

**1113716 [2012] RRTA 576 (4 July 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1113716

**DIAC REFERENCE(S):** CLF2011/144782

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

**TRIBUNAL MEMBER:** Linda Symons

**DATE:** 4 July 2012

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of the Peoples' Republic of China (China), applied to the Department of Immigration (the Department) for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

### Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

#### **Information given to the Department by the applicant**

20. The following personal information about the applicant and the written claims are contained in the Application for a Protection Visa lodged [in] August 2011:
21. The applicant claims he is a citizen of China. He was born on [date deleted: s.431(2)] in [China]. He claims to have 11 years of education in China. At the time of application he was studying in Australia for 2 years. He has provided no details of employment.
22. He has never married. His parents and [brother] reside in China. He speaks, reads and writes Chinese and English and speaks Uighur. He claims he is a Muslim. He arrived in Australia [in] July 2009. He travelled on a Chinese passport issued [in] June 2009 which expires [in] June 2019. He came to Australia on a Student visa.
23. The applicant lodged the following unsigned written statement in support of his Application for a Protection visa:

My name is [name], I was born on the [date] in the People's Republic of China, [Xinjiang Province]. From September 1999 [schooling details outlined and] completed my [studies] in July 2009. [In] July 2009 I arrived in Sydney, Australia.

I was born into an Islamic family, which consists of four people; myself, [my brother and my parents] [names and dates-of-birth]. My father and my [brother] is unemployed and practises the religion of Islam during the day. My mother works for [company name deleted: s.431(2)] in the People's Republic of China, [Xinjiang Province].

Ever since I was a little boy around 6 years old, my parents brought me up in an Islamic way; teaching me the ways of Islam and its lifestyle. I accepted, followed and enjoyed this Islamic way of life that was shown to me. I call myself a Muslim. However when I was in 6th grade, [age] years old in China, [Xinjiang Province], a situation arose which made me think of my place in society as a Muslim. [During] the KURBAN EID festival which is a festival that marks the sacrifice of a lamb to God (Allah) that the Prophet Abraham performed. On this day around 7am in the morning I was running to the mosque because I was making my way for KURBAN EID prayers. I was running late and as soon as I stepped foot into the mosque I was dragged out by a man. While I was getting up from the floor two police officers picked me up and put me into the police car. The man who dragged me out of the mosque sat in the front passenger seat. I was scared and crying because of the physical pain that the man had put me through. One of the police officers called out to the man who dragged me out of the mosque "Captain" and he responded. I had realised at this point that the man who dragged me out of the mosque was a plain clothed police officer. They drove for about forty minutes to the police station and they placed me into a room with boys around my age, some were crying and some had bruises on their face. At this point I was terrified and shaking, not knowing what is going on. Every 15 minutes or so a few boys at a time would be taken out of the room, with some of them coming back into the room and others were not. After spending 2 hours in the room I was dragged out to another room, but this time I was all by myself and I was interrogated by two police officers who asked me the following questions in a vicious manner; Why did you go to the mosque? Who is religious in your family? Who has taught you to go to the Mosque? Don't you know that students can not enter the mosque? I could not answer any of these questions so one of the officers slapped me in the face and repeated the questions, each time getting more louder and sinister. By this stage I was crying and shaking out of fear so much so that I had urinated onto my pants, I honestly thought that I was going to die that day. The next thing I know I am in hospital with my Parents by my bedside and I was hooked up to a drip. When I was trying to tell my parents what had happened they told me that "everything will be ok" and to forget about what had happened. Basically telling me to keep it quite and to never speak of the situation. At such a young age I came to the realisation that we Uighur Muslims were not welcome in our own country. It is the first time I had experienced a lack of my human rights.

Another prominent situation that occurred was when I was in Middle School in [Town 1], which was a boarding school. I was fasting every Monday and Thursday during the month of February 2008 to make up for the days that I had missed during Ramadan because during Ramadan the teachers of the school know that it is Ramadan and know that the Uighur Muslims will be fasting so if the school finds out that I am

fasting I will be kicked out of the school because when I enrolled at this school my family told the school that we are not Muslims. So to mask the fact that I was fasting and avoid being caught fasting I would fast every year outside the month of Ramadan on Mondays and Thursdays. However, this year somehow the teachers at my school realised that I was fasting every Monday and Thursday because I was not eating anything in the school cafeteria. [In] March 2008, while I was hanging around the cafeteria area my Maths teacher said "Would you like to have lunch together", I said no, I told him that my stomach was hurting and I needed to go back to my dorm to lie down. When I went back to dorm, it was time for the noon prayer so while I was praying the maths teacher barged into my room and started kicking me. After two students with the instruction of the Maths teacher took me to the Principles office. The Principal told me that the school was growing suspicious of my religious activities and was monitoring me very closely. He explained that Religion has no place in the school or in China. That evening I was expelled from the school [in] March 2008.

The very next day I left for [Town 2] and enrolled in [Town 2] middle school [two days later in] March 2008. I was enrolled as a year 9 student, what had happened to me at my old school really affected my personality. I became depressed and did not speak to anyone about what had happened and decided that I would kept to myself for the rest of my school life because I did not want anymore trouble to come to me or my family. When year 10 came along I tried my best for one year, to remain under the radar so that an incident like what happened in my old school will never occur again, however [in] June 2009, on the day of my graduation, about six of my Uighur friends and I were saying goodbye to each other in the school dormitory as it was the last day of year 10, because that their was six Uighur boys hanging around together as a group in the school dormitory, this caught the attention of the school guards and teachers. Three school teachers and four guards approached us and one of the teachers said, "what are you terrorists doing here" I replied "we are not terrorists we are just saying goodbye to each other", then one of the school guards yelled at me and said "how dare you talk to your teacher that way, have you no respect you filthy animal". My friends and I were scared and so we apologised and walked away, as we were all walking away the four guards came from behind and beat up myself and my friends up with their batons. I was in a daze and could not make out what was going on all I know was most of my body was in pain and I was being dragged. When I came 'down to earth' I found myself together with my friends in the principal's office. I noticed that they were badly beaten, I also noticed that their was to school guards in the principals office, but these were not the guards that had attacked us. My friends and I pleaded with the principal telling him of what had happened to us, thinking that he might punish those guards for beating us up. Instead the opposite happened, the punishment for myself and my friends were that the following school year, (year 11) for one month, we had to came to school one hour before school and stay back one hour after school to clean the school.

After this incident occured I had enough, this was the last straw I finally realised that the country that I was born in and grew up in, I had no rights in as a human being. I went home to my mother and father and told them what had happened, my family knew that the police were not going to do anything about it so we did not bother reporting it, fearing that this might grow into something worse. That night my family

came to the conclusion to get me out of China and so they decided that Australia was a good option. I got out of China on a student visa to Australia [in] July 2009.

When I had left China for the last time, I was interrogated by the immigration police for 2 hours, as to what I had been up to during my visit. They knew I was talking about Religion, about East Turkestan to my friends and family and somehow they found out, however I had denied everything and told the police that my allegiance is with China till the day I die. The police believed me and I was lucky that they had let me go to fly to Australia. The conversations that I am having with my friends and family online and via telephone now makes me feel that If I were to go back to China now, as soon as I enter China's border's I'll be arrested by the Chinese immigration police, because sine I have left my closest friends and family are constantly being interrogated by the security police, who are trying to find out what I am doing while I am in Australia.

After arriving in Australia for the first time in my life, I finally felt like a human being. I have come to love this country and I now call Australia home. With the Australian government's permission, I would like to remain in Australia for the rest of my life and I also pledge my allegiance to this country. (sic).

24. The applicant was interviewed by the delegate from the Department [in] November 2011 During the interview he reiterated and expanded on his written claims.
25. [In] November 2011, the delegate refused the application on the basis that the applicant is not a person to whom Australia has protection obligations for the purposes of the Act and Regulations.

### **Information given to the Tribunal by the applicant**

#### ***Application for Review***

26. The applicant lodged an Application for Review [in] December 2011. A copy of the Department's Decision Record was lodged with the Tribunal at that time.

#### ***Invitation to Hearing***

27. [In] March 2012, an officer of the Tribunal wrote to the applicant advising that the Tribunal had considered all the material before it relating to the application but it was unable to make a favourable decision on that information alone. The applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal [in] April 2012. The Tribunal received a response to the hearing invitation [in] March 2012.
28. [In] April 2012, the Tribunal received a written statement from the applicant as follows:

My name is [name]. I was born on [date] in [a certain] region in Xinjiang province (we call this place Eastern Turkistan) of China. I am writing this statement in support of my application to the Refugee Review Tribunal (RRT).

I came to Australia [in] July 2009 on a student visa and I made my Protection Visa application to the Department of Immigration and Citizenship (DIAC) [in] August 2011. My application was refused by the department for various reasons [in] November 2011 -

I need to note that, when I made my application to DIAC, I did not receive any help from a professional person. So, I really didn't know what things in my life would be more appropriate to mention in my application. I prepared my application by myself.

First, I would like to mention other things that happened to me while I was in China, which I didn't write in my statement to DIAC, as I didn't know exactly what things in my life would be important for my application.

I studied my middle school education in the city of [Town 1] for about 3 years. It was a boarding school, and I was allowed to visit my family only 15-20 days a year.

In normal schools there are two main holidays, the first one is a 3-week holiday in winter and about 1.5-2 months holiday during the summer, depending the grade of the student. But in our school, we had only the summer holiday for 15-20 days.

Normally school start in the first day of September each year; but some schools have compulsory military training at the beginning of year 8, like my school. The military training lasts for 15 days. This period may change from school to school. By law, military training is not compulsory, but who would apply the law properly in China.

I was asked to do military training in the beginning of year 8 from about [August] 2006 till about [15 days later in] August 2006. The Chinese soldiers used to treat the Uighur students in an abusive manner. For example, they used to force the Uighur students, including me, to stand in attention position half an hour more than the Chinese students. One day, I asked the soldier why the Uighurs had to stand longer than the Hans, and the soldier hit me on my back and my legs using his belt and told me that, I should only obey what was told to me. When I was hit, I was in severe pain, and I started crying. The soldier then asked me to shut up in a rude manner, and forced me to do push-ups for 50 times. After I did about 30 times, I couldn't continue anymore and collapsed on the ground. The soldier kicked me on my body, and yelled at me to continue. I was very tired and I collapsed again after about 10 times, and he kicked me and told me that I wouldn't be given food, unless I completed 50 times. When I finished I was in extreme pain and tired. During the 15 days of training, they abused and beat Uighur students several times, but they have not done so to any Chinese student.

My school was a junior high school named [Town 1] city No 2 Middle School. There were 41 students in my class. About 11-12 of the students were Uighurs. The language of instruction was Chinese. We were not even allowed to speak in our mother tongue in the school buildings, even during the breaks. If one spoke during the class time, then the teacher would make that person stand against the wall, his/her nose touching the wall, and keeping the hands in attention position for about 40 minutes to 1.5 hours, depending on the teacher. If a student spoke in the Uighur language during the break time, then the student would be forced to sit in the office of the teacher and write a sentence such as 'I will not talk in the Uighur language at school again', for 50 to 500 times, depending on the teacher. If one does not write the sentence in the given time, or refuses to do it, they are beaten by the teacher using a wooden ruler.

Such a thing happened to me as well. The classes start at 7.15, and then there is morning exercise for 15 minutes, then breakfast for 30 minutes and half an hour



break, and then the classes begin. Classes start at 8.30, and continue till 1.45pm. Then we have recess till 4.00pm (eating and resting time). Then we start the afternoon classes, which last till 7.30pm. Then we have dinner time till 9.00pm, and then do self-study from 9.00pm till 11.00pm.

I was in year 8 (in about December 2006). It was before the self-study time, and I was in the class with my [friend], and we were talking between us. As the teacher entered the Class, she came towards me and my [friend], and asked us to follow her to her office. Our teachers were all Chinese and at that time our teacher was [name]. She said that she was told that we were talking in the Uighur language, and asked us why I talked in the Uighur language. I said : 'I am sorry, but it is my mother language; why is it wrong to speak in my mother tongue even during the break time?.' Then the teacher said, according to the rules, we were allowed to speak only in the Chinese language at school. Then I told her that, there was not such a written rule among the school rules. At that point, she hit me on my face, and held my hair and shook my head, and said things like: `you stupid bastard, the rule is rule, whether it is written or not, and you have to obey it'. I felt pain on my head and face, and started crying. Then she hit me on my hand with a ruler, and asked me and my friend to write the sentence of 'I will not talk in the Uighur language at school again' for 200 times. Then the teacher rang my mother and told her that, I was not obeying the school rules properly and that I had some aggressive behavior, and that they were not able to raise me properly, I had to write that sentence 200 times, but I felt extremely abused and downgraded, because it is not easy for someone to accept not using their mother language. After this incident, I tried to talk in my mother language secretly with my friends to avoid more penalty.

It was [in] July 2009, and I travelled to Beijing with my father, as I would be leaving China the next day. Naturally we needed a place to spend the night. My father and I went to a hotel. My father asked if room was available for one night, and the receptionist said yes. Then he asked to see our ID cards, and my father provided our ID cards. As soon as he saw that we were Uighurs, he said: 'sorry we have no room for you'. Then my father said that, he told us that room was available just a few minutes ago. The receptionist then said: 'there is no room for you, that is it; just leave the hotel at once'. We were both shocked.

Then we tried two more hotels, and same thing happened in both of them. My father and I had to spend the whole night at the airport. When I was in Kuqar, I used to hear from the people that, Uighurs travelling to inner parts of China usually wouldn't be given a hotel room to sleep. I used to think that people were exaggerating, but I saw with my own eyes that it was true.

#### How I obtained my passport

I was expelled from my school in March 2008. After this, I believed that I wouldn't be able to live freely and without problem in China. My parents were also thinking the same. So, they decided to get me out of China. My father made an application for a passport for me in about July 2008, and I could get my passport only in June 2009. This itself shows how the Uighurs are treated by the Chinese authorities. We also had to provide documents from various government departments, such as the police station, the security department, the religious affairs department etc. My father had to

go to the police station many times for about two months in order to get a signature from them, regarding my passport application.

Some people can never get a passport, while some people can get by paying bribes etc. But the Chinese people can get passport in short period of time, and without any problem.

Then my father found an [agency] to apply for a visa to Australia. The agency did all the paper work and made a visa application without my passport. Finally, I got my passport [in] June 2009 and sent it to Beijing, where the main office of my agent was.

Why I applied late for Protection Visa

I arrived in Australia [in] July 2009. When I came here, I didn't have much knowledge of protection application and I didn't know how or where I could make an application for protection. I was studying in [an] English School, and living in home stay in [Suburb 3]. I started meeting Uighurs in about September 2009. It was about February 2010 and I heard that people could stay in Australia as refugees. Then I started trying to find out where and whom I should approach. At about that time, my mother came to Australia for a short visit, and returned to China.

After she went back to China the local police approached her and questioned her. She was asked about what she was doing in Australia; what she told me while she was here; and what I was doing in Australia, which my mother answered, Then they forced my mother to call me back to China, to prove that, I didn't betrayed China. So, I went back to China [in] July 2010 to save my parents from problem with police.

When I went back to China the police found me on the first day and asked me questions such as what I was doing in Australia; what kind of people I was meeting with; whether I joined any organization; and whether I knew anyone who talked against China. I told them that I was a student and I did not join any organization.

After 3 days they came back again and questioned me again. They asked me to think about and tell them what the Uighur people were doing in Australia; how often they were meeting and where they were meeting. I didn't know much about the Uighur community in Australia at that time, so I told them that I didn't have any knowledge of Uighurs in Australia.

When I was leaving China [in] July 2010, I was warned at the airport to watch my mouth and not to say bad things about China.

After I came back to Australia, I was trying to apply for protection. We went to school camping in [suburb] in August 2010, and I got sick during the camping, and my temperature was as high as 41 degrees. I was taken to [the] hospital by ambulance, and I stayed there for two nights. Tests showed that I had [an infectious illness]. I was advised that, I should rest for about two months, and someone should take care of me during that time. My school advised me that, it would be better for me to spend that time with my family, as no one could look after me here. So, I had to go back to China again [in] September 2010, and I came back to Australia [in] November 2010.

At that time, I didn't have a place to live. I stayed in my friend [Mr A]'s place for about one week. But his cousin was also living with him, and the place was not suitable for me to stay. So, I had to spend some night in the internet cafe named name and address] in Sydney. There were even times that, I spent the nights at [name] (3 nights) and [suburb] (one night) train stations. Also, my school asked me to prove that I was OK health wise; so I had to do health checks as well.

After my friend [Mr A]'s cousin went back to China, I moved in to [an address in] [Suburb 4], [in] November 2010. Then I was able to start my application for protection. I didn't know how to make my protection visa application, so it took me long time.

Because of the things that I mentioned above, I was not able to apply for protection as early as I wished.

About my mother:

My mother is a religious person, and she secretly practices her religious duties at home within the secrecy of our home. But when the fasting month of Ramadan comes, she does fast secretly, but if her workplace authorities check on her or invite her for a lunch etc, she has no choice, but eat, in order to avoid penalties, which could include monetary fine, non-payment of salary for several months and the annual bonus. If one repeats such practice, then the authorities can terminate the employment of the person.

My mother became a member of the Communist Party, not because she believes in the communist system, but because she had to be member in order to be able to work in her position to make livelihood. As human beings, we need food, clothing and shelter to live, and my mother had to work to provide for the family. She does not believe in or support communism, because it is that system, that invaded our country, and destroyed our culture and freedom.

Also, the case Officer stated in my decision record that: `At interview the applicant stated that he was a child of six years of age at the time of this event which is inconsistent to the fact that the applicant was born in [year], therefore the applicant was [a different] age at the time.'

I mentioned during the interview that the incident happened in [a certain year], which means that I was [age] years old. At that time I was in year 6, and I made a mistake. I should have said I was in year six, rather than `I was 6 years old'. I apologize for that.

I also would like to note that, I am very stressed and depressed due to my fear of going back to China. I cannot sleep or eat properly, and I am socially not active like before and I cannot concentrate on things that I do like I could do before.

My activities in Australia

After coming to Australia, I attended several activities, which I wouldn't be able to do in China. Because the Chinese authorities regard such activities as separatist, or religious extremist activities. My activities are as follows:

a. I was able to fast during the months of Ramadan in the years 2009, 2010 and 2011, and I attended the Eid prayers for each Ramadan.

b. I have been able to practice my daily religious duties freely. Also, I was able to attend Qurban Eid prayer and activities, including meeting with other Uighurs and visiting families.

c. I have been able to attend the Friday prayers at mosque during the school holiday periods.

d. I have attended meetings three times organized by [a Uighur community group], where we learned about the Uighur history and our religion. I attended those meetings twice at [an address in] [Suburb 4]; and once at [a different suburb]. About 15-30 people attend our activities. I am very happy to attend those activities, as I am able to learn my nation's history and my religion. I will continue to attend those activities.

Also, I believe that the case officer treated me in a rude manner. I felt under pressure. She didn't talk in a quiet manner. When she didn't find my answers satisfactory, she raised her voice. I was scared and I was shaking during the interview; so much that my voice was shaking and I felt very nervous. This can be observed from the interview CD. Also, my friend [Mr A] was there at the interview, and he can give evidence about this. I have applied for protection because I went through difficult times in China. I was treated inhumanely and I was mistreated and discriminated against by the Chinese authorities. I was also beaten and verbally abused. In China it is not possible to talk freely in front of a government person. All this happened to me as a child. This is my background. So, it was not easy for me to adapt the free environment of Australia, and behave as a free person. So, I felt under pressure most of the time during the interview

What would happen to me if I go back to China

I was mistreated, discriminated and beaten due to my ethnic and religious background during my life in China. If I go back, I would continue to be exposed to more mistreatment, discrimination and abuse by the Chinese authorities as it happened to me before, due to my Uighur ethnicity and Muslim background.

On top of that, I believe that I would be exposed to abuse and mistreatment due to my activities in Australia, which I mentioned above. I believe that they would detain, question, beat and imprison me due to my activities in Australia.

I believe that my identity would be at risk, if I go back to China, As an Uighur and a Muslim, I would like to live my life according to my ethnic, religious and cultural identity. But there are severe assimilation policies in my country by the Chinese authorities, and it is impossible for me to keep my identity in the current political environment.

Finally, I need to say that I am extremely scared to go back to China, and I would greatly appreciate if the Australian Government could protect me against the Chinese authorities.

*At the hearing [in] April 2012*

29. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Uighur and English languages.

30. The applicant was represented in relation to the review by his registered migration agent.

The evidence of the applicant is summarised as follows:

31. He stated his name and stated that he is not known by any other name. He was born in East Kurdistan [date deleted: s.431(2)].

32. He is a citizen of China and is not a citizen of any other country. He does not have the right to live in any other country.

33. His mother lives in [Town 1] and his father in Urumqi. His mother works in [Town 1]. His father spends some of his time in [Town 1] and he sometimes visits his parents in Urumqi.

34. His father runs a private business with some friends. It is related to [employment details deleted: s.431(2)]. He started this business in about 2008. Before that he was unemployed.

35. He stated that when his father returned from Mecca he was accused of being a religious person so he could not find a job. He was unemployed from 2005 to 2008. Prior to that his father worked as a [occupation and company deleted: s.431(2)].

36. His mother works for [company deleted: s.431(2)]. She is a senior officer and is in charge of a small team. She was doing this job prior to his birth. His mother is a member of the CCP. He was unaware of how long she had been a member.

37. His brother lives in China. He is unemployed.

38. He went to school in China and studied up to [school year deleted: s.431(2)]. He left school during school holidays to come to Australia. The school he went to was not a boarding school. He then stated that he stayed at school from Sunday afternoon until Friday afternoon. He did this every weekend.

39. In China, the school year began [in] September every year. In December they had winter holidays and returned to school in January. The second semester ended in July. He stated that most schools that 15 days summer holidays. In his school they had 20 days because they had to do military exercises.

40. He travelled to Australia on a Chinese passport which was issued in his name. This is his first passport. When asked whether he had any problems getting his passport, he answered yes. His father started the application in July 2008. The first few months were spent preparing the documents. When they took the documents to the passport office they were told that they needed three other signatures from three other offices. They obtained two of the signatures through bribery and it took about one month to obtain them. The last signature took two months. When they returned to the police station they were told that they were busy. It took about two months further.

41. He came to Australia on a Student visa. He had an agent in China to organise his visa. His visa was issued [in] July 2009. It expired [in] March 2012. He travelled to Australia on his own.

42. He left China from Beijing. He had problems at the airport. He stated that they had to stay in a hotel in Beijing for one night prior to his departure. He and his father went to a hotel and asked for a room. The receptionist said they had a room and then asked for their ID cards. When the receptionist saw his ID and that he was a Uighur he said they had no rooms.
43. When the question was repeated, he stated that at the check in other passengers could leave. He was searched and his shoes and belt were inspected. When he was trying to get the last stamp to leave the officer saw from his passport that he was from Xinjiang and asked him to stop. Another man in a police uniform took his passport away. He was questioned for about 45 minutes. He was asked why he was going to a foreign country, if there were any people in that country that he knew and if he was planning to come back. They then returned his passport and he was allowed to leave.
44. He first arrived in Australia [in] July 2009. He initially lived in a home stay in [Suburb 3] for about 5 months. He then moved to a different home stay in [a suburb] where he lived for 7 months. He went to China and returned to the same address.
45. He went back to China because he became sick. On his return to Australia he spent 2 weeks staying with friends and then at internet cafes and train stations. He then moved to his current address in [Suburb 4]. On his return from China he did not go back to his previous address because the owner had new tenants.
46. He is now with a friend named [Mr A]. They rent [an] apartment. He initially stated that there are some other people there as well and then stated that there is no one else there. Their rent is \$330.00 per week. His friend sometimes helps him to pay the rent.
47. He first obtained immigration advice in Australia after his application was refused by the Department.
48. On his arrival in Australia, he [studied English] in 2009, He then started [a certain year in high school] in 2010. He is currently [still in high school].
49. His commenced his first job in Australia in February 2010. It was in [construction] and he worked in [Suburb 4] and [Suburb 3]. He did that job for 4 to 5 months. On his return from China he obtained a [delivery job]. He did that for one and a half months. After that he did not work and did not try to find a job. He felt stressed and could not sleep at night because he was afraid to return to China.
50. He is currently unemployed but is trying to find a job. When asked how he can afford his rent, he stated that he sometimes gets cash jobs and that helps to pay the rent. If he cannot find a temporary job his friend helps him.
51. He contacts his family in China by telephone once every few weeks. He last contacted them a week ago. Since coming to Australia he has contacted his Uighur friends in China twice. He does not have telephone numbers for his Chinese friends. They are commencing university now. He last had contact with his Uighur friends in China in January 2012.
52. He went to China [in] July 2010 and returned [18 days later in] July 2010. He went back to China [in] September 2010 and returned [in] November 2010.
53. He lodged an Application for a Protection visa [in] August 2011. He first found out about Protection visas in February 2010. He heard about them from some Uighur people. He went

to the office of the Department and obtained the forms. He prepared the written statement himself with a dictionary as his English is not very good. After he prepared the statement his friend's brother checked it for spelling mistakes.

54. He stated that everything he said in the Application for a Protection visa and his written statement are true and correct. He did not wish to make any changes to either of them.
55. When asked why he came to Australia, he stated that as a Uighur he was abused by the Chinese government and there was pressure on all his people. He had to live without religious freedom. He could not learn about the history of his people or their identity. He wanted some place where he could live freely, learn about his history and have religious freedom.
56. When asked how he proposed to do that when his Student visa only allowed him to stay here for a short time to study, he responded that before he became aware of Protection visas he planned to go to High School, university and return. Then he stated that he did not want to return. He wanted to study here no matter how long it took and stay here after his graduation. Being here he could learn about his religion and ethnic identity.
57. The Tribunal referred to his written statement to the Department and asked him about being expelled from school. He stated that he was expelled from school in March 2008 because the school authorities found out that he was a Muslim. When asked whether they were not already aware of that as he was a Uighur, he stated that they found out that he was fasting at school. Some other students could deny they were fasting but he was caught by the authorities.
58. He stated that during Ramadan towards the end of February 2008 they were invited by Chinese students to have lunch together. Sometimes they could refuse by saying they had planned to have lunch with their classmates. He was asked to have lunch with a teacher. Because he was fasting he told the teacher he had a stomach ache and wanted to go to the dormitory to rest. He went to the dorm. It was prayer time and while he was praying someone entered the room. It was his Maths teacher. His teacher kicked him while he was praying on his carpet. He called two other students who dragged him to the Principal's office. They telephoned his mother and told her that he had been expelled.
59. He was in a boarding school at the time. When asked whether he was expelled because he broke the school rules, he stated that the Chinese government banned students from fasting. There was no written statement about this in his school. He fasted because he thought it was his duty. He thought they would not find out.
60. He then enrolled in [School] in [Town 2]. It was not a boarding school. Uighurs were not allowed to speak Uighur and Uighur students were not allowed to gather together. They were in charge of cleaning the class room and were asked to do so by their teacher. When asked why cleaning the class room was a problem, he stated that only Uighurs were forced to do that. The Uighur students in every class room were in charge of cleaning the classroom. They were not allowed to leave school until they finished cleaning. There were 5 Uighur students in his class.
61. His parents decided to send him to a foreign country in May or June 2008. When asked why, he stated that his experiences during his school life were a signal that if you are a Uighur and want to save your identity you will be abused and have no freedom or future. His parents decided to send him to a foreign country to have a future. Since he was a little boy his mother

told him that her generation could not enjoy a good and free life and they would try to give his generation a free life.

62. When asked whether he practised his religion in China, he stated that he did so in secret. He stated that while studying in [School] he prayed and fasted at school. He practised his religion in Australia by praying at home. If he has time he goes to the mosque for Friday prayers. He is attending history and religion classes organised by the community here. He can go to the mosque to pray for Eid. He can proudly say he is a Muslim. He is managing to fast during Ramadan.
63. He started going to the mosque in Australia from the first Friday after he arrived here. The owner of his homestead took him to a [mosque]. He goes to the mosque regularly during the school holidays. During school if there are no meetings or classes and he can leave early he goes to the mosque.
64. He is currently living in [Suburb 4] and walks to the mosque. He used to go to the mosque in [Suburb 4] by train. He last attended the mosque on the day before yesterday for the morning prayer. The prayers are in Arabic. After the prayers especially on Fridays the Imam speaks in Turkish. It is translated into English by others in the mosque.
65. He does not speak Turkish or Arabic. He had some lessons on reading the Koran and can recite some chapters from the Koran. When asked how he understands the prayers if he does not speak Arabic or Turkish, he stated that Arabic is used during the prayers. When the Imam teaches he uses Turkish and English.
66. Since being in Australia, he has attended the Eid festival prayers. There are Uighur community activities like visiting families. When he has time he attends those activities. He goes to Friday prayer. He intends having Koran lessons from “a guy”. He intends fasting during Ramadan. He has also gone to [Uighur classes] organised by the community.
67. He first attended a meeting organised by [a Uighur community group] in February 2012. The next meeting was in late March 2012. The next was in early April 2012. When asked what happened at these meetings, he stated that they read them a book about Uighurs. There was then time for questions and a discussion. After this they contacted a professional Imam [via video] and asked him some questions. The Imam also gives them lessons in topics they are interested in.
68. He first started meeting other Uighurs and visiting families in September 2009 or October 2009. When he was living in [Suburb 3] he did not have much chance of meeting other Uighurs. He attended a New Year’s Eve party organised by the Uighurs in 2010 and since then has started to communicate with the Uighur community. He stated that it is part of the culture to visit Uighur families especially during Eid. Besides that he and his friend [Mr A] visit other Uighurs.
69. When asked what he thought would happen if he returned to China, he stated that he would have to give up his identity, religion and history. He would have to follow orders and get abused. Because of his activities in Australia he might have much worse treatment if he returned. He believes it will also affect his family. There is another possibility that he will be arrested at the airport and disappear. Chinese policies say they are tolerant of all religions. However, they do not want religious activities in the country. They do not like people who participate in these activities and think they are against Chinese authority.



70. When asked whether there was anything else he wished to say, he stated that he wanted to clarify something he said during his interview with the delegate. He stated that he referred to an event in [year deleted: s.431(2)] and said when he was 6 years old rather than when he was in Year 6.
71. He stated that he feels stressed. He has problems sleeping at night. He cannot concentrate. He hopes the Tribunal will forgive him if he made any mistakes today.
72. When asked whether he had told the Tribunal everything he wished to say, he stated that in Year 8 they had military exercises organised by the school. While they were standing they were forced to do 15 to 30 minutes more than the Chinese students. He asked a soldier training them why they were doing it longer than the Chinese students. He shouted at him and told him to follow orders. He used his belt and hit him on his back and legs. He started to cry because he was so scared. He was asked to do 50 push ups. He fell down after doing 30 push ups and was kicked in his back by the soldier. He did 10 more push ups and stopped. The soldier told him they would not give him food until he did 50 push ups. He finally did it. He felt tired and was in pain.
73. The Tribunal asked the applicant's migration agent whether he wished the Tribunal to ask the applicant any further questions and he answered no.

The evidence of [Mr A] is summarised as follows:

74. He stated that he lived in [Suburb 4] and has lived there since late January 2010. He is a student.
75. He is an Australian resident and has lived here for almost 3 years.
76. He is a friend of the applicant. He described their relationship as very close friends. He met the applicant about 3 months after he arrived in Australia. They share a unit and have done so since November 2010.
77. The applicant moved in with him soon after he returned from visiting his family in China. He then moved out when his sister came for a visit. When his sister left, the applicant moved back.
78. He has [a number of] bedrooms in his unit. When asked why the applicant had to move out, he stated that he was living with his brother and sister. When his sister visited she had to wear a head scarf in the applicant's presence because of her religion. They thought it would be inconvenient for her.
79. His sister came for a visit in early December 2010. She left in October 2011. She is in Turkey now.
80. He stated that he also applied for a Protection visa. His application was granted [in] 2009. The applicant did not give evidence in his case.
81. When asked what he would like to say about the applicant, he stated that they are good friends. The applicant has some hardships now and he wants to help him. If he cannot afford to pay the rent, he pays it himself. The applicant has become strange and does not want to go out. Sometimes when he talks about his family members he starts crying. Sometimes he

thinks he has some mental problems. Compared to when they first met he is getting worse psychologically. He thinks something is affecting him mentally.

82. When asked whether the applicant had seen a doctor or a psychologist to get some assistance, he stated that he met the school counsellor one or two times. He cannot afford to go to a psychologist.
83. When asked whether the applicant has medical insurance, he stated that he does not know. They do not talk about these kinds of things. When asked whether he was required under his Student visa to have health insurance, he stated that his parents managed the visa for him. He does not have any knowledge about the insurance.
84. When asked whether there was anything else he wished to say, he stated that the applicant needed help and he tried to help him.
85. The witness' evidence was then concluded.

The further evidence of the applicant is summarised as follows:

86. When asked whether he was attending school, he stated that because of what happened his parents cannot support him and the school stopped him one week before the holidays. As he is on a Bridging visa he asked the Department of Education about going back to school. They said there is some application he had to complete so he could go back to school.
87. He stated that he does not know who he can talk to. He is under a lot of pressure. He is not sure whether he should speak to his migration agent. He told him he is trying to arrange for him to see a psychologist free of charge.
88. He stated that he had medical insurance through Medibank previously but it has expired. He does not have mental problems. He sometimes feels stressed. He told his migration agent and he said he would help him.
89. The Tribunal then informed the applicant that it had information before it which could be the reason or part of the reason why it may have to affirm the decision made by the Department. The Tribunal informed the applicant that this was important because it could lead to the Tribunal forming the view that he is not a witness of truth and this could result in the Tribunal coming to the conclusion that he is not a refugee. The Tribunal informed the applicant that if it came to this conclusion it would have to affirm the decision made by the Department. This would mean that his application to the Tribunal would not be successful and he would not be entitled to a Protection visa.
90. The Tribunal informed the applicant that it would advise him of the relevant information and give him the opportunity to comment on or respond to the information. The Tribunal also informed him that he was not obliged to comment on or respond immediately and could seek additional time to do so.
91. The Tribunal noted that during his interview with the delegate [in] November 2011, he was asked about incidents he had experienced during the 10 years he attended school in China. The delegate noted that he had referred to 3 incidents. First, when a group of 5 or 6 Uighur students were standing together talking and the teacher reported them to the Principal. Second, when the Maths teacher caught him praying in the dormitory and reported him to the Principal. Third, when he made a mistake in a Maths exam and the teacher referred to it in

front of the whole class. The delegate asked him whether there were any other incidents. He stated that there were others but that these three incidents had the most significant impact on him.

92. In his written statement to the Tribunal received yesterday he referred to two further incidents at school in 2006. The first incident was when a teacher caught him speaking to another student in Uighur. He claimed that when he spoke up, the teacher hit him on his face, grabbed his hair and shook his head, swore at him, the pain in his face and head made him cry, hit his hand with a ruler, made him write out a sentence 200 times and then complained about his behaviour to his mother. The Tribunal expressed the view that it would think that this incident would have been quite traumatic for a [person of the applicant's age].
93. The second incident he referred to in his statement to the Tribunal was at school in August 2006 when he did 15 days of military training. He claimed that a soldier hit him on his back and legs with a belt until he cried, forced him to do 50 push ups, kicked him, yelled at him and threatened not to give him food until he did the push ups. The Tribunal expressed the view that it would think that this incident would have been quite traumatic for a [person of the applicant's age]. However, he did not mention this in his original statement to the Department. He did not mention it to the delegate during the interview even though she specifically asked him if there were any other incidents.
94. The applicant responded that he wrote about three incidents in his application. When the delegate asked him if there were any more he said yes but that these three were very important to him. He stated that he was expelled from school with only 3 months left for [that school year]. Because of this he did not do anything wrong in [this school year]. He just met his friends to say goodbye. In his teacher's mind he was a terrorist. He stated that this happens a lot to every Uighur in East Turkistan.
95. He stated that when he was preparing for the hearing, his migration agent asked him if anything else happened. He told him that everything is important. That is why another statement was prepared and sent to the Tribunal the day before the hearing. He had to meet his migration agent several times. They had to break several times because he could not take the bad memories.
96. The Tribunal noted that during the interview with the delegate [in] November 2011 the delegate discussed with him country information on China and particularly the information that children under 18 years are not allowed to practise their religion in public places or attend mosques in Xinjiang Province. He responded that he had never prayed in public places and only prayed in his dormitory. This is inconsistent with his written statement to the Department that [in a certain year] he went to the mosque and as he entered the mosque he was grabbed by a man and taken away.
97. The applicant responded that he was in Year 6 in [that year]. Before that he did not attend Friday prayers or morning prayers. He only went to Eid. He had done that previously and did not have a problem. He did not know why he was caught that year. After that he never prayed in public. Even in his dormitory, he prayed after the others left.
98. The Tribunal noted that during the interview with the delegate [in] November 2011, the delegate asked him what religious activities he was involved in in Australia. He stated that he prayed daily at home and went to the mosque in [Suburb 4] every Friday. This is inconsistent

with his written statement sent to the Tribunal yesterday in which he stated that he only attended Friday prayers at the mosque during the school holiday period.

99. The applicant responded that when he went to the interview he was in [a certain year in high school]. On Fridays he finished school at 11.00am so he had time to go to the mosque. In [his current high school year] he finishes school at 1.30pm. Prayer is half finished by that time so in [this school year] he can only go during school holidays.
100. The Tribunal noted that during the interview with the delegate [in] November 2011 he stated that when he returned to his hometown in China the police came over a few days later and asked him questions about his life in Australia. In his written statement sent to the Tribunal yesterday he stated that when he returned to China in July 2010 the police questioned him on the first day he got back. He claimed that they then returned after 3 days and questioned him again.
101. The applicant responded that he did not mention the first time because when he was at the airport the police at the airport asked him questions there. The police then came to his home a few days later.
102. The Tribunal noted that during the interview with the delegate [in] November 2011 he was asked what activities he was involved in in Australia besides going to school, praying and working. He stated that he read books and played the guitar. He stated that he did not want to communicate with too many people as it could impact on his studies. In his written statement sent to the Tribunal yesterday he claimed that he meets other Uighurs, visits families and has attended three meetings organised by [a Uighur community group].
103. The applicant responded that at the time of the interview with the delegate there were no [Uighur] classes. They started after November 2011. He stated that once a year at Eid and Ramadan, after they pray, they visit homes. Because it only happened once a year he did not think it was important and did not mention it at the interview with the delegate. He did not want to talk to other people so he said it would interrupt his studies. He then realised that if he did not talk to people he would not talk at all.
104. The Tribunal informed the applicant that it had some concerns in his case. The Tribunal noted that he voluntarily returned to China twice. On each occasion his passport was not confiscated and he was not stopped from leaving China. This is inconsistent with his claims.
105. The applicant responded that he did not voluntarily return to China. On the first occasion the police forced his parents to ask him to return to China. He does not know the reason. His mother called him. On the second occasion he got [an infectious illness] and there was no one who could take care of him. There were two children at his homestay. He spoke to his school and was advised to return home if there was no one who could help him.
106. He stated that the advice he received from the hospital was that he had to lie down for 1 ½ months or else he would have problems with his liver. At that time he did not have much contact with Uighur people. On each occasion the Chinese police warned him to watch his mouth and what he said in Australia. On the first occasion they checked his passport and checked his suitcase. On the second occasion it took longer and they took everything out of his suitcase. He will be arrested because of his activities in Australia. The Chinese do not want these activities for the Uighurs.

107. The Tribunal informed the applicant that it had concerns about his delay in lodging the Application for a Protection visa. The Tribunal noted that he came to Australia [in] July 2009. He lodged his Application for a Protection visa [in] August 2011 which was over 2 years later. The Tribunal noted that this was not consistent with someone who came here to escape persecution and to live a free life here.
108. The applicant responded that when he lived in [Suburb 3] he did not have much chance to meet Uighur people. He heard about refugees in February 2010. When he tried to find out more his mother told him she was coming to Australia to visit him. He thought it would be dangerous for his mother if he lodged an application.
109. When asked when his mother returned to China, he stated that she returned one week later in April 2010. The day she returned the police questioned her about what she did and what he was doing. They asked her why he had not returned to China. That is why he returned to China in July 2010.
110. When asked why he did not lodge his Application for a Protection visa when he returned from China, he stated that there was no one to help him. He got a temperature at the school camp in August 2010. The doctor had him do a blood test which showed that he had [an infectious illness]. When asked why he did not obtain some immigration advice, he stated that he did not know how to do it. They heard that there are spies and did not talk to each other about such things.
111. The Tribunal informed the applicant that it found it difficult to accept that his best friend applied for a Protection visa and he did not know about it particularly as they lived in the same house. The applicant responded that when his friend's cousin left he moved in. When his cousin returned he moved out.
112. He stated that he obtained the form and answered the questions on the form. It took him two months to write the written statement. He stated that when he arrived in Australia he thought that the way for him to stay here was to keep studying. When he found out about refugees in 2010 there was no one to help him.
113. The Tribunal informed the applicant that it was also concerned that he waited until his Student visa was getting close to expiry before he lodged his Application for a Protection visa. The applicant responded that that was when he completed his application. He did not think about his Student visa. He repeated [a year]. He thought he could get a Student visa for another year.
114. The Tribunal informed the applicant that under s.91R(3) it was required to disregard his conduct in Australia when assessing whether he had a well-founded fear of persecution unless satisfied that it was otherwise than for the purpose of enhancing his claims to be a refugee. The Tribunal noted that he must satisfy the Tribunal that his attendance at religious and/or cultural activities in Australia was otherwise than for the purpose of enhancing his claims to be a refugee.
115. The Tribunal noted that he came to Australia in 2009. It was only after the Department refused his Application for a Protection visa that he started getting involved in activities in Australia. The applicant responded that he prayed and fasted because he wanted to and because he could not do it in China. He went to Ramadan and Eid before he lodged his Application for a Protection visa. He did not mention it. The classes started last year in

October and November 2011. If he did not want to do attend them he would not have. He attended them because he wanted to.

The applicant's migration agent's submissions are summarised as follows:

116. He stated that when he met the applicant he was not very willing to talk about [the Uighar classes]. He asked him questions. He was very unwilling to give names especially the person who was doing the video link. He asked if he had to give that information. He told him that if he was asked questions and did not answer them it would not help him. He is the applicant's migration agent and he had difficulty giving him that information.
117. The hearing was then concluded.
118. [In] April 2012, the Tribunal received a letter from the applicant's migration agent requesting a further three weeks to provide the Tribunal with a Psychological Report on the applicant. [In] April 2012, the Tribunal informed the applicant's migration agent that an extension of time had been granted until [May] 2012 for a Psychological Report to be submitted to the Tribunal.
119. [In] May 2012, the Tribunal received a letter from the applicant's migration agent requesting a further three weeks to provide the Psychological Report. On [the same day] May 2012, the Tribunal informed the applicant's migration agent that a further extension of time had been granted until [a certain date in] June 2012.
120. [In] June 2012, the Tribunal received a letter from the applicant's migration agent enclosing a written statement from the applicant dated [June] 2012 and a letter from [Mr B] dated [May] 2012. In his statement the applicant stated that he has not been able to obtain a Psychological Report as yet. He claimed that he does not have the financial resources to pay a private Psychologist and has been waiting to be interviewed by a Psychologist from [a trauma survivor's centre] but has not been interviewed as yet. He also stated that he continues to practise his religion freely and attend classes organised by [a Uighur community group].
121. The letter from [Mr B] indicates that he organises classes for young Uighur people to learn about their history and religion. He confirmed that the applicant has been attending the classes. He stated that he believes that the applicant could face severe abuse, mistreatment and discrimination for participating in these activities and he would be beaten, tortured or imprisoned if he returns to China.

## **INDEPENDENT COUNTRY INFORMATION**

122. *The situation of Uighurs in Xinjiang Province, China*

The Tribunal has considered the following Reports:

US Department of State 2011, *Country Reports on Human Rights Practices for 2011 – China (includes Tibet, Hong Kong, and Macau)*.

US Commission on International Religious Freedom 2011, *Annual Report 2011 – People's Republic of China*.

Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009.

Amnesty International 2010, “*Justice, Justice*”: *The July 2009 protests in Xinjiang, China*, July, ASA 17/027/2010.

Human Rights Watch 2005, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, April, Vol. 17, No. 2(C).

(<http://www.hrw.org/sites/default/files/reports/xinjiang1009webwcover.pdf>)

Human Rights Watch 2009, “*We Are Afraid to Even Look for Them*”: *Enforced Disappearances in the Wake of Xinjiang’s Protests*.

(<http://www.hrw.org/sites/default/files/reports/xinjiang1009webwcover.pdf>)

Freedom House 2011, *Freedom in the World 2011 – China*

(<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8016>)

### 123. *Monitoring by the Chinese government of Uighurs in Australia*

Department of Foreign Affairs and Trade

In November 2010, the Department of Foreign Affairs & Trade (DFAT) repeated earlier advice it had provided that “it is likely that Chinese authorities seek to monitor Uighur groups in Australia and obtain information on their membership and supporters.”

(Department of Foreign Affairs & Trade 2010, *DFAT Report No. 1205 – China: RRT Information Request: CHN37428*, 1 November)

.....China regards separatist activities (eg calling for Xinjiang’s independence from China) as criminal, regardless of whether the person was in China or in another country when he or she carried out such activities. In determining what constitutes separatist activity, China does not make a significant distinction between non-violent political calls for Xinjiang independence and advocacy of violence (although the latter would likely attract more severe punishment).

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

(DIMIA Country Information Service 2006, *Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006) – CISNET China CX154325)

Sydney Morning Herald

In July 2009, Beijing was reported to have “called on the Chinese diaspora to unite around the Communist Party on the basis of ‘blood lineage’ and to spread the ‘truth’ about

separatism in Xinjiang.” It was also reported that institutions such as the United Front Department, the State Council’s Overseas Chinese Affairs Office, Chinese embassies and consulates and the Ministry of State Security were all “responsible for organising and monitoring overseas Chinese business, student, cultural, media and political networks.”

(Garnaut, J. 2009, ‘Rally around flag, China tells diaspora’, *The Sydney Morning Herald*, 27 July – CISNET China CX233958)

## **FINDINGS AND REASONS**

124. The Tribunal finds that the applicant is a citizen of the People's Republic of China based on his evidence and his passport, a copy of which is before the Tribunal, and will assess the claims on this basis. The Tribunal finds that the applicant is outside his country of nationality. There is no evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality.
125. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
126. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true. (See *MIMA v Rajalingam* (1999) 93 FCR 220).
127. However, the Tribunal is not required to accept uncritically any or all of the allegations made by applicants. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
128. In dealing with this application, the Tribunal finds, on the evidence before it, that the applicant is of Uighur ethnicity and that his religion is Muslim. The applicant’s claims for protection are based on his Uighur ethnicity and his religion. He relies on several incidents in China to support his claims.
129. The Tribunal generally found the applicant to be a credible witness although the Tribunal formed the view that the applicant exaggerated and embellished some of his claims. The Tribunal accepts that the applicant’s account of the restrictions on his practise of his religion and expression of his culture are consistent with the independent country information referred to above in relation to the Chinese government’s policies towards Uighurs and the severe discrimination experienced by Uighurs for reasons of their ethnicity and religion.
130. Whilst the Tribunal accepts that the applicant had difficulties at school in relation to the practise of his religion, speaking his mother tongue, associating with other Uighur students and being expelled from school for reasons of his ethnicity and religion, the Tribunal is not satisfied that it amounts to serious harm as defined in s.91R(2) of the Act. The Tribunal therefore finds that the applicant did not experience persecution on the grounds of race and/or religion in China.



131. However, the Tribunal is satisfied that there is a real chance that the applicant will suffer serious harm upon his return to China in the foreseeable future for the following reasons. The Tribunal accepts, on the basis of the applicant's oral and written evidence and the evidence of [Mr B], that the applicant has been attending classes organised by [a Uighur community group] in Australia to learn about his history and religion. The Tribunal also accepts that the applicant has been practising his religion in Australia including fasting during Ramadan, praying, attending the mosque and meeting and visiting Uighur families.
132. The Tribunal is satisfied that the applicant has a genuine interest in his own culture and religion which he has sought to explore and practise freely in Australia. The Tribunal is also satisfied that the applicant was not motivated to engage in such activities to strengthen his claim to be a refugee. The Tribunal finds that the applicant has engaged in religious and cultural activities in Australia otherwise than for the purpose of strengthening his claim to be a refugee.
133. The applicant gave evidence that his mother visited him in Australia in April 2010. He claimed that, on her return, the police questioned her about what he was doing in Australia and why he had not returned to China. He claimed that his mother was "forced" to get him to return to China and that is why he returned to China in July 2010. He gave evidence that when he returned to China in July 2010 he was questioned on his activities in Australia. He claimed that when he left China in July 2010 and November 2010 he was warned not to say "bad things" about China.
134. The applicant claimed that his activities in Australia are peaceful but the Chinese authorities may conclude that he has been associating with Uighurs in Australia who are separatists and/or terrorists and this would place him at risk if he returns to China. This claim is supported by [Mr B] who states that the applicant's attendance at the [a Uighur community group] would place him in danger of severe abuse, discrimination, mistreatment, torture or imprisonment.
135. The Tribunal accepts that the independent country information on China referred to above indicates that the Chinese authorities monitor Uighur cultural activities in Australia. The Tribunal also accepts that, although the activities in which the applicant is involved in in Australia appear to be cultural and religious (rather than political), any involvement by a Uighur in such activities may be viewed as involvement in a separatist organisation. The Tribunal further accepts that the independent country information indicates that Uighurs who return from other countries are often questioned upon their arrival about any involvement in separatist organisations.
136. The applicant has been questioned by the Chinese authorities about his activities in Australia in the past. He was not attending the [a Uighur community group] at that time and was able to convince the Chinese authorities that he had no contact with Uighurs in Australia. The Tribunal has serious concerns that should the applicant be subjected to questioning again, the Chinese authorities would have no difficulty extracting information from him about his involvement in Uighur activities in Australia.
137. The independent country information referred to above indicates that the range of treatment of such persons varies and it is possible that the applicant may be treated more leniently given his age. However, the independent country information also indicates that since the protests in Urumqi in 2009 the Chinese authorities have blamed overseas Uighur groups for what they

described as “premeditated violence”<sup>1</sup> and have implemented a crackdown on any perceived dissidence. Accordingly, the Tribunal considers that there is a real chance that the applicant may be subject to some form of re-education through labour and that his future education and employment opportunities would be severely affected.

138. The independent country information referred to above indicates that Uighurs have limited employment opportunities and the Tribunal considers that any further restrictions on the applicant would severely affect his ability to earn a livelihood.
139. In considering the above factors cumulatively, the Tribunal finds that there is a real chance that the applicant would be subjected to serious harm amounting to persecution for reasons of his ethnicity and religion if he returns to China in the reasonably foreseeable future. Therefore, the Tribunal finds that the applicant has a well-founded fear of persecution in China for reasons of his race and religion.

### **CONCLUSIONS**

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

### **DECISION**

141. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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<sup>1</sup> Amnesty International 2010, “*Justice, Justice*”: *The July 2009 protests in Xinjiang, China*, July, ASA 17/027/2010.