

060828163 [2006] RRTA 224 (29 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060828163

DIMA REFERENCE(S): CLF2006/65370

COUNTRY OF REFERENCE: Uzbekistan

TRIBUNAL MEMBER: Antoinette Younes

DATE DECISION SIGNED: 29 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.

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.

Claims made in the application for a protection visa

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

- He escaped Uzbekistan because his life and freedom were in danger. He is not in any way an Islamic fundamentalist. He is a normal person who just wants to have freedom in relation to religious or political affiliations. He has made a decision to be a devout Muslim and he just wanted to study Islam. He just wanted to be able to become a true Muslim who respects his elders, who does good things to his people and a person who is able to teach his children the right way to live. He was persecuted because he met like-minded people and attended private gatherings. These gatherings involved book reading and discussing various aspects of Sharia and the Koran. He could have attended one of the government approved mosques but there is no real freedom of discussion. He was arrested and investigated. He was then tortured to the point where he required an urgent operation. His wife sold their house in order to pay for his medical treatment and subsequent release. He would have died in prison. This happened a number of years ago.
- He was summonsed again and questioned in regard to his old contacts with the religious group. The police and security forces had arrested other members of the group who apparently gave the applicant's name. He made an application to change his name and for the renewal of a lost passport whilst he was preparing to escape. When he left, his wife told him that their new house had been searched. His wife had innocently told the police that the applicant had taught them about Allah and that he had very precious books which were hidden. His eldest child showed the police in a niche at the wall where the applicant had hidden the Koran and other religious material which he was unable to destroy. He is not sure if there is an arrest warrant issued against him but he is sure that should he appear in the Uzbekistan, he would be detained and charged. He fears for his life. Should he be charged and imprisoned or killed, his family would suffer the most. His escape was the only way to spare his family death and sufferings. His brother was persecuted just because he was praying five times a day. He was nearly killed and the applicant prayed for his safe escape.
- He fears that if you were to return to the Uzbekistan, he would be dead or in prison. He cannot blame his daughter for telling the truth to the police but this put his life in grave danger. Should anything happen to him like being imprisoned or even rumours that he is an Islamic fundamentalist, one cannot imagine what would happen to his family. He fears to imagine what would happen. At the very least, his family would be stoned as has happened to a lot of families of religious prisoners. He sees women in Australia who wear the hijab and nobody insults them; they have the freedom. He simply wanted to be able to learn what Islam is about and what they had missed out in their country as

atheists. He might be killed or in prison but in any case his family would suffer and this is the worst that he fears might happen.

- He has no doubt that the police and security forces would persecute him as they had done before. But the worst persecution would come from people who have been kept in the darkness. He sincerely believed that all people who pray and read the Koran are extremists. He would not mind if the people were less ignorant and there was less vice and more morale. People have no information in Uzbekistan and they have no choice but to believe the government about the Islamic threats. So they would be relentless in the harassment of the applicant and his family. They have suffered enough and cannot take it any longer.
- His advisor informed him that he had to write a detailed statement of what had happened to him, otherwise he would not have a chance to get protection in Australia. He would write all the details but it is so painful to relive everything that had happened to him. He is also conscious that the very word Wahhabit is scary to some people. He cannot say that he is a Wahhabi because he could not study it properly, everything had to be done in secret and was very limited. They had no opportunity to learn it in depth. But he does regard himself as a follower of Wahhabi when it concerns morale and Karimov's regime, which is much worse for people than an Islamic state. He does not approve of severe Islamism of Iran, Iraq, or Saudi Arabia, who have taken it too far and into extreme, but he would like to see people to have more freedom, both religious and political. He is scared that people and the police would ill-treat him because the authorities benefit from dividing people and directing them against each other. It is easier to rule when society is divided and people are suspicious of each other. The authorities would not protect him because they have persecuted him and they are responsible for his detention and torture.

Claims made in a statement provided in support of the application for a protection visa

In the statement provided in support of the application for a protection visa, the applicant reiterated his earlier claims and claimed that:

- He escaped the Uzbekistan because his life and freedom were in danger. He was persecuted because he started to meet with other like-minded people and attended private gatherings. These gatherings involved book-reading and discussions of various aspects of Sharia and the Koran. He could have attended one of the government approved mosques but there is no freedom of discussion. He went to a named mosque in Town X several times and asked mullah some questions such as the reason for the prohibition of wearing beards, the normality of adding things to the Koran when it is said that the Koran was written under the dictation of Allah, the reasons for not praying as many times as they would like to, the reasons for the authorities lack of prohibition of nightclubs where young people consume drugs and engage in public displays of inappropriate behaviour, the authorities lack of prohibition of widespread selling of erotic literature with explicit pictures that are easily accessible by very young children and at the same time his neighbour was arrested for the possession of the Koran which he had brought with him from his Khadj (sacred trip to Mecca and Medina) in the mid 1990s. His questions were absolutely innocent and he was genuinely interested to know what was wrong with beards or why the authorities did not care much about the morale of the youth. Mullah said that there were too many questions to be answered and said that a genuine Muslim should just follow what Mullah and the authorities say and not ask "*stupid*" questions.

He said that he saw the applicant's questions as having been dictated to him by enemies and that the applicant should do well and redeem himself by going to the authorities and telling them about who had put such harmful and destructive ideas into his head. The applicant told Mullah that he is an adult with children and he should be ready in case the children asked the same questions because they are interested in Islam and eager to start reading the Koran when they grow up enough to understand. The applicant did not consider his questions to be provocative or prohibited. He knew about fundamentalists' and the Wahhabs' threats but he always thought that those people are extremists and terrorists and his questions were completely innocent. He saw that Mullah was angry with him and he left. Since then the applicant did not attend that mosque.

- He grew up in an atheist country and there were no places to ask questions about religion. Since independence, people started to attend mosques and go to Saudi Arabia and sacred Khadj. He started to ask himself questions and read the Koran. He became interested and became moderately involved in Islam. Since the middle of the 90s the authorities had announced that possession of the Koran other than printed with permission of the highest Islamic Muftis is prohibited. People were discouraged from going to Khadj and there were arrests of some Muftis. He could not understand why Muslims cannot praise as many times as they desired. He left disappointed but could not help but think about those matters.
- He talked about those issues with his friends. One of his friends whom he cannot name as he did not give him permission to reveal his name, told him that it was very dangerous to ask those questions. He told the applicant that he might have attracted negative attention of the Mufti at the very least which would be a problem if the Mufti disclosed those matters to the authorities. His friend asked him if he wanted to go to his home for private talks, "Gap". Gap talks are traditional in Uzbekistan when men regularly gather to share rice and lamb dishes; they talk about everything that they have in common; everyone took turns to host the gaps. His friend told him that he might meet someone who might be able to answer his questions.
- He went to a gap and he was very happy. He talked to an older man who told him that he should be extremely careful about asking questions and that he should only ask those questions from people whom the applicant trusted. The applicant told the man that all his friends are like himself - ignorant and looking for answers. The man told the applicant that his friend who was hosting the gap was very knowledgeable and that the applicant should talk to that man privately.
- The applicant's friend told him that there were many people who were dissatisfied with the ideological dictatorship of the authorities and that they gathered in order to advance their studies in Uzbekistan history and Islam. The applicant asked if he could attend those gathering and the man agreed but he warned the applicant that it was very dangerous and that he should keep it secret from his wife and everyone. People who attend those gatherings do not do anything illegal or antisocial; they are not sectarians or terrorists, though the authorities label them as such just because those people want knowledge and equal opportunities.
- The applicant went to the next gap and met others. He was asked to leave the room and after some time, he was told that he was allowed to ask questions. They told him that they were trying to study the teaching of Ibn Abd al-Wahhab because they want to

understand why it had been portrayed as something very sinister. They also wanted to learn the history of Islam. Wahhabi was a devout Muslim in the 18th century and he wanted Islam to get back to its original clear and unpoliticised roots. They told him that Wahhabis are not what they have been portrayed by the authorities. The Wahhabis' ideas that are accepted by Central Asian Muslims are not advocating Jihad; they are not against any government; they are not advocating Khalifat as a statutory Islamic state; they just want to establish the right to practise Islam as they are supposed to - with all fasts and prayers, with the right to teach their children Islam since childhood. They also told him that in Saudi Arabia such teachings went too far, calling for Jihad against all Kafirs and even Muslims who are not devout or who organise new additions to the Koran. It was all very confusing for him and he is still not sure if they could call themselves Wahhabies. It was so difficult to learn and make up one's mind when the only information available is the one that had been approved by the security forces and the authorities. He would say that they were "*kind of the study group*". Even the audiotapes with prayers were educational.

- After a few gatherings, they gave him some literature in Uzbek about Wahhabi and how it should be interpreted. He saw that it did not contradict the Koran. He sees nothing bad at the necessity for women to cover their faces if they want to as opposed to wearing miniskirts and abundance of makeup, smoking and having public displays of sexuality. Such requests should not apply to everyone, but women should be free to choose, though he is strongly against overt expressions of sexuality by people. Universities in Uzbekistan expel female students for the wearing kind of parandja (short veil) or even full-length dresses. It is the oppression of the free will. He is not an orthodox when it comes to Islam, he just wants to advocate the basic human rights for everyone to choose the extent of obeying the religious rules when and if those rules do not contradict other basic human rights. In the wake of terrorism in the world, he is afraid that one might see him as a fundamentalist. That is not the case; he considers himself to be fairly intelligent with an inquisitive mind with a desire to lead a dignified life, not one which is dictated by the repressive government. In Uzbekistan, one does not have to be a prominent religious or political activist to be persecuted. One does not have to disagree with the official ideology to attract torture and death; it is enough not to tell on someone who disagrees or seems to disagree.
- They met once or twice a month. After a few months, their leader (Person A) gave the applicant tapes with prayers and said that he could distribute the tapes amongst those whom the applicant trusted and keen to learn about the Koran. Some of the prayers were in Arabic. He also gave the applicant booklets about the interpretation of some suras which the applicant gave to some of his trusted friends, two of whom asked the applicant if he could introduce them to the group. The applicant asked Person A who met them privately. Later the applicant saw them at the next gap and was happy that his friends shared his interests.
- Subsequently, one of his friends rang him with terrible news, namely that the leader and four other members of the circle had been arrested. They decided to stop the meetings. However, the applicant was arrested the following day which happened on a specific date. During the search, the security forces found two tapes and one booklet. The applicant was detained and investigated. He cannot describe all the pain and fear whilst he was in custody. They demanded him to sign a confession that they planned to overthrow the government and something else. They never let him read any document in

whole. They just forced him to sign and taped his oral confessions. They would put a piece of text in front of him and demanded that he read it with expression of guilt and repentance in his voice. He spent several weeks in a cell where they kept a number of people. They were fed once a day and conversations were prohibited. At times they talked to one of them outside and later returned them in an unrecognizable state. He was tortured in spite of his signed confessions. They wanted names and the applicant was so confused and in so much pain that he had invented some names. Once he was kicked so hard (at least that was what he was given as an explanation by the doctor) he suffered a particular injury and he had an urgent operation. His wife sold their house to pay for his treatment and for his subsequent release. He would have died in prison. He started to feel better some months later.

- At the beginning of the following year (amended to several months later), he was summonsed again and questioned about his old contacts with the religious group. The police and security forces had arrested other people from that group and apparently they gave his name. He was questioned about people whom he never knew and when he told them that he did not know those people, they started to beat him up. Out of fear he told them that he would sign anything if they let him go. They made him sign a blank paper. He was so stressed out that he fainted. The police told him that from now on, he had to inform them about any contact with people who are very religious or possessed tapes or the Koran from abroad. The applicant told them that people do not discuss such things which then led to one of the police officers taking the applicant to the basement and locking him in a tiny windowless room where he spilt chloride. He was told to come up with at least a few names to get out, otherwise they threatened to hurt his little girl. The applicant understood that to mean raping his little girl. Consequently, the applicant promised to spy on people in his neighbourhood and elsewhere and was later let go of. It became clear that he was doomed and that he had to cooperate by telling on innocent people. This is how the system works in Uzbekistan.
- He decided to attempt to flee Uzbekistan. His wife went and lodged an application to divorce. This was not finalised. The applicant lodged an application to change his name and to renew his passport, claiming that it had been lost. They demanded a bribe for the renewal of the passport but he told them that he does not have any money. Subsequently his wife told him that the house had been searched. Police told his children that the police were trying to help the applicant get away from eight people and to save him. His wife was taken to another room and was interrogated. She could not prevent the children from being questioned by the authorities. He always taught his children to be honest with elders and when asked, the children innocently told the police that the applicant taught them about Allah and that he has very precious books hidden away. His eldest child showed the police and a niche at the wall where he had the Koran and some other religious material that the applicant was not able to destroy. He had no idea that his wife had taken one of the audiotapes and had listened from time to time. This was also discovered. He is not sure if there is an arrest warrant issued against him but he is sure that should he return to Uzbekistan, he would be detained and charged. He fears for his life. Should he be charged, imprisoned or killed, his family would suffer the most. He is afraid that the police would not believe that they had genuinely intended to divorce and would persecute his wife trying to lure him back to Uzbekistan. He is a small man and they can see that he is not a terrorist. By prosecuting him, they would show others that nobody can escape their fair "*justice*".

- His brother has been persecuted terribly because he was praying five times a day. He was nearly killed. Should anything happen to the applicant such as imprisonment or even rumours that he is an Islamic fundamentalist, one could not imagine what would happen to his family. The applicant fears to imagine and at the very least, his family would be stoned as has happened to a lot of other families of religious prisoners. He is also conscious that the very word Wahhabit is scary to some people and he cannot say that he is a Wahhabi because he could not study it properly. Everything had to be in secret and was very limited. They had no opportunity to learn it in depth. However the applicant regards himself as a follower of Wahhabi when it concerns morale and Karimov's regime. He would like to see people having more freedom both religious and political. He is scared that people in Uzbekistan and the police would ill-treat him. The authorities benefit from dividing people and directing them against each other. He is sorry that his story is somewhat lengthy and unintelligible. He is still scared that he might be perceived as an Islamic fundamentalist. He is scared that he might be sent back to death.

In support of the application for a protection visa, the applicant provided a number of generic reports in relation to ill-treatment and human rights abuses in Uzbekistan.

There is also a copy of the application for another visa.

Interview with a DIMA officer

The applicant was interviewed by an officer from DIMA. During that interview the applicant stated, *inter alia*, that:

- He has gone to the mosque in Australia a couple of times but that he had no time to go because he has to get money to support his family. His wife does not have a job and his children are small. He had no time to go to the mosque. He read his prayers at home by himself and that he has not found a mosque because he has no time.
- He had paid a specific sum of money for the visa to come to Australia. When he was asked how he had obtained the money to pay for the visa, the applicant said that on a specific date, he was admitted to hospital after being tortured by the police with a specific injury. He was there for several weeks and he had to pay for his treatment; he had to pay the police to close his case. He said his wife sold their house to pay this money, and the rest was used for the visa and travel. He had to borrow some money from his friends.
- He does not think of himself as a Wahhabi or called himself so. He however supports some of their ethics He studies not only Wahhabism but also Islamic history. In Uzbekistan there are no true Wahabis because of lack of information about its teachings. He was asked if he would be a Wahhabi, if he had more access to its teachings and the applicant said he would not. It is the authorities that would label them as Wahhabis.
- He was bashed by the police because they wanted some names.
- He changed his name. He was playing for time as he did not have a passport. He also asked his wife for a divorce so that she could be safe. He does not think that the police would believe that the divorce was authentic and would use his wife as hostage to get him to return.

- He did not seek protection in a Muslim country sympathetic to the teaching of Wahhabism as his sympathy to Wahhabism is limited and because the Uzbek authorities screens them. According to the Wahhabis, Saudi Arabia is a holy country and Australia is an infidel. Saudis take Wahhabism to the extremes which he does not support.

Material provided to the Tribunal

In written submissions, the applicant's adviser stated as follows:

- The applicant fears persecution on the basis of his imputed political opinions and imputed religious activities. He took part in an unregistered group, an unaffiliated Koranic study group. He is not sure that this group is affiliated with similar underground groups or some high level group in Uzbekistan, because they were in possession of leaflets and tapes which they did not produce themselves, they had to receive them from somewhere else. The applicant disseminated (even if a small amount) leaflets interpreting the Koran and prayer tapes, which are prohibited in Uzbekistan because they were not certified by the authorities, despite only containing Koranic prayers.
- The applicant fears that he would again be subjected to physical violence and intimidation by the authorities in Uzbekistan if he were to be forced to return. He fears that he would be subjected to a lengthy arbitrary imprisonment; the situation of political opponents and people with imputed religious opinions in Uzbekistan is worsening daily. The applicant nearly died when he was beaten by agents of the state authorities (police forces) in order to punish him. He was beaten up severely and had a specific injury. His life and freedom were in grave danger.
- He was not able to learn the Koran privately which could be considered as a religious discrimination. Such treatment falls within the concept of persecution in the Convention. Each of the experiences of persecution suffered by the applicant could be considered independently, but they should also be considered cumulatively. When this is done, there would be no question that the applicant had experienced religious and political persecution in Uzbekistan. The persistent and continuous persecution demonstrates that they were not just isolated, random incidents but formed a systematic pattern of persecutory conduct.
- There is no evidence to suggest that there is any change in attitudes to the political or religious opponents in Uzbekistan. The applicant's fears are also based on his knowledge of what had happened to other people in the same position and in similar situations. There is abundant evidence to show that the persecution of political and religious opponents in Uzbekistan at the present time. The applicant fears are objectively justified by the horrifying events that happened to him and to people with political opinions, or just many devout Muslims, in the past. Those events are not in the distant past but in the immediate past. This is consistent with independent country information about Uzbekistan (the adviser referred to various generic reports relating to Uzbekistan).
- The applicant's fear emanates from the authorities of Uzbekistan. The authorities have been involved in many of the instances of persecution which the applicant has suffered. The authorities have been responsible for the detention, torture and the threats that the applicant had suffered all of which are consistent with independent country information. The adviser referred to the case of *Chan* and its significance to the test of well-founded fear.

- The persecution feared by the applicant is not limited to a particular local area and as such relocation is not reasonable. The applicant does not have a right of return to Russia. He is not a Russian citizen. There is also a real risk that the Russian intelligence would cooperate with the SNB (former KGB of Uzbekistan). The Russian security forces have mutual agreements with almost all of the former Soviet countries in regard to extradition of political dissidents and there have been precedents already.
- The applicant's accounts and experiences are consistent with independent country information and they are credible. The applicant's efforts to seek official protection within his own country resulted in further persecution and abuses by the officials from whom he had sought assistance. The applicant upon his arrival in Australia sought protection immediately. There is no reason to disbelieve the applicant's claims he is a refugee.

The adviser provided the Tribunal with two documents in Uzbek language. She stated that one of the documents is a medical certificate regarding the operation which the applicant had undergone in relation to his particular injury. The other document is a summons from the police.

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.

The Tribunal was assisted by a Russian-speaking interpreter.

The evidence of the applicant

At the beginning of the hearing, the applicant told the Tribunal that he wished to make amendments to the information that he has provided. He stated that instead of being detained on a specific date, the date should be several months later.

The Tribunal asked the applicant about the preparation of the application for a protection visa and statement provided in support. The applicant stated that when he came to Australia he had a short term visa and he did not know about protection visas. He said he initially wanted to get an extension for his visa but subsequently sought advice from his current adviser who informed him that he has grounds for a protection visa. The Tribunal had noted that the Tribunal has received two documents which have not been translated. The Tribunal indicated that it would further discuss those documents in the course of the hearing.

The Tribunal asked the applicant about his claim that he is a Muslim and the applicant stated that he is a Muslim. The applicant stated that in the former Soviet Union, there were Muslims who did not practise their religion. He said that subsequent to independence from the USSR, people began to practise their religion and began to have access to religious material. He stated that a number of years ago, he started becoming interested in Islam. The Tribunal asked the applicant about his religious beliefs prior to this and the applicant stated that prior to that period there was no available information and he did not know about prayers. He said after independence however, the country was more able to get the Koran and other religious literature. He said that people started going to the mosque. The Tribunal asked the applicant whether it was accurate then to say that prior to this, he did not practise any religion and the applicant stated that he has always thought of himself as a Muslim and he was interested in Islam but was unable to practise. The Tribunal asked the applicant to elaborate on his comments that he thought of himself as a

Muslim. The applicant stated that in the former Soviet Union, the population in Uzbekistan thought of themselves as Muslims but did not have any literature to learn about Islam. He told the Tribunal that his parents saw themselves as Muslims.

The Tribunal asked the applicant which sect of Islam he belongs and the applicant stated that he does not belong to a particular sect; he said he attended gaps, gatherings. He said there was a leader; they read and discussed the Koran; they studied the history of Islam and the Koran. The Tribunal asked the applicant if he was aware of the different sects in Islam and the applicant stated that he was aware that there are different sects. He said in one of the gap meetings, a question was asked and the leader explained the different sects to the group. The Tribunal asked the applicant about the different sects of Islam and the applicant stated that unfortunately he was unable to find out a lot about the issue. The applicant told the Tribunal that he had attended nine to ten gaps and was ill treated as a result of his activities. The Tribunal asked the applicant when he attended the gap meetings and the applicant stated that the first time he was invited was at the beginning of a particular year. The Tribunal asked the applicant about the other occasions when he attended the gap meetings and the applicant stated that he could not recall the precise dates of the meetings. He said that however they occurred at different times. He said they gathered twice a month but he does not recall the particular dates. The Tribunal indicated that it would further consider this matter. The applicant stated that his knowledge is quite limited; he said he did not have enough time; he said he was arrested soon after he went to the meetings. The applicant stated that in the meetings, they were not causing any harm by trying to learn about the Koran and the verses of Islam. The Tribunal asked the applicant if he currently considers himself to be a Muslim and the applicant stated that he realises that his current knowledge of Islam is not enough and that he has more to learn. The Tribunal asked the applicant which sect of Islam he currently belongs to and the applicant stated that he does not belong to any sect. He stated that he was just studying Islam for himself. He stated that it is natural to want to learn more about Islam so that he can help his children in case they asked him questions about religion.

The Tribunal asked the applicant if he practises Islam in Australia and the applicant stated that he goes to the mosque and participates in prayers. The Tribunal asked the applicant when he started attending the mosque in Australia and the applicant stated that when he came to Australia, he found a mosque and started going to the mosque several weeks after his arrival in Australia. He explained that at that time he was living in a specific suburb. The Tribunal asked the applicant how often he went to the mosque and he stated that he went on weekends when he was not working. He stated that he went every weekend when he was free. The Tribunal clarified whether the applicant went to the mosque in Australia every weekend and the applicant stated that some weekends he was unable to go because of his work but during the week, when he was free he went to the mosque. The Tribunal asked the applicant if he knew on how many occasions he attended the mosque in a specific month and he stated that he did so about three to four times. The Tribunal asked the applicant if he knew on how many occasions he attended the mosque in the following month and the applicant stated he was not counting but when he was not busy he went to the mosque. The Tribunal clarified whether the applicant was able or not to provide details about how many occasions he would have attended the mosque that month and the applicant stated that he was not counting. The Tribunal referred to the information provided by the applicant during an interview with DIMA during which he told the officer that he had been to the mosque since his arrival in Australia a couple of times, which appears to be inconsistent with his evidence in the course of the hearing. The applicant stated that in the Muslim religion, they do not count how many times they attend the mosque. The Tribunal indicated that the Tribunal would further consider that explanation.

The Tribunal asked the applicant if he considers himself to be a Wahhabi. The applicant stated he does not see himself as a Wahhabi but the Uzbekistan government declared him to be so when he started going to the gap meetings. He stated that he has studied the Wahhabi theory in order to understand about the Wahhabis and who they were. He stated that he subsequently discovered that there were a lot of positive things about Wahhabism. He stated that he knew that the founder of the Wahhabi movement is Abd al-Wahhab. The Tribunal asked the applicant if he knew when Wahhabism was introduced and the applicant stated that he did not wish to make a mistake but thought that it was around 18th century. He said the main idea is to turn Islam back to its original state and to look at the Koran and follow its rules in their original state. The Tribunal asked the applicant if the Wahhabis initially used any other name and the applicant stated he did not know what they called themselves but currently this is what they are called. The Tribunal asked the applicant if he knew whether Osama Bin Laden is considered to be a Wahhabi and the applicant said he did not think so. The applicant stated that Wahhabis are not active politically, although this is claimed to be so in Uzbekistan. He said that it would be useful to learn from the Wahhabis' teachings such as the traditions about ceremonies relating to funerals. He said according to those traditions, after funerals families have to feed what could be a very large number of people and subsequently they would incur enormous debts which would take years to pay back. He said according to the Wahhabi teaching, things should be simple and mosques should not be decorated. He said there is a lot of rich Mullahs, some of whom he knew. He said according to the Wahhabi tradition, they should not be rich and they should devote themselves to Allah.

The Tribunal asked the applicant if he has heard of the term “*Muwahidun*” and the applicant stated that he has heard the word during one of the gap meetings. He said that during meetings people usually argued and had discussed the term. He said that it seems to him that the term means “*after the death of Mohammed*”; the applicant stated that there was a group that had separated from another which later became the “*Muwahidun*”. The Tribunal indicated to the applicant that although the Wahhabis are known today as so, they in the past referred to themselves as “*Muwahidun*”, meaning, “*those who advocate oneness*”. The Tribunal invited the applicant to comment on that information and the applicant stated had he had more time, he would have known more about those matters. He said at the gap meetings they discussed the Wahhabis and as such he knows a little bit about it but he has not had enough time unfortunately to study it further. The Tribunal indicated that it would further consider the matter.

The applicant gave evidence that he was arrested for the first time on a specific date. He stated that the day before, the leader of his group and four other members were arrested. He said that one of the members contacted him and told him about the arrests. He stated that the following morning the police came to his home and searched the apartment. He stated that during the search, the police found a tape and booklets. He said he was later taken to the police station. He stated that he was interrogated; he was kept in a cell where there were a number of other people; he said there were no seating places and nowhere to lie down. He stated there was only a toilet in the corner and there were no windows in the cell. He said that the ceiling and the walls were made of concrete. He said there was a bad smell and there was blood everywhere. He said people were being badly beaten. He said he was also taken to a different cell for interrogation. He said there was a table and chair for the investigator. He said he was trying to tell them that he has not done anything wrong. He said he was accused of being a Wahhabi and for distributing tapes. He said during the interrogation, he was asked about the group in the gap meetings which he attended and he told them that they were not doing anything wrong. He said he was still however accused of being a Wahhabi and they did not pay any attention to his explanations. He said he was targeted and subsequently blacklisted. The Tribunal asked the applicant what he

meant by being blacklisted and the applicant stated that because he was going to meetings and had given booklets and tapes to two of his friends which would have been against the law. He stated he did not have the opportunity to be involved in the wider activities.

The Tribunal asked the applicant if he had been detained on any other occasion. The applicant stated that he was detained for a second time approximately eighteen months later. He said he was summonsed again and they started asking him questions about members of the group. He said they offered him to cooperate with them and provide them with necessary information, otherwise it would have been easy for them to imprison him. He said they told him that because of the tapes that he had distributed, it would be easy for them to accuse him of being involved in anti-regime activities. The applicant told the tribunal that when he was a detained on the first occasion, because of the beatings and the physical ill-treatment that he was subjected to, he was unconscious and it was later explained to him that he had been in detention for several weeks. The applicant told the Tribunal that on the second occasion, he was detained for one day. He said at that time he was offered cooperation but they also threatened him with the evidence on videotape. He said they also threatened to sexually assault his daughter. He said he was taken to another room where the officer placed Chlorine and the room smelt very badly. He said he later decided that he would work with them and signed a blank piece of paper. He said he was later told that they are planning to use him as a witness. He said he was told to become a spy and an informer. He said he was told to cooperate with them. The Tribunal asked the applicant if he spied on any group and the applicant stated that he did not become a spy or an informer as he did not want to lead this kind of life. He said that after the first arrest, his wife was also interrogated and had to pay a bribe. He said he realised that they were not going to leave him alone and consequently he decided to leave Uzbekistan.

The Tribunal asked the applicant how long he spent at the hospital after his first detention and the applicant stated that he was in hospital for a number of weeks but subsequently was rehabilitating at home. He said that when he was detained on the first occasion, he was trying to convince them that he was not doing anything wrong or anti-government. He said they did not accept what he was saying and they beat him up. He said he gave names of other members of the group but they wanted more and more. He said two other officers were in a bad mood and they started asking him about his lack of cooperation. He said he was beaten and subsequently lost consciousness which he later regained in the hospital. He said the doctor at the hospital explained to him that he had a specific injury.

The Tribunal referred to the two documents that have been provided in the Uzbek language. With the assistance of the interpreter, the contents of the summons were read out. The dated summons contains details about where the wife of the applicant should go and other matters concerning the name and addresses. The Tribunal noted that the summons does not have any official stamp on it. The applicant told the Tribunal that the usual practice is to tear off the second part of the summons. He said his wife was planning to go to the police station but instead they searched their place. The Tribunal indicated that it is difficult to see that this is an official document because there was nothing on it that would indicate that it is official. The applicant stated that he does not know how to prove to be Tribunal. He said in Uzbekistan that is a summons. The Tribunal indicated that it would think further about the authenticity of the summons as well as the reliability of the information contained therein. The Tribunal discussed with the applicant the other document that has been provided. This is a note from his medical history from relevant authorities. The medical certificate refers to the admission date and date of discharge. The certificate refers to a specific diagnosis after injury. The medical certificate makes no reference to the cause of the injury.

The applicant stated that when he came to Australia on the visa, he did not give any information to the Australian Embassy but paid money to another person who had made all the arrangements, including the provision of all the documents in support apart from the diploma. The Tribunal asked the applicant why he did not choose to go to a Muslim country and he stated he has not devoted his life to his religion. He said he was trying to understand how the religion worked and wanted to be able to practise freely. He said in some of those countries they send refugees back to their homeland. He said the Saudi Arabian regime is very similar to the Uzbekistan regime. He said he does not support fundamentalism in Islam and he does not want to be dictated to.

At the end of the hearing the applicant stated that he feared that he would be arrested and that he does not want his children to be called Wahhabis. The applicant told the Tribunal that he was prepared to undergo any medical examinations to prove the cause of his injuries.

Submissions of the adviser

The adviser stated that when the applicant was interviewed by DIMA officer, she understood the question to refer to whether the applicant attended the mosque on Fridays. She stated in relation to the applicant's understanding of the Wahhabis, there were no schools or literature available in Uzbekistan and as such the applicant was not able to gain a lot of knowledge about Islam. She stated that it would not be appropriate to expect him to have a deep understanding of Islam.

The adviser stated that she has seen a lot of summonses in Uzbekistan and they are never officially stamped. She said in relation to the medical certificate, no doctor would dare to mention the cause of the injuries.

Information about the Wahhabis

In an article published by Global Security , it is noted that :

This branch of Islam is often referred to as "Wahhabi," a term that many adherents to this tradition do not use. Members of this form of Islam call themselves *Muwahhidun* ("Unitarians", or "unifiers of Islamic practice"). They use the *Salafi Da'wa* or *Ahlul Sunna wal Jama'a*. The teachings of the reformer Abd Al-Wahhab are more often referred to by adherents as *Salafi*, that is, "following the forefathers of Islam."

The basic text of this form of Islam is the Kitab at-tawhid (Arabic, "Book of Unity"). Central to Muhammad ibn Abd al Wahhab's message was the essential oneness of God (*tawhid*). The movement is therefore known by its adherents as *ad dawa lil tawhid* (the call to unity), and those who follow the call are known as *ahl at tawhid* (the people of unity) or *muwahhidun* (unitarians). The word Wahhabi was originally used derogatorily by opponents, but has today become commonplace and is even used by some Najdi scholars of the movement. Most Wahhabi people live in Saudi Arabia. Almost all people in Mecca and Medina belong to this school.

The Caliphate was brought into being by the implementation of Islam for about three decades. They called this shortlived experiment *Khilafat Rashidah*, the rightly-guided Caliphate, implying thereby that the rulers that followed were misguided. Fundamentalists seek the restoration of the Islamic State i.e. the Khilafah, and by electing a Khaleefah and taking a bay'ah on him that he will rule by the Word of Allah (Subhaanahu Wa Ta'Ala) i.e. he will implement Islamic laws in the country where the Khilafah has been established.

Wahhabism [Wahabism] is a reform movement that began 200 years ago to rid Islamic societies of cultural practices and interpretation that had been acquired over the centuries.

The followers of Abdul Wahab (1703-1792) began as a movement to cleanse the Arab bedouin from the influence of Sufism. Wahhabis are the followers of Ibn 'Abd ul-Wahhab, who instituted a great reform in the religion of Islam in Arabia in the 18th century. Mahommed ibn 'Abd ul-Wahhab was born in 1691 (or 1703) at al-Hauta of the Nejd in central Arabia, and was of the tribe of the Bani Tamim. He studied literature and jurisprudence of the Hanifite school. After making the pilgrimage with his father, he spent some further time in the study of law at Medina, and resided for a while at Isfahan, whence he returned to the Nejd to undertake the work of a teacher.

Aroused by his studies and his observation of the luxury in dress and habits, the superstitious pilgrimages to shrines, the use of omens and the worship given to Mahomet and Mahomedan saints rather than to God, he began a mission to proclaim the simplicity of the early religion founded on the Koran and Sunna (i.e. the manner of life of Mahomet).

To understand the significance of Muhammad ibn Abd al Wahhab's ideas, they must be considered in the context of Islamic practice. There was a difference between the established rituals clearly defined in religious texts that all Muslims perform and popular Islam. The latter refers to local practice that is not universal. The Shia practice of visiting shrines is an example of a popular practice. The Shia continued to revere the Imams even after their death and so visited their graves to ask favors of the Imams buried there. Over time, Shia scholars rationalized the practice and it became established. Some of the Arabian tribes came to attribute the same sort of power that the Shia recognized in the tomb of an Imam to natural objects such as trees and rocks.

Muhammad ibn Abd al Wahhab was concerned with the way the people of Najd engaged in practices he considered polytheistic, such as praying to saints; making pilgrimages to tombs and special mosques; venerating trees, caves, and stones; and using votive and sacrificial offerings. He was also concerned by what he viewed as a laxity in adhering to Islamic law and in performing religious devotions, such as indifference to the plight of widows and orphans, adultery, lack of attention to obligatory prayers, and failure to allocate shares of inheritance fairly to women. When Muhammad ibn Abd al Wahhab began to preach against these breaches of Islamic laws, he characterized customary practices as jahiliya, the same term used to describe the ignorance of Arabians before the Prophet.

Muhammad ibn Abd al Wahhab focused on the Muslim principle that there is only one God, and that God does not share his power with anyone -- not Imams, and certainly not trees or rocks. From this unitarian principle, his students began to refer to themselves as muwahhidun (unitarians). Their detractors referred to them as "Wahhabis"--or "followers of Muhammad ibn Abd al Wahhab," which had a pejorative connotation. The idea of a unitary god was not new. Muhammad ibn Abd al Wahhab, however, attached political importance to it. He directed his attack against the Shia.

Muhammad ibn Abd al Wahhab's emphasis on the oneness of God was asserted in contradistinction to shirk, or polytheism, defined as the act of associating any person or object with powers that should be attributed only to God. He condemned specific acts that he viewed as leading to shirk, such as votive offerings, praying at saints' tombs and at graves, and any prayer ritual in which the suppliant appeals to a third party for intercession with God. Particularly objectionable were certain religious festivals, including celebrations of the Prophet's birthday, Shia mourning ceremonies, and Sufi mysticism. Consequently, the Wahhabis forbid grave markers or tombs in burial sites and the building of any shrines that could become a locus of shirk.

His instructions in the matter of extending his religious teaching by force were strict. All unbelievers (i.e. Moslems who did not accept his teaching, as well as Christians, &c.) were to be put to death. Immediate entrance into Paradise was promised to his soldiers who fell in battle, and it is said that each soldier was provided with a written order from Ibn 'Abd ul-Wahhab to the gate-keeper of heaven to admit him forthwith. In this way the new teaching was established in the greater part of Arabia until its power was broken by Mehemet Ali. Ibn'Abd ul-Wahhab is said to have died in 1791.

The teaching of ul-Wahhab was founded on that of Ibn Taimiyya (1263-1328), who was of the school of Ahmad ibn Hanbal. Copies of some of Ibn Taimiyya's works made by ul-Wahhab are now extant in Europe, and show a close study of the writer. **Ibn Taimiyya, although a Hanbalite by training, refused to be bound by any of the four schools,** and claimed the power of a mujtahid, i.e. of one who can give independent decisions. These decisions were based on the Koran, which, like Ibn Hazm, he accepted in a literal sense, on the Sunna and Qiyds (analogy). He protested strongly against all the innovations of later times, and denounced as idolatry the visiting of the sacred shrines and the invocation of the saints or of Mahomet himself. He was also a bitter opponent of the Sufis of his day.

The Wahhabites also believe in **the literal sense of the Koran and the necessity of deducing one's duty from it apart from the decisions of the four schools.** They also pointed to the abuses current in their times as a reason for rejecting the doctrines and practices founded on Ijma, i.e. the universal consent of the believer or their teachers. They forbid the pilgrimage to tombs and the invocation of saints. The severe simplicity of the Wahhabis has been remarked by travellers in central Arabia. They attack all luxury, loose administration of justice, all laxity against infidels, addiction to wine, impurity and treachery.

Muhammad ibn Abd al Wahhab's mission in his own district was not attended by success, and for long he wandered with his family through Arabia. Realizing that he needed political support and authority to effectively reverse the status quo, Ibn Abdul-Wahhab presented his program of reform to the governors of the central Arabian city-states. He began by approaching Othman ibn Mu'amar, the governor of Uyyayna, his home state. Ibn Mu'amar was receptive to Abdul-Wahhab's ideas and allowed him to preach within the city. As word of the movement spread, however, strong pressure to silence Ibn Abdul-Wahhab came from powerful tribes in the region who viewed change as a threat to their decadent lifestyle. Fearing invasion, Othman ibn Mu'amar felt compelled to ask the reformer to leave Uyyayna.

.....It is clear that the claim of the Wahhabis to have returned to the earliest form of Islam is largely justified. The difference between ul-Wahhab's sect and others is that the Wahabis rigidly follow the same laws which the others neglect or have ceased altogether to observe. Even orthodox doctors of Islam have confessed that in Ibn 'Abd ul-Wahhab's writings there is nothing but what they themselves hold. At the same time the fact that so many of his followers were rough and unthinking Bedouins has led to the over-emphasis of minor points of practice, so that they often appear to observers to be characterized chiefly by a strictness (real or feigned) in such matters as the prohibition of silk for dress, or the use of tobacco, or of the rosary in prayer.

Imam Muhammad bin Abdul Wahhab died in 1792.

The Wahhabi ulama reject reinterpretation of Quran and sunna in regard to issues clearly settled by the early jurists. By rejecting the validity of reinterpretation, Wahhabi doctrine

is at odds with the Muslim reformation movement of the late nineteenth and twentieth centuries. This movement seeks to reinterpret parts of the Quran and sunna to conform with standards set by the West, most notably standards relating to gender relations, family law, and participatory democracy. However, ample scope for reinterpretation remains for Wahhabi jurists in areas not decided by the early jurists.

The 1920s marked the beginnings of modern Arabia. ‘Abd al-‘Aziz understood the potential advantages Western technology offered; the importation of a fleet of automobiles and, later, the building of airstrips gave him the means of reaching distant parts of his territory in a fraction of the time required previously. He also ordered the creation of an extensive information network based on the wireless telegraph, through which he was able to extend his "eyes and ears" across the country. However, some of his followers were less than enthusiastic, and their leader spent much time and effort explaining personally the value of the telephone in particular. ‘Abd al-‘Aziz finally overcame their opposition by inviting skeptics to listen to recitations from the Qur‘an being read down the phone line.

Aware that the fledgling nation would be ill-equipped to function in the 20th century without industrial modernization, ‘Abd al-‘Aziz was eager to embrace technology; however, he was no less aware that change had to be selective and gradual if it was to be accepted by the citizenry. Arabist and historian Leslie McLoughlin pointed out that "it was the Insight of Ibn Sa‘ud that slow change without disabling disputes was better than speed of change with great disruption."

Under Al Saud rule, governments, especially during the Wahhabi revival in the 1920s, have shown their capacity and readiness to enforce compliance with Islamic laws and interpretations of Islamic values on themselves and others. The literal interpretations of what constitutes right behavior according to the Quran and hadith have given the Wahhabis the sobriquet of "Muslim Calvinists." To the Wahhabis, for example, performance of prayer that is punctual, ritually correct, and communally performed not only is urged but publicly required of men. Consumption of wine is forbidden to the believer because wine is literally forbidden in the Quran. Under the Wahhabis, however, the ban extended to all intoxicating drinks and other stimulants, including tobacco. Modest dress is prescribed for both men and women in accordance with the Quran, but the Wahhabis specify the type of clothing that should be worn, especially by women, and forbid the wearing of silk and gold, although the latter ban has been enforced only sporadically. Music and dancing have also been forbidden by the Wahhabis at times, as have loud laughter and demonstrative weeping, particularly at funerals.

The Wahhabi emphasis on conformity makes of external appearance and behavior a visible expression of inward faith. Therefore, whether one conforms in dress, in prayer, or in a host of other activities becomes a public statement of whether one is a true Muslim. Because adherence to the true faith is demonstrable in tangible ways, the Muslim community can visibly judge the quality of a person's faith by observing that person's actions. In this sense, public opinion becomes a regulator of individual behavior. Therefore, within the Wahhabi community, which is striving to be the collective embodiment of God's laws, it is the responsibility of each Muslim to look after the behavior of his neighbor and to admonish him if he goes astray.

In the 1990s, Saudi leadership did not emphasize its identity as inheritor of the Wahhabi legacy as such, nor did the descendants of Muhammad ibn Abd al Wahhab, the Al ash Shaykh, continue to hold the highest posts in the religious bureaucracy. Wahhabi influence in Saudi Arabia, however, remained tangible in the physical conformity in

dress, in public deportment, and in public prayer. Most significantly, the Wahhabi legacy was manifest in the social ethos that presumed government responsibility for the collective moral ordering of society, from the behavior of individuals, to institutions, to businesses, to the government itself. King Fahd ibn Abd al Aziz Al Saud repeatedly called for scholars to engage in ijthihad to deal with new situations confronting the modernizing kingdom. (<http://www.globalsecurity.org/military/world/gulf/wahhabi.htm>)

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.

The Tribunal has some doubts about the applicant's claims and the Tribunal shares some of the concerns expressed by the delegate. The Tribunal has conducted a relatively long hearing during which the applicant demonstrated a level of understanding of Wahhabism that is arguably limited and superficial. However, in the Tribunal's opinion, the applicant was familiar with various concepts relating to the Wahhabism branch of Islam. The applicant's evidence about his claims was detailed and overall consistent with his written claims. The Tribunal found his explanations to be persuasive. The applicant recognises that his knowledge is limited. In the Tribunal's opinion, the applicant's level of knowledge of Wahhabism is commensurate with his claims. He is not claiming to have an in-depth knowledge of the branch, nor is he claiming to have been an activist, a religious leader or a fundamentalist. In fact, he has expressed serious hesitation and apprehension at being perceived as being anything but a moderate Muslim. The applicant comes from Uzbekistan, a country that limits religious freedom, publication and circulation of religious material, which could reasonably explain his limited knowledge. The applicant has provided documents in support of his claims. Whilst the Tribunal has some doubts, on the basis of the available information, the Tribunal cannot make a positive finding that those documents are not genuine, or reflective of the truth and as such, the Tribunal has to proceed on the basis that the documents may be genuine.

The applicant's claims are consistent with independent country information. Whilst the authorities supported the country's Muslim heritage, they nevertheless exercised a great deal of control. 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.....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 Ziyodkhojayev, 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.....**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 the applicant attended about ten gap meetings (an unaffiliated group), starting at about the end of a specific year. The Tribunal accepts as being plausible that the applicant disseminated religious leaflets which would have been prohibited in Uzbekistan as they were not certified by the authorities. The Tribunal accepts as being plausible that during those meetings, members of the group discussed the Koran, Islamic verses and Wahhabism. The Tribunal accepts as being plausible that the applicant's home was searched and the authorities found religious material. The Tribunal accepts as being plausible that the authorities in Uzbekistan perceived the applicant as being supportive of Wahhabism. The Tribunal accepts as being plausible that consequently, the applicant was detained on two occasions, during which he was seriously ill-treated by state agents. The Tribunal accepts as being plausible that the applicant was accused of being involved in anti-regime activities and that he was asked to be an informer/spy and there were plans to use him as a witness. The Tribunal accepts as being plausible that there was a threat of sexual assault of the applicant's daughter. The Tribunal accepts as being plausible that the applicant's wife was interrogated. The Tribunal accepts as being plausible that the applicant has recently been summonsed. 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 and being imputed with anti-regime political opinions are the essential and significant reasons for the harm that he had suffered. 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. The Tribunal finds that there is a real chance that the applicant would be subjected to arbitrary imprisonment and to severe punishment that amounts to persecution. The Tribunal

finds that the persecution feared by the applicant is not restricted to his local area and consequently relocation is not reasonable in his case. There is no evidence before the Tribunal to suggest that the applicant has the right to enter and reside in Russia or any other country for the purposes of s.36(3) of the Act.

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 <i>Migration Act 1958</i> . PRRRNM
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