending childcare on about [date] July 2009, 3 days a week (Wednesday, Thursday and Friday) 4 hours a day. I have been observing significant difference in the attitude of my son towards the childcare here in Australia and back in China. For example, he never cries when I take him to childcare or while I pick him up. In fact he likes his school environment so much that, sometimes he asks me 'why I came early' to pick him up. Also, he is not being abused like he was back in China.

My son got used to the way he was treated in his school, and if we have to return to China, and my son starts school, I believe that it would be a severe shock to him because of the difference of the treatment he would receive, and I believe that my son would be severely depressed at his very young age, and he would never be able to reach his potential as a human being.

The Chinese authorities put more and more pressure on Uighurs day by day, and the situation is getting worse, rather than better. In such an environment, my son's human rights would be abused like other Uighurs. He wouldn't have any freedom of religion, freedom of opinion or freedom to travel. Also he would be discriminated against in education and employment opportunities and he would not be able to earn a livelihood either for being an Uighur. I can tell this without hesitation, because I experienced and witnessed many people in such a situation in my country.

I also would like to mention that, we were told by the Australian authorities that, my son has a heart condition, but I wasn't able to take him to the doctor, as I didn't have a Medicare card and I wouldn't be able to afford it myself.

My activities In Australia

The Chinese killed brutally our Uighur brethren in Guangdong on 28 June 2009. The Chinese authorities did nothing for justice,

The Uighurs protested peacefully in Urumqi, carrying Chinese flags, and asking justice for the incident. The Chinese authorities controlled the protests by using tanks, and weapons.

As a Uighur I couldn't eat and sleep comfortably, while my people were brutally murdered. I took the flag of my country in my hands and tried to be a voice of my people to make the world hear our voices. I attended the demonstration in Canberra

on [date] 2009 from 10 am till about 1:30. I had extreme fear in my heart, when I attended this activity. I felt that, the Chinese authorities could come and take me and torture and even kill me. I told my feeling to my sister, and she told me not to worry, and added that all Uighurs feel like that initially. We protested in front of the Australian Parliament, as well as in front of the Chinese Embassy. Our aim was to protest the Chinese government in their abuse and discrimination of Uighurs for their democratic rights, freedoms and the basic human rights. Hundreds of Uighurs from Adelaide, Sydney and Melbourne attended this demonstration. I understood that, many of the Uighurs, who attended this demonstration, were scared to participate in the activities of Uighurs in Australia. But after the incidents in Guangdong and Urumqi, no one could bear the level of discrimination and injustice of our people, and everyone came.

I heard from Uighurs in Melbourne that, they were still living in fear and under the oppression of the Chinese authorities, even though they were Australian citizens or permanent residents. They feared that, they would be targeted if they went to visit their family and friends, or their family members could be targeted by the Chinese authorities. The Uighurs that I know, who became citizens in Australia are proud of it, but they still cannot trust that, their citizenship can save them if they went to China

I also attended another demonstration on [date] 2009 in front of the Chinese Consul in Melbourne, for the same reasons.

I also attended another demonstration on [date] 2009 in front of the Chinese Consul in Melbourne from 9:30am till midday. This protest was also aimed to make the Chinese authorities to stop the genocide of the Uighur people. Rebiya Kadeer, who is the leader of the World Uighur Congress, also attended this protest, and she also made a speech. She said: "I will never stop this struggle of saving my people. I will not let my people down, who see me as their hope for freedom. The Chinese authorities have been oppressing us for a long time. We should be awake all the time"

Rebiya Kadeer is regarded as a separatist and a terrorist by the Chinese authorities. There have been a lot of anti-propaganda about her. The authorities even show her videos from her imprisonment times, and they want to display her as a liar, and a traitor. But as Uighurs we all know that, she was forced to say those things. I must say that listening to Rebiya Kadeer made me 'wake up'. I felt that, I was being isolated from the truth and kept in a cage. I found truth and courage in her speech and I was able to get me out of the cage of fear built around me by the Chinese authorities.

I also attended a meeting in the evening of the same day (6pm till 8pm) in [location], where Rebiya Kadeer made another speech. I was very much influenced by her speech, and it made me 'wake up' one more time.

I also watched the film made about Rebiya Kadeer on Sunday, the 23rd of August, 2009.

I am improving my knowledge about the Uighur cause, which was not possible while I was in China. One of the books I am reading is named 'Eastern Turkistan; the bleeding wound of the Turkish World, which was written by Ahmet Igamberdi, who is the president of the Government of Eastern Turkistan in exile.

I am visiting internet sites that would be regarded as illegal by the Chinese authorities.

After attending the activities I mentioned above, I have also changed significantly in this short period of time after I came to Australia, and the way I look at the things changed. For example I learnt that all human being should have the right of expression of opinion, and religion

Recently, [a Women's support group] was established, and I am also intending to attend their meetings as much as I can.

I recognise the World Uighur Congress as the highest organization of Uighurs, and her leader Rabiya Kadeer as the leader of Uighurs, whom the Chinese authorities regard as 'terrorist'.

I am learning more about my religion as well, as we were not allowed to learn it properly in my country.

What would happen to me if I go back to China

I learnt that, the authorities questioned my mother and scared her. My mother was hospitalized due to her fear from the authorities. I also learnt that, they questioned and detained my husband and put pressure on him to make me return to China. My husband rang me about 20 days after the July incidents and said to me: "you are not involved in any wrong activity, are you." Any Uighur would translate this as 'he is being intimidated by the authorities'.

I felt the taste of the freedom for the first time in my life and I realized how inhumanely I had been treated all my life back in China I do not want to be forced to live in a cage-like environment, where all my freedoms are taken away from me. I was abused and unfairly treated during my life in China. I am certain that that I would be exposed to much worse treatment if I have to go back and I would be questioned, beaten, tortured and imprisoned by the Chinese authorities due to my activities in Australia as well.

I have been extremely depressed fearing that I would be forced to go back to China and my life would be hell, now days I cannot concentrate on anything or socialize. I spend most of my time at home in a depressed situation.

I know how the Chinese authorities treat Uighurs, and I am even more fearful to go back as the time passes. I believe that I would be abused and unfairly treated if I have to return to my China, because of being an Uighur and a Muslim. I also believe that, my activities in Australia have significantly heightened the risk of me being abused and unfairly treated by the Chinese authorities. I am fearful of my life and concerned very much that my son would go through similar abuse and discrimination like millions of Uighurs (as I mentioned above), if I have to go back to China.

So I would greatly appreciate if you could grant protection for me and my son against the Chinese authorities, so that we can live without fear and in dignity as human beings

27. A letter dated 6 August 2009 addressed "To Whom It May Concern" states as follows:

My name is Rebiya Kadeer. I am the leader of the World Uighur Congress whose aim is to stop the human rights violations of my nation under the Chinese Government rule and make the democratic world aware of the current situation of my people.



The Uighur people are exposed to serious human rights abuses by the Chinese authorities, and every single family received their share from such abuse one way or another.

I came to Australia for a visit in February 2008 and met officials from various Australian Government Authorities including Refugee Review Tribunal, Department of Immigration and Citizenship, some members of NSW parliament and Amnesty International Sydney. I have returned again this month for the Melbourne Film festival and the launch of the film "the 10 conditions of love".

[Person B], an Australian [member] of the World Uighur Congress, has assisted with the preparations of my visit to Melbourne. He has advised me that his [relative] [Applicant 1], has been visiting them from Xinjiang and her application for protection has been refused.

I have been informed that the refusal states that [Applicant 1] will not face persecution as an Uighur if she returns to China, that she is not at greater risk due to the unrest in Xinjiang in July, that the fact her parents have recently been questioned about her and when she will return to China is co-incidental to the recent unrest, and that the fact she has made a family visit to Australia will not raise her profile or increase her risk of harm on return to China even though she has been staying in the home of [Person B].

I am very disappointed and frustrated that decision makers in human rights areas still seem to have such little understanding of the situation in East Turkistan. Uighurs have been facing ethnic genocide in East Turkistan - it is not just simple discrimination. The recent tragedy in our country has resulted in hundreds of people being killed and thousands of Uighurs being arrested. I am being blamed by the Chinese for this violence!

I have stated in the past that Uighurs who travel overseas and then return home are nearly always interrogated at the airports. If they have been involved in any activities overseas then they can expect to be detained. Many Uighurs who have been deported to China have been imprisoned, some executed. One well know situation is that of a Canadian citizen who was arrested in Uzbekistan and deported to China where he was charged and imprisoned and is still in prison despite protests from the Canadian Government.

I would now state that since this latest crackdown any Uighur returning to China is likely to be arrested and imprisoned and face harsh interrogations about their activities overseas. For someone like [Applicant 1], who is related to, and has been living with, [an official] of the Uighur World Congress, the consequences facing her would be grave. It is incomprehensible for a decision maker in these cases to not understand the severity of the situation facing [Applicant 1]. Not only is [Person B] [an official] of the Uighur World Congress but he has been a key person in organizing my visits to Australia and the Chinese authorities are well aware of this.

I am aware that the Chinese Government have spies all over the world. They are very worried about the Uighur people and the active Human rights movement abroad and do all in their power to suppress these activities. Spies overseas report on Uighurs activities including those who attend meetings such as ones where I speak, at Nawrooz celebrations etc. These reports are sent back overseas and then often the families of these people are severely interrogated and some have even been arrested.

I strongly support the application for protection for [Applicant 1] and recommend that the Australian Government grant her protection”.

28. A letter in support dated 6 November 2009 from [Person B], [an official] of the Uighur Association of Victoria Inc. was submitted in support of the application. It states inter alia that he is [an official] of the World Uighur Congress and that he is writing in support of [Applicant 1]’s application for a Protection Visa. He states that she is his [relative] and currently residing with him. He says:

“She has been a very active member of the Uighur community in Melbourne since her arrival in Australia. [Applicant 1] has actively participated in all of our major activities and protests against Chinese government, such as on [date] 2009 in Canberra, on [date] 2009 in Melbourne and again on [date] 2009, during which we protested the brutal killings of Uighur people during and after the July 5th incidence in Urumqi. The president of the World Uighur Congress, Miss Rebiya Kadeer, also joined our protest in August.” The writer goes on to say that [Applicant 1] has been an “Active supporter of our movement to fight for freedom, human rights and democracy for our people and our homeland East Turkistan.”

29. [Person B] states,

“I also believe that, even [Applicant 1]’s family ties with me and her residing with us in Australia would heighten the risk of her being abused by the Chinese authorities. I believe that she would certainly face interrogation, and severe abuse, torture and imprisonment because of her activities in Australia. She would also be penalised by sacking her from her job.”

30. [Person B] supports the first-named applicant’s claims in relation to her son, the second-named applicant, being forced to attend a childcare in the Chinese language; her concerns that her son would be discriminated against in education and employment opportunities because of his Uighur ethnicity and states that he shares her concerns. [Person B] supports the first-named applicant’s evidence that she has become increasingly stressed and depressed due to her concerns of having to return to China.

*Evidence at the hearing*

31. The first-named applicant stated her name and gave her date of birth as [date deleted: 431(2)]. She also stated the name of the second-named applicant, her son, [Applicant 2], born [date deleted: 431(2)]. The first-named applicant told the Tribunal she first arrived in Australia [in] April 2009 on a tourist visa. She produced her passport and that of her son indicating that they were issued in the People’s Republic of China.
32. The first-named applicant told the Tribunal she had an older sister and older brother living in Australia together with their families. It was her evidence that the family remaining in East Turkistan included her older sister, the older sister’s husband and two children; her mother; and her own husband.
33. The first-named applicant told the Tribunal her religion was Islam, and that she was of Uighur ethnicity; she said she was Chinese, but was born in Urumchi in East Turkistan. She and her son had travelled legally on their own passports to Australia.
34. The first-named applicant told the Tribunal that growing up in Urumchi, East Turkistan she had experienced mistreatment by the Chinese government. She said she had no religious freedom, she could not fast or pray, and that she was subject to many restrictions because of

her ethnicity. It was her evidence that every step of her life, every minute of her life, she was mistreated by the Chinese government.

35. The first-named applicant told the Tribunal that in 1999 she was accepted as a student at [education provider deleted: s.431(2)] She said in April or May of 1992 she was praying and was noticed doing so. She said she was in her room and a friend came and told her that she had been called to the office. She went to the office where she was told that she could not engage in religious activities at school. She was told that if she persisted, she could not study at the school any more. She said she was suspended for two weeks and made to study communist political material for the two weeks. She was then asked to withdraw from her religion and to write on a piece of paper that she would not engage in religious activity again. She told the Tribunal that she did this even though it was not her choice. She said she was then made to read her promise out aloud in front of the school. It was her evidence that she was also fined 5000 Yuan. Her evidence indicated that she was told that if she didn't do what was asked of her she would not be allowed to continue to study at the school and she would be fined. It was her evidence that she continued at school, finishing in 1995 at aged 18.
36. The Tribunal asked the first-named applicant what she did next. It was her evidence that she worked, but that she had difficulty obtaining employment because of her race and religion. She said that she had 12 years of schooling and that it was after the eighth grade that she had graduated to the [education provider]. She said she had a qualification and that she had studied mechanical maintenance at the [education provider]. She told the Tribunal she had to pay money to get a job, but because of her ethnicity it was not in the area that she had studied in. The Tribunal asked her to explain this. She said in East Turkistan Uighurs have no rights in any field and they have to do what the government asks them to do. For this reason, she did what she was told to do. She said she was asked to clean out buckets filled with petrol. Her job was like a cleaner. She worked at a factory that performed a process on petrol and then sold it.
37. The Tribunal asked the applicant if she had any other problems because of her Uighur ethnicity. She replied she was looked down upon at school and in society. Again she said she had no freedom of religion or of speech. The Tribunal asked the first-named applicant if there was any serious harm caused by these claims. She replied in school she would come across a word and she would be called a stupid ignorant Uighur who couldn't do anything. She said she was discriminated against because of language. She said she was held back in the workplace and that it was not possible for people of Uighur ethnicity to get ahead, even if they worked better than their Chinese counterparts. The first-named applicant then described the tests that she had to undertake in the workplace. She said the tests were designed to keep Uighurs back and to stop them from working.
38. The Tribunal asked the applicant if she had any assistance in the preparation of her application. She replied she told them what happened, meaning her sister at first, and she told her representative and lawyer. The Tribunal asked her if the information was true and correct or if there was anything she wanted to change or add. She replied it was all true and correct.
39. The first-named applicant told the Tribunal that in 1999 she was forced to do a test, and she was told that if she didn't pass the test she would lose her job. She said she couldn't pass the test the second time and she had to continue working for six months with no pay. Fortunately she passed the third test and continued in her employment.

40. It was the first-named applicant's evidence that she had to pay some 60000 Yuan in order to get a job. She said this is roughly the equivalent of AUD \$7,000 or AUD \$8,000. The Tribunal asked her where she got the money from. She said she borrowed it from her sister in Australia. She said she also owed her sister in Australia some AUD\$20,000, which she borrowed in 1995 in order for her parents to get work so that the family could survive.
41. The first-named applicant claimed that she had her passport confiscated before the Olympic Games in 2007. It was her evidence that in May 2007 she had obtained the passports for herself and her son and was very happy. She said she had gone through many, many difficulties in order to obtain those passports and then a month later, sometime in June or July, Uighurs were told they were not allowed to travel outside China. They were told that all processing to travel would stop until after the Olympic Games. The Tribunal asked the applicant if the passports were physically collected and taken away. She replied that they were. She said police came and asked for the passports because they had a record of who had passports and who didn't. The Tribunal asked her how she knew that all Uighurs' passports were taken away. She replied because Uighurs talk to each other. She told the Tribunal that her mother's passport was also taken. The Tribunal asked the first-named applicant about her mother's travel and if she had used her passport. The first-named applicant replied that her mother had travelled twice to Australia and was last here in 2004.
42. The first-named applicant said she had to bribe the authorities in order to get their passports back. She said she had to pay 5000 Yuan for the passports and that she had to go through the whole process of obtaining certificates and documents and police checks in order to get her original passport.
43. The Tribunal asked the first-named applicant when she first planned to come to Australia. She replied in 2007. The Tribunal asked her if anything in particular had precipitated her wanting to come to Australia at that time. She replied the reason was seeking freedom and human rights. She said she was prepared to go to any democratic country. It was her evidence, however, that she had family in Australia that she could stay with and so she came here.
44. The Tribunal asked the applicant if she had ever been detained because of her ethnicity or her religion. She replied in 2008, during Ramadan, she had been fasting at work and her colleagues found out and she was asked to drink some water. It was her evidence that she thought one of her colleagues had told the police, or she thought he rang the police station. When she got home from work that evening she found two police waiting for her. She said they took her to the police station to ask her some questions. She said the police station was in the same suburb as where she lived; however, it was her evidence that she was handcuffed and taken away. She said she told the police she didn't hurt anyone, she was just practising religion. It was her evidence the police said she had no right to speak or to do that and that they pulled her hair and pushed her. She said they did not let her sit or sleep the first night of her detention. They asked her to stand. She said she was kept for two days in detention. She said she was asked about her relatives in Australia and what they did there. She told the Tribunal that she said to the authorities her sister was a nurse and that her brother was in construction to which they replied, don't lie. It was her evidence that she had to pay a bribe of 1500 Yuan and was then released with a warning. It was the first-named applicant's evidence that because she and her sister did not speak freely on the phone she did not know what activities they were engaged in, in Australia.

45. The Tribunal put to the first-named applicant that she had not mentioned this incident in her first application for protection. She replied that her sister had helped her with the first application and had translated it and may be there was a missed translation. When she spoke to her lawyer she didn't have enough time because she was living under the stress of the Chinese government for a long time. She had included the claim in her subsequent submission to the Tribunal.
46. The first-named applicant said that she had been treated as a criminal and a terrorist for practising her religion.
47. The Tribunal asked the first-named applicant about the claims she made in relation to her son. She said when he was two years old some people from the education organisation came to her home and told her she had to send him to a Chinese childcare centre. She said it was her thought to send him to childcare when he was a little older so that he could first learn his mother tongue; however, she thought that the Chinese had a higher chance to brainwash him at an early age and for this reason forced her to send him at such a young age. She said this makes the young person think they are Han Chinese. It was her view that, in the future, if her son went to a Chinese school, because of his religion and ethnicity he would have no chance of a good job. He would have to live and work like a slave under Chinese control. She said he may even be caught and killed. She reiterated that there was no freedom, no human rights and no way her son could ever get a good life, or that she could pass her wisdom onto him. She said there was no future for him. It was her evidence that her brother-in-law, who is now in Australia, was jobless for ten years.
48. The Tribunal asked the applicant if there were any incidents, apart from Ramadan when she had been fasting, which had brought her harm because of her Muslim faith. She replied because she was a Muslim she could pray at home, but fasting was something she needed to do at work. She told the Tribunal of another incident in 2005 when fasting at work. She said she had been in the charge of another Uighur and so was lucky that she had only been fined 400 Yuan that time; however, the man in charge of her lost his job.
49. The Tribunal asked the first-named applicant about her claim of being forced to end a pregnancy and asked her how this related to her ethnicity. She explained that the Chinese want everyone to practise the one child policy and they want to decrease the Uighur population. She said it was necessary to get permission from a person in charge, in order to have a pregnancy.
50. The Tribunal asked the first-named applicant if she ever attended any protests on behalf of Uighurs in East Turkistan. She replied no, never. She said if she had been found doing that she would have been killed. She said the punishment for fasting and praying was bad enough, but to have attended a protest would have been fatal.
51. The Tribunal asked the first-named applicant what activities or protests she had attended in Australia. The applicant described some incidents that occurred in China in June 2009 where some Uighurs were killed in a toy factory. Nothing was done about this and some older Uighurs and students conducted a peaceful protest; however, the Chinese authorities disrupted the protest and for this reason she became involved in the protest rallies in Canberra and in Melbourne. It was her evidence she went to a demonstration on [date] in Canberra and on [date] in Melbourne. She also protested in front of the Chinese Consulate in Melbourne on [date] 2009. She said she attended these rallies to draw the world's attention to the

persecution and suffering of the Uighurs; to try and draw world attention, or get world attention to focus on the treatment of Uighurs by the People's Republic of China.

52. The first-named applicant gave evidence that whilst people were fearful of attending such rallies, there were many people from East Turkistan in Australia and they united, they got together, they went together and they stood up together. She said she was awakened at these rallies and proud of herself and proud to be a Uighur.
53. The first-named applicant told the Tribunal that she had also had the opportunity to view documentaries and read books that would otherwise be restricted in China, and to increase her knowledge of Islam.
54. The first-named applicant told the Tribunal that her [relative] was [an official] of the World Uighur Congress and that in that capacity he organised rallies and made speeches and found ways to help those suffering in East Turkistan. [Information deleted: s.431(2)].
55. The Tribunal asked her why she had said in her application that she had fear in her heart when attending the Uighur rallies in Australia. She replied that when she first came to Australia she was still suffering stress and she was afraid at the rallies that she would be caught or taken away by someone even though her sister was with her. She said she was also afraid because she attended that if she returned to China the government would take her, persecute her or even kill her. She feared returning to China because she had attended the rallies. She feared arrest and persecution and being treated as a terrorist or separatist.
56. The first-named applicant explained that her involvement in the activities was her fight for freedom. She said the PRC would interpret it as a threat and label her a terrorist and separatist. The Tribunal asked her why she attended the rally if she had the fear she described. She replied because millions of Uighurs were suffering in the twenty first century and the PRC government was mistreating, persecuting and killing Uighurs, she wished to help focus world attention on their plight. She said this was because she had Uighur blood flowing through her.
57. The Tribunal asked the first-named applicant why she claimed being a member of her family put her at particular risk. She replied because of the role of her [relative] as [an official] of the World Uighur Congress. It was her evidence that anyone related to him would be shown no mercy and would most certainly be treated as a terrorist. The first-named applicant included a number of photographs of herself at Uighur rallies, and the Tribunal asked her why she had included these. She replied as evidence of her involvement and attendance.
58. The Tribunal asked the applicant if anything had happened to her at the airport when she departed China. In reply she described an incident where she was body searched. The Tribunal asked her if it was the first time she had travelled internationally, and she replied that was so. It was her belief that she had been searched because of her ethnicity.
59. The first-named applicant told the Tribunal that she had a poor mental state as a result of what she had suffered. She said she has difficulty interacting with others, that she does not feel happy any more, that she has nightmares about going back, and fears that the PRC government will persecute her. It was her evidence that rather than go back to the persecution and discrimination she would end her life here. She could see no future for her son and could only think ahead to when the PRC would hurt or kill him in the future.

60. The applicant's sister [Ms A] gave evidence. She stated her name, and date of birth as [date deleted: s431(2)]. She came to Australia in June 1993 on a spouse visa, having married her husband who was an Australian citizen in January 1993. She described how he had become [an official] of the World Uighur Congress and spoke of his work in the Uighur community in [location].
61. It was her evidence that she knew what her sister had experienced in East Turkistan. She described the discrimination by the PRC government and told the Tribunal that she and her sister did not discuss these things on the telephone. She was in East Turkistan in 1992 when her sister was in school and asked to stay away for two weeks because she had been fasting because of Ramadan. She knew that her sister had been asked to study politics for those two weeks because she was living at home at the time. She said her parents were stressed and sad. She said others in her family suffered the same discrimination some way or another. She knew at that time her sister had been told by the PRC that there was more punishment waiting for her if she continued with her religious practises. She said it was not only her sister who was suffering, but a number of Uighurs.
62. She told the Tribunal, after her sister came to Australia she had told her what she had experienced in 2008, again whilst fasting. She corroborated her sister's story of a two-day detention, having been arrested at home, after fasting at work. She told the Tribunal she knew her sister had been handcuffed by the police and taken away.
63. It is well established that a family is capable of constituting a particular social group within the meaning of the Convention. However, this is subject to s.91S of the Act, which provides that the following matters must be disregarded in determining whether a person has a well-founded fear of being persecuted for reasons of membership of a particular social group that consists of the person's family:
  - (a) any fear of persecution, or any persecution, that any other family member has experienced, where the fear or persecution is not for one of the Convention reasons; and
  - (b) any fear of persecution, or any persecution, that the applicant or any other family member has experienced, where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in (a) above had never existed.
64. Therefore, a person who is pursued because he or she is a relative of a person targeted for a non-Convention reason does not fall within the grounds for persecution covered in the Convention definition.
65. The first-named applicant's representative raised an issue in relation to the translation by the interpreter of certain words, stating that the interpreting was not 100 percent. He gave an example that the word "stress" ought to have been translated as "oppression" and said that some of the dates given were not correct. He said the differences in interpretation were slight, not significant. Nevertheless, he asked for time to review the recording of the hearing to check on translations. The Tribunal allowed him until 3 December 2009 to make any submission in relation to corrections he wished to suggest.
66. On 3 December 2009 the Tribunal received a submission from the applicant's representative under cover of letter which stated as follows:

“I have listened to CD’s of the hearing and concluded that, there wasn’t anything significant to clarify, except that the issues of the confiscation of the passports and I am attaching three (3) documents to shed some light on the issue.

Please also note that, the client informed me that, she has seen a doctor about her psychological problems and a letter from her doctor is also attached”.

67. The Tribunal notes the ambit of material submitted is wider than that requested at the hearing, however, the Tribunal has taken it into consideration in making its decision.

*Independent country information*

68. The Bureau of Democracy, Human Rights, and Labour 2008 Country Reports on PRC’s Human Rights Practices; February 25, 2009, stated:

The government's human rights record remained poor and worsened in some areas. During the year the government increased its severe cultural and religious repression of ethnic minorities in Tibetan areas and the Uighur Autonomous Region (XUAR) increased detention and harassment of dissidents and petitioners and maintained tight controls on freedom of speech and the Internet. Abuses peaked around high-profile events, such as the Olympics and the unrest in Tibet. As in previous years, citizens did not have the right to change their government. Non-governmental organizations (NGOs); both local and International, continued to face intense scrutiny and restrictions. Other serious human rights abuses included extrajudicial killings, torture and coerced confessions of prisoners and the use of forced labour including prison labour. Workers cannot choose an independent union to represent them in the workplace and the law does not protect workers' right to strike.

Executions of Uighurs whom authorities accused of separatism but which some observers claimed were politically motivated were reported during prior reporting periods. In February 2007 authorities executed Ismail Samed, an ethnic Uighur from the XUAR following 2005 convictions for "attempting to split the motherland" and other counts related to possession of firearms and explosives.

Authorities in the XUAR used house arrest and other forms of arbitrary detention against those accused of subscribing to the "three evils" of religious extremism, "splittism", and terrorism. Raids, detentions, arrests and judicial punishments indiscriminately affected not only those suspected of supporting terrorism but also those who peacefully sought to pursue political goals or to worship.

In November in XUAR family planning officials and police escorted a Uighur woman, Arzigul Tursun, who was more than six months pregnant with her third child to the hospital for an abortion. Tursun had gone into hiding to save her pregnancy but returned amid threats that her family's home and land would be confiscated. After the situation was brought to the attention of central government officials, Tursun was released from the hospital without having to undergo the procedure.

The government’s repression of religious freedom intensified in Tibetan areas and in the XUAR.

69. Amnesty International has recently published a report "Uighur Ethnic Identity under Threat in China" (April 2009):

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.

70. The Tribunal has also taken into account the outbreak of violence in the XUAR during July 2009 and subsequent to the lodging of this application for review. The British Broadcasting Commission reported: China's Urumqi city in chaos: Dan Martin, July 7, 2009:

Thousands of angry Han Chinese armed with poles, meat cleavers and other makeshift weapons stormed through Urumqi Tuesday as the flashpoint city riven by ethnic tensions descended into chaos.

Heavily armed security forces fired tear gas at the crowds and ordered a night curfew in an effort to restore calm in Urumqi, capital of China's remote northwest Xinjiang region, where 156 people died in weekend clashes.

But tensions remained at boiling point, with Han Chinese roaming the city wielding machetes, bricks, chains, steel bars and other weapons while calling for revenge against Muslim Uighurs who they blamed for Sunday's carnage.

"The Uighurs came to our area to smash things, now we are going to their area to beat them," one protester, who was carrying a metal pipe, told AFP.

World leaders have urged restraint from protesters and the authorities to prevent further violence.

"I urge Uighur and Han civic leaders and the Chinese authorities at all levels to exercise great restraint so as not to spark further violence and loss of life," said Navi Pillay, the UN's top human rights official.

White House spokesman Robert Gibbs on Monday said the United States was "deeply concerned" about the reports of deaths in Urumqi and called for "all in Xinjiang to exercise restraint".

US House Speaker Nancy Pelosi on Tuesday blamed China's "harsh policies" for fuelling resentment among the Uighurs and urged Beijing to seek a dialogue with the Muslim minority.

Sunday's unrest, which also left more than 1,000 people injured, began with protests by Xinjiang's Uighurs, who have long complained of repression under Han Chinese rule.

Chinese authorities have blamed exiled Muslim Uighurs for masterminding the unrest -- charges they deny -- and announced Tuesday they had arrested 1,434 suspects for murder, assault, looting and other crimes linked to the violence.

But Han Chinese in Urumqi declared they were not satisfied with the government response.

"It is time we looked after ourselves instead of waiting for the government," said Dong Sun, a 19-year-old leader of one mob.

Police prevented the crowds, one of which an AFP reporter estimated was more than 10,000-strong, from entering Uighur neighbourhoods by firing tear gas and erecting barricades.

But in other areas of Urumqi police and other security personnel simply looked on as mobs swept through the streets shouting nationalist slogans. Others chanted, "Protect our families! Protect our homes!" the official Xinhua news agency reported.

The only incident of direct violence against a Uighur that AFP witnessed was when a small mob stopped a car being driven by a Uighur man. The mob smashed his car but the man was able to drive off.

There were no reports from Chinese state media of direct violence against Uighurs.

Xinjiang Communist Party chief Wang Lequan called for calm as authorities announced a night-time curfew.

"Neither the Han nor Uighur people are willing to see the Han people being attacked," Xinhua quoted Wang as saying.

"It is the same the other way around. If the Han people attack the innocent Uighur people, it is also heart-breaking."

Earlier Tuesday, more than 200 Uighurs, mostly women, staged a protest in front of foreign reporters to demand the release of their relatives detained in the security sweep that followed Sunday's unrest.

The women, with tears rolling down their faces, shook their fists in the air and yelled at police in a tense stand-off that lasted about an hour before ending peacefully.

China's eight million Uighurs are a Turkic-speaking people who have long complained about the influx of Han Chinese into what they regard as their homeland, a vast area of mountains and deserts that borders Central Asia.

Exiled Uighur groups have sought to lay the blame for Sunday's violence on Chinese authorities, saying the protests were peaceful until security forces over-reacted and fired indiscriminately on crowds.

China has accused exiled Uighur leader Rebiya Kadeer of masterminding the violence but she has denied the accusations and called on Monday for an international probe into the violence.

71. The Australian Broadcasting Commission recently reported: Posted Fri Jul 10, 2009 11:10pm AEST :

Thousands of people have poured into bus and train stations to leave China's Urumqi city after deadly ethnic unrest, as many mosques were ordered shut for the main Muslim day of prayer. Quiet has returned to the streets of Urumqi, in the western province of Xinjiang, where Muslim Uighurs rioted several days ago, followed by counter-riots by Han Chinese. At least 156 people died and more than 1,000 were injured in the unrest, Chinese authorities have said, after a protest by the city's Muslim Uighur population turned violent. There is still unease in the city after the Han retaliated violently against the Uighurs on Tuesday. Thousands of Chinese soldiers are patrolling the streets, mosques are closed and the Friday prayers have been cancelled.

72. The Tribunal has taken into account the profile of prominent Uighur activist Rebiya Kadeer and the publicity she received during a visit to Australia in July 2009:

Rebiya Kadeer founded and directed a large trading company in north-western China, championed the rights of the Uighur ethnic group there, and became one of China's most prominent advocates of women's rights. All these activities came to an abrupt halt in August 1999 when police arrested her as she entered a hotel to discuss human rights with U.S. Congressional staff who were visiting China.

Rebiya Kadeer has spent more than five years jailed in a region where prison conditions are notoriously harsh. Prisoners in China's Xinjiang Uighur Autonomous Region receive poor food, inadequate sanitation, and little medical treatment. Amnesty International has expressed grave concern about reports of Rebiya Kadeer's deteriorating health.

The Chinese government charged Rebiya Kadeer in September 1999 with "providing secret information to foreigners" even though the local newspapers she was carrying at the time of her arrest were all publicly available, as were the newspapers she had sent to her husband in the United States. Authorities tried her in secret and sentenced her in March 2000 to eight years' imprisonment. In early 2004, authorities reduced her sentence by one year.

A successful and charismatic businesswoman, Kadeer used her resources to provide fellow Uighurs, the regions predominantly Muslim majority ethnic group, with training and employment. The Chinese government had recognized her contributions by appointing her to its prestigious national advisory group, the Chinese People's Political Consultative Conference. The government also appointed her to its delegation participating in the 1995 United Nations World Conference on Women. She was a standing member of the Xinjiang Uighur Autonomous Region Chamber of Commerce, and in 1997, she founded the Thousand Mothers Movement to promote women's rights and economic security.

Rebiya Kadeer's activism in the strategically important, oil-rich autonomous region of Xinjiang and her husband's outspoken criticism of Chinese rule in the mostly Muslim region began to draw government reprisals in the late 1990s. Her husband left China in 1996. The following year, the government confiscated Rebiya Kadeer's passport. Harassment by police was accompanied by further restrictions on her movements. In 1998, authorities barred her from reappointment to the Consultative Conference.

Rebiya Kadeer, 53 at the time of her arrest in 1999, is the mother of 11 children, some of whom live in the United States. More than 100 Members of Congress have called upon the Chinese government to free her.

Amnesty International considers Rebiya Kadeer to be a prisoner of conscience and seeks her immediate and unconditional release.

73. Background: the Xinjiang Uighur Autonomous Region

Since the late 1980s, Chinese government policies and other factors have generated growing ethnic discontent in the Xinjiang Uighur Autonomous Region. In the past few years, thousands of people there have been the victims of gross human rights violations, including arbitrary detention, unfair political trials, torture, and summary executions. These violations, suffered primarily by members of the Uighur ethnic group, occur amidst growing ethnic unrest fuelled by unemployment, discrimination

and restrictions on religious and cultural freedoms. The situation has led some people living in the XUAR to favour independence from China.

Crackdowns in the region intensified after September 11, 2001, with authorities designating supporters of independence as "separatists" and "terrorists." Uighurs, most of whom are Muslim, have been the main targets in the region of the Chinese authorities. Authorities have closed down mosques, detained Islamic clergy, and severely curtailed freedom of expression and association.

74. An article in The Australian newspaper published on 31 July 2009 stated:

Australia has issued international Uighur leader Rebiya Kadeer with a short-stay business visa in the face of strong pressure from the Chinese government.

China had signalled that such a move would exacerbate tensions in a relationship already reeling from a series of problems, including what Beijing sees as unfair media coverage over the imprisonment of Australian Rio Tinto executive Stern Hu.

75. The Chinese Foreign Ministry referred The Australian to comments made about Ms Kadeer in which its spokesman, Qin Gang, said:

"We resolutely oppose any foreign country providing a platform for her anti-Chinese, splittist activities." And the Chinese embassy in Canberra said: "Rebiya Kadeer is a criminal. Facts have indicated that the violent crime on July 5 in Urumqi (capital of Xinjiang region) was instigated, masterminded and directed by the World Uighur Congress headed by Rebiya."

The Australian government is pushing Beijing for hard evidence of its claims that Ms Kadeer was responsible for the 200 deaths during recent violence in China's far-west Xinjiang province.

Adding to Canberra's dilemma, Mamtimin Ala, the general secretary of the Uighur Association of Australia, who will be Ms Kadeer's host, is pressing for a meeting with Foreign Minister Stephen Smith when she comes to Australia next week. Labor MP Michael Danby, parliamentary joint standing committee on foreign affairs chairman, who officially supported Ms Kadeer's visa application, said China's claims that she was a terrorist were "transparent manipulation".

Mr Ala said:

"I don't think Australia will risk its economic relationship with China over such human rights issues, it will probably take its cue from the USA over this. It is on the defensive with China.

"But Australian people are taking more and more interest in the Uighur issue, despite -- or because of -- the pressure from China for the Melbourne International Film Festival to withdraw the film about her."

He said the Chinese campaign of "vilifying" Ms Kadeer had been counter-productive. "One of the most powerful countries on earth is pitting itself against a single woman."

Such interest is likely to peak when she gives a televised address to the National Press Club in Canberra on Tuesday, August 11. She quietly visited Australia for a week in March -- chiefly to meet the 2000-strong Uighur community, including one of her sons and his family in Melbourne. But since then her profile has soared.

Next week, she will attend a public launch of her biography and lunch at Victoria's Parliament House. Australian Uighurs are further antagonising China by planning a demonstration outside its Melbourne consulate on Friday afternoon.

Tomorrow week Ms Kadeer will attend the sold-out launch of the 53-minute documentary about her, *10 Conditions of Love*, jointly hosted by Greens leader Bob Brown and Mr Danby. John Lewis, producer of the \$130,000 documentary, said the withdrawal of five Chinese, Hong Kong and Taiwan films from the Melbourne International Film Festival in protest against Ms Kadeer's presence had led to the film's promotion "all over the planet".

76. DFAT reports in relation to Personal files (dang'an):

The Department of Foreign Affairs and Trade (DFAT) have pointed out on a number of occasions that Chinese authorities maintain a dossier (dang an) on PRC citizens.

(DIAC Country Information Service 2007, Country Information Report No. CHN8980 – CIS Request CHN8980: China: Publication of client details, (sourced from DFAT advice of 20 March 2007), DIMIA Country Information Service 2006, Country Information Report No. 06/53 – China: Return of failed asylum seekers, (sourced from DFAT advice of 14 September 2006), DIAC Country Information Service 2003, Country Information Report 82/03 Personal Files, (sourced from DFAT advice 10 June 2003).

77. In June 2003, DFAT described the contents of the dang an in detail and referred to its diminishing use by authorities with regard to those who are not party members or cadres. It does state that “neighbourhood committees retain dossiers for the unemployed”; and that the “dossier is chiefly a record of official merits or demerits, qualifications, and evaluations by employers, including political evaluation”:

The Chinese government maintains different records for rural and urban residents. It does not keep personal files or dossiers on all citizens. The political significance of personal dossiers for those who are neither party members nor cadres has diminished in recent years. With greater freedom of movement between provinces and employers and the growth in the non-state sector, it is becoming easier to find employers who do not require a continuous personal dossier from a previous employer or work unit.

Beginning from primary school, a Chinese may also possess a personal dossier (dang'an). This is a collection of papers containing personal comments by teachers, records of marks, official commendations or records of disciplinary offences. It is passed through high school and on to university authorities. The dossier takes on real significance after university, when it can be used by potential employers in place of a personal resume or references to determine employment opportunities and promotion prospects.

Some large state-run employers, including government ministries and party organs, physically retain individuals' dossiers, which are maintained by the personnel section. Smaller, private sector or foreign-owned work units can contract centralised “human resource centres” or employment agencies to retain the dossiers. Neighbourhood committees retain dossiers for the unemployed. Rural Chinese employed in agriculture do not require dossiers after leaving school. Village or county-level personnel departments may keep records of rural households.

We have no specific information on how the dossier system works in particular provinces. But it would be reasonable to assume that the system would be used more

strictly in relation to individuals in certain occupations (such as the military and cadres in government and party employment), rather than in relation to individuals' geographic location per se. We have no evidence suggesting the dossier system is imposed more strictly on members of ethnic minorities.

The dossier is chiefly a record of official merits or demerits, qualifications, and evaluations by employers, including political evaluations, party membership and party standing. It may also record social welfare or insurance contributions. The system is clearly open to abuse, as individuals do not generally have access to their own dossier and work units can use retention of a dossier to pressure individuals contemplating changing their work unit. The personnel section which maintains the dossier may pass on incriminating comments (including information from third parties) directly to public security or state security authorities.

Local public security authorities maintain separate records of individuals, based on unique identity numbers recorded on identity cards and linked to hukou records. Individuals must carry their identity cards (shenfenzheng) at all times. Local public security authorities also maintain individual criminal records (DIAC Country Information Service 2003, Country Information Report 82/03 Personal Files, (sourced from DFAT advice 10 June 2003).

78. The book published in 1989 by Suzanne Ogden, *China's Unresolved Issues – Politics, Development and Culture*, states that:

a “dossier will also contain information about a person’s class background, education, friends and relations (especially if they have bad class backgrounds or have lived abroad), and participation in political organizations. If a person has a bad class origin or has ever been labelled as one of the “five bad elements,” that fact can haunt him for the rest of his life” (Ogden, Suzanne 1989, *China's Unresolved Issues – Politics, Development and Culture*, ‘Dossiers (Dang’an)’ from Chap.6 ‘Socialist Legality and Social Control’.

79. Role of Uighur women: In relation to the role of Uighur women the following information is available:

An August 2009 Radio Free Asia article on the strong role that women play in Uighur society, points out that they “are viewed as the principal educators in Uighur society, responsible for educating children and passing on traditions through the family”:

Uighur women are viewed as the principal educators in Uighur society, responsible for educating children and passing on traditions through the family, experts say.

“Women have a strong position in Uighur society,” one Uighur woman living in U.S. exile said.

...And the Uighur figure best known around the world is Rebiya Kadeer, leader of the World Uighur Congress, which Beijing accused of inciting violence in July.

Kadeer was a successful self-made businesswoman held up as a model by the Chinese government until she was accused of “endangering national security” in 2000.

“It was Rebiya Kadeer’s founding of a women’s movement in Xinjiang and her support to the mothers and wives of those arrested during the 1987 Ghulja [in Chinese, Yining] protests that first turned authorities against her,” Roberts says.

“In Xinjiang, women have been active in [political protests] over the last several decades” (‘Strong Women in Uighur History’ 2009, Radio Free Asia, 24 August <http://www.rfa.org/english/women/uyghur-women-08202009140517.html/in-history-08202009141230.html?textonly=1>).

## FINDINGS AND REASONS

80. The first named applicant and her son, the second named applicant entered Australia on a PRC passport. The applicants consider their nationality to be East Turkistan, which is internationally accepted to be an autonomous region within the PRC, also known as Xinjiang. There is no evidence that the applicants hold any nationality other than that of the PRC. The Tribunal finds the applicants are citizens of the PRC and accordingly has assessed their application against that country.
81. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings on the claims the applicant has made. However the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is “well founded” or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision maker is not required to make the applicant’s case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEO* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
82. The first named applicant has claimed that she is a Uighur and a Muslim, and that she and her family have a history of discrimination and abuse by the Chinese authorities in Urumchi in East Turkistan.
83. The Tribunal found the applicant on the whole to be a credible witness though tending to exaggerate and to embellish at times. The Tribunal accepts the first named applicant’s claims that she is suffering from stress and mental fatigue. The Tribunal accepts that she and her son have suffered discrimination. The Tribunal accepts that in the area of education she suffered discrimination and was constantly put down or held back because of her Uighur ethnicity. The Tribunal accepts the first named applicant’s evidence that in her employment she was discriminated against, that it was necessary for her parents to pay money to secure employment for her and that she had no option other than to work in a lowly job which did not reflect the qualifications she gained at the [education provider].
84. The Tribunal accepts that her young son was forced to attend a Chinese child care centre from an early age and that as a result he suffered discrimination in cultural, linguistic and religious matters. The Tribunal accepts the first named applicant’s claims in relation to her son’s future including not being able to practice his Islamic faith and facing a lifetime of discrimination.
85. The Tribunal accepts first named applicant’s claims that she has experienced the discrimination and suffering of Uighurs throughout her life including denial of her cultural Uighur name, and her language. The Tribunal accepts it was necessary for the family to borrow money from her sister in Australia to pay bribes to obtain employment for her

parents. The Tribunal accepts she was subjected to tests with the threat of unemployment if she did not pass and that such tests were designed to be more difficult for people of Uighur ethnicity. The Tribunal accepts that work conditions for Uighurs are of a lesser standard than for Han Chinese.

86. The Tribunal accepts that Uighur passports were collected by PRC authorities prior to the Olympic Games and that Uighurs were harassed and made to pay bribes and reapply in order to get back their passports.
87. The Tribunal accepts the two separate incidents of punishment suffered by the first named applicant because she was engaging in the religious observance of fasting during Ramadan. The Tribunal accepts that she was fined for this in 1992 and made to write a promise not to engage in such activities again and that in 2008 she was detained for fasting at work. The Tribunal however does not accept that the applicant was handcuffed on this occasion and finds this evidence to be an embellishment of what actually happened.
88. The applicant has stated various accounts of ill treatment metered out to family members including her cousin [name deleted: s.431(2)] forced to abort a child, as the first named applicant was; [brother's name deleted: s431(2)] was accused of theft by a person who had lost their purse. For this he was imprisoned because he was a Uighur; her cousin [Person B] tortured for growing a beard and her sister [Ms A]'s husband who was imprisoned for borrowing money from Australia just before the Olympic and kept under strict surveillance. The harassment led to the ruin of his business and to her sister having a breakdown. The Tribunal accepts these events occurred as claimed.
89. The first named applicant has claimed that she is not a communist and that she believes in freedom and democracy. The Tribunal accepts that as a Uighur she stands against the treatment of Uighurs who are denied or are restricted in the area of human rights. The Tribunal accepts the first named applicant's claims in particular that Uighurs are restricted in the area of freedom of speech, freedom of association, freedom of travel, political activity, equal education and employment rights and family planning policies.
90. Since their arrival in Australia the first named applicant and her son have been staying with her sister [information deleted: s.431(2)]. Her [relative] has written a letter in support of the application. The Tribunal accepts the evidence that [her relative] is [an official] of the World Uighur Congress and that in that capacity he was an organiser of the many rallies and events that took place during the visit of The President of that organisation Ms Rebiya Kadeer. The Tribunal accepts that the first named applicant has also been involved with the East Turkistan Community. The Tribunal accepts country information that points out that on a number of occasions that Chinese authorities maintain a dossier (dang an) on PRC citizens who are living overseas. The Tribunal accepts that the first named applicant's [relative] would be viewed as a separatist and a terrorist by the PRC.
91. It is well established that a family is capable of constituting a particular social group within the meaning of the Convention. However, this is subject to s.91S of the Act, which provides that the following matters must be disregarded in determining whether a person has a well-founded fear of being persecuted for reasons of membership of a particular social group that consists of the person's family:
  - (a) any fear of persecution, or any persecution, that any other family member has experienced, where the fear or persecution is not for one of the Convention reasons;and



(b) any fear of persecution, or any persecution, that the applicant or any other family member has experienced, where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in (a) above had never existed.

92. Therefore, a person who is pursued because he or she is a relative of a person targeted for a non-Convention reason does not fall within the grounds for persecution covered in the Convention definition.
93. The Tribunal accepts the first named applicant's claim to fear harm because of her membership of a particular social group, her family, and in particular because of the high profile of her [relative] The Tribunal is satisfied that the harm feared as a member of a particular social group, her family, is because of their Uighur ethnicity their East Turkistan nationality and Muslim religion all of which are Convention based reasons. For this reason the Tribunal finds there is a real chance of harm of arrest, interrogation and persecution should she return to China now or in the reasonably foreseeable future because of her particular social group, her family.
94. The Tribunal has considered the activities of the first named applicant in Australia. The Tribunal accepts that she has attended demonstrations in both Canberra and Melbourne to protest the killings and attacks on Uighurs in East Turkistan in July 2009. The Melbourne demonstration was attended by Mrs Kadeer, the President of the World Uighur Congress and Uighur Human Rights Activist.
95. Independent country information before the Tribunal indicates that Rebiya Kadeer is regarded with great animosity by the Chinese State because of her campaigning against human rights' abuses of Uighurs. The Tribunal accepts that any perception that the first named applicant or her son has associated with either her [relative] or Ms Kadeer would result in a real chance of harm of arrest, interrogation and persecution should she return to China now or in the reasonably foreseeable future.
96. Independent country information set out above, and referred to by the Tribunal in relation to particular social group, indicates that the Chinese authorities attempt to monitor Uighur groups and their activities in Australia and obtain information about their members and supporters. The Tribunal accepts that the applicant has publicly demonstrated her opposition to the Chinese government's oppression of Uighurs in Australia by carrying flags in rallies that have expressed that opinion. The Tribunal accepts the first named applicant's evidence that photos have been taken at these events and that there is a chance that such photos may be seen by Chinese authorities.
97. In making its findings in relation to the first named applicant's activities in Australia, the Tribunal has had regard to S.91R(3) of the *Act* The Tribunal is satisfied that the applicant has been involved in Uighur associated activities in Australia because of her genuine concern about the treatment of other Uighur people by the Chinese authorities in Xinjiang (East Turkistan) and not for the sole purpose of strengthening her claims for protection. For this reason the Tribunal is satisfied that 91R(3) of the *Act* does not apply to the first named applicant and, accordingly, the Tribunal does not disregard her conduct in Australia in the assessment of the application.
98. The Tribunal accepts the applicant's claims that there is a real chance that she will be persecuted for her political opinion or her imputed political opinion if she returns to China

because of her involvement in activities with the Uighur Association of Victoria and her association with rallies and demonstrations and personal meetings with Rebiya Kadeer, President of the World Uighur Congress.

99. The Tribunal further accepts that the first named applicant is likely to be regarded as a separatist opposed to the Chinese authorities' control of East Turkistan as a result of her activities. In consequence of these findings, the Tribunal is satisfied that there is a real chance the first named applicant will be subjected to harm amounting to persecution should she return to China in the reasonably foreseeable future. The Tribunal finds that the harm the applicant fears is for reasons of her particular social group (her family) her political opinion; imputed political opinion; her Uighur ethnicity; and her Islamic religion.
100. The Tribunal accepts the applicants claims that people who have involvement with East Turkistan communities overseas may face arrest, imprisonment and interrogations on return to China. The Tribunal finds that should the applicants return to China in the reasonably foreseeable future there is a real chance that they would face serious harm.
101. The Tribunal has considered whether it would be reasonable for the applicants to relocate to another part of China. Because the Chinese government is persecuting Uighur Muslims for any suggestion of a separate state of East Turkistan, the Tribunal is satisfied that no protection would be offered to the applicants by the Chinese authorities. The Tribunal finds that the Chinese government would be the persecutor and, therefore, the issues of state protection and relocation in China need not be considered. Furthermore, the Tribunal finds that the applicants are likely to be sought by the Chinese authorities and detained upon any return to China; the applicants have a well-founded fear in relation to the country as a whole.
102. Having considered the applicants claims singularly and cumulatively the Tribunal finds that the applicants have a well-founded fear of persecution for Convention reasons in the PRC should they return now or in the reasonably foreseeable future.

## **CONCLUSIONS**

103. The Tribunal is satisfied that each of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such visas, provided they satisfy the remaining criteria.

## **DECISION**

104. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44