

0910028 [2010] RRTA 644 (26 July 2010)

DECISION RECORD

RRT CASE NUMBER:	0910028
DIAC REFERENCE(S):	CLF2009/120970
COUNTRY OF REFERENCE:	Uzbekistan
TRIBUNAL MEMBER:	Paul Fisher
DATE:	26 July 2010
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Uzbekistan, arrived in Australia [in] October 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] December 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] December 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file relating to the applicant. 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.

Background

20. The applicant is a [age deleted: s.431(2)] national of Uzbekistan, from the city of Andijan (or Andijon; both English spellings are used in the country information).
21. [In] 2006 the applicant travelled to [Country 1] where he remained for about seven months studying [subject deleted: s.431(2)] further to his tertiary studies in [subject deleted: s.431(2)] at [a college] in Uzbekistan. He returned to Uzbekistan [in] 2007 and completed his studies [in] 2008. The applicant was issued a [(Temporary)] visa [in] 2008 permitting him to remain in Australia until [a date in] 2009. [Information deleted: s.431(2)].
22. The applicant arrived in Australia [in] 2008, but did not apply for a Protection visa until [a date in] 2009. The applicant’s background and protection claims are set out in detail in the following statutory declaration which accompanied his protection visa application:
 1. I was born in Andijan, Uzbekistan [date]. I am an Uzbek Citizen. My ethnicity is Uzbek and I am Sunni Muslim.
 2. I have suffered significant persecution from the authorities, based upon my religion. The government in Uzbekistan restricted the religious practices and routines for all followers of the Muslim faith. These restrictions seriously affected my ability to pray and worship.
 3. I was not allowed to attend the mosque on Friday which is our religious day. I could not pray on the most important day that Muslims are required to attend. Prayer with others, as a group, is compulsory in my belief. It is believed that if you do not meet this requirement, you will suffer.
 4. In addition to banning prayer in the mosque, it was prohibited to for Muslims to gather anywhere else to pray together on Fridays. These prohibitions were selectively aimed at only followers of the Muslim faith.
 5. As a child I was prevented from receiving the teachings of the Muslim religion. I have been disadvantaged because of this prohibition.

6. I have not been allowed to wear doppa which is compulsory for all Sunni Muslims. This practice is also banned by the Uzbek.
7. Muslims are not allowed to have public places where the use of alcohol is prohibited. Restaurants and cafes are not allowed to prohibit the use of alcohol on their premises. We are not able socialise in public places for fear that we will violate our religious obligations by mixing with people who are consuming alcohol.
8. I feel that the government has stood between me and God in preventing me from practising my religion. I am persecuted because of my religion.
9. The government has violated my human rights by persecuting me on the basis of my religion. I have been targeted by the government of Uzbekistan because of my religion.
10. The government has also imprisoned the religious leaders. This caused an uprising amongst Muslims in Andijon during 2005. The background to this is that leading up to the political unrest in Andijon during May 2005, devout Muslim people gathered together to pray five times per day and then to discuss how support could be provided for other followers. Gathering to pray in this manner as a group and so many times a day was prohibited. The secular government targeted the leaders of these religious groups saying they do not have permission to gather together. The leaders were arrested and detained. They were beaten and tortured.
11. A crowd of supporters gathered to protest that their religious leaders should be released and given the opportunity to access justice. At that time, I used to work in a [factory]. I knew the group of people involved in the protests, but I was not involved with them. I had to pass by where they met each day to go to work. The building where I worked was accessed through the same gate they had to use. There was a designated area for prayer there and, like other Muslims, I attended there. It was apparent I was Muslim. Because of my religion, I was targeted by the security police. Because I am Sunni Muslim, they thought that I was involved with the protesters and they began to harass me.
12. For three days after the protests, people in my residential area we were not allowed to leave their homes. Our residential area is dominated by Sunni Muslims. There was an order if more than 5 or six people gathered in the street, they were to be shot dead. At the same time, we were concerned about my brother who was not contactable. We didn't know where he was or what had happened to him.
13. At the time of the protests, my brother [worked information deleted: s.431(2)]. My brother spoke English well and we later learnt that he was targeted by the Security Officers after the unrest subsided. He was arrested and detained. They accused him of releasing information to [journalists]. Although he denied any wrongdoing, they detained him for more than a week.
14. Three days after the protests, we were allowed to go out in the streets again and I returned to my work. While I was at work that day, a security officer came there and told me that I must attend the police station to give an oral report. The following the day, I reported to the Police Station and I was taken into an interview room. Immediately after they obtained my personal details to identify me, they ordered me to drink some alcohol they provided. They did this as a way of determining if you are Muslim and how dedicated you are to your beliefs. Of course, I would not drink it. They started showing me photographs and questioning me about the people shown in them. They asked me if I knew them, which I did, because they gathered in the building next to the one where I worked. They told me that as soon as I saw any of them, I must inform the police immediately. They were very intimidating and I was terrified. I was very frightened of what they might do to me if they were upset. The thought of having to report seeing these people also made me very frightened. I couldn't tell them if I saw those people because I believed those people were innocent and if I told the police where to find them, I knew they would face certain torture.

15. Not only was I fearful of the police, but I was also frightened of the people in the community. These people would not normally harm me and I felt safe around them.
16. I was questioned another time by the security officers around a month later. I received a notice to my home, summoning me to the Police Station. I reported again and I was questioned in the same manner. They wanted to know if I had seen the people who participated in the demonstrations. I had seen them, but I didn't want to tell the police. I couldn't tell them I had seen them and my fear was even greater, because I was terrified they knew that I had seen them. I was prepared to say I hadn't seen them, but I wasn't prepared for the punishment they would inflict on me if they suspected I was not telling the truth.
17. After this time, our whole family has been marked by the government of Uzbekistan. My brother has only been able to obtain work in a [business deleted: s.431(2)] since that time. I know that I will now be prevented from obtaining certain types of employment with government agencies.
18. My brother was unable to return to his job after he was released by the security officers, fearing that his life was at risk while he worked there.
19. I had another brother who lived in [Country 1]. I was able to apply to undertake a component of my studies there and so I immediately commenced the process of applying. The University arranged most things and it was coordinated through private agencies. I went to [Country 1] in December 2006. I was there for 7 months and upon my return to Uzbekistan, I continued with my studies.
20. I arrived in Australia in October 2008 as the holder of a [visa sub class].
21. I have been working in the agricultural industry in Victoria for 8 months. I came to South Australia to seek further employment. I had also heard that there was a large beki community here and I wanted to meet with them.
22. When I came to [City A], we met up in [a car park] where they came to meet me. They took me back to their house. I could not stay at their house because of the females residing there and so they allowed me to stay with their brothers instead.
23. I telephone my family weekly to advise them where I am and what I am doing. About a week after I had arrived in [City A], I called them to tell them where I was staying and to tell them I was staying with an established Uzbek community here. I discussed the family I was staying with. I told them some things about the family including that they were refugees here, after the protests in Andijon.
24. It was discussed with the family that there is a young woman who is suitable for me to marry. I explained to my parents that I understand that she is wanting to marry a person from her own culture also and is happy to leave the task of finding a husband to her father and mother. Marriages are routinely arranged by elder males in the family in this manner. I told my parents as it would be necessary for each of the parents to talk with each other to reach an agreement. My parents said that they would have to travel to Australia to meet the girl's family.
25. On the next occasion I called my family, they told me that the Security Officers had visited them. The Security Officers wanted to know where I was staying, who I was staying with and when I would be returning to Uzbekistan. My parents told me that they were very worried that Security Officers are looking for me. They said that they would not now be travelling to Australia because the Security Officers had told them they were not to leave Uzbekistan. My parents told me that they are now very worried about my safety when I return and although they didn't say it, we all believe the Security Officers are monitoring all of their telephone calls.

26. My brother later contacted me and told me that his application for an exit visa to study in [Country 2] has been refused. He told me that all of the family is now barred from travelling overseas.
27. [In] August 2009, I called my parents. They told me that the security officers had arrested my brother and taken him into custody. They told me that my sister's husband had also been arrested. My sister's husband had been a protester and they are now using this as an excuse to arrest other male family members. My parents also told me that the building I owned in Uzbekistan had been confiscated by the State. My father said that he had seen a lawyer who told him that the only way that ownership of the property could be returned to me is if I return to Uzbekistan. To my knowledge, my brother and brother in law remain in custody. I believe that all of these things are intended to force me to return to Uzbekistan where I will be imprisoned, tortured and most likely killed.
28. I have been persecuted by the authorities in my country. I am singled out and targeted as a member of a particular community by the people who are in power in Uzbekistan. My fear is both real and imputed. I have an actual fear that I will be harmed if I return to Uzbekistan I have lived in fear for my safety in my country for a very long time and I know I will not be protected by the authorities in Uzbekistan I ask that Australia grant my asylum here so that I can be protected from harm.

23. The applicant was interviewed in relation to his application [in] November 2009, and a departmental file note records that the following matters were clarified at interview:

- His brother [Mr A] was in [Country 1] in 2005 for about one and a half years as a student and has since returned to Uzbekistan He wanted to travel to [Country 2] but was refused permission.
- All his family is under surveillance. His brother in law had been jailed for one or two months in 2005 because he had been involved in the demonstrations. When the authorities found out the applicant was in Australia they jailed him again.
- The applicant was asked how he knew that the reason for him being jailed was because he is in Australia and responded that the security forces have been to his house asking about him and want to see him.
- The security forces are asking how he found the families in [City A] (they were involved in the protests) and that he must have had contact with them from before.
- The applicant was asked how he had been restricted in the practice of his religion and responded that he was not allowed to pray or go to Mosque. In response to country information about the easing of restrictions, the applicant responded that this is propaganda. In Australia he is able to go to Mosque freely and undertake any education he wants.
- The applicant was asked why he was issued a passport and allowed to travel if the family was being monitored from 2005 and responded that he was a student with no previous record. He was able to then come to Australia because his brother in law had been cleared at the time. It is only since arrival here and his involvement with the family of a girl he is interested in marrying that they are again under surveillance.
- The applicant stated he did not apply for refugee status in [Country 1] because he had no idea he could apply or what rights he had. His problems started after he met a girl in [City A] whose family came to Australia after the 2005 protests and he told his family about her.
- He fears that the authorities are waiting for him and if he returns he might be jailed because of his association with these people in [City A].

24. The application was refused [in] December 2009.
25. The delegate noted that the applicant's claims with respect to religious observance generally were not borne out by country information, referring to the 2008 International Religious Freedom report for Uzbekistan as indicating that:
- ... although the Government bans Islamic organisations it deems extremist and criminalises membership in them...[t]he Government states that it does not consider repression of persons or groups suspected of extremism to be a matter of religious freedom, but rather of preventing armed resistance to the government [and that] religious freedom conditions improved for the Muslim majority.
26. The delegate accepted that the applicant may have been questioned in May 2005, but did not accept that he was of ongoing interest to the Uzbek authorities, given the fact that he had subsequently travelled to [Country 1] and returned to Uzbekistan prior to coming to Australia. The delegate also noted that no evidence had been submitted to corroborate the applicant's claims that the Uzbek authorities had subsequently developed an adverse interest in his family, but also observed that even if that were the case, it did not follow that the applicant would also be of interest to those authorities.

Review Application

27. [In] December 2009 the Tribunal received an application for review of the delegate's decision.
28. [In] January 2010 the Tribunal invited the applicant to a proposed hearing scheduled [in] February 2010.
29. [In] February 2010 the Tribunal received what were said to be truncated submissions of fact and law provided in support of the applicant's claims. The author foreshadowed the provision of further submissions and evidence presently unavailable as a consequence of computer failure and delays having supporting documents translated. The submissions were accompanied by the various supporting statements and pieces of documentary evidence.
20. The applicant appeared before the Tribunal [in] February 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Uzbek and English languages. The Tribunal adjourned this hearing soon after its commencement because of concerns over the competence of the interpreter.
30. [In] March 2010 an amended submission was received by the Tribunal reiterating the applicant's claims, setting out the basis for his eligibility for a protection visa, and referring to relevant country information and other supporting evidence. The submission enclosed the following:
1. 8 February 2010: Statement of [the applicant]
 2. 5 March 2010: Statutory Declaration of [the applicant]
 3. 10 February 2010: Letter from [Mr A], brother of [the applicant] (Uzbek, English)
 4. 8 January 2010: Letter – [Mr B], family member of [the applicant]'s fiancée

5. 7 January 2010: Letter – [Ms L], family member of [the applicant]’s fiancé
 6. 15 February 2010: Letter – [Mr C]. [Member] of the Uzbek Association of Australia
 7. Documents from the Andijon City Criminal Court: (Uzbek, English)
 - a. [dates] 2009: Summons to appear at the Andijon City Criminal Court at 9.00 am on [date] 2009 and [date] 2009
 - b. [date] 2009: Notification that the residence of [the applicant] had been confiscated by the authorities as a penalty for failure to appear in the Court on [dates] 2009
 - c. [date] 2009: Summary of the Decision to confiscate [the applicant]’s property
 - d. [date] 2009: Notice of Execution of Court Decision to confiscate [the applicant]’s property
 - e. [date] 2009: Notice of forfeit to the State of [the applicant]’s property
 - f. [date] 2009: Execution Order Paper re the above property
31. The applicant’s statement [in] February 2010 essentially reiterates his earlier claims, but includes some elaboration on the evidence given at the departmental interview, as follows:
4. At that time [of the May 2005 uprising] my brother, [Mr D], [work and business details deleted: s.431(2)]. My brother spoke English well. He was arrested and accused of giving information about the Andijan uprising to anti-Communist journalists. Though he denied this he was detained for two weeks. He was beaten on his body when he was in prison. We could not contact him and did not know where he was. After his release my brother did not return to his work at the [business] because he felt that his life would be at risk there. My mother said to him, "If you go back there you will be in trouble again". My brother found work in a [business details deleted: s.431(2)].
 5. One of my brothers, [Mr A], studied in [Country 1] for a year and half. He has since returned to Uzbekistan. In December 2006 [Mr A] helped to arrange for me to go to [Country 1] to study [subject]. [In] 2007 I returned to Uzbekistan. I did not fear persecution from the authorities at that time because I felt that there was only a low level of interest in me from the authorities. All that has changed since I came to Australia.
 6. On [date] August 2009 I contacted my parents on my mobile phone. They told me that the security officers had arrested my brother [Mr D] and taken him into custody. After two months they let my brother [Mr D] go but he has to report to the police every week. His movements are also monitored. They also told me that my brother-in-law [Mr E] had also been arrested on [date] August 2009 at the same time as my brother [Mr D]. He had taken part in the Andijan uprising. [Mr E] is still in Andijan Gaol. My sister [name] visits him once a month. My sister says she can see that he has been tortured.
 7. My parents also told me that the apartment which I owned has been confiscated by the state. The government authorities said to my father that if I return to Uzbekistan the property will be returned to me. My father told me that he had seen a lawyer but the lawyer did not want to help us because we are followers of Akromi. I believe that the government is doing these things so that I will come back Uzbekistan and then I will face imprisonment, torture and maybe they will kill me.
 8. Since I have been in South Australia I have met Uzbek refugees who had fled from Uzbekistan because of their involvement in the Andijan uprising. They also follow the outlawed and imprisoned Muslim leader Akromi. In South Australia I fell in love with a young Uzbeki refugee. According to our custom marriages are arranged by the elder

males in the family. It was necessary for my parents to travel to Australia to meet my girl friend's family and arrange the marriage. However, my parents were refused a travel visa. The security officers came to our house and asked where I was living in Australia, who I was staying with and when I was to return to Uzbekistan. My brother applied for a visa to study in [Country 2] but was refused. When the security officers came to our home they said that all the members of our family are barred from travelling overseas. Our phone calls are monitored by Uzbek security police. My parents are worried that the security officers are looking for me.

9. I know that, because of the persecution of my family by the authorities and because of my association with Uzbek refugees in Australia who were associated with the Andijon uprising and who follow the outlawed Muslim leader Akromi, I will be arrested questioned and imprisoned if I return to Uzbekistan. My life is in danger if I return to Uzbekistan. I ask the Australian government to protect me.

32. The applicant's statutory declaration [in] March 2010 explains the significance of some of the supporting documents he submitted as follows:

1. I wish to comment on the documents I am submitting to the RRT. My brother [Mr A] sent me documents from the Andijon City Criminal Court. On [date] 2009 a Summons was sent from the Andijon City Criminal Court asking me to appear at the court on the next day, [date] 2009. I was already in Australia. As I did not appear in the court on [date] 2009 the court sent me another Summons on [date] 2009 to appear on the [date] 2009. Neither of the Summons gave a reason for me to appear i.e. there was no charge. However, in the document, the Court writes beneath the time to appear in court, the word [deleted: s.431(2)]. The interpreter did not translate this word. It means that the court is saying that I am guilty.
2. On [date] 2009 the Court sent an order, made by the [position] of the Andijon City Criminal Court, [name], that my apartment at [details deleted: s.431(2)], was to be confiscated by the Court.
3. On the same day a Decision record was sent saying that they wanted to talk to me about my property. This is not the real reason they were calling me to attend the court. They did not want to talk about my property but about my religious belief, the fact that I am a follower of Akromi who has been in prison for the past 10 years and whom they regard as trying to overthrow the government and because they see me as against the government as well. Also they know that I have been in touch with Uzbek refugees who have gained asylum in Australia and who also follow Akromi. They say in the Decision record that I have never been guilty of any criminal offence but they are concerned about my "social behaviour" i.e. I believe they are talking about my association with Uzbek refugees in Australia. As well as confiscating my apartment they have fined me [amount deleted: s.431(2)]. The other documents confirm that the confiscation of my property has been carried out.
4. In his letter on 10 February 2010, my brother [Mr G] says that my older brother [Mr F] and my brother-in-law [Mr E] have been put on a 'black' list of people who are accused of instigating the Andijon demonstrations on 13 May 2005 for religious reasons. I have been in close contact with Uzbek refugee families in Australia who fled to Australia after the killings at Andijon after 13 May 2005 and have gained asylum as permanent residents in Australia. My brother says in his letter that my association with these people has brought me to the attention of the authorities in Uzbekistan who now wish to persecute me for my religious belief and allegiance to Akromi. I am also about to be become engaged to the daughter of an Uzbek refugee family in Australia.

5. My family have been told that the only way that my property can be restored to me is if I return to claim it from the Court. They believe that the confiscation of my property and the qualification that the Court will return it only if I personally return and claim it from the Court is just a way to get me to return to Uzbekistan where the Court will bring charges against me. My family warn me not to return because if I do they fear I will be charged with inciting rebellion against the State because of my allegiance with the Uzbek refugee family in Australia. My brother [Mr G] writes in his letter dated 10 February "010:

My younger brother [the applicant] will face arrest and torture as (a) religious person if he returned to Uzbekistan. We, the family relatives of [the applicant] sincerely ask, the Australian government to grant him a life-saving opportunity.

33. The statement from the applicant's brother includes the following:

I, [Mr A] hereby declare that my family members have been restricted to practice religious freedom as the state government authorities closely monitor our family members. My parents are in great fear of the return of my younger brother [the applicant] from overseas. Because my older brother [Mr F] and my brother in-law [Mr E] were taken by Police authorities from our home since August. My brother [Mr F] had been relocated to the local hospital after two months time because of the worsened health condition and released with bail. But the police would come to our house on weekly basis to ask my brother to police station. My brother in-law-my older sister's husband [Mr E] is still detained in prison.

The reason why the Uzbekistan government have an interest on our family was that my older brother [Mr F] and my brother in law [Mr E] have been listed by government authorities as religious personnel after the Andijon demonstration on 13th May 2005 which sought religious freedom; my younger brother [the applicant] has been in close contact with the Uzbek refugee families who fled to [[City A]] Australia after the Andijon demonstration on 13th May 2005 which sought religious freedom. The government is now aware of these situations and thus they had big suspect on our family. My younger brother [the applicant] will face arrest and torture as religious person if he returned to Uzbekistan. We, the family relatives of [the applicant] sincerely ask Australian government to grant him a life-saving opportunity.

34. The supporting letter from [Mr B] incorporates the following:

I, [Mr B], (born Uzbekistan) came to Australia in 2008 as a refugee with the U.N. I escaped Uzbekistan due to the harsh dictatorial rule of the government. The crackdown on people from Andijan (my city) was so severe, that it was not possible for us to practice our religion freely, obtain justice for political wrongdoings and live without oppression. Currently, I reside happily with my family in [City A], Australia.

I met [the applicant] as soon as he came to [City A]. He stays in my house sometimes and sometimes in my brother's house. He has met with my niece and they have expressed interest in getting engaged or married.

The Uzbek government has been oppressing [the applicant]'s family in Uzbekistan due to his interactions with us and the local Uzbeks in [City A] who had also fled here between 2005 and 2008. As is their policy, they have been punishing his family in Uzbekistan for [the applicant]'s interaction with us. His siblings have been denied work, his family under watch by the authorities and they have been denied any kind of travel visas. I am 100 percent without a doubt if [the applicant] returned to Uzbekistan; he would be imprisoned as soon as he got off the airplane.

35. Similarly, the supporting letter from [Ms L] includes the following:

My name is [Ms L] and I have been a resident in Australia since August 2008. My husband had arrived in 2005 as a refugee and we also arrived with my children as refugees. We look forward to getting our Australian Citizenships as soon as possible as Australia has treated us with great hospitality since we arrived.

I am writing this letter regarding [the applicant]. We met him as soon as he arrived in [City A] as he is a friend of our son. He is a very polite, respectful young man. He stays in our house and also in my brother in laws house ([Mr B]). I also have spoke with his parents on occasion on the telephone. As an oppressive regime, the Uzbek government found out [the applicant] was staying with us and interacting with us because they spy on any phone call we make to Uzbekistan. As soon as they had found this out, his parents informed me the crackdown on them had begun. Her other children have been denied jobs, harassed and questioned by police and denied travel rights.

36. The supporting letter from [Mr C] dated [in] February 2010 states that he is [a member of] the Uzbek Association of Australia, and relevantly states as follows:

I have known [the applicant] since his arrival in Australia. He was aware of the Uzbek Association of Australia and contacted us by phone [in] 2008. I met him twice when I went to [city] and I see him often since his arrival in [City A]...The current situation in Uzbekistan is extremely oppressive for any Uzbeks who attempt to peacefully practice their religion and voice opinion on any issue. Good, innocent and peace-loving citizens are detained and face torture, sexual abuse and execution on daily basis.....[the applicant]'s relatives in Uzbekistan have been subjected to harassment, threats, phone tapping and questioning. His relatives fear for his safety if he were to return to Uzbekistan.

37. [In] April 2010 a further submission was received by the Tribunal once again reiterating the applicant's claims, setting out the basis for his eligibility for a protection visa, and referring to relevant country information said to support those claims.

Tribunal Hearing

38. The Tribunal hearing resumed [in] May 2010 and it was conducted with the assistance of another, competent interpreter in the Uzbek and English languages. The applicant was represented in relation to the review by his registered migration agent who attended the Tribunal hearing. The Tribunal also heard evidence from two witnesses, [Mr B] and [Ms L].

Evidence of the Applicant

39. At the Tribunal hearing, the applicant confirmed his identity and reiterated his claims.
40. The applicant explained that he came to Australia on a [details deleted: s.431(2)]
42. Asked whether he had to know some English in order to participate in the program the applicant confirmed that to be the case, indicating that he had studied English in Uzbekistan.
43. The Tribunal noted that the applicant had previously been to [Country 1] in 2006, and queried how he would have been permitted to even apply for these programs if he was at risk of persecution by the Uzbek authorities.

44. The applicant replied that in the first place, the applications were not processed by the Uzbek authorities, and secondly that at the time of the Andijan massacre in May 2005 he was merely interviewed and released.
45. Asked when he had been issued with his passport, the applicant said it had been issued [in] 2004. He was able to secure exit visas for the trips to [Country 1] and Australia by paying bribes of USD100 on each occasion.
46. At the time of the May 2006 incident, the applicant had been working at [a shop near] a factory where about half of the workers were followers of Akrom, some five or six km from where the demonstrations took place. Asked why then he thought he had been questioned by the police, the applicant explained that at least half of the people working in the factory were followers of Akrom.
47. Asked why he had not previously mentioned anything about the Akromi before the applicant said that he had mentioned his involvement with Akromi groups, but perhaps it had not been interpreted. Asked whether he is a follower of Akromi, the applicant confirmed that he knew other Akromi followers and had people and prayed with them, but he was not a member of the organisation and had never, for example, taken up arms on their behalf.
48. Asked why the security people were interested in him, the applicant explained that it was because they wanted more information about the people he worked with. The second interview was by way of follow up. He agreed he had not passed on any additional information. Asked
49. The applicant also agreed that he had not experienced any further problems in Uzbekistan either before or after traveling to [Country 1].
50. Asked about the Court documents he had submitted, the applicant said that the originals were in Uzbekistan, in the possession of his brother, who had sent only copies by mail. He agreed with the suggestion by the Tribunal that the Uzbek government knew he was in Australia as they had given him an exit visa. Asked why a summons had been sent to him at home in such circumstances, the applicant agreed that it did not make sense. The summons pertained to his house, which his father had bought for him when he was 19 years of age, but which was rented out.
51. Asked why his family had not simply informed the authorities that he was unable to respond to the summons as he was in Australia, he replied that they had in fact done this, but had been told that was no excuse, that he was expected to return to Uzbekistan to answer the summons. The applicant agreed that this was an unrealistic expectation, but indicated he felt it was simply a government strategy to place pressure on him to return to Uzbekistan, even though he has done nothing wrong.
52. The Tribunal pointed to deficiencies in the translations of the court documents, as there were evidently gaps in some of them indicating that some sections had not been translated, and the applicant himself had indicated that one of the words "guilty" had not been translated. The applicant clarified that the word actually translated as "accused" The applicant's representative explained that although the translations had been obtained through an interpreting agency at considerable expense, the agency had indicated that there were no accredited Uzbek translators in Australia.

53. The Tribunal emphasised the importance of having complete translations, and it was agreed that the documents would be returned to the agency with a request that the deficiencies be rectified.
54. Asked why the Uzbek government would be interested in him because of his religion, the applicant explained that they now had new information about him having met and associated with Uzbek refugees in Australia who are linked to the Akromi group. In the wake of the Andijan massacre many Akrami fled the country and were resettled as refugees in countries such as the US and Australia. The family of his fiancée are known as Akromi supporters, and one Uzbek woman from the community in [City A] who had fled Uzbekistan at that time and was resettled in [City A] recently returned to Uzbekistan and was gaoled.
55. There is also a political party opposed to the Karimov government based in Europe called Birlik (“Unite”), led by Muhammad Salih, and now some people from [City A] including Akromi followers have joined this party.
56. His brother-in-law is in gaol for his religious beliefs, having participated in the 2005 riots, and his brother has been released from gaol but cannot work in a government job. He is at risk of being gaoled if he returns, as he will be accused of associating with people who have sold out the country, and of not having returned to Uzbekistan when he was told to do so

Submissions on Behalf of the Applicant

57. The applicant’s representative submitted that the applicant had been regularly praying with Akrami at a prayer room at his workplace, that although he was not a member he was a follower. She also submitted that despite the applicant’s characterisation of his fears as being based on religion, they were clearly viewed as political by the government.

Evidence of the Witness [Mr B]

58. The witness indicated that he is from Andijan in Uzbekistan, and that he had left that country [in] 2007, fleeing to Kyrgyzstan where he was recognised as a refugee by the United Nations after 9 months and resettled in Australia [in] 2008.
59. Asked how he knew the applicant, he explained he had known him for approximately one year, having met him in Australia when he had visited his brother’s house. Their relationship is that he works with the witness’s brother, and they have a friendly relationship.
60. Asked what he wished to say, he explained that he is a member of a group called Adolat Tiklanish, which has been involved in disseminating information on the internet about the Uzbekistan, its dictatorship, and the human rights situation. People in Uzbekistan have therefore become aware of them and what has happened to them, despite government attempts to cover it up.
61. All the Uzbeks in [City A] have joined their group and participated in their activities. The group has a website and the witness agreed to provide the details to the Tribunal through the applicant’s representative.

62. In 2007 while they were still in Uzbekistan some of those who had fled in 2005 returned, but they were told that if they wanted to remain there in peace they would have to engage in propaganda on behalf of the Uzbek authorities, stating how bad life was like outside of that country. However, when he came to Australia, the witness realised for the first time how many rights and liberties were available outside of Uzbekistan, and put the absence of rights there in perspective.
63. The applicant participated in some of our activities, playing in games with children, and these have been placed on the internet and people can see he is associated with their group.

Evidence of the Witness [Ms L]

64. Asked about her status in Australia, the witness indicated that she is a refugee, having been recognized as a refugee by the UN and resettled here [in] 2008. She was in Kyrgyzstan prior to coming to Australia, having spent 10 months there. She is originally from Andijan in Uzbekistan.
65. The witness indicated that she had not met the applicant before he came to Australia; she only knows him because her husband helped him out, and he now lives with her family.
66. She asks Australia to allow the applicant to remain here because she is very afraid for his freedom and his life if he returns to Uzbekistan. Her husband participated in the riots in May 2005, after which he ran away, but then which terrible things happened to herself and her family. Her brothers-in-law were gaoled. Her experiences tell her that it will also be bad for the applicant if he returns to Uzbekistan. She looks as the applicant as her son, as her niece and the applicant are planning to marry, and she thinks he will be an asset to Australia.

Further Evidence of the Applicant

67. The applicant was asked whether Birlik is different from Adolat Tiklanish. He explained that the latter group was organised by Andijanis who had fled to different countries, whereas the man who formed Birlik was actually an opposition leader and presidential candidate in 1991 who escaped Uzbekistan when Karimov came to power.
68. Asked whether he is a actually a member of either of these parties, the applicant indicated that he is a member of the Andijani party.
69. [Information deleted: s.431(2)]

Post-hearing

70. [In] May 2010 the Tribunal received further submissions and supporting evidence, with translations prepared by a different Uzbek translator, including the following:

In August 2009 [the applicant]'s brother, [Mr A], sent him, by email, documents from the Andijon Criminal court (See attached documents). These documents were:

1. [date] 2009: Uzbekistan Republic Andijon City Criminal Court [number]: Court Request Paper. This document requests 'the accused', [the applicant], to appear in the court on [date and time]

2. [date] 2009: Uzbekistan Republic Andijon City Criminal Court [number] Court Request Paper. This document requests 'the accused', [the applicant], to appear in the court on [date and time]
3. [date] 2009: Verdict: ... using the Republic of Uzbekistan Criminal Codex paragraph 33, 307, 309-311- ... the fine of [amount]... sym fine is imposed ... [the applicant] to pay to the government ...,the estimation of the house ... [amount] ... for not attending on [dates] to the court, the residence of [the applicant] ... should be confiscated. The Court decision may be contested by the defendant's lawyer in the next 10 days.
4. [date] 2009: Execution Order Paper: File No. [number]. Hearing decided on the confiscation of the house of [the applicant], validated from [date] 2009
5. [date] 2009: [Number]: The Andijon Criminal Court considered the criminal case and passed a resolution that [the applicant] should take responsibility. The Andijon Criminal Court forwards the documents of the decision to confiscate [amount] cym from [the applicant].
6. [date] 2009: [Number]: The Andijon Criminal Court forwards to you the final papers re the confiscation of the residence of [the applicant]
7. [date] 2009: Court Stamp Document: The document quotes paragraph 89 of the Republic of Uzbekistan's Criminal Code and demands that all who are to be involved in the confiscation of the property to comply with the decision of the court.

In summary:

- Andijon Criminal City Court Documents ([numbers and issue dates deleted: s.431(2)]) are Summons to [the applicant] to attend the court on the next day i.e. [Number and dates deleted: s.431(2)]
- On [date] 2009 the Verdict is given and [the applicant] is found guilty i.e. 'responsible' - the Uzbek word is [deleted: s.431(2)], for not responding to the summonses and is given a fine and the house is confiscated. I take the 'responsible' to mean guilty.
- On [date] 2009 four documents are sent, three of which have the number [number] (though there is a mention of [number] (this appears to be a misprint and one of the documents [number] - with the Coat of Arms - seems to be the one described as [number]), The fourth document quotes Para. 89 of the Republic of Uzbekistan's Criminal Code. It seems to be a directive to all persons involved in the confiscation of the house to comply with the decision of the court.

Apart from the charge of not responding to the two Summons and not appearing in court, there is not charge given for why [the applicant] has been summoned to appear' in Court and for which the verdict finds him responsible i.e. guilty. The court told him he could appeal within 10 days of the verdict. His father has questioned the court and was told that the only way he could reclaim his property was to appear before the court. His father also approached a lawyer but the lawyer refused to act for him. In his Statement of 8 February 2010 [the applicant] says:

My father told me that he had seen a lawyer but the lawyer did not want to help us because we are followers of Akromi. I believe that the government is doing these things so that I will come hack Uzbekistan and then I will face imprisonment, torture and maybe they will kill me.

[The applicant] would like to add to this part of the statement. He says that the lawyer would not help the family not only because they were followers of Akromi but also because he says:

My brother, [Mr D], my brother-in-law [Mr E], and, since I have been in Australia, now myself, our names are on the list of people who the authorities; consider are against the Government.

Emails and phone calls from [the applicant]'s family warn him that he must not return to Uzbekistan because, if he does, he will be arrested. They, and he, believe that the court case is a ruse to get him to return to Uzbekistan for interrogation and imprisonment because of his association with Uzbeks who have fled from Uzbekistan, have sought and been given refugee status by the UN and consequently asylum in Australia and who continue to be active in their opposition to the Karimov government. In his 5 March 2010 Statutory Declaration [the applicant] writes:

My family have been told that the only way that my property can be restored to me is if I return to claim it from the Court. However, they warn me not to return because they believe that the confiscation of my property and the qualification that the Court will return it is only if I personally return and claim it from the Court and face the Court's charges against me. My family warn me not to return because if I do I will be charged with inciting rebellion against the State because of my allegiance with the Uzbek refugee family in Australia.

[The applicant] wishes to add to this that:

It is not only his association with [Family A] but also with the Adolat Tiklanish Party who are followers of Akromi and are anti- the Karimov government and are advocating religious freedom and human rights in Uzbekistan.

In an email 10 February 2010 [the applicant]'s brother, [Mr A] wrote a statement to the Tribunal about the second arrest of their brother [Mr D] and of their brother-in-law [Mr E] and the danger to [the applicant] if he returns to Uzbekistan:

... my parents live with constant worry that if my brother, [the applicant], returns to Uzbekistan he will be definitely jailed, like my other brother, [Mr D]. My sister's husband [Mr E] was taken to jail in August. Then my brother, after two months or interrogation in jail, was taken to hospital. He was released but has to go for questioning every week but my brother-in-law is still under interrogation in jail. All the members of our family live under pressure because, after the demonstration and protests that happened on 13 May 2005 in the city of Andijon, the Uzbek government, put my brother [Mr D] and brother-in-law [Mr E], on a list of religious people who took part in the demonstration. As well the Uzbekistan government has information of my brother, [the applicant]'s movements in the Australian city of [City A] and his relationship with families that arrived in Australia as refugees after 13 of May demonstrations. For that reason my family is under suspicion. I believe if my brother returns to Uzbekistan he will be jailed and interrogated without mercy. My family and I beg the Australian government to save my brother, [the applicant], and give him refuge.

B. Association with anti-Karimov groups in Australia:

[The applicant] arrived in Australia [in] 2008 on a 416 visa to engage in work experience at [a] farm in [Location B] about an hour from Melbourne. He was there for 8 months. Then, on [date] June 2009, with another young Uzbek man, [Mr H], with whom he had to come to Australia, he came to seek full employment at [a farm] north of [City A]. They were told that there was no work experience available at that time but that there could be work in a month or two. He promised to contact them if there was work later. [Information deleted: s.431(2)]. After he came to [City A] and was not able to find a work placement, [the applicant] and his friend, [Mr H] contacted an Uzbek student who had come from Uzbekistan six months after him who was working on [a] farm at [Location F], south of [City A]. This man, [Mr I], told him to contact the Uzbek community in [City A]. He told [the applicant] about the Uzbek Association of Australia which had a group in [City A] and gave [the applicant] the name of [Mr J], husband of [Ms L]. I phoned [Mr J] and he came and picked me and [Mr H] up from the bus stop after we had been to

[Location C]. [Mr J] took us to his house and we met his family. They were not able to stay at the house because there were females there. After a meal [Mr J] took [the applicant] and [Mr H] to a friend's place, [Mr K] an Uzbek man, who gave them accommodation. In his original statement ([in] 2009) when he applied for the Protection visa [the applicant] stated:

I have been working in the agricultural industry in Victoria for 8 months. I came to [location deleted: s.431(2)] to seek further employment. I had also heard that there was a large Uzbeki community here and I wanted to meet them. When I came to [City A] we met up in [a car park] where he came to meet me. They took me back to their house. I could not stay at their house because of the females residing there and so they allowed me to stay with their brothers instead.

When the man from [Location C] rang to tell [the applicant] and [Mr H] there was now work available [Mr H] went but, by then, [the applicant] had received the documents from the Court and bad news from home. He was too upset to go to [Location C] and stayed remained with [Mr K], close to [Family 1].

C. s.91 R(3)(b) of the Migration Act:

... provides that, when deciding whether the applicant has a "well-founded fear" of persecution according to the Refugees Convention, the Department and the Tribunal must:

disregard any conduct engaged in by the person in Australia unless:

(b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.

In Uzbekistan [the applicant] met and prayed with Akromi followers when he was a young man, 18 years of age. He did not sign up as a member (perhaps too young) but was committed to their religious beliefs and ascribed to their concern for human rights and their condemnation of the Karimov government for their failure to observe those rights and their persecution of Uzbek citizens for religious and political reasons. When he came to Australia [the applicant] met Uzbek refugees who had gained asylum in Australia and joined the Uzbek Association of Australia (UAA) which actively condemns the persecution of people in Uzbekistan for religious and political reasons by the Karimov regime

[Family 1] and [Family 2] belonged to the [City A] branch of the UAA also known as Adolat Tiklanish (Truth and Progress) and also called Andijan Birdamlik (Andijans Together), some are followers of Akromi and there are others who are not, but all are against the Karimov government and actively engaged in advocating religious freedom and human rights in Uzbekistan. Though [the applicant] had never signed up as an Akromi member as a young man in Uzbekistan, he was sympathetic to the Akromi principles and goals. [The applicant] is not a signed up member of the UAA because he is not a permanent resident or citizen of Australia but he has become a committed and active member of the group and attends the weekly meetings. The group also arranges family gatherings for the [City A] Uzbek community. At the meetings they discuss what is happening in Uzbekistan; they give support to Uzbek refugees in Australia, they have a website which gives information about the persecution of people in Uzbekistan by the Karimov government and another website which just shows how free life is in Australia. The majority of Uzbek people are in Adelaide rather than in other parts of Australia.

[The applicant] had only known [Family 1] a few weeks before he fell in love with their daughter, [Ms M] and asked if he could marry her. He rang his parents and they decided to come to Australia to meet with [Family 1] to arrange the wedding. About three weeks later, [in] 2009, his family informed him that his brother [Mr D] had been arrested and his brother-in-law had been imprisoned and the government refused to allow them to travel to

Australia to arrange the wedding. His brother [Mr A] also was refused a visa to go to [Country 2] to study. One week later [the applicant] received from his brother [Mr A], the documents from the Andijon City Criminal Court summoning him to the court re his apartment. [The applicant] was certain that the Summons was only to get him to return to Uzbekistan because the authorities had found out about his involvement with the UAA and they wanted to interrogate and imprison him. He thinks they found out because of his phone calls to the family - the Karimov government tap the phone calls. During the phone call he was asked the name of the family. He fears that it was overheard and the Uzbek government already had the name of [Family 1] on their black list. An Uzbek woman told him and me that there are also Uzbek people in Australia spying on the Uzbek community members and reporting back to Uzbekistan. This is what Communist governments do.

[In] 2009 [the applicant] applied to the Department for a protection (Class XA) visa because he has a well-founded fear of persecution if he returns to Uzbekistan because, after he arrived in Australia, his family has been persecuted and the Karimov government are asking his family when he is returning to Uzbekistan. [The applicant] believes that the Uzbek authorities are aware that he is with the UAA group which is actively criticising the Karimov government for its persecution of Uzbekis for religious and political reasons. He, too, believes he will be persecuted for his religious and beliefs particularly his following of Akromi and his association with the UAA which is giving information over the internet about the persecution in Uzbekistan.

Not only does [the applicant] fear persecution for himself but also for his family. His brother [Mr D] and his brother-in-law [Mr E] have both been in imprisoned twice and [Mr E] is still in prison because they participated in the 2005 Andijon demonstrations. His brother [Mr A] was in [Country 1] at the time so has not been targeted.

The websites

The websites mentioned by [the applicant] at the hearing are: [websites deleted: s.431(2)].

2. The website [details deleted: s.431(2)] is political in that it gives accounts of the Andijon massacre and of persecution of Uzbeks by their government.

Religious practice in Australia:

[The applicant] was in Melbourne for nearly 10 months. While he was there he attended the Sunni mosque in [suburb deleted: s.431(2)] every Friday. He says that it was a very big congregation and he does not know the name of the Imam. Since he has been in [City A] he attends Friday prayer at [details deleted: s.431(2)] along with [Family 1] and other people from the UAA. [The applicant] is going to ask the Imam from this mosque to verify that he attends the Friday prayer.

In addition to the court documents enumerated above, and copies of various documents previously submitted, the submission was accompanied by a further statement by the applicant dated 18 May 2010 along with printouts of the video from the website: [websites deleted: s.431(2)].

71. The further statement of the applicant includes the following:
 2. When I was in Uzbekistan, the authorities had little interest in me but, since I have come to Australia the Uzbek government have come to know that I have associated with Uzbek refugees who have gained asylum in Australia. The Uzbek government know that the people who are now my friends in Australia belong to the Uzbek Association of Australia (UAA) which gives information on the internet about persecution by the Karimov government, for religious and political reasons, in Uzbekistan.
 3. I believe that the Uzbek government have come to know about the people I associate with because they listened to my phone calls to my family. In [mid] 2009 I phoned to tell my family about my engagement to [Ms M]. Since then bad things have happened to me and

to my family. My brother [Mr D] was arrested for a second time, this time for 3 weeks. My parents and my brother [Mr A] were forbidden travel visas. Two Summons for me to attend to the Andijon Criminal Court were sent to my home. My brother, [Mr A], sent them on to me by email. In the court documents there were no charges. I was found 'responsible' i.e. guilty and my apartment was confiscated. There was no basis given for this court case and no credible charges. The Court said I could appeal the verdict within 10 days. When my father went to talk with the Court officials they did not help him. When he approached a lawyer, the lawyer said that he would not help our family because we were followers of Akromi. My family send me emails warning me not to return for they fear I will be arrested. I believe that the authorities wanted me to come back to Uzbekistan for interrogation about the UAA and its members. I fear that if I go back to Uzbekistan they will arrest me, interrogate me, torture me and imprison me.

4. I think the authorities in Uzbekistan found out because of my phone calls to my family. I knew that the Karimov government tap the phone calls. But, when I was talking on the phone to my family they asked "What is the name of the family in Australia?" and I told them. The Uzbek authorities would have known that this family belonged to the UAA. I think that is what got me and my family into trouble. An Uzbek woman has told [name] and me that there are also Uzbek people in Australia spying on the Uzbek community members and reporting back to Uzbekistan. This is what Communist governments do.
5. **How I became associated with the Uzbek refugees in [City A] and joined the UAA:** I arrived in Australia [in] October 2008 on a [type] visa to engage in work experience. I was sent to [a] farm in [Location B] about an hour from Melbourne where I worked for nearly 8 months. On [date] 2009, I went to [City A] with another Uzbek man, [Mr H], who he had come to Australia with me [information deleted: s.431(2)]. We went to [City A] to seek employment at [a] farm in [town deleted: s.431(2)], north of the city. There was no work experience available at that time, but we were told that there could be work in a month or two. The owner promised to contact us if there was work later.
6. [Information deleted: s.431(2)]. When we could not find work at [Location C] I contacted an Uzbek student, [Mr I], who had come from Uzbekistan six months after me and was working on [a] farm at [Location F], south of [City A]. [Mr I] told me to contact the Uzbek community in [City A]. He also told me about the Uzbek Association of Australia and gave me the name of [Mr J], husband of [Ms L] who was a witness for me at the Tribunal hearing. I phoned [Mr J] and he came and picked me and [Mr H] up from the bus stop after we had come from [Location C]. [Mr J] took us to his house and we met his family. We were not able to stay over at the house because there were females there. After a meal [Mr J] took me and [Mr H] to a friend's place, [Mr K] an Uzbek man, who gave us accommodation. I mentioned this in my original statement (21 August 2009). When the man from [Location C] phoned and said there was work [Mr H] left, but I did not go because, by then, bad things had happened for me and my family.
7. When I was in Uzbekistan I met and prayed with Akromi followers, but, as I was only young I did not sign up as a member. I believe in what Akromi taught about the Koran and how to be a good Muslim. I also believed in what he taught about religious beliefs and I agreed with his condemnation of the Karimov government for their failure to observe human rights and his persecution of Uzbek citizens for religious and political reasons.
8. When I came to Australia I met Uzbek refugees who had gained asylum in Australia. I went with them and joined the Uzbek Association of Australia (UAA) which actively condemns the persecution of people in Uzbekistan for religious and political reasons by the Karimov regime. I joined them because I believe in what they stand for.
9. [Family 1] and [Family 2] belonged to the [City A] branch of the UAA also known as Adolat Tiklanish (Truth and Progress) and also called Andijan Birdamlik (Andijans Together). Some are followers of Akromi and there are others who are not, but all are anti

the Karimov government and actively engaged in advocating religious freedom and human rights in Uzbekistan. I did not sign as a member of the UAA because I am not a permanent resident or citizen of Australia but I believe that I am a committed member of the group and I regularly attend the weekly meetings. I also attend family gatherings for the [City A] Uzbek community such as parties, weddings and sports gatherings. At the meetings we discuss what is happening in Uzbekistan and we give support to Uzbek refugees in Australia. The group has a website which gives information about the persecution of people in Uzbekistan by the Karimov government. The majority of Uzbek refugees live in Adelaide rather than in other parts of Australia.

10. Since I have come to Australia I have been committed to practising my religion, just as I was in Uzbekistan. I pray 5 times a day; I keep Ramazan each year. When I was in Melbourne for 8 months I attended the Sunni mosque in [Location D] every Friday where there was a very big congregation. I cannot remember the name of the Imam there. Since I have been in [City A] I attend Friday prayer at [Location E] mosque, near [Location A], along with [Family 1] and other people from the UAA.
11. [Information deleted: s.431(2)].
12. I really believe that if I return to Uzbekistan I will be arrested, interrogated, imprisoned and tortured because of my association with the UAA group. The Uzbek authorities will want to know who is in the group, what they talk about and what they do. After the phone call about my engagement and subsequently what happened to my family and after the Summons from the Court I became very, very scared. So on [date] 2009, I applied to the Australian government for a protection visa.
13. I fear persecution if I return to Uzbekistan because after I arrived in Australia my family has been persecuted and the Karimov government are asking my family when I am returning to Uzbekistan. I believe that the Uzbek authorities are aware that I am with the UAA group which is against the Karimov government because of its persecution of Uzbeks for religious and political reasons. I believe that I will be persecuted for my religious and human rights beliefs and particularly because I follow Akromi and because of my association with the UAA which is actively giving information over the internet about the persecution in Uzbekistan.

72. [In] July 2010 the review was re-constituted pursuant to s.422(1)(a) of the Act.

Country Information

73. On 2 July 2007, the Institute for War and Peace Reporting published an article entitled *Uzbek Government Concerned at Migration - The authorities have political as well as economic reasons for keeping a closer eye on people travelling abroad for work*, which is available at <http://www.iwpr.net/report-news/uzbek-government-concerned-migration>. The article includes the following:

The authorities in Uzbekistan are trying to gather more information about the hundreds of thousands of people who work as migrant labour abroad. Officially, a new registration system is intended to make it easier to help migrants if they get into trouble, but many believe the government is concerned about the exodus of its adult workforce and wants to stem the flow.

Other reasons for keeping tabs on Uzbek citizens abroad are to exert the same kind of political control as they are subject to at home, and also to recover some of the taxes they would have paid if they stayed in Uzbekistan.

A government order dated May 15 has two stated aims – to streamline the registration procedures that would-be migrant workers must go through, and to ensure they are protected once they are out of the country.

A local government official who asked to remain anonymous said the authorities were merely carrying out their responsibility to care for their citizens.

"Our state is still a young one, and we are gradually altering our legislation so that it is on a par with international standards," he said, insisting that "both the country and the people benefit from labour migration".

Under the new rules, Uzbek nationals planning to leave the country have to fill in a form stating details of their future job and whereabouts. This is a revised version of a document already in existence, although IWPR understands that most people who went through the procedure before the change were travelling to countries outside the former Soviet Union...

Iskandar Khudoiberganov, a political analyst and former director of the Centre for Democratic Initiative, said the government had opted to conduct the anti-migration campaign through covert tactics.

"If the authorities conducted this campaign openly, there would be great anger among the population. So everything is being done very quietly," he said.

Khudoiberganov believes the government is nervous of having so many Uzbek nationals outside the country and thus beyond its political and security influence.

"I think the authorities are very worried that [Uzbek] citizens are not under their control, and may bring back awkward ideas such as the fact that people live better in Russia, and questions about why we live like this in Uzbekistan," he said.

Yoldashev added, "They're gathering information about people who are dissidents and who have left the country.... The government wants to have precise statistics about people who leave the country in order to know who they can put pressure on."

74. The Human Rights Watch (HRW) report on Uzbekistan dated 8 June 2009, (CX227693, also available at <http://www.hrw.org/en/news/2009/06/08/human-rights-watch-concerns-uzbekistan-0/>) includes the following:

To this date, the Uzbek government continues vigorously to seek out and persecute anyone it deems to have a connection to or information about the Andijan events. This is particularly true for many of the relatives of hundreds of persons who fled to Kyrgyzstan in the immediate aftermath of the massacre and were later resettled in third countries, as well as those who fled but later returned to Andijan. Intense government pressure, taking the form of interrogations, surveillance, ostracism and in at least one case an overt threat to life, has continued to generate new refugees from Andijan, years after the massacre.

In a recent example, on May 26, 2009, within hours of violent incidents, including at least one suicide bombing, that reportedly took place in Andijan that day, police visited at least three homes of family members of individuals either serving sentences for alleged involvement in the May 2005 events or who fled Uzbekistan in the aftermath and have been resettled elsewhere.

75. The HRW 2010 World Report, which was released in February 2010 and available at <http://www.hrw.org/en/node/87620>, includes the following information on Uzbekistan [emphasis added]:

The Uzbek government's human rights record remains atrocious. In October 2008 the European Union lifted a visa ban against several Uzbek officials, citing progress in human rights. Yet in the wake of that decision the Uzbek authorities intensified their crackdown on civil society activists, members of the opposition, and independent journalists. Torture and ill-treatment remain rampant and occur

in a culture of impunity. A January 2008 law on habeas corpus has failed to protect detainees from torture.

Authorities continue to persecute religious believers who worship outside state controls, and freedom of expression remains severely limited. Government-initiated forced child labor during the cotton season continues.

The Uzbek judiciary lacks independence, and parliament is too weak to curtail the reach of executive power. The Uzbek government has ignored repeated calls for an independent inquiry into the May 2005 Andijan massacre, when state security forces killed hundreds of protestors, most of them unarmed...

Criminal Justice, Torture, and Ill-Treatment

Torture and ill-treatment remain endemic to the criminal justice system. The Uzbek authorities have failed to address the culture of impunity for torture or to implement recommendations to combat torture made by the UN special rapporteur in 2003. In January 2008 a much-touted habeas corpus law went into effect in Uzbekistan, but the reform has done little to bolster the rights of defendants or prevent torture and ill-treatment in detention.

Human Rights Watch continued to receive numerous, credible reports of torture and ill-treatment, particularly during pretrial detention. Yet judges routinely ignored allegations of torture and refused to examine such claims. Kushodbek Usmonov, a 67-year-old independent journalist, testified during his trial in March 2009 that he had been beaten with hard objects in the groin and abdomen and had been threatened with rape after being forced to lie face down, naked. The judge reportedly ignored these allegations...

Freedom of Religion

Although Uzbekistan's constitution ensures freedom of religion, authorities fiercely suppress any religious group that functions outside state control. In particular, authorities have intimidated, beaten, and imprisoned on false charges Muslims who are affiliated with independent organizations and clerics.

In three separate trials in June and July 2009, 32 followers of the late Turkish Muslim theologian Said Nursi were sentenced to prison terms ranging from 5 to 11 years for religious extremism. This brings to 58 the number of Nursi followers who have been imprisoned since late 2008.

Up to 60 pious Muslims in Shakhrihan district, Andijan region, were detained in June 2009 on suspicion of illegal religious activity. In August, 11 pious Muslim men were put on trial on religious extremism charges in Karshi. In November, at least 12 pious Muslim women were detained in Karshi, one of whom is a leader in a local mosque; the charges against them are not known...

The Andijan Massacre and the Situation of Refugees

The government has persisted in its refusal to investigate the 2005 massacre of hundreds of citizens in Andijan, or to prosecute those responsible for it. Instead, authorities have clamped down on any individual they believe to have participated in the events or who may know the truth about what occurred. The government's reliance on surveillance, interrogations, ostracism, and threats against survivors of Andijan and their families continues to trigger further refugees from the area.

On May 26, 2009, hours after a series of violent acts in the Andijan area, including at least one suicide bombing, police visited at least three homes of relatives of individuals imprisoned for alleged involvement in the May 2005 events or who had fled Uzbekistan in their wake.

The Uzbek government continues to work with Kyrgyz authorities to forcibly return Uzbek asylum seekers to Uzbekistan. Since 2005 more than a dozen people have been returned against their will. Haiatjon Juraboev, who was snatched off the streets of Bishkek, Kyrgyzstan, in September 2008, was sentenced in Tashkent to 13 years' imprisonment in February 2009 for religious extremism and illegal border crossing.

76. The United States State Department (USSD) Human Rights Report for 2009, published on 11 March 2010 and available at <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136096.htm>; includes the following information in its section on Uzbekistan:

Uzbekistan is an authoritarian state with a population of approximately 27.6 million....The government continued to commit serious abuses and authorities restricted political and civil liberties. Human rights problems included citizens' inability to change their government; tightly controlled electoral processes with limited opportunities for choice; instances of torture and mistreatment of detainees by security forces; incommunicado and prolonged detention; arbitrary arrest and detention; denial of due process and fair trial; poor prison conditions; restrictions on freedom of speech, press, assembly, and association; governmental control of civil society activity; restrictions on religious freedom, including harassment and imprisonment of religious minority group members; restrictions on freedom of movement for some citizens; violence against women; and government-compelled forced labor in cotton harvesting. Human rights activists and journalists who criticized the government were subject to physical attack, harassment, arbitrary arrest, politically motivated prosecution, and forced psychiatric treatment....

On January 22, a credible report cited the deaths in custody from unknown illness of Muhammad Artykov, allegedly one of 23 businessmen involved in the trial that led to the 2005 Andijon events, and alleged Andijon participant Abdurahmon Kuchkarov, although family members reported Kuchkarov was healthy when they saw him a few months before his death. Khoshimjon Kadirov, also arrested after the Andijon events, was reportedly beaten to death in November 2008, but his death was not reported until this year.

On April 30, Nozimjon Mamadaliev, a Kyrgyz citizen living in Ferghana, died in custody. Although the official forensic report stated that he died of natural causes, relatives took photographs of the body that appeared to show signs of severe beating.

Nurillo Maqsudov, the leader of a group in exile that calls attention to the 2005 Andijon massacre, reported in September that four of his relatives died in jail in 2008; he claimed their bodies showed clear signs of torture....

The government has not agreed to authorize an independent international investigation of the alleged killing of numerous unarmed civilians and others during the violent disturbances in Andijon in 2005. The government claimed, based on its own 2005 investigation, that armed individuals initiated violence by firing on government forces. The estimated number of dead varied between the government's total of 187 and eyewitnesses' reports of several hundred....

The government has pressured and prosecuted members of the Islamic group Akromiya (Akromiylar) since 1997. Independent religious experts claimed that Akromiya was an informal association promoting business along Islamic religious principles. The government claimed that it was a branch of HT and that

it attempted, together with the Islamic Movement of Uzbekistan, to overthrow the government through armed rebellion in the 2005 Andijan demonstrations.

77. On 4 May 2010, HRW published a report entitled *Uzbekistan: Stop Persecuting Andijan Refugees' Families - EU, US Should Condemn Intimidation, Seek Accountability for 2005 Massacre of Protesters*, which is available at <http://www.hrw.org/en/news/2010/05/04/uzbekistan-stop-persecuting-andijan-refugees-families>. The report includes the following:

The Uzbek government is vigorously persecuting the relatives of people it suspects of links to demonstrations in the eastern city of Andijan five years ago, when government forces killed hundreds of mostly unarmed protesters, Human Rights Watch said today.

New research by Human Rights Watch reveals that the Uzbek government continues to intimidate and harass the families of Andijan survivors who have sought refuge abroad. The police regularly summon them for questioning, subject them to constant surveillance, and threaten to bring criminal charges against them or confiscate their homes. School officials humiliate refugees' children. Five years after the massacre, on May 13, 2005, people suspected of having participated in or witnessed the massacre are still being detained, beaten, and threatened. The sentencing on April 30 of Diloram Abdukodirova, an Andijan refugee who returned to Uzbekistan in January, to 10 years and two months in prison, shows the lengths to which the government will go to persecute anyone it perceives as linked to the Andijan events.

"Instead of ensuring justice for the victims of Andijan, the Uzbek government persecutes anyone associated with the protesters," said Holly Cartner, Europe and Central Asia director at Human Rights Watch. "There is a climate of fear in Andijan that is still palpable five years after the atrocities."

In March and April 2010, Human Rights Watch interviewed 24 individuals who had fled persecution in Andijan. Some of them fled Uzbekistan in 2005 and have long been resettled, while others fled Uzbekistan over the last six months. They described Andijan as a place where their relatives live in constant fear.

A woman who fled Andijan recently said her mother was too afraid to allow her daughter to stay in her house. Another described how the neighborhood policeman repeatedly questions the man's elderly mother and pressures her to denounce her son as a "terrorist." A third refugee, who recently fled Uzbekistan, described how the security service repeatedly summoned him for questioning, as recently as December, and beat him...

"International silence in the face of impunity for the Andijan massacre has had disastrous consequences for the cause of human rights in Uzbekistan," Cartner said. "Neither the Uzbek government nor Uzbekistan's international partners should be allowed to forget the atrocities that were committed in Andijan."

The recent interviews revealed new episodes of persecution, similar to those Human Rights Watch documented in its May 2008 report "Saving its Secrets". Human Rights Watch has documented the Uzbek government's attempts to silence massacre survivors and witnesses with arbitrary arrest, torture, and threats to their lives, as well as sustained harassment. The names of those interviewed for this new report were changed to protect them, and there is no continuity of the pseudonyms with any earlier report.

Climate of Fear

A climate of fear persists in Andijan five years after the massacre. Although the Uzbek government attempts to portray Andijan as a closed chapter, the refugees said they still fear repercussions for their relatives back in Andijan.

Their relatives are subject to constant surveillance - by *mahalla* (local neighborhood) committees, the police, and the National Security Agency (SNB) - and are under constant threat of persecution by the authorities.

"[The authorities] know everything," said Shakhnoza Sh., who fled Uzbekistan earlier this year. She described how terrified her own mother was of associating with her. "It was cold at my house because there was no gas [pressure], so I went to stay with my parents," she said, describing the winter that just ended. "My mother, who is an old woman, a pensioner, was afraid to have me there, afraid they'd put her in jail. She loves me, but she is afraid for my brothers and herself [that they will get arrested]. She asked me, 'Are they going to lock me up because of you?' She didn't want me there, her own daughter, because she was afraid and said I should go to my husband [abroad]."

Other refugees told Human Rights Watch that their relatives in Andijan refuse to speak to them by phone, fearful they will face more harassment, or possibly lose their jobs.

"It's been five years and even now we can't speak normally by phone," said Salim S. "I limit my phone calls home because, while it's easy to pick up the phone here, for people back home, it could be dangerous."

Regular Police Interrogations

The refugees described a pattern of government harassment. Police summon relatives, interrogate them, demand that they write explanations about their activities, order them to provide official documents for no apparent reason, and call on them at their homes and places of work repeatedly. Human Rights Watch documented a similar pattern of harassment in 2008.

Almost all of the refugees interviewed recently said their relatives are summoned by the police once or twice a month. Most of those interviewed said their relatives are obliged to answer the same questions over and over again, including where their relatives abroad live and work, whether they send home money, how much and how it is spent. They are also forced to write explanatory statements about their activities, including where they go and whom they visit.

Anvar A. told Human Rights Watch that the neighborhood policeman summons his elderly mother for questioning or visits her house about every 15 days. She is forced to write a report (*otchet*) about any contact she has had with her son, whether he has sent her money, and related issues. In January, the police officer reportedly told her that if she would write a statement denouncing her son, call him a "terrorist" and an "enemy," they would stop calling her in for questioning. In an effort to end the harassment, she complied, but the harassment continues, he said.

"Sometimes the police visit the house at night, around 8 or 9 p.m.," he said. "They say to my mother that I must have returned to see my children and that I am hiding in the house. They search the whole place. Then they count everyone in the household to make sure no one has left Uzbekistan. It's a type of moral pressure."

The local authorities also harass family members by requiring them to submit documents such as health certificates, photocopies of passports and house registries, and character references written by the mahalla committees.

Arbitrary Detention and Ill-Treatment in Custody

In a September 2005 report "Burying the Truth", Human Rights Watch documented how the Uzbek police arbitrarily detained, tortured, and ill-treated hundreds of individuals in the aftermath of the Andijan massacre. Human Rights Watch continues to receive new reports of such abuse.

Tolib T., who recently fled Uzbekistan, told Human Rights Watch that he had been summoned periodically by the National Security Agency (SNB) since the massacre and

was summoned again in early summer 2009. The officers tried to pressure him into saying that a friend of his had been carrying weapons on the day of the massacre. He was forced to write an explanatory note, even though he denied knowing about any weapons. He said the officers told him they would put him in prison unless he found where the weapons were hidden. He said he was beaten for hours during the interrogation.

"First there was one guy, then another guy, and then a third," he said. "They took turns beating me. I was a living ball; they kicked me, hit me, and threw me around. I told them that we didn't have any weapons."

He was summoned again in December. "I don't know why they called me in," he said. "I didn't have to write or sign anything. I went with my sister. There was another woman there waiting for her son. He's 17 years old. They also questioned him. He was only 12 years old in 2005." He said the officers beat him for half an hour. "They called me in to humiliate me, to beat me. At the end they wanted to know if anyone had spoken to me about the dead bodies that were taken away in trucks from the square on May 13. Later my sister told me that the mother waiting for her son [had said] that her son was beaten so badly that he needed to take medication for his heart and blood pressure."

Another refugee, Nodir N., told Human Rights Watch that his brother, who had been resettled in the United States and then returned to Andijan, is detained by the authorities at the police station for several days before each national holiday as a preventive measure. The brother is held with other detainees in a large room with tables but no beds, Nodir N. said, and the authorities do not give him food.

Harassment of Children in School

The persecution of the families of Andijan refugees extends even to their children, some of whom were infants when their parents fled Uzbekistan. They are singled out as the children of "criminals," "traitors," and "enemies of the people."

Several of the refugees told Human Rights Watch that school officials have singled out their children during the morning line-ups (*lineika*) and told them that they are children of "enemies of the people." Two of the women interviewed said that teachers had told their sons that they would never be accepted at the institute (a college) because their fathers are "bad people." The teacher later confided to one of the women that she knew that her son was actually a good student and that her husband was a good person, but that the teachers had been told they must publicly denounce such children.

Shakhnoza Sh., one of the two women, said her teenage son was being followed by the police. She described how one day he came home and told her, "Mama, I keep seeing the same man, the same face following me everywhere."

Confiscation of Andijan Homes: The Case of Khilolahon Khuzhanazarova

Several of those interviewed said the government is threatening to confiscate the homes of their relatives in Andijan, reportedly as compensation for damage to state property during the massacre. In several cases reported to Human Rights Watch, the households consist of women, all of them caring for young children, whose relatives were imprisoned or fled Uzbekistan after the massacre.

One case researched by Human Rights Watch concerns Khilolahon Khuzhanazarova, the widow of Mukhammadshokir Artikov, one of the 23 businessmen whose trial in Andijan led to the May 13 protests and one of the 15 who were found guilty by the Supreme Court of Uzbekistan in November 2005 of organizing the Andijan violence. Khuzhanazarova lives in an apartment in Andijan with her three children.

In its judgment, the Court found Artikov and the 14 other defendants liable for damage caused to government property. The verdict was never made public, but the Andijan City Judicial Department issued an order on February 14, 2006, to execute its terms. The

order, a copy of which Human Rights Watch obtained, states: "the defendants must collectively pay damages to the State in the amount of 4,231,355,133 som [about US\$3 million]." The same department informed Khuzhanazarova that her apartment will be confiscated.

Khuzhanazarova appealed to the Kurgantepa Inter-district Court to have her apartment "removed from the list of property subject to confiscation." On May 14, 2009, the Court refused to consider her appeal, on the grounds that "Khuzhanazarova Kh. is not found to be an interested party in this case, since [her husband] Artikov died and she does not have a notarized certification that she is heir to this apartment."

Khuzhanazarova appealed that decision, and on June 30, 2009, the Andijan Regional Civil Court, citing the Family Code of Uzbekistan, which states that property acquired during a marriage is to be considered collective property, quashed the Kurgantepa Inter-district Court's ruling.

However, Khuzhanazarova has made multiple attempts to have the decision to confiscate her apartment overruled, but courts of various instances have denied her request, including most recently the Andijan Regional Civil Court on April 1, 2010.

Several other Andijan refugees said that local authorities, including court bailiffs and representatives from the prosecutor's office, have repeatedly come to their relatives' homes to tell them that their homes are under threat of confiscation. Komil K. told Human Rights Watch that his sister, who lives in his apartment in Andijan and cares for his five children, was recently told by an official that the apartment was going to be confiscated and that she had to move out. Komil K. said that in response to her question about where the children would live if they were forced out of their home, the official replied, "Just put them in an orphanage."

Pressure on Relatives to Secure Refugees' Return

The refugees said that Uzbek authorities actively seek the return of Andijan refugees living abroad, using propaganda, pressure on their families, and promises. Human Rights Watch documented similar tactics in 2008. During the repeated interrogation sessions with family members, Uzbek authorities typically threaten and coerce them to pressure their relatives to come home. They promise that it is safe for refugees to return, that they will encounter no persecution, and in a number of instances have assured their family members that they "guarantee" the returnees' safety.

Shakhnoza Sh. told Human Rights Watch that the authorities would say: "Everything is fine. Your husband is forgiven. He just needs to come home" Other times they would threaten her, saying "If you do not convince him yourself, we'll put you in prison and then your husband will come back for you."

Umar U., another refugee, said that in September 2009, the neighborhood policeman came to the house in Andijan where his wife and daughter live and told them: "We know where your father and brother are...if they don't come back voluntarily, we can extradite them through Interpol," the international police organization.

Arbitrary Arrests: The Case of Diloram Abdukodirova

Despite Uzbek government promises, refugees who return have been arrested.

Diloram Abdukodirova, who fled to Kyrgyzstan on May 13, 2005, and was later resettled in Australia, returned on January 8, 2010, after local authorities repeatedly assured her family that she could return without fear of punishment or reprisal.

She was put on trial, though, on April 21, at the Andijan City Court on multiple charges, including illegal border crossing and anti-constitutional activity. Just over a week later, on April 30, she was sentenced to 10 years and two months in a general regime prison.

During one of the hearings, on April 28, Abdukodirova had bruises on her face, said a family member who was present. Her relative said that she had lost a lot of weight and would not make eye contact with family members.

During the same hearing, Abdukodirova reportedly confessed to all the charges, including the prosecutor's accusation that she had organized a busload of people to participate in the demonstration on May 13, 2005. However, at the next hearing, she again pleaded innocent to the charges, except for having unlawfully crossed the border into Kyrgyzstan in 2005.

When she returned to Uzbekistan, Abdukodirova was stopped at passport control at Tashkent International Airport for not having an exit stamp in her passport. The Tashkent police questioned her, held her for four days, charged her with illegal border crossing, and then released her.

At the end of January, Abdukodirova's case was transferred to the Andijan City Police Department, and the investigator's office repeatedly summoned her for questioning. On March 12, the authorities again detained her.

She has been held ever since in a detention cell in the Andijan City Police station. Initially she did not have access to legal counsel, as her government-appointed lawyer was allegedly on a business trip in a different part of Uzbekistan. The lawyer her family hired to represent her met with her once, then dropped the case. Her family fears he may have come under pressure from the authorities. Abdukodirova's family reportedly approached about 50 lawyers before another finally agreed to represent her. The family fears the new lawyer also faced threats from local authorities.

Abdukodirova's husband and children had been under constant government surveillance since she fled Uzbekistan. Each month her husband was required to report to his neighborhood police officer and confirm that no one from his family had fled Uzbekistan. During these sessions he was reportedly frequently asked about his relatives abroad and required to provide information about their activities.

After Abdukodirova was arrested, the police summoned her relatives and warned them not to organize any demonstrations in her defense. Mahbuba Zokirova, Abdukodirova's sister and the only person to testify at a Supreme Court hearing in November 2005 that government troops opened fire on the crowd, was summoned to the police station and forced to sign a statement promising not to picket in her sister's defense.

78. In May 2006, UNISCI (the Research Unit on International Security and Cooperation part of Complutense University of Madrid's Department of International Studies) published a discussion paper entitled *Akromiya Islamic Extremism or the Islamic Brand of Social Democracy?* by Alisher Ikhamov of the School of Oriental and African Studies (SOAS), University of London. The paper, which is available at <http://revistas.ucm.es/cps/16962206/articulos/UNIS0606230187A.PDF>, includes the following [footnotes omitted]

The bloody events in Andijan on 13-15 May have made the name of "Akromiya" in the epicentre of world public attention.

The current conflict between the state authorities and the "Akromists" and their supporters started in June 2004 when a group of local entrepreneurs were arrested and accused in anti-constitutional activity. The court hearing started In February 2005.

The government claims these 23 entrepreneurs belong to the underground and illegal organization "Akromiya" allegedly linked to Hizb-ut Tahrir, the clandestine Islamic party calling for establishment of Islamic caliphate.

The accusation is almost totally based on a piece of paper which was ostensibly attached to a book “The Path to Belief” written by Akram Yuldashev in 1992. Yuldashev was indeed a spiritual leader of the local community of Muslims located in the Andijan suburb district Bogi Shamol. Before 1992 he was a member of Hizb-ut Tahrir, but being disagree with its strategy lapsed this organization and organized his own circle of believers.

Yuldashev’s teaching, at least his book, has nothing to do with political agenda of extreme Islamists. It is rather a call for religious self-purification. He can be compared with Said Nursi (died in 1960), Turkish Muslim thinker, whose teaching was quite moderate and not challenging the secular state: the main focus of his teaching was spiritual self-perfection through education, both religious and secular, and building Muslim community via charity, mutual trust and backing up public morality.

Followers of Sayid Nursi, known as Nurchi and Fathullachi, had formed a wide movement, charities and informal networks across the country and have been prominent for their philanthropy, assistance to poor families. They have been successful in raising funds aided for fellowships to young people and the like social purposes.

The “Akromiya” community followed almost the same path as Nursi’s apologists. Another parallel can be driven with Christian analogues, for instance, the Mormon Church established itself as a self-sufficient and extremely wealthy community, Quakers known for their egalitarianism and creedlessness, or Mennonites known for their humanitarian aid.

“Akromiya” therefore could be regarded as a kind of Islamic ‘protestant’ community with the virtues pursued in this mundane world, via hard work, entrepreneurial success and profit sharing with the community members and the poor.

The only Islamic element of “Akromists” was their reverence of Akram Yuldashev and the pious life style. The bulk of their activity was consumed by business and building of their own social infrastructure and safety net – a clinic, a pharmacy, a nursery and so on. They proved to be really successful entrepreneurs and even some of them were awarded by the government.

From this point of view “Akromiya” as an Islamic movement is not yet political one, it has more to do with social, that is quite moderate, Islamism. By the way, the current US administration is possessed with the idea of promotion of “moderate” Islam. I know from my meetings with some US officials that they quite positively perceive the performance of the current Turkish Islamist government which is ideologically closed to Nursi teaching and movement. So why not to support “Akromiya” in the same way?

However, the Uzbek government which declaratively supports the idea of “moderate” Islam, in practice doesn’t make distinction between terrorists and extremists, and between extremists and moderate. In the middle 90s the government had undertaken crackdown and persecution of the local followers of Sayid Nursi, treating them in the same way as the Islamic Movement of Uzbekistan. Now it turned similar reprisals against “Akromiya”.

The accusation of “Akromists” refers to the mentioned attachment to the book The Path to Belief. The author of this attachment suggests five steps toward establishment of an Islamic State via deposition of the current secular government. But the charged followers of Akram Yuldashev deny his authorship of this attachment.

Their spiritual leader Akram Yuldashev has been jailed and is in the prison since 1999. The access to him is denied. According to some sources he is said to be murdered in prison. If so then he will never be able to confirm his authorship of this notorious attachment.

Against his authorship of the attachment says the fact that since issuing of ‘The Path to Belief’ Yuldashev was never convicted for this writings. Only in 1998 he was brought to justice, but the investigator found nothing criminal and challenging the regime in this

book. As a result, he was shortly released, although to be jailed soon again. The 'existence' of the attachment was revealed just recently and most probably falsified by the security services and associated experts on Islam.

The term "Akromiya" itself has been also most probably invented by these experts. The "Akromists" themselves, though recognizing of being zealous followers of Akram Yuuldashev, yet deny they represent a clandestine organization with a political agenda. In Andijan itself they are rather known under the name "Yimonchilar" (from the word "Yimon" meaning Belief as a word taken from the title of the Akram Yuldashev's book).

But if they are so peaceful and far from politics why the government pursue them and how were possible the violent events in Andijan on 13 May – the seizure of the oblast administration building, releasing of prisoners and taking hostages?

The analysis of the circumstances preceded these violent actions lead to conclusion that they were rather provoked by the government – first of all, by the trail [sic] farce itself and some provoking actions during the trail [sic].

The Uzbek regime was expecting the growth of protest movement caused by the ongoing economic crisis, harsh restrictions of economic and political freedoms and inspired by liberal revolutions in Georgia, Ukraine and especially in Kyrgyzstan. According to some insight sources the security services were preparing a series of provocations in order to 'kill two birds with one stone' – to discredit the opposition movement and suppress mass dissent until it widespread across the country. That is, a controlled bloodshed was demanded and deliberately instigated by the government in order to take advantage of that.

If not provoked and suppressed by the government the "Akromiya" community could serve as an example of non-violent grass root self-government, let it be with Islamic accent.

Community Based Organizations (CBO) is the term often used by Western donors pursuing promotion of civil society in the region. No doubts, "Akromiya" had a chance to develop itself as CBO. Sadly, the government has made everything to divert it from this 'Path to Democracy' and turn it into a 'Path to Militancy'.

79. In the (northern) Fall of 2006, *Demokratizatsiya* published an article entitled *Inventing Akromiya: The Role of Uzbek Propagandists in the Andijon Massacre*, by Sarah Kendzior of the Washington University of St Louis. The article, which is available at http://wustl.academia.edu/documents/0009/7023/kendzior_akromiya.pdf includes the following

Abstract:

Many have claimed that the alleged terrorist group Akromiya incited the violence in the city of Andijon, Uzbekistan, in May 2005. This article contends that the portrayal of Akromiya as a violent organization is highly suspect and may have been created by members of the Uzbek government and propagated by members of the international scholarly community.

Introduction

On May 16, 2006, a group of scholars, policy experts, and journalists convened at the Hudson Institute in Washington, DC, for the unveiling of a video that promised to reveal the truth about the violent events in the city of Andijon, Uzbekistan, one year before. "This video demonstrates that the organizers of the uprising may not have been, as some have claimed, 'peaceful Muslims,'" proclaimed the cohosts of the event, Zeyno Baran of the Hudson Institute and S. Frederick Starr of the Central Asia Caucasus Institute, in an invitation to colleagues.¹ According to Baran and Starr, this new video, which had been made available to them by the Uzbek embassy, would put to rest reports declaring the

Andijon events to be a Tiananmen Square-style massacre of defenseless citizens by the Uzbek government. Proof of the falseness of this allegation, they claimed, lies in the fact that the video "shows clips recorded by members of Akromiya (a Hizbut Tahrir splinter group) during the uprising in Andijon on May 14, 2005."²

Roughly twenty-six minutes long, the video consisted of three main parts: clips of remorseful Akromiya members pleading for the forgiveness of the government; conversations with alleged witnesses and victims; and an interview with Shirin Akiner, a professor and close colleague of Starr who has condemned Akromiya and supported Uzbek President Islam Karimov's claim that the use of force was necessary. Titled "Andijan Tragedy: The Course of Investigation," the English-language documentary was shown to an audience composed largely of Westerners, many of whom remained doubtful of the video's veracity given the policies of the Karimov administration toward independent Muslims. Had an average Uzbek television viewer been in attendance, however, he or she might have been skeptical for wholly different reasons. "Andijan Tragedy: The Course of Investigation" is known, in Uzbekistan, as Qabohat (Villainy), a state-produced propaganda video about the attacks that Uzbek television played repeatedly during the summer of 2005. A comparison of the video with English-language transcripts of Qabohat, made available by Eurasianet.org last summer, shows that the two contain many identical segments,³ a fact mentioned by neither Starr nor Baran.

The creation and promulgation of "Andijan Tragedy: The Course of Investigation" is only the latest move by certain Uzbek and international scholars, policy analysts, and state propagandists against Akromiya, the alleged Islamic terrorist group blamed for the attacks in Andijon. According to these individuals, Akromiya armed the militants, Akromiya gave the orders, Akromiya was responsible for the deaths of Uzbek citizens in Andijon.⁴ There is one significant problem with this theory. Akromiya, by the accounts of many Uzbek and international human rights groups, political organizations, journalists, citizens, and accused Akromists themselves, does not exist.

In researching Akromiya, one is struck not only by the paucity of sources on the group, but of what these few sources consist. Unlike other Central Asian radical Islamic organizations such as Hizb-ut Tahrir or the Islamic Movement of Uzbekistan (IMU), Akromiya went almost completely unnoticed and unexamined by both Uzbek and international scholars and policymakers prior to May 2005. While organizations such as Hizb-ut Tahrir have developed elaborate Web sites and distributed literature to advance their goals and win adherents, Akromiya has produced no publicly available materials, save one work by the group's eponymous leader, Akrom Yo'ldoshev. While the violent actions of organizations such as the IMU are a genuine threat to Central Asian security, Akromiya has remained dormant since its alleged founding in 1992, only to suddenly be held accountable for the Andijon massacre.

FINDINGS AND REASONS

80. Having carefully considered the claims and evidence before it as set out above, much of which was not available to the delegate, and including for the purposes of s.422(2) the record of the hearing already conducted, the Tribunal has resolved to determine the matter in favour of the applicant without it being necessary to conduct a further hearing.

Country of Nationality

81. The applicant claims to be a citizen of Uzbekistan. He arrived in Australia on an apparently valid Uzbek passport, issued to him by the government of that country, and

stating that he is a national of that country. The Tribunal finds on this basis that the applicant is a national of Uzbekistan, and has assessed his claims against that country.

Well-founded Fear of Persecution for a Convention Reason

Convention Nexus

82. The applicant's claims as set out in the protection visa application emphasis his religion. However, it is implicit in those claims, and explicitly claimed in the written submissions made to the Tribunal, that the repressive actions of the Uzbek authorities have more to do with maintaining political power in circumstances where certain Muslim groups are, or are perceived by the Uzbek authorities to be, a threat to the political status quo.
83. Either way, the Tribunal finds that the applicant's claims, if made out, bring him within the scope of the Convention on the basis that the persecution he claims to be at risk of in the event that he returns to Uzbekistan would be motivated by the applicant's religion and/or his actual or imputed political opinion.

Assessment of Protection Claims

84. The applicant has made detailed claims of the problems he experienced in Uzbekistan, which commenced at the time of the Andijan demonstration on 13 May 2005, which degenerated into a massacre when Uzbek troops began firing on the protestors.
85. The applicant does not claim to have been directly involved in the demonstration which led to the massacre, but says his brother and many of his workmates were, and that he was subsequently directed to attend at a police station to be interviewed in connection with the demonstration, shown photos of suspects, pressured to become an informant, and interviewed again one month later to ascertain whether he had seen the suspects. Despite having done so, he denied any such encounter.
86. The applicant states that it was not until he came to Australia that the Uzbek authorities showed any further interest in him. He explained that it was only after he began to associate with other Uzbeks in [City A] and spoke of this association - including his engagement to a member of [Family 1] - to his family members in Uzbekistan, that the real problems began.
87. Country information indicates that in an apparent effort to both deflect attention from their actions, and to justify clamping down on the protest movement, the Uzbek authorities blamed the protestors for shooting first, accusing them of being Islamist extremists, and began rounding up, interrogating, imprisoning and in some cases killing those they believed to have been involved. Uzbekistan is described by the most recent US State Department report on human rights practices as *an authoritarian state*, and the country information generally makes it clear that it has an appalling human rights record.
88. The first HRW report extracted above also indicates that in May 2009, there was a further crackdown on those believed to be linked to the Andijon protests after a series of violent incidents occurred in that city, and the subsequent reports indicate that the

those involved or suspected of involvement *and their families* continue to encounter serious problems in Uzbekistan.

89. The applicant's claims are supported by independent evidence in a number of respects. Although the applicant's express claim is that he is at risk of persecution because of his religion, and he denied having been involved in any overt political activity, the country information makes it clear that certain pious Muslim groups including followers of Akrom have been demonised by the Uzbek government as extremist separatist groups, regardless of whether they hold such an agenda. Indeed, as the UNISCI article points out, *the "Akromists" themselves, though recognizing of being zealous followers of Akram Yuuldashev, yet deny they represent a clandestine organization with a political agenda.* In other words, those followers see themselves as simple pious Muslims who protested about the unfair trial of a number of their business leaders, but the government of Uzbekistan sees them as a political and military threat, or at least is keen to characterise them as such in order to justify the massacre of protesters which occurred in Andijon in May 2005 and, apparently, the ongoing persecution of those who were involved, or are suspected of having been involved in that protest. This is evident from the UNISCI and *Demokratizatsiya* articles reproduced above.
90. The applicant's claim to have been repeatedly interrogated despite having done nothing wrong himself, and to have been pressured by the Uzbek authorities into becoming an informant against his co-workers, is also consistent with country information confirming that the Uzbek authorities rely on such sources as a means of keeping tabs on the citizenry, and require people to report on their relatives. For example, the June 2009 HRW report which states that:

[t]he government's reliance on surveillance, interrogations, ostracism, and threats against survivors of Andijan and their families continues to trigger further refugees from the area.
91. Similarly, the May 2010 HRW report states, with respect to Uzbek refugees:

Their relatives are subject to constant surveillance - by mahalla (local neighborhood) committees, the police, and the National Security Agency (SNB) - and are under constant threat of persecution by the authorities.... Almost all of the refugees interviewed recently said their relatives are summoned by the police once or twice a month. Most of those interviewed said their relatives are obliged to answer the same questions over and over again, including where their relatives abroad live and work, whether they send home money, how much and how it is spent. They are also forced to write explanatory statements about their activities, including where they go and whom they visit.
92. The applicant's claim that his involvement with a group of Uzbek expatriates likely to be viewed as suspect by the Uzbek authorities is supported by the statements and evidence of the witnesses, including recognised refugees, and the letter from the Uzbek Association [member]. The significance of such associations is evidenced by the examples in the country information extracted above of problems encountered by people actually involved in the events of May 2005, those suspected of such involvement, their relatives, and also by Uzbek refugees generally, a particularly pertinent example being the [reference in the most recent HRW report to the fate of Diloram Abdukodirova.](#)
93. The applicant's claims of having had his telephone conversations monitored and property seized on spurious grounds might sound like something out of a cold war spy story, but they are, sadly, borne out by the country information illuminating the manner

in which Uzbekistan continues to be governed some two decades after the iron curtain was lifted elsewhere. For example, the most recent HRW report, published in May 2010, months after the applicant first made such claims, variously states with respect to phone tapping that:

[o]ther refugees told Human Rights Watch that their relatives in Andijan refuse to speak to them by phone, fearful they will face more harassment, or possibly lose their jobs.

"It's been five years and even now we can't speak normally by phone," said Salim S. "I limit my phone calls home because, while it's easy to pick up the phone here, for people back home, it could be dangerous."

94. Similarly, the *Institute for War and Peace Reporting* item extracted above shows that the Uzbek government actively monitors its expatriates, and ascribes a political motivation to that monitoring.
95. The applicant's claim that his house has been confiscated not for any valid reason but on the pretext of trying to induce him to return to Uzbekistan is also supported by descriptions of such incidents appearing in the most recent HRW report, which variously states that:

Several of those interviewed said the government is threatening to confiscate the homes of their relatives in Andijan, reportedly as compensation for damage to state property during the massacre.

Several other Andijan refugees said that local authorities, including court bailiffs and representatives from the prosecutor's office, have repeatedly come to their relatives' homes to tell them that their homes are under threat of confiscation.
96. The applicant's claim that he will be viewed as having betrayed his country is also borne out by the aforementioned HRW report which states that
[t]he persecution of the families of Andijan refugees extends even to their children, some of whom were infants when their parents fled Uzbekistan. They are singled out as the children of "criminals," "traitors," and "enemies of the people."
97. Departmental movement records accessed by the Tribunal confirm aspects of the applicant's claims with respect to the immigration status of the witnesses and the basis upon which they were granted permanent residence in Australia, as well as the departure from Australia in January 2010 of subclass 200 Refugee visa holder Diloram Abdukodirova, whose arrest upon her return to Uzbekistan after assurances as to her safety is reported in the most recent HRW report extracted above.
98. The Tribunal has also confirmed that the applicant appears in a video as claimed which, as at [date] 2010, was available at [website deleted: s.431(2)].
99. The Tribunal notes that the applicant did not expressly mention his Akromi affiliation until the review stage, but observes that his initial statement nevertheless emphasised the religious suppression in Uzbekistan generally, and the imprisonment of religious leaders which precipitated the Andijan uprising in 2005. The country information indicates that it was Akromi business leaders whose arrest and unfair trials precipitated the uprising. The USSD report, for example, states that

The government has pressured and prosecuted members of the Islamic group Akromiya (Akromiyalar) since 1997. Independent religious experts claimed that Akromiya was an informal association promoting business along Islamic religious principles.

100. The UNICI report's description of the activities of this "group" is as follows:
- "Akromiya" therefore could be regarded as a kind of Islamic 'protestant' community with the virtues pursued in this mundane world, via hard work, entrepreneurial success and profit sharing with the community members and the poor.
- The only Islamic element of "Akromists" was their reverence of Akram Yuldashev and the pious life style. The bulk of their activity was consumed by business and building of their own social infrastructure and safety net – a clinic, a pharmacy, a nursery and so on. They proved to be really successful entrepreneurs and even some of them were awarded by the government.
101. Where there is clearly such ambiguity concerning the nature and even the existence of the Akromi, and where to the extent that there is a group its prominent members would appear to be readily capable of characterisation as religious leaders, the Tribunal draws no adverse inference from the applicant's failure to identify his adherence to the Akromi school of Islam from the outset.
101. Having carefully considered the applicant's claims and evidence, the Tribunal accepts that the applicant has come to the adverse attention of the Uzbek authorities as claimed, most likely through his association with close association with Uzbek refugees in Australia. The Tribunal accepts that, as evidenced by the copies of Uzbek court documents submitted by the applicant, those authorities have initiated what the Tribunal considers to have been politically motivated court proceedings against him and have, furthermore, confiscated his house as a punishment when he failed to respond to the court's summons.
102. The country information generally makes it quite clear to the Tribunal that people who have acquired adverse profiles with the Uzbek government can and do experience serious harm at the hands of those authorities for the purposes of s.91R(2), including deprivation of liberty and even life, as well as serious physical harassment and ill-treatment.
103. Consequently, the Tribunal finds that there is more than a remote chance that the applicant will encounter serious harm capable of amounting to persecution for the purposes of s.91R of the Act, should he return to Uzbekistan in the reasonably foreseeable future.

Availability of State Protection

104. The Tribunal is satisfied that the applicant is at risk of harm from the state apparatus of Uzbekistan itself, and that state protection would therefore not be forthcoming. The Tribunal concludes that the applicant's unwillingness to seek protection from those authorities is therefore justified for the purposes of Article 1A(2).

Section 91R(3)

105. Having considered the evidence before it, the Tribunal is satisfied that the applicant's conduct in Australia was engaged in otherwise than for the purpose of strengthening

his claims to be a refugee, and consequently the Tribunal has had regard to that conduct in assessing those claims.

Conclusion on Persecution

106. In the present case, the Tribunal finds that the applicant faces a real chance of persecution if he returns to Uzbekistan in the reasonably foreseeable future, for the Convention reason of his political opinion, which for the purposes of s.91R(1)(a) is the essential and significant reason for the harm feared.

Internal Relocation

107. The Tribunal is satisfied that in the present case the risk of Convention persecution exists in the country as a whole, and that safe relocation within Uzbekistan is therefore not reasonably open to the applicant.

Safe Third Country

108. There is no evidence before the Tribunal to suggest that the applicant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act or of Article IE of the Convention.

Conclusions

109. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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