

060828736 [2006] RRTA 216 (20 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060828736

DIMA REFERENCE(S): CLF2006/65603

COUNTRY OF REFERENCE: Uzbekistan

TRIBUNAL MEMBER: Antoinette Younes

DATE DECISION SIGNED: 20 December 2006

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Uzbekistan, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter and posted the same day.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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, in this case 9 June 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

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.

In the application for a protection visa, the applicant claimed that:

- He was forced to leave his family in Uzbekistan and flee to Australia in order to save his life. His parents and siblings have been mistreated.
- He is a Tajik by ethnicity. There are a lot of Tajiks in R Region so he was not "*badly mistreated because of that*". He was physically abused and threatened because converted to the Jehovah's Witnesses faith. The majority of Uzbekistan population is Muslim and they are intolerant of other religions. There are no legal avenues to defend oneself in case of religious persecution. The government suppresses religious freedom.
- He found out the hard way about what happens to those who convert; "*by hiding, by being beaten, and harassed, by fearing for my life and being threatened...*" The authorities refused to protect him. They mistreated and threatened him. His crime is very simple; he talked to people about his happiness at finding his true faith. He did not try to convert people to his faith but he was obliged to tell them honestly if asked.
- He suffered indescribably in recent years when it was discovered that he had converted. He was beaten and humiliated. His property was damaged. His house was searched. His religious magazines were seized and desecrated. Law enforcement agencies refused to protect him. They told him that they would encourage people to punish him.
- He is an educated man. He wrote to senior public officials in R Region. He was beaten subsequently and had to be hospitalised for some weeks. Following discharge, he discovered that his family was aggrieved by huge and irreparable damage to his home. They were scared to go out.
- If he were to return, this would mean definite death. He would not get protection. He could seek protection in other post-Soviet countries but they are the same; "*democratic by declarations, repressive by nature*". Moreover, the militia have accused him of bad-mouthing Uzbek people by complaining.
- He was able to leave legally but he was threatened not to return. The authorities have denied exit visas to his family so they are "*being held hostages in case if I asked for protection*".

In support of the application for a protection visa, the applicant provided a statement in which he reiterated the above claims and further claimed that:

- He was not religious but had read the Bible and the Koran. However, in recent years, he worked as a tradesperson in a private house. He admired the hosts. At that time, he was

grieving for the loss of a close friend. The host of the house noticed his grief and talked to him. He also gave him magazines and told him not to tell anyone about their talks.

- Subsequently, the applicant attended private gatherings and meetings. They did book studies on the weekend. During his free time, he studied. He knew that he might be abused but he was ready to suffer. He never openly propagated his religion as it is dangerous. He initiated talks about God, beliefs and similar themes. When he saw interest in people, he gently mentioned his happiness. When he was certain that a person is genuinely interested, he would hand up leaflets or magazines. These magazines were not in abundance, there was scarce because it is prohibited to bring them from Russia in big quantities. But he would have given his last issue to someone in the hope that he or she would see right path for his or her soul.
- When it became known to the authorities that he has transgressed and betrayed his people and country by converting to Jehovah's Witnesses in recent years, he suffered indescribably. He was beaten up and humiliated. His property was damaged. His family suffered from physical and emotional ill-treatment. His house was searched and his religious magazines were seized and desecrated. Someone with whom he talked about the Bible told their relatives who complained to the militia about him allegedly trying to convert Uzbeks into some sect.
- He had his house searched. They came at night with sirens screaming as if he was some criminal or terrorist and stormed into his house. His neighbours woke up and gathered outside. Militia questioned them and someone told the militiamen that the applicant talked about the Bible and had handed down some sectarian leaflets. They overturned everything in his house, found his magazines and leaflets, and they took him with them. He was handcuffed and when they led him to the car, they threw his magazines on the ground and stomped on them. The books were spat at and peered at by teenagers; some magazines were set on fire.
- At the militia station, he was beaten and humiliated. When he started to bleed, they smeared his blood and spat. He tried to be dignified but he started to cry. They told him that they do not need to put him in prison to take up space. They said that they would encourage the population to punish him and that he should not complain to the militia because of what he would get by way of protection would be much worse than mere beatings. He was bashed and abused. He was kicked. He was there for a few hours and then they let go of him on one condition: that he ought to bring them a list of all the people who were attending the Jehovah's Witnesses' meetings, all possible addresses, and that the applicant would continue to go to these meetings but that he should report after each meeting to the militia.
- When he came home, he found his family distraught. Neighbours had smashed all the windows of the house, damaged the gate, and the fence, thrown faeces and stones at their house. The next day he went to see a doctor because he had terrible pain. He did not tell the doctor that he had sustained those injuries at the militia station.
- He found that his children had been beaten up by teenagers. They were called sectarians Kafirs. He decided to make a complaint because he feared for his safety and his children. He made a complaint to the central office of militia in R Region. He also sent a copy to one of the senior public officials. The local militiamen came to his place after just a few

days and dragged him onto the street where they kicked him all the way to their car. He was beaten again at the police station and he was warned that he would face imprisonment for illegal religious activities because allegedly his neighbours had complained that they were having religious orgies at home. He was threatened with terrible things that would be done to his children.

- He knew that if he did not complain any further, he would be a constant and easy target for neighbours dissatisfied with their poverty, and militia that hate all people who do not live as prescribed by the government. He is an educated person and he decided to seek the truth and protection. He wrote to senior public officials in R Region. He also went to see one of the people with whom he was friends at their religious meetings, Person A, who also signed his letters as well because he was also intimidated and abused, his family suffered and he was at the edge emotionally and physically.
- Subsequently, the law enforcement officers beat him up so badly that he was hospitalised for some weeks. Upon his discharge, he found his family aggrieved by huge and irreparable damage to their home. They slaughtered all the sheep. They put all the wooden sheds on fire and regularly threw rubbish at their yard. His wife and children were scared to go out even to the shops. He prayed as hard as he could but he started to lose his spirit.
- He later received a summons from the militia. They told him that they were about to commence a criminal case against him. He was interrogated again. He was asked about the magazines. He was asked about the leader. He was asked about tactics employed to catch people, how much they pay to the sect, etc. He refused to answer and they beat him up again. He was warned that if he were killed by rightful Muslims, it would be the least punishment that he should endure.
- More recently, his house was searched again as well as the houses of other Witnesses. They did not find anything but again they kicked him and called up the neighbours to defend Islam and the state against foreign sectarians and punish those who disgrace Muslims by converting. He was scared to stay at home so he went into hiding. They stopped the beatings but they still humiliated and insulted his family. They damaged their house further. His wife does not complain about being afraid but she is at the edge of her patience and she is scared for one child in particular.
- He blames the authorities who knew that his life was in danger and they refused to protect him. They mistreated him and threatened him themselves. He was able to leave legally but he was told that if he ever dared to return, his family would suffer unimaginatively. His wife contacted him and told him that she had received a summons for him to go to the militia. He went there because he was planning his escape but did not have an assurance that it might be successful. He was afraid that if he did not go to the militia, they would imprison him as was stated at the back of the summons. At the militia, he saw people in uniform and in civil clothes. One person was heavily bruised and looked exhausted. He did not know him but he pointed at the applicant and said that the applicant and others had beaten him up and insulted his Islamic beliefs. The man said that they sang satanic hymns as they beat him up. He also said that he was ready to be a witness in court. The applicant was terrified but later understood that it was a plot and that the man was being used by the militia to convict the applicant and his brothers and sisters in faith. Militia men said that it was time that the applicant would bring a list of

other sectarians, otherwise he should only pray to his God to let him die. The applicant promised to bring a list but told them that it might take him several days to find out the addresses and family names. He went to see the friend who had introduced him to his faith. The friend's house was closed and it appeared that he and his family had left. The applicant looked for another person whose address the applicant knew and who had similarly been pressured and feared his safety. The applicant told the man that he had made a promise to bring the names. He asked the man for guidance. The applicant did not want to endanger people but at the same time he was putting himself and his family at risk. The man told the applicant to give some names because those people were already known to the authorities to be Jehovah's Witnesses and as such the applicant would not endanger them further.

- His wife begged him to escape. They knew that there was no use in trying to seek another safe place to live in Uzbekistan; the attitude would be the same elsewhere. The applicant understood that his persecutions would never end and would become more and more tragic until he died. This has brought a stigma on the applicant's family so he decided to listen to his wife and to try to save his life and by doing so he saved their lives. He is not going to return to the Uzbekistan as to do so would be death to himself and many sufferings to his family.
- Jehovah's Witnesses in the Uzbekistan understand that proselytising could lead to ill-treatment. They were not permitted to talk openly but rather in a way of just answering questions when asked.
- Uzbeks are mostly Muslims and they embrace Jihad. They are very peaceful people. People are prejudiced against Jehovah's Witnesses but they are also equally prejudiced against any other religion that is not approved by the State.
- His life was in danger and his basic human rights have been violated. He has the right to choose his religion and to live in accordance with its rules and to seek protection from the government of his country were he was a citizen. He would never be forgiven for converting, neither would the authorities protect him. He cannot say exactly what would happen to him if he were to return to Uzbekistan. He knows one thing is sure; next time he would not be so lucky to survive and to save his family. This is only his last chance to survive and to lead a dignified life.
- He is not able to change people's attitudes towards Muslims who convert to other religions, neither is he able to get protection in the Uzbekistan. He cannot go to a neighbouring country because he would encounter the same attitude and because there is no effective protection. He could seek protection in other post - Soviet countries, but they are all the same. They are democratic by declarations but repressive by nature. Furthermore, the militia had accused him of bad-mouthing Uzbek people by complaining. Lesser crimes in the Uzbekistan are enough to fear for one's life and freedom.
- The authorities did not protect him when he asked and they would not protect him if he were to return to the Uzbekistan. They explicitly threatened him and he regards himself lucky that he was let out of the country. When he gave the militia the short list of names, they told him that it was not nearly enough and they would have to prosecute him. He promised to bring more names in the following couple of weeks and to tell them where

the leaders get their magazines from. He went to the office of exit visas and requested visas for himself and his family but immediately he was told to pay a bribe which he did. When he returned to collect his passport and enquired about his wife's and children's passports, they told him that they had denied foreign passports and exit visas to his family members, "*just to keep me grounded*". They told him that in order to ensure his return and silence, his family would stay in the Uzbekistan.

- Only at the insistence of his migration agent regarding strictest confidentiality, he dared to reveal all the details about his ordeal. He is now relieved.

In support of the application for a protection visa, the applicant provided a number of generic reports relating to the ill-treatment of Jehovah's Witnesses in the Uzbekistan.

DIMA obtained the applicant's application for a visa. The applicant was interviewed by a DIMA officer. The applicant was asked, *inter alia*, why he feared returning to the Uzbekistan and he stated that he could not return after what had happened to him and that he might be killed. The applicant's representative stated that the applicant had asked her to locate a Kingdom Hall for him and that she had been unable to do so. The applicant stated that he had a headache after everything that happened to him, that these had been recurring for several months. The representative stated that the applicant had been unable to describe many aspects of his faith to her.

HEARING

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent who attended the hearing. The Tribunal was assisted by an interpreter (Professional Level).

The Tribunal asked the applicant about the completion of the application for a protection visa. the applicant stated that his advisor had assisted him in the preparation of the application for the protection visa as well as the statement that he provided in support of the application. The Tribunal asked the applicant if he wanted to make any changes to either the application for a protection visa or the statement. The applicant confirmed that he did not wish to make any changes to either of those documents.

The Tribunal asked the applicant when he became a Jehovah's Witness. The applicant stated when this happened. The Tribunal asked the applicant whether he was religious prior to becoming a Jehovah's Witness. The applicant stated that he was not religious, however he used to read the Bible and the Koran. He said he read magazines and the Bible and consequently he realised what he wanted. He said he started to have particular religious beliefs at that time. The Tribunal asked the applicant if anyone had assisted him in understanding Christianity. The applicant stated that initially people helped him in understanding the Bible. He said he later did it conscientiously. The Tribunal asked the applicant what he meant by conscientiously. The applicant stated when he became a Jehovah's Witness and studied the Bible. He said he went to meetings at people's places and subsequently became a Jehovah's Witness. The Tribunal asked the applicant when he became a Jehovah's Witness and the applicant stated during which period when this occurred. The Tribunal asked the applicant at what stage he was reading the Bible and the Koran; the applicant stated that he was doing so a few years ago. He explained that reading those books at that time was like reading an ordinary book that not a religious book as such.

The Tribunal asked the applicant about who introduced him to Jehovah's Witnesses. The applicant explained that at that time he was working as a tradesperson and he was not feeling very well. He said that the host of the house explained to him Salvation and introduced the applicant to Jehovah's Witnesses. The applicant's stated that the man invited him to meetings which he attended. The Tribunal asked the applicant when he attended those meetings. The applicant replied that he attended Bible studies on weekends and sometimes he attended on weekdays as well. The Tribunal asked the applicant from when until when he attended the Bible studies and the applicant stated the periods that he attended. The Tribunal asked the applicant if the meetings which he had attended were held at places where others could have seen what was going on and the applicant stated that the group comprised a group of people who attended meetings at the brothers' places. He explained that the neighbours could have seen what was going on but the group were trying not to make much noise. The Tribunal asked the applicant if he was concerned about being seen and he stated that he was not as they were peaceful gatherings. The Tribunal asked the applicant if the meetings were secret and the applicant confirmed that the meetings were not secret meetings.

The Tribunal asked the applicant if he was aware of the authorities' attitudes towards Jehovah's Witnesses and the applicant stated "*very bad attitude*". Tribunal asked the applicant to explain and he stated that the authorities persecute Jehovah's Witnesses. He said the authorities beat them up which happened to him. He said the authorities do not allow the practice of religious beliefs or Jehovah's Witnesses. The Tribunal asked the applicant if at the time of starting to attend the meetings, he was aware of the authorities' attitudes and the applicant stated that he did know. The applicant stated that he had made a conscious decision. He said he knew what he was doing but it was like an obligation.

The Tribunal asked the applicant about other activities in which he may have been involved. The applicant stated that he talked to people anywhere; he provided interested people with religious literature if this was not dangerous. The Tribunal asked the applicant if he was involved in any other activities apart from those he had discussed with the Tribunal and the applicant confirmed that he was not involved in any other activities.

The Tribunal asked the applicant when the authorities became aware of his involvement in Jehovah's Witnesses and the applicant stated when this occurred. He said the authorities came to his place and took him away just before that. He said he was taken away for the first time around that period. The Tribunal asked the applicant if he was able to give a more specific date and the applicant stated "*I can't remember the date..... may be on the [date]*". The applicant stated that he was taken to the police station where he was ill-treated. He said subsequently he was put in prison until the morning and let go of on the condition that he would become an informer and bring a list of Jehovah's Witnesses. He said he was kept at the basement of the police station. The Tribunal asked the applicant if he was detained or taken to the police station on any other occasion(s). The applicant stated that this was only the beginning; he said after that period they came every week and searched his place. He said he received a summons to go to the police station. The applicant stated that he was beaten in some months later and that they searched his house again.

The Tribunal asked the applicant on how many occasions he was taken to the police station. The applicant stated that after they let him after the first time, he complained to one senior public official's office about his treatment and what had happened. He said a few days later, the police went to his place and he was taken again. He said he was beaten again, humiliated, threatened and he was shown the complaint which he had made. He said they told him not to do it again. He said some further days later, he complained to the authorities at the regional level; he said he

also complained to another senior public official's Office; he said he complained to a person, whom he named. The Tribunal asked the applicant about the role of that person to whom he complained. The applicant stated that he was a representative. The Tribunal asked the applicant if his complaint was oral or written and he stated that his complaint was in writing. The Tribunal asked the applicant if he had kept any copies of his letter of complaint and the applicant stated that he was not sure if he had kept any copies at home.

The Tribunal asked the applicant on how many occasions he had been taken to the police station. He said when he was taken and subsequent to his complaint. He said the total number times he was taken. The Tribunal asked if a particular occasion was the first time that he was taken and the applicant stated that it was just before that which was the first time. The Tribunal noted when the applicant had earlier said that it was and the applicant stated that it was around that time in any case. The Tribunal indicated that it would consider the matter further. The applicant stated that on other occasions the police went to his home and he had also received summonses. The applicant gave evidence that he was taken to the police station on one occasion after he had complained in writing. He said what the period was that this happened. He said he had left the hospital soon after this time. The applicant confirmed that he was taken by the police another time around this period. Subsequently the applicant stated when he was taken to the police station on the further occasion. He said it was difficult to remember because he has headaches from a concussion. The applicant stated that he was trying to remember very hard. He said it was difficult to remember as he was severely beaten. The Tribunal indicated to the applicant that it would further consider his evidence.

The Tribunal asked the applicant if there were any other dates of him being taken to the police station. The applicant stated that he was taken again soon after the previous time. He said he was beaten and hospitalised. The Tribunal asked the applicant about any other dates and the applicant stated that his place was searched but they found nothing. He said he was summonsed a little while later. The applicant stated that he does not recall the exact dates. The Tribunal asked the applicant to explain why he was unable to recall the dates and the applicant stated because he was threatened all the time; he said he could not remember the exact dates. The Tribunal indicated that it would think further about his explanation.

The Tribunal asked the applicant when the house was searched by the authorities and the applicant stated the date this happened for the first time when he was taken away. He said that they also searched the house some time soon after. The Tribunal asked the applicant if the house had been searched on any other occasion but the ones he had referred to and the applicant stated that they were the only occasions. The adviser interjected and passed on a note to the Tribunal which was read on the record. In the note, the adviser had written that there were a few mistakes in the written statement, namely the times that the house was searched and the year that the applicant married. The Tribunal asked the adviser why she did not make any mention of those amendments at the beginning of the hearing when of the Tribunal asked the applicant if he had anything to change in the statement that he provided in support of the application for a protection visa and/or the application. The adviser acknowledged that she should have mentioned those changes at the beginning of the hearing. The Tribunal asked the applicant why he did not mention those changes. The applicant apologised and said he did not do so because he was nervous. The Tribunal indicated that it would think carefully about his explanations.

The Tribunal asked the applicant again on how many occasions his house was searched and he stated the first time that it was searched and the second time when it occurred. The Tribunal noted that the applicant had said earlier when the first time was that it happened. The adviser interjected and told the Tribunal that there was a problem in the interpretation. The Tribunal

played the tape back and the interpreter confirmed that she had mistakenly told the Tribunal when it was and not the date as the applicant had said. The Tribunal accepted that the inconsistency is due to an error in interpretation and indicated that the Tribunal would not draw any adverse conclusions from the inconsistencies.

The Tribunal asked the applicant about any other harm that he may have experienced and the applicant stated that he was beaten on many occasions; he said they broke into his house and threatened him. The Tribunal asked the applicant when exactly he was beaten and the applicant stated that he was beaten whenever he was summonsed at the police station; he said he was beaten constantly. The Tribunal asked the applicant when the authorities broke into his home and the applicant stated when the first incident occurred. He said he suffers from severe headaches which make it difficult for him to concentrate. The Tribunal asked the applicant when the headaches started and he said that they started at the hospital whilst he was in the Uzbekistan. He said he takes medication. The Tribunal asked the applicant what medication he took and he stated that he takes analgesics and another medication which had been prescribed for him. The Tribunal asked the applicant if he has seen a doctor in Australia about the headaches and the applicant stated that he has not seen anyone in Australia; he said that he feels better in Australia. He said that he has bad headaches however when he thinks about those incidents. The Tribunal indicated that it needed to carefully consider whether any memory difficulties he has are a result of the claimed headaches.

The Tribunal asked the applicant about his knowledge of matters relating to Jehovah's Witnesses. The applicant stated that his knowledge is average and that he is still studying and would do so throughout his lifetime. The Tribunal asked the applicant if he knew when Jehovah's Witnesses was officially founded and the applicant stated that it was officially founded in 1872 in Brooklyn. The Tribunal indicated that the country information appears to indicate that Jehovah's Witnesses was officially founded in 1884. The applicant stated it was officially founded in 1870 – 1880, "*around that time*". The Tribunal asked the applicant if he knew when the name Jehovah's Witnesses was officially adopted and the applicant stated that he could read out historical facts in relation to Jehovah's Witnesses; he said he is a witness of the Bible. The Tribunal asked the applicant if he knew who officially adopted the name Jehovah's Witnesses and the applicant stated "*I can't remember the name precisely*". The Tribunal asked the applicant if he knew who Joseph Rutherford was and the applicant stated he did not know. The applicant stated that he was studying English in Australia and that he had read about historical facts but the names are in English which makes them hard to remember. The Tribunal indicated to the applicant that some of those names are very important. The applicant stated that he is still a student. He said that he attends Kingdom Hall in Australia. He explained that as a result of the language differences, it would take time but subsequently it would become easier.

The Tribunal asked the applicant if he read any Jehovah's Witnesses material in Uzbekistan. The applicant stated that he read *Watchtower* and *Awake*. He said it was difficult to bring material to Australia. He stated that he gets the publications twice a month. He said he is waiting for a bible in Uzbek. The Tribunal asked the applicant if he knew the names of the Jehovah's Witnesses periodicals. The applicant stated that he read *Watchtower* and other periodicals in English. He said he is not ready to comprehend them yet. The Tribunal asked the applicant if he knew about *Awake* and the applicant stated that it was a religious journal about "*God, people and teaching-- -- good things*". The Tribunal indicated to the applicant that *Watchtower* and *Awake* are considered to be the main periodicals. The Tribunal asked the applicant if he knew about Jehovah's Witnesses' source of authority; the Tribunal asked if it was the Bible. The applicant stated that the main source is the Bible. He said Jehovah's Witnesses "*witnessing about God*".

The Tribunal indicated to the applicant that Charles Taze Russell's writing, specially, *Studies in the Scriptures*, are considered to be the "*light of Scriptures*" (*Jehovah's Witnesses, Christian or cult*, <http://rapidnet.com/jbeard/hebdm/cults/isjw.htm>). The applicant stated that he does not know who Russel was. He stated that he does not need to know the name of people but that the Bible is the main authority. He stated that he needs to treat the Bible as the main authority. The applicant stated that it is difficult for him to remember names. He stated it is hard for him to remember dates because of the headaches that he suffers from. The Tribunal indicated that it would further consider that explanation.

The Tribunal asked the applicant if he knew what the Jehovah's Witnesses' understanding of the doctrine of the Trinity. The applicant stated that God is the only one in the universe. The Tribunal asked the applicant who Jesus Christ was and the applicant stated that he was the son of God. The Tribunal asked the applicant who "*God the father*" is as far as the Jehovah's Witnesses are concerned and the applicant stated that it is one of the names or titles of God. He said there are others such as the Lord, the King, the father of God, and Jehovah. The Tribunal asked the applicant to explain when Jehovah's Witnesses use the term "*Jehovah*" and to the applicant stated that they are referring to God. The Tribunal asked the applicant about his understanding of the Resurrection of Christ and the applicant stated that he was resurrected; he stated "*I don't know how to explain it*". The applicant was silent for some time and he stated "*free the mankind*". The applicant later stated that Christ died and was resurrected in heaven; that he gave to mankind the possibility of resurrection. The Tribunal asked that the applicant if Christ had a new body after his death. The applicant replied "*yes, probably -- -- -- yes that's it-- -- -- I'd just studied the Bible*". The Tribunal indicated that it would further consider this matter.

The Tribunal asked the applicant if Jehovah's Witnesses accept organ transplant currently and the applicant stated "... *I haven't studied that yet, I'm just studying the Bible*". He stated that he has not come to that issue yet. The Tribunal asked the applicant if Jehovah's Witnesses accept blood transfusion and the applicant stated that Jehovah's Witnesses are against blood transfusion because there is soul in the blood. The Tribunal asked the applicant if Jehovah's Witnesses currently accept vaccinations and the applicant stated "*seems to mean not against -- -- --just with blood transfusion*". The applicant later said that Jehovah's Witnesses are not against vaccinations. The Tribunal asked the applicant if that was always Jehovah's Witnesses' position in relation to vaccinations and the applicant stated that he did not know this particular issue as he has not studied it; he said he was just explaining the Bible now. The Tribunal indicated that it would further think about those matters.

The Tribunal asked the applicant if Jehovah's Witnesses accept that the soul is immortal and the applicant stated "*yes they do believe in it*"; he stated that he was certain. He later asked the Tribunal to repeat the question and then he stated that "*everybody is immortal*". The applicant said words to the effect that immortality is in heaven. He said he was sorry if he was unable to express himself properly. He said on earth we are mortal. The Tribunal asked the applicant if Jehovah's Witnesses believe that the soul can exist apart from the body and the applicant stated "*after death -- -- -- not here*". The Tribunal indicated that it would think further about those matters.

The Tribunal asked the applicant if he has been baptised and he stated that he has not yet been baptised. He stated that he was not ready back home but in Australia, he is going to be baptised. He stated that in a few months, he would be ready for baptism. The applicant stated that in order to be baptised one must be completely ready and must have studied the Bible. The applicant stated that he has to study the Bible.

The Tribunal asked the applicant if there was anything else that he wanted to tell the Tribunal and the applicant stated that when he was called by the Department for an interview, he was nervous and not comfortable. The Tribunal indicated to the applicant that the Tribunal needed to consider whether his involvement in Jehovah's Witnesses in Australia was for the purpose of enhancing his application for a protection visa and the applicant stated that he had participated in those activities "*from the bottom of my heart*".

Oral submissions of advisor

The advisor stated that she is from Uzbekistan herself and did not receive proper religious education. She stated that the applicant is Tajik and that his Russian is poor. She stated that the language difficulties may have contributed to his confusion about immortality. She stated that the applicant's religious education is in English which may contribute to the confusion. She stated that the language confusion as well as the conditions of being underground in Uzbekistan may have contributed to the level of his knowledge.

The Tribunal asked the advisor if she could comment on the apparent lack of details in some of the applicant's claims and she stated that when the applicant came to see her, she had difficulties in getting specific information. She stated that she observed that he was also nervous with her. The advisor suggested that the applicant should give a chronology of the events.

The applicant's evidence

As suggested by the adviser, the Tribunal asked the applicant if he would give a chronology of the events in summary form. The applicant stated that he started studying the Bible and when the authorities came the first time. He said he was detained. He said soon after, he wrote a complaint to the city police and a senior public official's office. He said he was taken away. He said he was beaten up. He said he was constantly being beaten up. He said they wanted him to become an informer. He said he lodged another complaint to the regional authorities and another senior public official. He said he was severely beaten up following the complaint which led to him being hospitalised. He said the authorities continued to ill-treat him and his children. He said he was humiliated. He said they came to his house without permission. He said he was summonsed to the police station where they continued to beat him up. He said he is Tajik but had lived in Uzbekistan. He said the authorities told him to go away. He said he was summonsed again and ill-treated. He said he was accused of beating up the man who was a Muslim. He said they tried to imprison him. He said he had to leave Uzbekistan in order to save his life and his family.

At the end of the hearing, the Tribunal noted that there is a medical alert attached to the applicant's passport referring to the applicant's request for no blood transfusion. The applicant explained to the Tribunal that he was given the medical alert at Kingdom Hall. He said that Jehovah's Witnesses who were baptised are given special cards in relation to the wish for no blood transfusion but as he had not been baptised himself he was given the medical alert. The Tribunal indicated to the applicant that the Tribunal needs to consider how much weight it would place on the document.

INDEPENDENT INFORMATION

The Penguin Dictionary of Religions provides the following information on Jehovah's Witnesses:

Jehovah's Witnesses...Charles Taze Russell (1852-1916 CE) of Pittsburgh (U.S.A.) founded this MILLENARIAN movement or SECT. He was succeeded by Joseph Franklin ('Juge') Rutherford (1869-1941). Witnesses interpret the BIBLE literally, reject the TRINITY and understand JESUS CHRIST in ARIAN fashion. The millennium has begun and a final battle (Armageddon) is imminent, after which the Witnesses will rule with Christ. Other churches are rejected as ruled by Satan. Refusal of military service and hostility to earthly institutions has led to clashed with governments. Witnesses live plainly, refusing stimulants and blood transfusions. They are active propagators of their faith, publishing the *Watchtower* magazine (Hinnells, John R. (Ed) 1984, 'Jehovah's Witnesses', *The Penguin Dictionary of Religions*, Penguin Books, Ringswood, p.172 – Attachment 6).

The Concise Oxford Dictionary of World Religions provides the following information on Jehovah's Witnesses:

Jehovah's Witnesses. A sect derived from Charles Taze Russell (1852-1916), emphasizing biblical literalism and the imminent coming of the kingdom of God. Jesus Christ is not God but the son of God, the first of his creations. The fulfilment of the promise of God's kingdom will be inaugurated by the battle of *Armageddon, an event which was predicted for 1914-hence the saying of Rutherford, Russell's successor, that 'millions now living will never die'. 1914 is now interpreted as the establishment of the kingdom. Jehovah's Witnesses engage in persistent door-to-door proselytising endeavouring to sell *The Watchtower*, in which the movement's interpretation of world events is contained (Bowker, John 2000, 'Jehovah's Witnesses', *The Concise Oxford Dictionary of World Religions*, Oxford University Press, Oxford, p.284 – Attachment 7).

Religious Bodies in Australia – A Comprehensive Guide provides the following information on the Jehovah's Witnesses:

Jehovah's Witnesses denounce the doctrine of the Trinity and teach that Jehovah created all that exists, including his first creation Jesus Christ. The Holy Spirit is not a person of the Godhead but the impersonal active force of Jehovah. The spiritual world includes angels, some of whom rebelled under Satan. The material universe is of vast age but the creative 'days' of Genesis 1 are each of 7,000 years duration and thus began some 48,000 years ago with a soon to arrive millennial period completing cycle. Evolution as a method of creation is rejected. Jesus was born of a virgin but was not God the Son, but a son of God in the sense of being the first creature God made, and he did not possess immortality. He ceased to be a spirit and became a physical man at his birth and was resurrected as a spirit creature now possessing immortality. The resurrection of Christ was spiritual and his body ceased to exist. However, in appearing to the disciples he materialised a body for each occasion. He returned (invisibly) in 1914 (Russell's date of 1874 is ignored).

On salvation, the teaching is that there are two classes: (1) 'the Congregation of God' with a heavenly calling who will live and reign with Christ and who include a total of 144,000 since AD29. These are also described as 'Spiritual Israel' or the 'Spirit Begotten' etc. They partake of the annual 'Lord's Evening Meal' and some years ago numbered less than 10,000 of the attendance of over two million. The attendance now exceeds 12 million. The period when the number will be complete is viewed as rapidly drawing to an end. Much of the New Testament only applied to this class. (2) 'the Great

Crowd' who have an earthly hope and will live on a restored earth. They obtain God's favour by faith and works – the merit principle applies.

At death the person ceases to be conscious or to exist until resurrected. There are three resurrections. The heavenly class who had died up to the year 1918 were then spiritually resurrected, and those who have died since will receive immediate 'spiritual life' when they die or at the time of the millennium if then alive. The millennium occurs after a terrifying war called the Battle of Armageddon in which all opposed to God will be destroyed by the armies of heaven. The earth will then be cleansed and filled by three groups – those faithful who survived Armageddon, those who have been born to them, and those who have been resurrected to physical life. Later, all the unrighteous dead (except the wilfully wicked) will be resurrected and will be taught God's law. Those who obey will receive life but those who do not will be annihilated. At the close of the millennium paradise on earth will have been fully restored. Satan and his demons will be loosed for a brief time, but they and those who follow them will be destroyed and God's name vindicated. The redeemed on earth will abide there for ever, and the 144,000 will reign with Christ in heaven.

...Each Jehovah's Witness is encouraged to spend 10 hours per month in door to door work. 'Pioneers' give 90 to 100 hours per month, and 'Special Pioneers' work about 140 hours monthly in isolated areas and in opening up new congregations. These latter receive a small allowance

A Jehovah's Witness meeting place is called a Kingdom Hall. While not according Sunday any special significance, two services are held that day. One is an hour long address to which non-members are invited. It is followed by a one hour study meeting which is opened and closed with a religious song and prayer. In the second meeting bible verses are examined in the light of Watch Tower literature with set questions on the passage being answered. There are also weekly classes for the Theocratic Ministry School (doctrines) and a Service Meeting (techniques of door to door preaching).

...As Christmas is of Pre-Christian origin it is not observed. The annual 'Lord's Evening Meal' at Passover time is observed. ...Baptism is by immersion following acceptance of the Society's teaching. ...Use of alcohol in moderation is permitted, but gambling is grounds for expulsion (Humphreys, Robert & Ward, Rowland 1995, 'Jehovah's Witnesses', *Religious Bodies in Australia – A Comprehensive Guide*, 3rd Ed, New Melbourne Press, Wantirna, pp.240-241 – Attachment 8).

The following information on Jehovah's Witnesses' beliefs is found on the Jehovah's Witnesses Watchtower Society website:

- Bible is God's Word and is truth;
- Bible is more reliable than tradition;
- God's name is Jehovah;
- Christ is God's Son and is inferior to Him;
- Christ was first of God's creations;
- Christ died on a stake, not a cross;
- Christ's human life was paid as a ransom for obedient humans;
- Christ's one sacrifice was sufficient;
- Christ was raised from the dead as an immortal spirit person;

- Christ's presence is in spirit;
- We are now in the 'time of the end';
- Kingdom under Christ will rule earth in righteousness and peace;
- Kingdom will bring ideal living conditions to earth;
- Earth will never be destroyed or depopulated;
- God will eliminate present system of things in the battle at Har-Magedon;
- Wicked will be eternally destroyed;
- People God approves will receive everlasting life;
- There is only one road to life;
- Human death is due to Adam's sin;
- The human soul ceases to exist at death;
- Hell is mankind's common grave;
- Hope for dead is resurrection;
- Adamic death will cease;
- Only a little flock of 144,000 go to heaven and rule with Christ;
- The 144,000 are born again as spiritual sons of God;
- New covenant is made with spiritual Israel;
- Christ's congregation is built upon himself;
- Prayers are to be directed only to Jehovah through Christ;
- Images should not be used in worship;
- Spiritism must be shunned;
- Satan is invisible ruler of world;
- A Christian ought to have no part in interfaith movements;
- A Christian should keep separate from world;
- Obey human laws that do not conflict with God's laws
- Taking blood into body through mouth or veins violates God's laws
- Bible's laws on morals must be obeyed
- Sabbath observance was given only to Israel and ended with Mosaic Law;
- A clergy class and special titles are improper;
- Man did not evolve but was created
- Christ set example that must be followed in serving God;
- Baptism by complete immersion symbolizes dedication; and
- Christians gladly give public testimony to Scriptural truth ('Jehovah's Witnesses – What Do They Believe?' 2000, Jehovah's Witnesses Watchtower Society website http://www.watchtower.org/library/jt/article_03.htm – Accessed 14 November 2005).

The following information on the religious services of the Jehovah's Witnesses is found on the Office of Public Information of Jehovah's Witnesses website:

Jehovah's Witnesses meet for their religious services at houses of worship called Kingdom Halls.

...Usually a Kingdom Hall is a modest structure that has an auditorium with chairs for the audience, a speaker's platform, a lectern, a library, and an area where members can request or pick up literature for Bible study.

You won't see religious symbols such as crosses or images in a Kingdom Hall.

...Jehovah's Witnesses do not pass collection plates or practice tithing.

...Jehovah's Witnesses usually hold services three times a week, and most of the programs involve audience participation similar to a classroom discussion. Worship starts and ends with prayer, and most services include singing. All services focus on reading and discussing the Bible and seeing how to apply it in one's life.

...Jehovah's Witnesses have no clergy-laity division. All baptized members are ordained ministers, and all who attend services, including children, have an opportunity to participate. Most services are led by elders, who are spiritually mature members of the faith, or by qualified assistants, who are known as ministerial servants.

The *Public Meeting and Watchtower Study* are often held on Sundays. The first is a 45-minute Bible-based lecture that is designed to be of interest both to members of the congregation and to visitors. The second is a one-hour question-and-answer coverage of a recent article on a Bible topic published in our main religious journal, *The Watchtower*.

For the *Congregation Book Study*, Witnesses meet in small groups of about 10 to 15, usually in the private homes of members, to discuss a single Bible topic in depth. One of the books or brochures published by Jehovah's Witnesses is used to direct the question-and-answer Bible discussion.

...The *Theocratic Ministry School* and the Service Meeting are usually held on a weekday evening. The 45-minute Theocratic Ministry School is designed to help Jehovah's Witnesses improve their public reading and speaking. Students receive assignments on a rotating basis. At each meeting, six students give brief speeches on preselected Bible topics, and an instructor comments on the speech and offers suggestions for improvement. Witnesses and non-Witnesses of all ages can enroll in this school. The Service Meeting focuses on helping Witnesses improve their ability to teach the Bible to others 'Worship and Conventions' 2004, Office of Public Information of Jehovah's Witnesses website <http://www.jw-media.org/people/worship.htm> – Accessed 14 November 2005).

FINDINGS & REASONS

On the basis of the available information, the Tribunal is satisfied that the applicant is a citizen of Uzbekistan and that he is outside that country.

Essentially, for reasons of lack of credibility, the delegate was not satisfied that the applicant is a member of the Jehovah's Witness faith. The delegate interviewed the applicant who was asked a number of questions relating to the faith. The delegate found that the applicant was unable to describe many aspects of the faith and that he was not at the time of the interview attending Kingdom Hall.

The Tribunal has conducted a relatively long hearing during which the applicant demonstrated limited understanding of the faith. However, in the Tribunal's opinion, the applicant was familiar with various doctrines. He also came across as being genuine. He gave detailed accounts of many aspects of his claims. There were minor inconsistencies in the evidence but overall his oral evidence was consistent with his written claims. The Tribunal found his explanations to be persuasive. On his own evidence, the applicant described his knowledge as average. He is not claiming more than what is commensurate with his level of knowledge. The

applicant who speaks no English is basically trying to learn a religion in English, which in the Tribunal's opinion explains his limited knowledge. The applicant comes from a country that limits religious freedom, publication and circulation of religious material. The Tribunal notes that there is a medical alert attached to the applicant's passport referring to the applicant's request for no blood transfusion. The applicant explained to the Tribunal that he was given the medical alert at Kingdom Hall. In consideration of the evidence as a whole, the Tribunal is not satisfied that the applicant had obtained the medical alert or that he attends Kingdom Hall in Australia for the purpose of enhancing his application for a protection visa. In fact, neither did the applicant nor the advisor draw any attention to the medical alert, which was only noticed by the Tribunal upon examination of the passport.

The applicant's claims are consistent with independent country information. The US Department of State Report, *Uzbekistan Country Reports on Human Rights Practices - 2005* (Released by the Bureau of Democracy, Human Rights, and Labor, March 8, 2006), notes in relation to religious freedom:

While the law provides for freedom of religion and separation of church and state, in practice the government restricted religious activity. The law treats all religious groups equally; however, the government supported the country's Muslim heritage by funding an Islamic university and providing logistical support for citizens' participation in the hajj. The government sought to promote what it considered a moderate version of Islam through the control and financing of the Muslim Board of Uzbekistan (the Muftiate), which in turn controls the Islamic hierarchy, the content of imams' sermons, and published Islamic materials. A small number of unofficial, independent mosques were allowed to operate under the watch of official imams. The law requires all religious groups and congregations to register and provides strict and burdensome registration criteria, including a requirement that each group present a list of at least one hundred national citizen members to the local branches of the MOJ. This and numerous other provisions.....Any religious service conducted by an unregistered religious organization is illegal. Police occasionally broke up meetings of unregistered groups. Members of some Christian evangelical congregations were detained during the year and occasionally beaten by authorities. Religious groups are prohibited from forming political parties and social movements.....***Jehovah's Witnesses in Tashkent were unable to obtain registration; out of the 11 Jehovah's Witnesses' churches in the country, only those in Chirchiq and Ferghana were registered. Police routinely questioned, searched, and arbitrarily fined individual members of Jehovah's Witnesses throughout the country. On March 24, police and security personnel disrupted Jehovah's Witnesses meetings in Tashkent and eight other cities, arresting approximately 200 church members. Most were released soon afterwards, but some were subjected to longer administrative detention, some were reportedly beaten by police, and several were required to pay small fines.....***During the year several persons were prosecuted and convicted of religious extremism and membership in an unregistered religious group for their affiliation with Akromiylar.....On March 29, a court in Syrdarya Province sentenced seven food vendors from Bakht to prison sentences of eight to nine years for anti constitutional activity, religious extremism, and tax evasion, based on their alleged membership in Akromiylar. Family members of the defendants claimed the men were not members, and that the court's decision was based entirely on forced confessions. The decision was upheld by an appellate court on May 3, and by the supreme court on May 21. On July 25, the Tashkent criminal court convicted alleged Akromiylar members Akhad Ziyodkhozayev, Bokhodir Karimov, and Abdubosid Zakirov of participation in a

religious extremist group, conspiracy to overthrow the constitutional order, establishing a criminal group, and disseminating materials constituting a threat to public order. The defendants were given prison sentences from 15½ to 16 years. Trial observers noted that the convictions were based almost entirely on defendants' confessions and witness testimony, and that evidence presented in court did not suggest the defendants were involved in criminal activity....The law prohibits proselytizing and severely restricts activities such as the import and dissemination of religious literature. On August 10, a criminal court in Navoi convicted Jehovah's Witness Azim Klichev of teaching religion without government authorization and fined him approximately \$70 (78,350 soum), or 10 times the minimum monthly wage. The decision was upheld on appeal. On August 30, a criminal court in Karshi convicted Jehovah's Witnesses Bakhrom Pulatov and Feruza Mamatova of conducting illegal religious meetings and proselytizing. Pulatov was fined approximately \$640 (705,150 soum), or 90 times the minimum monthly wage; Mamatova was fined approximately \$500 (548,450 soum), or 70 times the minimum monthly wage. The fines, although within the amount prescribed by law, were far beyond that normally imposed for religious crimes. The decisions were upheld on appeal. **On March 24, over 200 members of Jehovah's Witnesses were detained in several coordinated raids in Tashkent, Kogon, Bukhara, Samarkand, Navoi, and Bekobod during Good Friday worship services; in addition, 120 persons were questioned in Angren. Jehovah's Witnesses reported several instances of police brutality in the course of the raids. Police also reportedly confiscated religious materials....** The law limits religious instruction to officially sanctioned religious schools and state-approved instructors,....A state religious censor approved all religious literature. The government controlled the publication, import, and distribution of religious literature, discouraging and occasionally blocking the production or import of Christian literature in the Uzbek language, although Bibles in many other languages were available....A 2003 OSCE expert panel that reviewed the 1998 Religion Law and associated criminal and civil statutes concluded that they were in violation of international norms....

In consideration of the evidence as a whole and for the reasons discussed above, the Tribunal accepts as being plausible that is a Jehovah's Witness who converted to the faith in Uzbekistan at the time he claimed. The Tribunal accepts as being plausible that the applicant read the Bible and went to meetings at people's homes. The Tribunal accepts as being plausible that the applicant attended Bible studies several times a month for a stated period. The Tribunal accepts as being plausible the number of people in the group in which the applicant was involved. The Tribunal accepts as being plausible that although the meetings were not secret, they were however discrete. The Tribunal accepts as being plausible that the applicant provided interested people with religious literature if he did not think that was dangerous. The Tribunal accepts as being plausible that the authorities became aware of the applicant's involvement in the faith around the time claimed. The Tribunal accepts as being plausible that the applicant was subsequently, on several occasions, taken to the police station where he was ill-treated and released upon a condition that he would become an informer, namely, revealing to the authorities the names of other Jehovah's Witnesses. The Tribunal accepts as being plausible that the applicant complained about his ill-treatment to the offices of senior public officials and that consequently he was threatened and ill-treated by the authorities. The Tribunal accepts as being plausible that the applicant's home was searched on more than one occasion and that he was summonsed by the authorities. The Tribunal accepts as being plausible that the applicant's property was damaged and religious material was seized. The Tribunal accepts as being plausible that the applicant's children were beaten by teenagers and called sectarian Kafirs. In essence, the Tribunal is satisfied that the applicant suffered what amounts to serious harm as

contemplated by the Act and persecution as contemplated by the Convention. The Tribunal is satisfied that the applicant's religion is the essential and significant reasons for the harm that he had suffered. The Tribunal is satisfied that the applicant would continue to practise his faith and out of fear of being harmed, he would not be able to proselytise which in itself amounts to persecution. Given the above country information and in consideration of the evidence as a whole, the Tribunal finds that there is a real chance that the applicant would suffer such harm in the reasonably foreseeable future if he were to return to Uzbekistan.

Therefore, the Tribunal is satisfied that the applicant has a well-founded fear of persecution.

CONCLUSIONS

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

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officers ID: PRRTIR