

0909990 [2010] RRTA 229 (23 March 2010)

DECISION RECORD

RRT CASE NUMBER:	0909990
DIAC REFERENCE(S):	CLF2009/116160
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Sydelle Muling
DATE:	23 March 2010
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

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

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the Protection visa application, the applicant is an ethnic Uyghur Muslim male born on [date deleted s.431(2)] in Xinjiang, China. He lived in [location deleted: s.431(2)] in Xinjiang from June 1999 to June 2009. He completed one year of primary education and is fluent in Uyghur and can speak Mandarin. The applicant described his occupation before coming to Australia as [business] manager and owner. His past employment details include [details of employment deleted: s.431(2)]. Between 1990 and 2001 he travelled regularly, every two or three months, to Kazakhstan, Kyrgyzstan and Uzbekistan for business purposes. He did not travel outside China between 2001 and 2005 and between 2005 and 2009 he travelled to Kazakhstan once a year, usually for business purposes, however in 2008 he went together with his family on a vacation. The applicant departed China legally to travel to Australia [in] June 2009. The applicant was married [in] October 1982 in Xinjiang. His wife, three daughters and one son are currently residing in China. The applicant has one daughter living in Australia.
21. In a statement attached to the Protection visa application, the applicant made the following claims:

The reason why I came to Australia was that our country was occupied by the communist Chinese. The persecution faced by Uyghurs is so serious that it amounts to ethnic genocide. Political persecution, religious repression, and cultural genocide, depriving Uyghurs from social, educational and economic rights are very serious in East Turkistan. There is no freedom of speech, live in peace without fear from authority and police in East Turkistan.

I'm a Uyghur who always thinks about the Uyghur nations' future, who always wishes and struggles for the independence of East Turkistan day and night. But, the Chinese prisons are full of Uyghurs like me and they were being tortured. I was aware that this day would come to me just like any other innocent Uyghurs so that's why I escape to Australia to live safe and I ask the Australian government to help a Uyghur who was to be executed by the Chinese.

I was born in a merchant family in Urumqi. My father [name] who is now [age], my mother [name] who is [age] years old. Before the occupation of the Chinese in East Turkistan my father had lived in [location] (east part of East Turkistan) in a wealthy and an honored family. My grandfather was a man who was nationalist and religious and who loves knowledge so he sent my dad to capital of Russia, Moscow to him to be an intellectual man (it was so hard to go to Moscow from East Turkistan as it costs

huge amounts of money at that time). But, my dad's wealth was already finished before we were born.

When the Chinese communists took over East Turkistan in 1949, they labelled my dad's family as "a wealthy landlord", "qatalga baghlanghan onsor" (Foreign related evil), so they took the land, household items and kicked them out of their homeland. Even, the Chinese shoot two of my dad's brother. For this reason, my dad escaped to Urumqi and from that day he came to Urumqi, he started a small business. My dad is nationalist, educated who had lived under the Chinese oppression so long. That's why he wanted us to be educated, religious and fight for the freedom of our country.

In [year], I started my primary education in Urumqi I was so interested and to joy the education under my father's training. But, my aspiration and desire to learn was destroyed by the brutal policies of the Chinese. In 1964, the language that has been used by the Uyghurs for a 1000's years cancelled by the Chinese government under compulsion and replaced Chinese sound of script. This script continued till the year 1982. As a result there was a writing difference in two generations so father and son couldn't read each other's writings. This was the biggest damage to the Uyghur education system by the communist Chinese.

Not long before I started my schooling the Chinese communist's what's so called "the Cultural Revolution" started. The Chinese started to parade my dad in the streets with a label on him said "Wealthy landlord". The reason was he went to a foreign country and became rich by selling merchants.

At school, we were avoided and forced to do labour works and didn't allow us to join the class and study. Our days passed by cleaning the school yards and the toilets. The Chinese government arrested my father for selling [goods]. They accused him of earning money by harming the state owned property. My dad was tormented by the Chinese and was forced to hand over all his wealth and belonging to the government. He spent so many years and his strength to find all those belongings but he lost everything within a minute.

My dad was sentenced for three years imprisonment. The Chinese police had beaten him cruelly and dragged him in front of us. It has left an unforgettable horrifying memory in my childhood. Such memories had also strengthened my eagerness for freedom and liberty. After my father had been sentenced, I couldn't continue my study as we didn't have money. This was the reason for tens and thousands of Uyghur children have to become illiterate and uneducated.

I started to follow my father and started a business in [year] when my father was released from the prison. I was very young when I started. My dad was an open and well mannered person so our business developed in a short period of time

When I had enough money, I expanded my business and went to other Central Asian countries. During these times, I met many Uyghurs who have same intention as I had and we exchanged our opinions.

As my business developed quickly, I made significant amount of money but there wasn't a day that I forgot about my people, my motherland. The most importantly, I have never forgotten the discriminatory policies of Chinese regime towards to my Uyghur people.

I met with a woman who impressed me and earned my respect during my business trips. Even though she was an ordinary businesswoman, she had such bravery and

passionate love to our country and to our nation. As well as this brave heart that does not scared of the Chinese sword or anything. And that was Rebiya Kadeer.

Rebiya Kadeer's desire to freedom, her opinions about our nation's future had influenced me lot. So that's why I decided to go with Rebiya Kadeer and to fight for the freedom of our country. From the day we met, we started cooperative partnership in our business for few years. At that time, we longed to help the Uyghurs who were in dire need, help and improve their living conditions as well as to inform them about what is happening in and out East Turkistan and how to organise the struggle for the freedom of our nation. We also started to conduct some intellectual tasks in Central Asia and made some friends who was willing to support us.

One day, Rebiya Kadeer told me that what we doing outside our country wasn't enough and that we have to do something real inside, how in our country we have so many orphan children who were spending their days in streets, again how they couldn't go to school because poverty. So we decided and opened [a foundation] There were more than 100 people who attended to this [foundation], Nationalist intellectuals, religious scholars, progressive businessmen. I became one of the important members who established the [foundation]. The main purpose of this [foundation] was: to educate the Uyghur orphans, to help the children who couldn't go to school because of their financial difficulties, to send the best students to foreign countries, mainly, to rescue the Uyghur Ethnic Education System that was being destroyed by the communist Chinese day by day.

The things that we did had spread to other districts, regions and cities of East Turkistan very quickly. Thousands of children who didn't have opportunity to go to school went back to schools. Again, so many powerful students went to Europe, America to study. We worked on this so hard so whole country people felt grateful and praise to us for what we did.

But, not long after what we did was counted as a crime and harshly banned by the communist Chinese government. The [foundation's] members were accused by Chinese authorities for their humanitarian deeds that delivered to Uyghur community. The Chinese authorities counted the [foundation's] members as political criminals because the authorities wanted to discharge our actions, they tried to bury the Uyghur nation under a darkness that far apart from education and social well being. By doing that, the Chinese communists wanted to accelerate the pace political annexation and cultural assimilation of East Turkistan and Uyghur people. That's why the government saw these things as a crime even when we spent our own money for it. So the authorities accused us "having intention to separate the country", "providing state secrets to overseas countries" and so on. As a result, Ms Rebiya Kadeer was arrested in 1997.

Members of the [foundation] were arrested by the Chinese. In this tense situation I had to hide from such situation. From 1999 - 2001, I lived secretly. After that, I lived under the supervision of Chinese policies. My business withdraws day by day because of the various types of pressure by the Chinese Government authorities. The other members of the [foundation] were arrested and sentenced, they did not commit any crime, and they were innocent just like me. I was also arrested by the police and spent 15 days in jail. After that, I lived under the supervision of Chinese policies. They arrested and interrogate me anytime they wanted. And I wasn't allowed to go to other foreign countries either.

To be free from the Chinese governments unreasonable bondage I didn't have any other choice but to go to a foreign country where I can express my ruined personal

freedom. Therefore with a help of my daughter and son in law I had an opportunity to come to Australia. But the Chinese put pressure on me to give my passport to them. I simply said I sent my passport to the consulate then bought the plane ticket secretly. Escape to Australia without saying good bye to my elderly parents.

Not long ago, on the 26th June 2009, a violence attack took place at a toy factory in Guangdong Province. The attack involved more than 10,000 Han Chinese workers and local residents who physically abused 800 Uyghur workers who were forced to go and work on that factory. But the Chinese government suppressed what had happened and didn't tell any media about it also didn't give any explanations to the Uyghurs.

So, the Uyghur youth (on the 5th July) were only out on streets peacefully expressing their resentment over the death of their brothers and sisters. They were only claiming the justice that had been neglected by the authorities.

However, their rights of seeking justice through peaceful protesting have been condemned by vicious means such as the use of electroshock weapons and poisonous gas. Furthermore, protesters, including females were beaten very viciously by the armed forces and this results a death of more than 1000 innocent Uyghurs. 10,000 Uyghurs were arrested.

Currently, all cities in East Turkistan are under the control of armed forces. Urumqi has been restrained and police are arresting everyone who they think might have had connection with the protest. How the Chinese government will deal with these arrested youth is unknown. The Chinese government telling the world shamefully that the things in Urumqi went back to normal and spreading false news and hiding the truth of what had happened in Guangdong Province and Urumqi. On the contrary, they are blaming Rebiya Kadeer and World Uyghur Congress. For that matter they imprisoned every single person who knows Rebiya Kadeer and still arresting people. Of course, I would've been arrested by now if I were still in East Turkistan because at that time I was on the same line with Rebiya Kadeer. Now, the Chinese polices trying so hard to find me every day. So, my life is in danger. It would be very dangerous for me to go back to East Turkistan. I ask the Australian Government to refuge me and save me from this situation.

22. Also attached to the Protection visa application was a letter from [a senior official] of the East Turkistan Australian Association dated [in] August 2009 confirming that the applicant had become a member of the East Turkistan Australian Association and acknowledging the applicant's daughter and son-in-law's involvement in the community. The [senior official] also confirms that the applicant was one of the founders of "[a second welfare organisation]" which was established in East Turkistan by leading businessmen in East Turkistan in the early 1990s. It was claimed that the applicant's relationship with Ms Rebiya Kadeer would make him vulnerable.
23. In a further statement made by the applicant he claimed that he was arrested by police in May 2001 because of his involvement with the "[welfare organisation]" which he founded together with Rebiya Kadeer. He was arrested for fifteen days and after that he lived under the supervision of the Chinese authorities. The applicant claimed that he was arrested and interrogated any time the police wanted. The authorities would come whenever something happened in Urumqi or whenever they wanted information on Rebiya Kadeer's activities. He was not allowed to go to other foreign countries. The applicant claimed that he owned [two businesses] in Kazakhstan and therefore needed

to travel there on a regular basis so he had to ask his brother to travel there on his behalf.

24. The applicant claimed that from 2008, since the Olympics, the Chinese authorities took away the passports of Uyghur people. In August 2008 his passport was also taken. The applicant claimed that as he was planning to visit his daughter in Australia he applied for a new passport in January. He obtained one after some difficulty and paying many bribes. It took two months and he was issued with a new passport in March 2009. The applicant claimed that in [May] 2009 the police rang him twice and requested his passport. He told the police he had sent the passport to the consulate and that he would hand it in to them when it was returned to him but instead bought a plane ticket secretly and escaped to Australia without saying goodbye to his elderly parents.
25. The applicant claimed that his son had informed him that some of his friends had been arrested. After the unrest he and his wife were very concerned about their children in Urumqi and his wife wanted to go back. Despite his children telling her not to return his wife left Australia [in] August 2009. The applicant claimed that since his wife returned to Urumqi she had confirmed the rumours that his friends had been arrested. Two days after his wife returned the police came to their home and asked for him and questioned his wife about his absence. They requested that he report to them for questioning and that his wife does not have any visitors. The applicant claimed that a security guard has been placed outside his home to take the details of anyone who visits there. His telephone is being monitored by the Chinese authorities so he does not call his wife directly. His son-in-law and his family call his daughter at the University and she passes on messages to his wife.
26. In the submission from the applicant's adviser, accompanying his application for protection, the adviser reiterated the details provided by the applicant in his statements. It was submitted that the applicant claimed a well founded fear of persecution owing to his Uyghur ethnicity, his East Turkistan nationality, his Islam religion, his membership of a particular social group being "family" and his political opinion as a result of him being seen as a separatist and anti Chinese authority. The adviser contended that following recent events all Uyghurs returning to China faced severe interrogation and if it was known that they were involved in demonstrations while being in Australia, they are arrested. It was submitted that Uyghurs strongly believe any Uyghur now returning to Xinjiang from overseas is going to be immediately arrested under suspicion of being involved in separatist activities and returning to incite unrest. The applicant has a past record and given the police had been looking for him, as confirmed by his wife, it was submitted that the applicant's return to China would result in him being arrested and tortured. The adviser provided country information discussing the situation in East Turkistan and the treatment of Uyghurs.
27. The applicant was interviewed by an officer of the Department [in] October 2009. The applicant stated that his occupation was businessman/entrepreneur. He was involved in import/export to Uzbekistan, Kazakhstan and Kyrgyzstan. He started the export business in the 1990's and before this he was involved in business within China. He explained that the [business] he referred to in his Protection visa application and visitor visa application belonged to his son although within their culture, the business was considered his because he was the elder within the family. It was started [in] July 2006 and many people from Central Asia who travelled for business [used his business] but since the trouble in Urumqi, the business has suffered. The applicant stated that since

2005 he basically stopped all his business activities. Before that he collaborated with Rabiya Kadeer and established an orphanage and the government would bother them on and off. Whenever something happened in Urumqi, the police would come to his office and take him away and question him. The applicant stated that he had supported himself since 2005 with the income his son obtained through the [business] and also [the two businesses] which he owned with his brother in Kazakhstan. His brother became a citizen of Kazakhstan in 1990. The applicant stated that he continues to have a share in these businesses. The applicant stated that his import/export business was going well from 1990 to 1999 but since 1999 it went down hill because the government constantly confiscated his passport because he had helped Rabiya Kadeer establish [a foundation]. As a result, he was unable to operate his business.

28. The applicant stated that his wife and children were all in Urumqi. He has a daughter from his first marriage and from his current marriage he has five children so altogether he has six. He only has once daughter in Australia. He has two daughters and two sons living with his wife and his other daughter from the previous marriage lived with her aunt up until recently and was now with his family. His parents were still alive and also living with his family. The applicant stated that he has only a younger brother, who lived in Kazakhstan. His older brother had passed away. He also has two elder sisters and one younger sister living in Urumqi.
29. The applicant stated that he met Rabiya Kadeer in 1993 in Kazakhstan. She had a huge textile and clothing business in Urumqi and bought some of her goods to Kazakhstan and he helped her to find a buyer there. He also bought items to export from Rubiya Kadeer because she had a huge wholesale business in China. The applicant stated in 1994 Rubiya Kadeer introduced him to the [foundation] and he became a member. He stated that the aim of the foundation was to develop their own education and to help orphans and children finish their education and support them to go overseas to further their education. He stated that the foundation was originally established in [location deleted: s.431(2)] but eventually it moved to Urumqi. The opening of the foundation was held in Rubiya Kadeer's building and he donated 50,000 yuan. They held a meeting once a month and Rubiya Kadeer would report on how the money was spent and how many orphans were helped. After 1997 when Rubiya Kadeer was arrested, he lost contact with her. The applicant stated that from 1999 the government started investigating the [foundation] and they arrested anyone who had worked with Rubiya Kadeer and donated money to the foundation. The applicant stated that the foundation still existed however after Rabiya Kadeer was arrested [Person A] managed the foundation. Since 2001 [Person A] had been arrested on and off but he had never given up. The applicant stated that he stopped his involvement because his business had been affected and he had been questioned so many times and could not have a normal life.
30. The applicant stated that he was arrested once in 2001 and detained for 15 days. He was questioned so many times and on this occasion he reacted angrily and this was the reason he was detained.
31. The applicant stated that in 1999 when members of the foundation started being arrested he was worried so he secretly left China to Kazakhstan He stayed in a rural area with one of his relatives for two or three months. He never left the house. He lived like this for almost two years and when he heard that things had settled down a bit he started moving around and out of the house. The applicant stated that between 1999 and 2001 he went back to Urumqi twice. He explained that there was no computerised

system at the border at that time and he also went in from different parts of the border. He arrived in Urumqi in the evening and then he would stay at his relative's home in a slightly outer region, hiding for two or three months, and then return to Kazakhstan. He returned to Urumqi in 2001 but things were not normal because if he wanted to go anywhere he had to ask permission from the authorities. Every time he went to Kazakhstan he had to write the dates when he was going and when he was coming back and obtain permission to go. The last time he went to Kazakhstan in June 2008, he went with his family to attend his nephew's wedding, and they returned in July 2008 because of the Olympics. He stated that the authorities confiscated his old passport when he returned. The applicant stated that his new passport did not come easily to him. He spent a lot of money and had to use his networks to obtain it.

32. The applicant stated that he went to Kazakhstan in 1990 with his brother because his brother was highly educated and smart enough to apply for permanent residency. Between 1990 and 1995 Kazakhstan was accepting people from his region so it was easy to get permanent residency and citizenship. Even between 1995 and 2000 there was still a lot of people moving into Kazakhstan but at that time he did not realise that it was necessary for him to apply for residency in Kazakhstan. He did not realise his situation would become worse otherwise he would have applied. After 2000 Kazakhstan stopped anyone applying for citizenship or refugee status.
33. The applicant stated that since arriving in Australia he has had no contact with the foundation at all. Before coming to Australia the last time he had anything to do with the foundation was at the beginning of 2008 when he had contact with [Person A]. He attended a small meeting with [Person A] who was proposing that the foundation go underground because of the continual problems he was having with the authorities. The applicant stated that he wished to continue to support the foundation by donating money to it but he had pulled back a bit because of the authorities' interest in the foundation.
34. The applicant stated that he had not done anything in Australia because of the language. Even if he wants to have contact with his family he can't. He has to ring his daughter's school and speak to her and then she passes on information to his family. The applicant stated that he could not really say what will happen to him if he returned to China but the fundamental thing would be that he will be arrested and put in prison. He stated although he did not have contact with Rabiya Kadeer since she left China, which was a long time ago, the government was arresting anyone who was associated with her and there were a lot of people in prison. His wife returned to China [in] August 2009 and since then the authorities had come every second day asking why he had not returned, when he was returning, whether he was still involved in the foundation and what he was doing in Australia. The applicant stated this was the reason he did not return to China; he will be arrested because of his connection with Rabiya Kadeer in the past.
35. [In] December 2009, the delegate refused the applicant's Protection visa application. The applicant applied to the Tribunal for review of this decision [in] December 2009.
36. [In] February 2010, the Tribunal received a statutory declaration made by the applicant in which he explained that he believed there was a misunderstanding during his interview with the delegate [in] October 2009. He claimed he had never been living in Kazakhstan permanently but rather between 1999 and 2001 he had travelled to Kazakhstan on two occasions; once for the funeral of his sister-in-law's brother and

once when his brother bought a house and invited his parents and he accompanied his mother. The applicant claimed that in order to travel to Kazakhstan he had to seek permission from the Chinese government. His brother had to provide a death certificate and he requested that as the oldest brother, he was required to represent the whole family. His parents had to give their details and he was threatened that if he did not return to China, his parents would be imprisoned. The applicant claimed that in order to get permission for his second trip he had put his house down as security and if he had not returned he would have lost his house. He claimed since he was imprisoned in 2001 he had not been able to go on business trips or go to any other countries apart from the two trips to Kazakhstan which he had mentioned.

37. The applicant claimed that applying for a permanent visa in Kazakhstan was not an option. His brother was only permitted to stay in Kazakhstan because his wife was a Kazakhstan citizen and overstaying his visa would have put his family at risk. The applicant claimed that his life in Urumqi became very complicated after his imprisonment in 2001 and he fears if he returns to China he would be arrested again. The applicant stated that he was aware Ms Rebiya Kadeer was in Melbourne last year and knew about a meeting but he chose not to make contact with her or even attend the meeting out of fear of putting his wife and children in China at risk. He claimed there were many spies in the community who fed back information to the Chinese authorities.
38. [In] March 2010, the Tribunal received a detailed submission from the applicant's adviser which reiterated the applicant's background and claims. The adviser made submissions addressing a number of issues, including: the current situation of the applicant's family; the activities of the applicant in Australia; the applicant's travel between the PRC and Kazakhstan and the applicant's failure to apply for the right to reside in Kazakhstan, in response to the decision made by the delegate. The adviser also provided further country information in support of the applicant's claims and references to various other Tribunal decisions which have considered the claims of Uyghurs.
39. The applicant appeared before the Tribunal [in] March 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Uyghur and English languages.
40. The applicant stated that he was born on [date deleted: s.431(2)] in Urumqi, in Xinjiang. He was living in Urumqi before coming to Australia and had always lived there since birth. The applicant stated that he did not have any formal education apart from one year around [year deleted]. He explained at that time the cultural revolution started in China and his family was targeted as landlords and as a result he was denied an education. The applicant stated that he was fluent only in Uyghur. He confirmed that he had a number of businesses in China in the past. When his father was released from detention in 1978, he started a small business buying and selling items with his father. From the end of 1977 and beginning of 1978 they started a small business buying [goods] from inland China and selling them in Urumqi. He could not remember exactly how long he had this business with his father but believed it was about five or six years. The applicant stated that he was involved in such small businesses for nearly ten years, until 1990. After 1990 when the Soviet Republic countries obtained independence, he started business in the Central Asian countries. His brother went to Kazakhstan and he also went there to do business with his brother in the 1990s. They had [an export] business, [details of goods deleted: s.431(2)] which continued for six to seven years.

During that time they also exported [details of goods deleted] and other items. The Tribunal noted that in his Protection visa application he had claimed to have this business until 2005. He stated that the information he had provided in relation to his business dealings was all correct. He and his brother, and other relatives, had been involved in the export business since 1990. They exported [goods] until 1990 and since then his brother had imported [various other goods]. The applicant explained that he had been involved in the business until 2005 but since 2001 he could not travel overseas to do business himself. The Tribunal noted that in his Protection visa application he described his occupation before coming to Australia as [business] manager and owner. The applicant stated that he did have [this business]. He explained that in the 1980s his father bought a small building and he made it into [the business]. In 1994 a number of businessmen and women established a welfare foundation and in 1997 Ms Rebiya Kadeer was arrested and as a result he changed the ownership of the [business] to his son. The applicant stated that his son had had legal ownership of the [business] since 2005 but within the community the building was identified as his. He stated in the initial application form that he had [this business] but he did not claim that it belonged to him.

41. The Tribunal asked the applicant if he had travelled outside China before coming to Australia. He stated that he had travelled to Kazakhstan, Kyrgyzstan and Uzbekistan. Before 1997 he travelled to these places once every two or three months. Between 1997 and 1999 he only travelled outside China on two occasions; once in 1997 and once in 1998, both for business purposes. From 1999 to 2001 he travelled to Kazakhstan on two occasions but each time he had to report to the police as the authorities had confiscated his passport and he had to pay them money to get it back. The first occasion he went to Kazakhstan was when his brother's brother-in-law passed away and the second occasion was when he went with his mother to visit his brother's family because his brother's family had moved to a new house and his nephew had had a new baby. On this occasion he had to put his house up as a bond and it was only for this reason that he was allowed to travel. The applicant stated that from 2001 to 2006 he did not travel outside China. In 2007 he travelled to Kyrgyzstan on one occasion to attend the wedding of his brother's son. He stated that in 2008 his passport was confiscated as most people's were during the time of the Olympics. He did not think he travelled outside China in 2008 because his passport was confiscated. The Tribunal asked the applicant when he departed China for Australia. The applicant stated that he departed China [in] June 2009. He paid a lot of money to get his passport back, 20,000 to 30,000 yuan.
42. The applicant stated that he was married to his current wife [in] 1982. He has five children; three daughters and two sons. He also has a daughter from a previous wife which meant that he has six children in total. His oldest daughter from his previous wife was registered in Urumzi but was living with her maternal grandmother in [Location 1]. His other children were all living in Urumqi apart from the one daughter in Australia. His parents were also living in Urumqi, as well as three sisters. His brother was living in Kazakhstan. The applicant stated that at the moment he spoke to his family via public telephone. Most of the time he was in contact with his wife through his daughter. He sometimes spoke to his wife on a mobile which was registered in other people's names. He spoke to his family once or twice a week because he was worried about the safety of his family members, especially his parents who were aged, as well as his children. The Tribunal asked the applicant if he had experienced any difficulty

contacting his family in Urumqi since being in Australia. He stated that it was an extremely difficult situation after July 2009, for a period of a few months time. The Chinese authorities disconnected all phones and communication means for three to four months. He resumed contact with his family in November 2009.

43. The Tribunal asked the applicant when he first met Rubiya Kadeer. The applicant stated that he met Ms Kadeer in 1991 in Kazakhstan. He met her through their respective businesses Ms Kadeer had an export business, as he did, and he used to store his stock at her warehouse in Kazakhstan. He also confirmed that he had helped Ms Kadeer to find buyers for her goods in Kazakhstan. The Tribunal asked the applicant what sort of business Ms Kadeer had at the time. He stated that she had a building which was a shopping centre and she also had textile and clothing businesses. The Tribunal asked the applicant about his association with Ms Kadeer once he met her in 1991 and how it developed. The applicant stated that since 1991 Ms Kadeer was always helping orphans and poor students in different places and she would organise meetings in Urumqi which businessmen would attend and she would invite him. The Tribunal asked the applicant about his claim that he and Ms Kadeer started a cooperative partnership in their business for a few years. He stated that they had some form of partnership through buying stock together and combining their stock for exportation. Later they cooperated in establishing the welfare foundation in Urumqi because their aim was to help the poor and orphaned children in Urumqi city.
44. The Tribunal asked the applicant whether the welfare foundation had a particular name. The applicant stated that it started in [Location 1] with the name [Location 1] Welfare Foundation. The Urumqi branch was established [in] Ms Kadeer's building in Urumqi. The Tribunal asked the applicant how he became involved in this foundation. He stated that there were many orphan children in Urumqi, as well as other places in the country. In addition, in his own childhood he did not have the chance to get an education, so that was why after making a small amount of money he realised he had a responsibility to support the orphan children. It was for this reason that other businesspeople united to support this fund. The Tribunal asked the applicant if he was involved in the establishment of the foundation. He stated that there was an opening ceremony [in] 1994 under Ms Kadeer's building and he attended that opening. The applicant confirmed that prior to the foundation opening in Urumqi the foundation had already been established in [Location 1].
45. The Tribunal asked the applicant what the purpose or aim of the foundation was. The applicant stated that in his society there were many children who were orphaned and uneducated and the government did not provide these children with any direct support. It was for this reason that the business people in Urumqi decided that they had a responsibility to take care of these children and that was why they decided to come together to establish the foundation to help the poor Uyghur children. The money they provided was used to pay the tuition fees of children. The applicant stated that the foundation had fifteen to twenty major investors or big donors and he was one of these major investors. The Tribunal asked the applicant if he did anything else apart from donate money. He stated that he attended regular gatherings in which the distribution of money would be discussed. Other than that they did not engage in any other activities. A meeting of the major investors would be held once a month and if he was in Urumqi he would definitely attend. The Tribunal asked the applicant if Ms Kadeer established any other foundations or charities apart from the welfare foundation. He stated that Ms

Kadeer was a very reputable lady in his country and she was involved in many other issues.

46. The Tribunal asked the applicant whether the foundation was able to operate without any difficulties or problems from the Chinese authorities. The applicant stated that the foundation continued its activities up until Ms Kadeer was arrested. After Ms Kadeer was arrested members who donated money to the foundation were also arrested; some members were questioned and some were detained. He stated that the police asked him to attend the station every three or four days and they would question him about why he collected money, how the foundation spent the money and why the foundation wanted to assist Uyghurs. He was sometimes interrogated for twenty four hours. He was experiencing problems up until now because of his involvement with the fund. The Tribunal asked the applicant when Ms Kadeer was arrested. He stated that he could not remember exactly which year but it could have been in 1997 or 1998. He did not know exactly what charges were made against Ms Kadeer but it was reported that she had provided information overseas. The applicant stated that Ms Kadeer was detained for a number of years but he could not remember when she was released.
47. The Tribunal asked the applicant how often he was taken by the police for questioning. The applicant stated that it happened irregularly. When any major event happened in China he would be taken into custody, for example if a top level official visited his city he would be taken into custody. The situation worsened between 1999 and 2001. The police would come and question him once a month or twice in a month. He was detained once for fifteen days in 2001. Before 2001 he was not detained however he was taken in for questioning and sometimes the questioning would continue for more than twenty four hours. The Tribunal asked the applicant how many members of his foundation were arrested from 1999. The applicant stated that [Person A], the head of the foundation in [Location 1], was arrested in 2000 and detained for six months. [Person A] continued to be targeted by the Chinese authorities up until now. The applicant stated that he could also remember two other members who were arrested.
48. The Tribunal asked the applicant what he meant when he claimed to have lived secretly between 1999 and 2001. The applicant explained that because news spread that members of the foundation were being detained and charged, he tried to avoid the authorities. He tried to find some reason to go overseas and travelled twice to Kazakhstan during that period and when he was in Urumqi, most of the time he lived in the countryside with relatives without any communication with his family. The applicant stated that he did not reside in Kazakhstan for any time between 1999 and 2001. He reiterated he travelled to Kazakhstan on only two occasions and stayed fifteen days. The applicant explained that there was a misunderstanding in the interview with the delegate due to the fact that he was worried about his family and also had difficulty understanding the interpreter, and he did not intend to say that he was living in Kazakhstan for a period of two years. The Tribunal noted that in the interview with the delegate he claimed to have been staying with relatives for two to three months at a time between 1999 and 2001 and it wanted to clarify whether he was staying in Urumqi or Kazakhstan with relatives. The applicant explained that when he came back to Urumqi from Kazakhstan he would stay in Urumqi city for two or three days and then he would go to the Urumqi countryside where he stayed with his relatives. He did this in order to avoid unnecessary trouble from the police. The Tribunal asked the applicant why, if he was trying to avoid the police, he went to Kazakhstan on the two occasions

between 1999 and 2001, given that he had to seek permission from the authorities to depart the country. He stated that there appeared to be some misunderstanding because of his use of the term hiding. He was not charged with anything at the time. The police were bothering him all the time by taking him in for questioning so that was why he tried to avoid this communication with the police. The applicant stated that after 2001 he did not travel outside China again until 2005 because he did not want to make any trouble with the authorities

49. The applicant stated that he was arrested in the autumn season of 2001 and was issued with a letter stating that he was not allowed to travel overseas without permission from the authorities. The Tribunal asked the applicant if he was charged with any offence when he was arrested. He stated that he was charged with cooperating with Ms Kadeer. Ms Kadeer was accused by the authorities as being a revolutionist. He was detained for 15 days. His brother came from Kazakhstan to China and he paid a huge amount of money to the authorities to get him released. Whilst he was detained he was questioned during the night, until sunrise, about why the foundation collected money and where the money was spent. They did not let him sleep. After he was released he was warned by the authorities that he was not allowed to travel without the permission of the authorities. He was also required to report to the police, once in two months or once in three months, up until the time of his travel to Australia. The Tribunal asked the applicant why he was arrested in 2001 given that since 1997 or 1998 when Ms Kadeer was arrested he had been questioned by the police on a number of occasions. The applicant stated that [Person A] was arrested in 2000 and after his arrest a number of members of the foundation of the fund were arrested, including himself in 2001. He stated that some members were detained for three or four months. He was released after fifteen days because his brother paid a bribe to the police.
50. The applicant stated that he next travelled outside China in 2006. Between 2006 and 2007 he travelled overseas on two occasions. The Tribunal noted that in his Protection visa application it was claimed that between 2005 and 2009 he had travelled to Kazakhstan once a year, usually for business purposes and in 2008 he went with his family on vacation. The applicant stated that in fact he travelled to Kazakhstan on two occasions only during this period of time. He explained that his children completed the application form because he could not write and probably his children made some mistakes. He stated that he did not go to Kazakhstan for a vacation but instead went there for a family matter, which was his nephew's wedding. He believed he went to Kazakhstan for the wedding two or three months before the Olympics in 2008 because his passport was confiscated one month before the Olympics.
51. The Tribunal asked the applicant about the businesses he owns in Kazakhstan. The applicant stated that his younger brother has a [business] in Kazakhstan. When the Tribunal asked the applicant if he was a co-owner of this [business], the applicant stated that he did not have any legal ownership of this business. His brother provides support to him and other family members because his brother was richer than him. The Tribunal asked the applicant if he ever owned any businesses in Kazakhstan. The applicant stated that he used to have businesses there but now it was owned by his brother. The Tribunal asked the applicant if he ever owned [two businesses] in Kazakhstan. The applicant explained that the rules in his family were that his father controlled everything and as a result there was no differentiation between his business and his brother's business. He did not have personal ownership in [these businesses].

52. The Tribunal asked the applicant why in the many years he travelled between China and Kazakhstan he did not seek residency there, especially given that he had business interests in the country and his brother was also living there. The applicant stated that the only means by which he could become a resident of Kazakhstan was if he was of Kazakh ethnicity or if he married a Kazakh woman and given that he was married with five children, he could not get married for the sake of becoming a resident of the country. Also, there was no chance in Kazakhstan to claim asylum, like here in Australia.
53. The applicant stated that his passport was taken by the authorities in July 2008. His passport had previously been confiscated in 2001 and was not returned to him until 2005. The Tribunal asked the applicant how he went about getting another passport relatively soon after having his previous one confiscated in July 2007. The applicant stated that he obtained his current passport by paying 30,000 yuan and waiting nine months. After receiving his passport in March 2009, he was questioned on one occasion about his new passport in May 2009. He was asked why he had obtained the passport and he explained it was to travel to Australia and he paid money to the authorities. Prior to his departure from China he was also required to put his friend's business building as a bond for his return to China. When he did not return after three months, his friend was arrested and charged with assisting someone to flee China. The Tribunal asked the applicant why he did not mention this during his interview with the Department [in] October 2009. The applicant stated that his friend was arrested prior to his interview but he did not have the information until after the interview because he was only in contact with his family in Urumqi from November 2009.
54. The Tribunal asked the applicant what happened to the welfare foundation he was a member of after 1999 once Ms Kadeer had been arrested and other members of the foundation had also been arrested. The applicant stated that the head of the foundation, [Person A], was arrested and detained on several occasions and now he was mentally ill and being treated at the [hospital] in Urumqi. The Tribunal asked the applicant if the foundation still existed. He stated that in 2007 [Person A] was arrested again and the police ordered him to close the foundation. The Tribunal asked the applicant if he continued his involvement with the foundation after 2001. He stated that he had contact with the Deputy Chair secretly. He donated money to the foundation up until he came to Australia because although the foundation was officially closed in 2007, members were still providing assistance to the poor and orphaned children up until now. The applicant stated after the 5 July 2009 incident the remaining members of the foundation were arrested and imprisoned because Ms Kadeer was accused as being the mastermind behind the trouble and as a result people connected to her were arrested.
55. The applicant confirmed that he travelled to Australia with his wife. After the 5 July 2009 incident so many things were happening to his family, as well as in Urumqi, so his wife decided to risk her life in order to settle these family matters. His wife left Australia in August 2009 after spending two months in Australia. Since returning his wife had been questioned by the police about him and his activities in Australia. She was asked why he had not returned and when he would be returning. She was questioned two days after returning to China. Since then his wife had been questioned a number of times both at home and at the police station. She signed a document stating that he would be returning after receiving [medical treatment]. The Tribunal asked the applicant about his claim that a security guard was placed at his home. The applicant

stated that after 5 July 2009 there were more than 2,000 Chinese armed forces located inside his residential area so that was why his family were being monitored.

56. The Tribunal asked the applicant if he had any more recent news about what was happening with his family in Urumqi. The applicant stated that after 5 July 2009 most people related, connected or associated with Ms Kadeer were been arrested and detained. Whenever he communicates with his family they tell him how difficult the situation is in Urumqi, how it has deteriorated and news of people he knows. After his wife returned to China she passed a message to him through someone not to return to China because his friends had been arrested and the situation had become worse there and the authorities were targeting anyone associated with Ms Kadeer.
57. The Tribunal asked the applicant when he became a member of the East Turkistan Australian Association. The applicant appeared to have no knowledge of this Association. He had no knowledge of the letter from the East Turkistan Australia Association dated [in] August 2009. The applicant suggested that his family members put his name on the list. He stated that his family were members of the Association and had attended demonstrations but he did not know exactly what involvement they had with this association. The applicant stated that he had not participated in any demonstrations or protests in Australia. The Tribunal asked the applicant why he did not meet Ms Kadeer when she was in Australia or attend the meeting held whilst she was in the country especially given his past association with her. The applicant stated that he wished to meet Ms Kadeer however there were a lot of Chinese spies in Australia watching the Uyghur community closely and he was afraid if he attended the meeting it would cause his family in China to be harassed.
58. The Tribunal asked the applicant what he feared would happen if he returned to China. The applicant stated that he feared he would be arrested and imprisoned. The Tribunal asked the applicant why he believed he would be arrested again. He stated that after the incident on 5 July 2009 in Urumqi, people connected with Ms Kadeer were being arrested and he fears that he will also be arrested because of his previous involvement in the foundation with Ms Kadeer. It was not the same as before when he was only questioned; he now fears he will be imprisoned. The Tribunal put to the applicant that he was arrested only the once in 2001 and claimed that he continued to be a member of the foundation until he came to Australia. He also claimed he was able to travel to Kazakhstan between 2006 and 2009 which suggests that he was not of interest to the Chinese authorities, so why did he believe that he would be arrested now, if he returned to China. The applicant stated that the political situation was not as serious prior to 2009. The July 2009 incident has worsened the situation and resulted in the political situation deteriorating a great deal. The Tribunal asked the applicant, apart from his association with the foundation and Ms Kadeer, was there any other reason why he feared returning to China. The applicant stated that he did not think there was more serious harm than this. The political atmosphere in China was critical. The Chinese authorities would arrest him just because he had a connection with Ms Kadeer. The applicant reiterated that the situation in his country had changed dramatically and as a result he had a great fear of imprisonment by the Chinese authorities. The incident on 5 July 2009 critically changed the situation in his country and he would be arrested on the day he arrived in China because of his connection with Ms Kadeer, whom the Chinese authorities have branded the mastermind behind the incident on 5 July 2009.

59. [In] March 2010, the Tribunal received a response from [Person B], [a senior official] of the Uyghur American Association in Washington DC to its enquiries regarding the existence of the Uyghur [foundation] and whether the applicant was a member, along with Ms Rebiya Kadeer. [Person B] stated that after speaking with Ms Kadeer, she confirmed that she established a fund to help Uyghur women and children, especially to provide opportunities to educate Uyghurs, and if possible send them overseas and with the help of the fund, several Uyghur students were sent overseas for higher education. Later, the Chinese government shut it down fearing its influence. [Person B] stated that Ms Kadeer believed the applicant was one of the members of the fund.

COUNTRY INFORMATION

Situation of Uyghurs in Xinjiang

60. An Amnesty International report dated April 2009 includes the following background information on the situation of the Uyghurs in Xinjiang (Amnesty International *Uyghur Ethnic Identity under threat in China*, April 2009, ASA 17/010/2009):

Uyghurs are a Turkic speaking, mainly Sunni Islamic ethnic group with a long history at the heart of central Asia. In China, they are concentrated in the western region of the country, an area historically claimed by competing empires, warlords and ethnic groups. In 1949, the region was integrated into the People's Republic of China.

In 1955, the People's Republic of China established the Xinjiang Uyghur Autonomous Region (XUAR), in recognition of the Uyghurs' predominance in the region, a status which according to the Chinese Constitution entitles ethnic minorities to organs of self-government in order to exercise autonomy.

According to the latest Chinese census in 2000, there are more than 18 million people living in the XUAR, of whom 47 per cent are Uyghurs, 40 per cent are Han Chinese and 12 per cent are other ethnic groups, including Kazakhs, Kyrgyzs, Tatars, Uzbeks and Tajiks. The Han Chinese population has increased significantly from an estimated 6 per cent in 1949 due to central government policies that include providing financial incentives to Han Chinese who migrate to the region.

... The post-Mao era in the 1980s brought liberalizing policies throughout China that allowed citizens greater freedom, including freedom of religion and expression, and strengthened legal protections, policies which extended to the XUAR. However, in the mid to late 1990s, Uyghurs in the region experienced a sharp reversal in policy, as the authorities embarked on an aggressive campaign against the "three evils": "terrorism, separatism and religious extremism". As a result, increased numbers of Uyghurs have been subjected to arbitrary arrests, unfair trials and torture, and their economic, social and cultural rights have been slowly eroded. This has worsened since the attacks in the USA on 11 September 2001 as the authorities cast Uyghur discontent within the framework of international terrorism, claims that many academics and other observers consider unsubstantiated.

In 2008, the authorities used a series of violent incidents, allegedly carried out by Uyghur separatist groups, as a pretext for launching a sweeping crackdown on the Uyghur population in the XUAR. According to official media, almost 1,300 people were arrested during 2008 on state security charges that included terrorism, separatism and religious extremism, and 1,154 were formally charged and faced trials or administrative punishments. On 14 August, Wang Lequan, Communist Party Secretary of the XUAR, announced a "life and death" struggle against Uyghur "separatism".

61. The Amnesty report also states:

The authorities maintain tight control over mosques and religious clergy, intervening in the appointment of local imams, stationing police within and outside mosques, and closely monitoring all religious activities. Government employees in the XUAR, including teachers, police officers, state enterprise workers and civil servants risk losing their jobs if they engage in religious activity. The Chinese authorities have also put many obstacles in the way of Uyghurs attempting to make the pilgrimage to Mecca, known as the Hajj, which is a requirement for all practising Muslims.

Children under the age of 18 are not allowed to enter mosques or to receive any sort of religious education. Many young Uyghurs are afraid that if they do enter a mosque, or are found to be praying at home, they will be expelled from school.

Summary of violence and demonstrations in July and September 2009:

62. Serious conflict between the Uyghur and Han Chinese communities broke out in Urumqi in July 2009. The violent demonstrations beginning Sunday 5 July 2009 in Urumqi developed from a protest by Uyghurs against the government for its perceived failure to protect two Uyghur factory workers reportedly killed by Han workers in Guangdong in late June 2009. Uyghur sources state that the protest was peaceful and became violent only after police fired on the crowd; while the government described the demonstration as a riot in which property and innocent people were attacked. There is evidence that the demonstration included and was closely associated with college and university students, and may have been initially organised through the Internet. Estimates of the number of protestors vary from 1,000 to 10,000; with approximately 20,000 Chinese security forces present by late Sunday evening. The violence involved Uyghurs attacking Han, Han attacking Uyghur, as well as the actions of security forces. The Chinese government publicly blamed the World Uyghur Congress (WUC), led by Rebiya Kadeer, for orchestrating the violence and demonstration; and initially announced that 156 people had died and 1,000 were injured. The exact number remains unknown. Later government figures indicated that 137 Han, 46 Uyghur and 1 Hui died. Smaller protests were also reported in other cities in Xinjiang, including Kashgar and Hoten. Two days later on 7 July 2009, Han protestors marched in the streets of Urumqi with clubs, knives, axes, hammers, and other weapons but were reportedly dispersed by the police. On 7 July 2009 the government announced that 1,379 men and 55 women had been detained following the 5-7 July events; that checkpoints had been set up in the city and neighbouring areas to prevent suspects from fleeing. Tight security measures had been implemented in cities throughout XUAR, including armed vehicles in Ghulja and house-by-house searches in Kashgar. Authorities believed that those behind the demonstrations may have also come from Kashgar and Hoten districts. By 7 July 2009, the government had begun to introduce restrictions on internet and telephone access to the area; and restricted the work of journalists in fully covering the initial and subsequent events. Reporters were expelled from Kashgar on 10 July 2009. On Friday 10 July 2009 the government attempted to close some mosques in Urumqi but others remained open there and in other cities. By mid-September 2009, government news agencies had reported the criminal detention of approximately 825 people and approval by the procuratorate to formally arrest an initial 237 people. Government officials stated that those “not deeply” involved in the demonstrations, and who did not cause physical injury to property or persons, would be detained, reeducated and required to repent, with possible further surveillance or supervision. Some of those detained reportedly appeared to have no involvement in the events of 5 July (this information is

given in three summaries of events compiled by the Congressional-Executive Commission on China (CECC) reports: Congressional-Executive Commission on China 2009, 'Xinjiang Authorities Forcefully Suppress Demonstration, Restrict Free Flow of Information', 6 August

[http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125582;](http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125582)

Congressional-Executive Commission on China 2009, 'Authorities Pledge Crackdown Following Xinjiang Demonstration and Clashes', 6 August

[http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125931;](http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=125931)

Congressional-Executive Commission on China 2009, 'Xinjiang Authorities Continue Detentions, Announce Arrests Connected to July 5 Incident', 14 September

[http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=128326\).](http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=128326)

63. Tensions between the Uyghur and Han communities in XUAR and the Chinese government further escalated two months later (in early September) as a result of street protests by Han Chinese lasting several days. These protests by Han were against the government's inaction in the face of allegedly Uyghur "hit-and-run" attacks involving syringes and other sharp objects. These reportedly started on 17 August 2009. These syringe attacks were also linked by the government to Rebiya Kadeer. Security was further tightened as a result; dozens of perpetrators were detained and eight charged. On 14 September 2009 three people were sentenced with up to 15 years jail over the attacks (Bezlova, A. 2009, 'Han Chinese Blame Regional Chief for Xinjiang Unrest', *Inter Press Service*, 8 September 2009; 'The party under siege in Urumqi' 2009, *The Economist*, 12 September; 'China needle attacks: victims cleared', *Australian Broadcasting Corporation*, source: *AFP*, 14 September <http://www.abc.net.au/news/stories/2009/09/14/2685809.htm> – Accessed 21 September 2009).

Profile of those detained/arrested in the aftermath of the 5-7 July demonstrations

64. The initial targets of the authorities in the days following the demonstrations were mainly men and youths. *BBC News* reported on 7 July 2009 that "mass arrests have been going on since Sunday's clashes. Reports are surfacing that police have been going from house to house, rounding up young men for questioning." Two weeks later, on 20 July 2009, *The New York Times* indicated that "in the two weeks since [the] ethnic riots...security forces have been combing the city and detaining hundreds of people, many of them Uyghur men whom the authorities blame for much of the slaughter...police response has been indiscriminate"; and that "Residents of Xiangyang Po [where some Han were killed] say police officers made two morning sweeps through the neighborhood after the rioting began, randomly grabbing boys as young as 16. That spurred a crowd of anguished women to march to the center of Urumqi to demand the men's release. But none of the detainees has come home, the residents say, and the authorities have refused to provide information about their whereabouts" (Jacobs, A. 2009, 'Countering Riots, China Rounds Up Hundreds' *The New York Times*, 20 July http://www.nytimes.com/2009/07/20/world/asia/20xinjiang.html?_r=2&pagewanted=all; 'Angry Uyghurs defy Chinese police' 2009, *BBC News*, 7 July <http://news.bbc.co.uk/2/hi/asia-pacific/8137512.stm#map> ; 'Tight Security in Xinjiang' 2009, *Radio Free Asia*, 7 July http://www.rfa.org/english/news/uyghur/security_in_xinjiang-07062009174105.html)

65. Women were also detained during what one report refers to as “indiscriminate sweeps of Uyghur areas”. On 7 July 2009, *The Times Online* referred to “brothers as well as a sister among the suspects taken into police custody for questioning over the riots”:

Following news that 1,434 people had been arrested for Sunday’s riots, some 300 Muslim ethnic Uyghurs confronted heavily-armed riot police in the city of Urumqi demanding the release of **family members they said had been arbitrarily arrested in the crackdown** following the weekend bloodshed, which left 156 dead and more than 800 wounded.

One woman, Maliya, said: “My husband was taken away yesterday by police. They didn’t say why. They just took him away.” Another girl described how her teenage brother was grabbed from his bed in a midnight police raid.

Abdul Ali, a Uyghur man in his twenties who had taken off his shirt, held up his clenched fist. “They’ve been arresting us for no reason and it’s time for us to fight back.” He said three of his brothers as well as a sister had been among the suspects taken into police custody for questioning over the riots. **Local residents complained police were making indiscriminate sweeps of Uyghur areas** (Macartney, J. 2009, ‘Riot police battle protesters as China’s Uyghur crisis escalates’, *The Times Online*, 7 July <http://www.timesonline.co.uk/tol/news/world/asia/article6655225.ece>)

66. Human Rights Watch reported in October 2009 on “the enforced disappearances of at least 43 Uyghur men and teenage boys who were detained by Chinese security forces in the wake of... protests” which occurred between 5 - 7 July 2009 in Urumqi, Xinjiang. The report also indicates that “on October 12, 2009, China pronounced the first sentences in protest-related cases: six Uyghur men were sentenced to death and one to life imprisonment.” (Human Rights Watch “*We Are Afraid to Even Look for Them*”: *Enforced Disappearances in the Wake of Xinjiang’s Protests*, October 2009, pp. 3-6 & 21-32). The report continued:

Chinese authorities were quick to accuse a variety of external forces of masterminding and sponsoring the unrest. They specifically blamed Rebiya Kadeer, a former political prisoner in Xinjiang and a prominent Uyghur rights activist living in exile in the United States, for planning and organizing the protests. No evidence, however, has been provided to support those claims, and many analysts believe that the root causes of the protests were largely related to China’s longstanding discriminatory policies toward the Uyghur minority ...

The latest official figures put the death toll from the protests at 197 people, the majority of them Han. More than 1,600 were injured. Uyghur groups continue to question the official death toll, saying it underestimates the number of Uyghur victims.

...In the wake of the Urumqi protests, Chinese authorities declared they would deal decisively with perpetrators of the violence. Immediately after the protests and in the following two months, they released a number of contradictory statements regarding the number of people detained by the security forces in connection with the unrest, which seemed to have reached well over a thousand people. On October 12, 2009, China pronounced the first sentences in protest-related cases: six Uyghur men were sentenced to death and one to life imprisonment.

...On July 6-7, 2009, Chinese police, armed police, and the military conducted numerous largescale sweep operations in two predominantly Uyghur areas of Urumqi—Erdaoqiao and Saimachang. The operations, on a lesser scale, continued at least through the end of July.

According to witnesses, the security forces sealed off entire neighbourhoods, searching for young Uyghur men. In some cases, they first separated the men from other residents, pushed them to their knees or flat on the ground, and, at least in some cases, beat the men while questioning them about their participation in the protests. Those who had wounds or bruises on their bodies, or had not been at their homes during the protests, were then taken away. In other cases, the security forces simply went after every young man they could catch and packed them into their trucks by the dozens.

In addition to large-scale sweeps, the security forces also detained an unknown number of people in the course of targeted raids, usually involving smaller groups of police officers or soldiers who took Uyghur men from their homes, places of work, hospitals, or the street. In some cases, the security forces seemed to act on leads received from previously detained individuals. These raids continued at least through mid-August.

The victims of “disappearances” documented by Human Rights Watch were young Uyghur men—most in their 20s, although the youngest victim was 14 years old, and some witnesses reported that the police had detained boys as young as 12 during the raids.

In most cases documented by Human Rights Watch, the men and boys detained in the course of these sweeps and raids have been missing since the security forces took them away. Their families’ attempts to inquire about the relatives at local police stations or with other law enforcement agencies proved futile—the authorities either said they had no knowledge of the arrests, or claimed the inquiry was still ongoing without admitting the fact of detention, or simply chased the families away.

67. On 20 July 2009, Rebiya Kadeer issued a statement on the events in Urumchi in an attempt to counter the version presented by the Chinese government. At the time she stated that “mostly young men and women” had attended the initial demonstration; that fleeing protestors were indiscriminately shot by police and others were arrested; that Uyghurs at Xinjiang University were fired upon and arrested; and that the “Chinese government’s crackdown...on ordinary Uyghurs in East Turkistan is in full swing”:

The actual events in Urumchi according to eyewitness reports are as follows.

In the days leading up to July 5, an unknown person or persons posted on the forums of China-based websites an appeal to Uyghurs in Urumchi to peacefully protest the Chinese government’s mishandling of multiple killings of Uyghurs by Han Chinese at a toy factory in Shaoguan, Guangdong province. The forum post surprisingly remained online, which is contrary to the known behavior of Chinese government censors.

On July 5, Uyghurs, mostly young men and women, some of whom carried the flag of the People’s Republic of China, assembled and marched peacefully in Urumchi toward People’s Square. They asked for justice for the victims in Shaoguan and expressed sympathy with the families of those killed and injured. They also demanded to meet with government officials but none came out to meet with them.

As the protest was public knowledge, the protestors were met en route by a show of force, including four kinds of Chinese police- regular police; anti-riot police; special police and People’s Armed Police. The police surrounded the protestors and tensions between police and protestors grew. According to an eyewitness caller to our offices, the protestors were incited by plain clothes agents to respond to the police presence. As tensions became heated, police started beating, kicking, and arresting protestors. Then, under the cover of darkness, Chinese security forces began to fire upon Uyghur protestors.

Protestors fled to other points of the city, where they were forced into several closed areas from which they could not escape. The protestors were indiscriminately shot and killed in these locations, and those remaining were arrested. Reports indicate that Chinese authorities turned off the street lighting in the areas where protestors were present. These reports also describe the possible killing of Han Chinese bystanders in the shootings by Chinese police, which may explain the high numbers of Han Chinese fatalities. That Han Chinese civilians may have been killed by Chinese police must be investigated by independent journalists.

In another phone call to our offices, a protestor at Xinjiang University reported that Uyghurs were being fired upon by Chinese police “right now”, and in the background we could hear the screams of people in the vicinity. The caller stated that they could see approximately 50 Uyghurs lying dead from Chinese police shooting in an area around the stop for the number 1 city bus.

On July 11, Reuters quoted a Uyghur resident of Urumchi who said that the official death toll is “the Han people’s number. We have our own number...Maybe many, many more Uyghurs died. The police were scared and lost control.” In that same report, *Reuters* also stated that “a spray of bullet holes could be seen on the glass front of a Bank of China office...Many Uyghur residents say they heard or saw gunfire.” That Chinese security forces used live ammunition in suppressing the protest was confirmed in several calls to our office received on Sunday night from protest participants.

Some Uyghurs reacted to the intimidation of Chinese policing. Uyghurs killed and injured Han Chinese in violent attacks. Here, I would like to say that I strongly condemn the violence which took place in Urumchi.

In the immediate aftermath of the violence, Chinese security forces conducted mass-arrests of Uyghurs, according to sources quoted by Radio Free Asia in a July 9 report. A caller to our offices stated that the dormitories at Xinjiang University were broken into by Chinese police in a bid to arrest Uyghurs deemed to have been involved in the unrest. In a Xinhua report dated July 7, Urumchi Communist Party secretary, Li Zhi, was quoted as saying that authorities had detained 1,434 people for their role in the Urumchi unrest. The World Uyghur Congress contests that number, as it has not been independently verified. A July 19 Financial Times report [ix] states that more than 4,000 Uyghurs have been arrested and that Urumchi’s prisons are so full that detainees are being held in People’s Liberation Army warehouses. We fear that these detainees face execution in non-transparent judicial procedures.

In further communications with our offices, Uyghurs reported that some of the Uyghur wounded from July 5 did not go to the hospital for fear of arrest. Those who did go to the hospital reported that they were either turned away or charged for treatment, while Han Chinese victims received assistance free of charge.

...The Chinese government’s crackdown on ordinary Uyghurs in East Turkistan is in full swing. The July 19 Financial Times report states that Chinese armed police have established checkpoints on all roads in and out of Urumchi and that “[p]rivate cars without Uyghur passengers were waved through after a quick document check for the drivers. Vehicles with Uyghur drivers or with Uyghur passengers were being searched at gunpoint.” The report added that numbers of armed police in the region would be raised to 130,000 by October 1, 2009, the sixtieth anniversary of the founding of the People’s Republic of China (Kadeer, R. 2009, ‘Unrest in East Turkistan: What China is Not Telling the Media’, World Uyghur Congress website, 20 July <http://www.uyghurcongress.org/en/news.asp?ItemID=-946385842&rcid=803688565&pcid=1110134820&cid=803688565&mid=-2139923529>).

68. On 21 July 2009 AsiaNews reported that the XUAR authorities intend to pass special laws to deal with separatism in the region:

“Xinjiang wants to quickly pass special laws to deal with separatism in the autonomous region, Chinese newspapers reported yesterday without any explanation. This is a sign that the protests that broke out on 5 July will be met with harsh measures. Officially 197 people died during the violent clashes and more 1,700 were wounded.

Analysts note that China already has some of the toughest anti-secession laws on the books; any new law will simply give more powers to the police and increase already harsh penalties, thus further limiting civil liberties.

Speaking to Xinhua Eligen Imibakhi, chairman of the Standing Committee of the Xinjiang Regional People's Congress, said that this month's protests were caused by the “three forces,” namely “extremism, separatism and terrorism”.

For years China has used this unholy trinity to justify its persecution of Uyghurs, charging them with being dangerous terrorists. Chinese authorities insist that demonstrations in early July were organised by secessionist groups, not the spontaneous action of ordinary people.

The mouthpiece of the Communist Party, the People's Daily, yesterday blamed foreign groups like the Munich-based World Uyghur Congress (WUC) and exiled Uyghur leader Rebiya Kadeer for masterminding the violence, an accusation which Xinhua reprinted today. Uyghurs have dismissed Chinese charges, saying the protests were peaceful until police intervened. Instead WUC representative in Japan Ilham Mahmut called on China to allow a third party to hold an independent investigation into the incidents. Meanwhile Xingjian's capital of Urumqi remains an ethnically-divided powder keg. Uyghurs have become a minority in their own city, restricted to the poorest neighbourhoods. Ethnic Han Chinese now make up more than 70 per cent of the city's 2.3 million residents, encouraged to settle in this faraway outpost through incentives and promises of positions of power. The violent demonstrations have traumatised both groups; each claiming that media coverage of the events has distorted what actually happened. Officially, 1,400 Uyghurs have been arrested for their involvement in the protests, a figure treated with scorn by Uyghurs, some of whom claim that as many 20,000 have been detained, including innocent passers-by caught up in the events.”

69. On 10 November 2009 Amnesty International reported that “eight Uyghurs and one Han Chinese individual” were executed after “21 individuals were tried and sentenced in October in relation to the July unrest” after trials lasting less than a day. Amnesty International said that “(g)iven the large number of detentions reported by Chinese officials in connection with the unrest, dozens more trials could take place, possibly leading to more executions” It said that the China Daily had reported that the authorities have just prosecuted another 20 suspects, “for offences ranging from murder, arson, and robbery linked to the riots”: Amnesty International, “Hasty Executions in China Highlight Unfair Xinjiang Trials”, www.amnesty.org/en/news-and-updates (10 November 2009).

Communication with Uyghurs in XUAR

70. A Radio Free Asia article entitled “Xinjian bans separatist talk” dated 4 January 2010 provided the following information:

“While authorities announced that a limited Internet service would resume, bloggers in Xinjiang said they are still unable to get online using normal technical procedures.

Instead, Xinjiang’s 20 million residents, who have been cut off from Internet and international phone services since deadly ethnic rioting six months ago, may now access two state-run Web sites: those published by the Xinhua news agency and the Communist Party newspaper, The People’s Daily.

Phone, text, and email links remain largely blocked.”

71. An article, “China Starts to Lift Region’s Web Blackout”, published in The New York Times on 30 December 2009, stated:

“For now, though, people in Xinjiang can visit the sites of the official government news agency, Xinhua, and the Communist Party’s main newspaper, People’s Daily. Even on those reliably policed sites, the region’s Web users were still barred from engaging in e-mail, blogging or forums. It also took noticeably longer to load pages than it had before the riots, one user said.

After languishing under a communications lockdown as protracted and geographically far-reaching as any in China in the digital age, some residents were thrilled with even so modest an opening.

In Xinjiang, local authorities, banks and phone service providers have been able to send text messages, but private citizens still cannot. People can read news on a number of local government-run media sites that were restored in August, yet most of those sites are blocked to viewers outside the region.

In September, Xinjiang passed a broadly worded bill banning online speech that incites separatism and upsets national unity and social stability, and ordered service providers to monitor their systems for such provocations. The authorities have enlisted local Communist Youth League members to act as online “supervisors.”

But even on local news portals that have been operating for months, Web forums, blog and e-mail services remain off limits.”

72. An article in the China Daily dated 5 November 2009 on internet restrictions in XUAR since the July 2009 violence refers to a situation in which a mother in XUAR whose daughter was studying at a university in Australia has not been able to talk to her daughter on the telephone “as the international phone service was also suspended following the riot”: J Cui, “The Missing Link”, China Daily, 5 November 2009.

Political activities and monitoring in Australia

73. In relation to monitoring by Chinese authorities of Uyghurs in Australia, DFAT advised in June 2006:

A1. It is likely that Chinese authorities seek to monitor Uyghur groups in Australia and obtain information on their membership and supporters ... In pursuing information, Chinese authorities would not necessarily exclude sources that do not have a political profile. It is therefore conceivable that Chinese authorities would approach Uyghur secondary school students to inform on the Chinese Uyghur Community in Australia.

A2. Failure to comply with Chinese authorities expectations to provide information could possibly result in repercussions on return to China This could include Chinese authorities harassing individuals and/or their family members (for example including, but not necessarily limited to, creating difficulties in pursuing education or public sector employment opportunities).

A3. We consider there to be a small likelihood of Chinese authorities learning of individuals' PV applications in the absence of some indiscretion by the applicants. But if this information were revealed, on return to China, failed applicants would be likely to be subject to official scrutiny. In addition to possible consequences listed in paragraph 2, authorities might interview the person and might put the person concerned in administrative detention (DIAC Country Information Service 2006).

74. Country Information Service No. 06/29 – CIS Request No 8597: China: Treatment of Uyghurs on Return to China sourced from DFAT advice of 28 June 2006):

In May 2006, DFAT advised on the treatment upon return of Uyghurs involved in Uyghur groups in Australia.

A.1. It is not possible to say definitively how Chinese authorities would treat a particular individual who returned to China after being involved in a Uyghur group in Australia. It is likely that the Chinese authorities seek to monitor Uyghur groups in Australia and obtain information on their membership and supporters. On return to China, it is likely that the authorities would at least put such people under surveillance and might detain them for interview. Whether the person would face more serious consequences could be influenced by whether China perceived the person's activities outside of China as amounting to criminal activities. 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 Uyghur 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.

Depending on the level of the individual's involvement in Uyghur organisations, if on return to China the individual renounced his or her previous political sentiment and promised to cease any political activity, the Chinese authorities might act more leniently – for example, the authorities might interview the person and possibly put him or her in administrative detention (re-education through labour) for a period. On the other hand, if the individual continued to be politically active, he or she would likely face more serious consequences.

A.2. As noted above, the consequences for the individual on return to China would be related to his or her level of involvement with the organisation outside of China, as well as the individual's behaviour on return to China The more involved the individual had been in a Uyghur organisation outside of China, the more likely that

China became aware of the individual's activities (with repercussions as outlined above) (DIMIA Country Information Service 2006, Country Information Report No. 06/18 – China: Return of Australian Uyghur Association Members (sourced from DFAT advice of 26 May 2006).

75. In August 2006 DFAT advised in general terms on the Chinese authorities' view towards Uyghurs:

A.4. In general, Chinese authorities view politically active Uyghurs as more threatening than members of underground church groups. Chinese authorities are particularly concerned about politically active Uyghurs because they view Uyghur political activity as having separatist objectives (DIMIA Country Information Service 2006, Country Information Report No. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639) (sourced from DFAT advice of 7 August 2006).

76. Amnesty International-Canada stated in June 2005 that if the Chinese government suspects that a Uyghur asylum seeker has a history of involvement in political opposition movements currently being repressed in the XUAR, “there is a strong risk of serious human rights violations, including arbitrary detention and torture or ill treatment”:

Uyghurs who are suspected by the Chinese authorities to have claimed asylum will, at the very least, be questioned upon their return to China. Due to their ethnic minority status, Uyghur asylum seekers who are forcibly returned are likely to be viewed by the Chinese authorities as political suspects and face arbitrary detention or imprisonment. A returnee would raise suspicion due to their expired passport, or lack of passport, and due to their lengthy absence from China without any legal travel documentation. In this context, it is important to note that Article 322 of the Chinese Criminal Law makes “illegally crossing a national boundary” an offence punishable by up to one year in prison.

In addition, if the authorities suspect a Uyghur of seeking asylum abroad, and/or if they suspect a history of involvement in either political opposition movements or in the religious activities that are currently being repressed in the XUAR, then this person would come under further scrutiny. Under these circumstances, there is a strong risk of serious human rights violations, including arbitrary detention and torture or ill treatment. If a Uyghur is suspected of playing a leading role in organizing “separatist”, “terrorist” or “illegal religious” activities, they would face a long period of imprisonment, or possibly the death sentence and execution (Amnesty International-Canada 2005, Amnesty International concerns on Uyghur asylum seekers and refugees, June http://www.amnesty.ca/Refugee/Concerns_Uyghur_June2005.pdf)

FINDINGS AND REASONS

77. The applicant claims that he is a citizen of China and he arrived in Australia on a Chinese passport. The Tribunal accepts that the applicant is a Chinese national, outside his country of nationality. Therefore, for the purposes of the Convention, the Tribunal has assessed his claims against China as his country of nationality.
78. The Tribunal accepts that the applicant is an ethnic Uyghur from XUAR province in China, and that he and his family members have experienced discrimination in the past as a result of their Uyghur ethnicity.

79. The Tribunal accepts that the applicant has a past long-standing association with Rubiya Kadeer through his business dealings with her in Kazakhstan and Urumqi and his membership of a welfare foundation, which was established with Ms Kadeer's support, to provide opportunities to educate Uyghurs, and if possible to send them overseas for higher studies. The Tribunal refers specifically to the evidence provided by [Person B], [senior official] of the Uyghur American Association, which confirmed the existence of the foundation and the applicant's membership of it. According to [Person B], Ms Kadeer had advised that the foundation was later shut down by the Chinese government fearing its influence and many members of the foundation who wanted to continue it were harassed by the authorities. The Tribunal has had regard to the applicant's failure to get in contact with Ms Kadeer when she was in Australia, given their past relationship as business people and philanthropists. The Tribunal accepts the applicant's explanation that he did not meet Ms Kadeer, despite wishing to do so, because it may have placed his family in Urumqi at risk of harassment from the authorities in China. The Tribunal refers to the country information cited above which discusses the monitoring of Uyghurs in Australia by the Chinese authorities and finds that in light of this, the applicant's actions are entirely plausible and consistent with his concern for his family in China.
80. In light of this evidence, the Tribunal accepts as plausible the applicant's evidence that from 1999 onwards he was questioned about the foundation on numerous occasions and that in May 2001 he was arrested and detained for a period of fifteen days. The Tribunal notes that the applicant's evidence in regard to the attention he received from the authorities from 1999 onwards has been relatively consistent and credible. The Tribunal also accepts that the applicant may have had travel restrictions placed on him after his release from detention, noting the country information cited above which confirms that the Chinese authorities imposed bans on leaving the country on people who were deemed threats such as religious leaders, political dissidents and ethnic minorities. The Tribunal therefore accepts on the very few occasions that the applicant was permitted to travel overseas, he was required to provide some form of security or bond to ensure his return.
81. The Tribunal accepts that since the applicant's wife returned to China in August 2009 she has been questioned on several occasions about the whereabouts of the applicant and his activities in Australia given that he has overstayed the three months that he was permitted to be away for. The Tribunal accepts that the bond provided by the applicant in order to travel to Australia has been confiscated by the authorities and his friend who provided the security has been charged with assisting him to leave the country. Although the Tribunal notes that the applicant was detained some eight years ago and had managed to get permission to travel outside China on several occasions between 1999 and 2009, the Tribunal accepts the applicant's assertions that the situation has changed drastically in Urumqi since the events of 5 July 2009. The Tribunal has taken into consideration the country information cited above which details the harsh response taken by Chinese authorities against the Uyghur population (not only those who participated in the demonstrations) and discusses the large numbers of Uyghurs arrested and detained since the violence that erupted following the demonstrations in mid 2009. The Tribunal also notes that the Chinese authorities have accused Ms Kadeer of planning and organising the protests and in light of this, the Tribunal accepts as plausible the applicant's claims that those identified as associates of Ms Kadeer have been targeted in the aftermath of the demonstrations.

82. The Tribunal also finds the fact that the applicant has overstayed his permitted stay in Australia may lead to him being subjected to further scrutiny by the authorities. Although the Tribunal does not accept that the applicant has had any involvement with any Uyghur groups in Australia, despite his claimed membership of the East Turkistan Australian Association, the Tribunal finds, based on the country information cited above, that there is a real chance given the applicant's history of involvement with Ms Kadeer and the foundation, he will be questioned and may face arbitrary detention and imprisonment on his return to the country.
83. Having regard to all of the circumstances, the Tribunal finds that in the current context the applicant, on account of his past association with Ms Kadeer and his previous interest to the authorities because of his membership of the foundation, could be regarded by Chinese government officials as having a political opinion supporting greater autonomy for the Uyghur people in Xinjiang. For this reason, the Tribunal finds that there is a real chance of the applicant coming to the attention of the authorities upon his return to China and of facing serious harm amounting to persecution, including arbitrary arrest and detention accompanied by serious mistreatment for reasons of his political opinion (both actual and imputed) as well as Uyghur race and Muslim religion. In these circumstances the Tribunal does not accept that the applicant would be able to avail himself of state protection. The Tribunal therefore finds that the applicant's fear of persecution on return to China is well-founded.
84. The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of China, other than XUAR, where he may be free from the harm he fears. Given the applicant faces a fear of persecution from the government and the authorities, the Tribunal does not accept relocation would be reasonable. The Tribunal also finds that there is nothing in the evidence before it to suggest that the applicant has a legally enforceable right to enter and reside in Kazakhstan or any other country apart from his country of nationality. The Tribunal has considered the applicant's evidence in the Departmental interview which suggested that he had resided in Kazakhstan between 1999 and 2001. The Tribunal accepts the applicant's explanation that there was a misunderstanding during that interview in relation to this particular issue and that he never resided in Kazakhstan during that period except for the two occasions he visited and stayed no more than fifteen days. The Tribunal therefore finds that the applicant is not excluded from Australia's protection by operations of s.36(3) of the Act.

CONCLUSIONS

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

DECISION

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

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

Sealing Officer: PRMHSE