

**1102506 [2011] RRTA 587 (12 July 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1102506

**DIAC REFERENCE(S):** CLF2010/54188

**COUNTRY OF REFERENCE:** Russian Federation

**TRIBUNAL MEMBER:** Denis O'Brien

**DATE:** 12 July 2011

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (a) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (b) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.

## 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 applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Russian Federation, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2010 and applied to the Department of Immigration and Citizenship for the visas [in] April 2010. The delegate decided to refuse to grant the visas [in] February 2011 and notified the applicants of the decision.
3. The delegate refused the visas on the basis that the applicants are not persons to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
4. The applicants applied to the Tribunal [in] March 2011 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 applicants have 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 Convention.
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (a) to whom Australia has protection obligations under the Convention and (b) who holds a protection visa. Section 5(1) of the Act provides that one person is a "member of the same family unit" as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that "member of the family unit" of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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’

10. 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.
11. 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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Secondly, 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, if the 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 unable to be controlled 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 (see *Chan* per McHugh J at 430; *Applicant A* per Brennan CJ at 233, McHugh J at 258).
15. Persecution also 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.
16. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified 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.

17. Fourthly, 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 he or she has genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded when 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.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression "the protection of that country" in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
19. 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**

20. The Tribunal has before it the Department's file relating to the applicants. 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.
21. The applicants appeared before the Tribunal [in] June 2011 to give evidence and present arguments. The Tribunal first took evidence from the first named applicant and then took independent evidence from the second named applicant. The Tribunal also received oral evidence by telephone from [Mr A] in [City 1] in the Russian Federation. The Tribunal hearing was conducted with the assistance of an interpreter in the Russian and English languages.

### **Protection visa application**

22. The first named applicant (who, for the sake of convenience, will be called "the applicant") is Russian. He was born in the the Primorskiy Krai region of Russia on [date deleted: s.431(2)]. He is married with two children, a [age deleted: s.431(2)] son who is currently residing in Australia with the applicant and his wife and a [age deleted: s.431(2)] daughter who is residing in Russia.
23. From 1985 to 1992, the applicant worked as an instructor in [a military base]. In November 1990 he began to supplement his income by working on a casual basis for a friend in his private business. The applicant's occupation before coming to Australia was second-hand car dealer.
24. He gave up his membership of the communist party in January 1991 to pursue his interests in private business which towards the end of 1992 provided him with a better

income. However, giving up his membership had severe repercussions and he began to experience problems at work. He had been warned about withdrawing his communist party membership by his Commanding Officer, [Mr B], who was a secretary of the communist party at the army base where he worked. He was harassed at work and resigned from his job [in] December 1992.

25. Between [December] 1992 and [January] 1993 the applicant's flat was burnt down. The applicant, his wife and son were not in the flat at the time as they had attended a New Year's celebration at a friend's place. The fire department advised that the fire had been lit deliberately. The applicant believed that they fire had been lit with the purpose of killing him and his family. He believed that the people he worked with at the military base were responsible as he did not have any enemies.
26. From 1995, he owned a second-hand car business which bought and sold Japanese cars. The business was registered in [City 2] [in] January [year deleted: s.431(2)]. This business was his only source of income. In December 2008 the Russian government announced higher tariffs on imported cars meaning that the price of Japanese cars would rise.
27. The applicant took part in a peaceful protest against the rise in car import duties on 14 December 2008 in [City 1]. He arrived in [City 1] [in the morning] and joined a convoy of cars heading to Vladivostok airport [in the afternoon]. The police stopped the convoy so the applicant and others walked to the airport carrying signs and shouting slogans. At 8:00pm the applicant and the other protesters returned home.
28. On 21 December 2008 the applicant attended a second peaceful demonstration where riot police also attended. He was beaten and then taken into custody by the police and charged with breaching public order. The police threatened him and he was told not to seek medical attention. He was told that he would be black-listed and that his file would be transferred to the local police station in [City 2] where he would be monitored by local authorities. The Russian Government labelled the protesters as "enemies of the people" and on 11 January 2009 increased the tariff on imported cars. As a result the applicant lost his business to pay off his accumulated debts.
29. In January 2009 he joined a group called TIGR which he claims was an initiative of citizens of Russia, mainly entrepreneurs who had lost their car business. TIGR was not a political party, but a party united by entrepreneurs and businessmen in the Vladivostok region who were speaking up against government corruption. The applicant organised activities for this organisation in the city of [City 2]. After becoming involved in TIGR he began to have problems with police and government authorities. He received threatening phone calls.
30. [In] March 2009 the applicant received a threatening phone call from someone who claimed to be from One Russia Party. The caller told him that there could be no other political organisations in [City 2] other than One Russia Party. The applicant was advised to withdraw from TIGR and join One Russia Party. He believed he was unable to join this party as all the higher ranked positions within the party were occupied by former communists.
31. He was harassed by the police who regularly checked his licence and registration and checked his vehicle for drugs. He was also taken to the police station for drug testing.

- [In] January 2009 he was stopped by the police and questioned why they were searching his car without his permission. The policeman in charge, [name deleted: s.431(2)], replied that “the ones like you deserve special treatment” The applicant complained several times to the policeman in charge, [name deleted: s.431(2)], and to the DPP [name deleted: s.431(2)] but his complaints were ignored and no action was taken.
32. [In] March 2009 at 10:30pm on his way home from a TIGR meeting the applicant was arrested. He spent the night in prison and was taken to see the head policeman the following day. He was questioned about his TIGR associates for over 5 hours. During this time he was threatened and sections of the law relating to terrorism and extreme behaviour were read out to him.
  33. In 2009 the applicant had a nervous breakdown and spent time in hospital. After he was released from hospital he received threatening phone calls every 3-4 minutes (sic). His wife and son were also threatened. The applicant sent his son away to protect him.
  34. [In] October 2009 the applicant was stopped by police on his way home from a TIGR meeting. He was asked to remove an orange ribbon that was displayed on his car. He refused to remove the ribbon and was beaten. The ribbon was forcibly removed by the police. A policeman punched him in the face, leaving him unconscious. When he regained consciousness, the applicant drove himself to the nearest hospital.
  35. [In] November 2009 at about 11pm on the way home from a TIGR meeting the applicant was attacked by four unknown men. He was beaten for 3-5 minutes and lost consciousness. When he came to, he called his wife on his mobile telephone and she took him to the hospital. He had sustained a burst intestine from the beating and required an operation. He spent 12 days in intensive care and was advised that, if he had arrived at the hospital half an hour later, he would have died. He spent a month in hospital having numerous procedures. Whilst recuperating in hospital a police officer came to take a statement about his beating. The policeman suggested the beating was a random attack by unknown assailants. The applicant claims that the attack was orchestrated by the authorities.
  36. [In] December 2009 at 2:30pm whilst the applicant was in hospital the police searched his home for drugs and did not find any. His computer hard drive and TIGR literature was confiscated. His wife was at home when the search took place. A few days later while he was still in hospital he received an anonymous letter stating that a criminal case was being fabricated against him. He made some enquiries with a friend who worked for the police and discovered the charge was for the transportation and sale of drugs.
  37. He arrived in Australia [in] January 2010 on a visitor visa. He cannot return to Russia as he fears for his life and liberty. He holds the Russian authorities responsible for the events that caused him to leave Russia and does not believe that the authorities would protect him.
  38. He fears that if he returns to Russia he will continue to be persecuted by the authorities because he was involved in protests against the government and because of his key role with the protest organisation, TIGR.

## **Report of medical examination of the applicant**

39. On the Department file is a report dated [in] May 2010 of a medical examination of the applicant conducted by a medical practitioner in Australia in connection with the applicant's application for a protection visa. The report includes a drawing of the applicant's stomach showing surgical wounds, beside which some handwriting of the medical practitioner appears. Not all the handwriting is completely legible to the Tribunal but it includes the following: "Large surgical wounds laparotomy following assault 12/09. Mild tender lower abdo and some discharge from wound...".

## **Departmental interview**

40. In an interview with the delegate [in] August 2010 which lasted for more than two and a half hours, the applicant was asked details about his work as [a military base] instructor. He said that he worked as an [instructor] of students doing military service at [a military base] at his home town of [City 2]. He taught them the basics about [military equipment and] maintenance and other matters. The delegate asked him how he got this training role given that he had no educational qualifications. He replied that, after his military service, he stayed on in the military, [service details deleted: s.431(2)] where he did a mechanics course. At the [military base], with the help of literature about the particular [equipment] and with his knowledge of mechanics, he was able to teach the basic information the students required. He was not a qualified [occupation deleted: s.431(2)] and the [equipment] on which he provided the training were obsolete [equipment].
41. The delegate asked why he was instructing in relation to obsolete [equipment]. He responded that that was a matter for higher ranking officers. He was merely asked to teach general information about [equipment]. The students might later go elsewhere to learn about more modern [equipment].
42. The delegate asked him why he had said in his protection visa application that he had to give up his communist party membership. He said that he had to be a member of the communist party when he was in military service but was told by his superiors in the military after he started to engage in private business ventures that this activity was contrary to the communist party charter.
43. He was able to engage in the private work he was doing for friends because his military job at [military base] involved shift work and he was able to fit the private work in around the various shifts. He also did the private work on weekends and public holidays.
44. The applicant estimated that the population of [City 2] was about 35,000. It used to be more but was now a dead city with many factories not operating.
45. The applicant said that, after he was charged with breaching public order following the demonstration on 21 December 2008, he was fined 1,000 roubles. His blacklisting meant that he was constantly watched and had his telephone bugged. He was often stopped by the police when he went out in his car.
46. The delegate asked him why he did not move elsewhere when the trouble started for him. He said that it would have been impossible for him to move to Moscow or

anywhere near Moscow because registration was necessary and his blacklisting would have prevented him from moving.

47. The applicant responded to various questions the delegate asked about the formation of TIGR and the activities it engaged in. The applicant said that it was set up after the protest in Vladivostok in December 2008 and had its headquarters there. He organised a branch in [City 2] which had about [number deleted: s.431(2)] members but the branch was not registered in that city because the mayor would not allow it. Members of the branch would go to Vladivostok to participate in the protests there. The applicant said that he attended protests in Vladivostok in October and December 2008 and on [two occasions in] January 2009. There was another protest [in] March 2009 which the applicant did not attend because of his arrest in [City 2] the previous day. He also did not attend a protest [in] October 2009 because he was beaten up. All the protests initially were about the increases in customs duty on imported cars.
48. The delegate asked him how he was able to provide for his family after the collapse of his business. He replied that he had some savings and was still able to get the occasional job through friends.
49. The applicant gave the delegate further details about the threatening phone calls he received, clarifying that the calls would occur 3 or 4 times a week.
50. He said that he was not at home when the police searched his home but his wife was there. Two policemen knocked at the door and said they were conducting a search in connection with a criminal case. The applicant's wife asked to see a search warrant and they produced a document which bore a signature but no seal. When the officers left the house with paper records they had seized and with a computer disk, they gave the applicant's wife a document to sign. The applicant believes the police concerned were attached to the Town Administration. The delegate asked why they might have been interested in him given that he did not appear to have been a high profile figure. The applicant said that they did not want him to organise people in [City 2] in opposition to the authorities and he believed that they thought they could make an example of him to others. The authorities could not do much with high profile people in TIGR but could deal with a smaller person like him. [City 2] was relatively small and people there knew him.
51. The delegate queried the applicant about the entries in his passport showing his trip to Japan in June 2009, which occurred after the collapse of his business. He said that he went there because he owed money to his former business partner through whom he purchased cars for his business. He was also keen to get out of Russia so the militia would leave him alone but he was not at that time thinking about leaving Russia for good. The applicant paid his business partner the money he owed him from savings he had accumulated in the business and through selling off his stock of cars at about half the price they should have sold for.
52. The delegate pointed out to the applicant that he arrived in Australia in January 2010 but did not lodge his protection visa application until April 2010. The delegate asked why he did not lodge the application shortly after his arrival. The applicant said that he was still in shock and was unwell after having only just got out of hospital and he did not know anyone in Australia. It was only after meeting a few people in Australia that he became aware of the possibility of seeking protection.



### **Documents supplied to Department following interview with delegate**

53. Amongst the documents supplied to the Department by the applicant following his interview with the delegate were the following:
- statement of [Mr A] of [City 1] stating that he has known the applicant since 2006, that, like [Mr A], the applicant was in the car sales business, that the two of them traded next to each other in the car market at [City 1], that the introduction of protective tariffs led to a wave of protests by motorists to protect their interests, that [Mr A] and the applicant took part in rallies in Vladivostok and that [Mr A] was aware that the applicant was [an official] of the [City 2] branch of TIGR;
  - statement of [Mr C] of [City 2] stating that he has known the applicant since 2000, that he helped the applicant in his business, driving cars from the ports of Vladivostok, Slavyanka and Zarubino to [City 2] and helping to prepare them for sale, that the applicant lost his business due to the raising of car import duties and [Mr C] lost his job, that the applicant attended protests in Vladivostok and organised the activities of TIGR in [City 2] and that [Mr C] refused to join TIGR because he could see from what happened to the applicant that joining could threaten [Mr C] and his family;
  - certificate under the hand of [Mr D], [an official] of PROO TIGR, certifying that as of 2009 the applicant has been [an official] of the [City 2] branch;
  - report of findings of the Fire Protection and Rescue Service of [City 2] District relating to a fire at the applicant's residence on the night of [date deleted: s.431(2)] January 1993;
  - statement of [Mr E] of [City 1] stating what he saw when buses packed with the OMON (Special Police Squad) arrived at the rally in Vladivostok on 21 December 2008 protesting the increase in customs duties on imported cars;
  - anonymous undated statement addressed to the applicant warning him that the Narcotics Control Service proposes to charge him with a criminal offence in relation to narcotics to be "located" in his car or apartment;
  - medical certificate dated [in] May 2009 relating to the applicant having been diagnosed as suffering from post traumatic stress disorder;
  - case history extract, [City 2] City Hospital, relating to laparotomy, abdominoscopy, enterectomy, end to end anastomosis and drainage of the abdominal cavity performed on the applicant [in] November 2009.

### **Documents supplied to Tribunal**

54. Prior to the Tribunal hearing the applicant supplied the following documents to the Tribunal:
- a submission in support of his case;

- a psychological report dated [in] April 2011 of an examination of the applicant by [Mr F], Clinical Psychologist;
- a letter dated [in] March 2011 in support of the applicant by [Ms G], Psychologist;
- a letter from the applicant's General Practitioner, [name deleted: s.431(2)], referring to the applicant's suffering from depression and post traumatic stress disorder;
- a hospital discharge report relating to the applicant's admission to Prince of Wales Hospital, Randwick, [in] June 2010 suffering from chest pain;
- express post receipts which appear to be dated [in] April 2010 and [in] May 2010, apparently relating to documents sent from Russia to Australia.

## **Tribunal hearing**

### ***Evidence of first named applicant***

55. At the Tribunal hearing the applicant gave further evidence about his former job as a trainer at the [military base]. He said that, after performing national service in [Armed Forces 1], he joined [Armed Forces 2], where, after a period of training, he was promoted to [rank deleted: s.431(2)]. His role at the [military base] was to instruct young national servicemen who had joined [Armed Forces 2]. He taught them the basics about [military equipment].
56. He said that, in the early 1990s, there were problems with the availability of foodstuffs in Russia. With his friend, he set up a supply chain bringing food from Moscow and [Asia] and selling to retail shops. From [Asia] the foodstuffs were mainly sweets. From Moscow the foodstuffs included mayonnaise, biscuits and chocolates. He was involved with this business in his free time. However, when [Armed Forces 2] came to know about it, it was said to him that the business was incompatible with his communist party membership. At communist party meetings he began to be shamed for his involvement in this private enterprise. He had been compelled to join the party when he first joined the military and, when this pressure began to be applied to him, he got fed up. He quit the party [in] December 1992. After he quit, [Armed Forces 2] made life difficult for him. They tried to ensure that he had little free time by sending him away on assignments, his photograph was removed from an honour roll at the school and his name was removed from a housing waiting list.
57. He decided that he wanted to resign from the military altogether but [Mr B] warned him that no one could resign their communist party membership or leave [Armed Forces 2] just like that.
58. For the New Year's Eve celebrations at the end of 1992, friends had invited the applicant and his family to their house and had then invited them to stay over. The applicant returned to his flat a couple of days later to get some clothes and, as he approached the flat, he saw that there were fire trucks there. Fire had destroyed one room in the flat completely and the family's belongings in other rooms were affected by smoke and water. The building in which the flat was contained comprised two flats,

one upstairs and one downstairs. The applicant's flat was upstairs and heating was supplied by a coal fired heater, for which the applicant had to carry coal upstairs. The Fire Department, which was attached to [Armed Forces 2], suggested that the fire had started through the applicant's negligence with the coal heater.

59. The Tribunal queried the applicant about the report from the Fire Protection and Rescue Service which the applicant had supplied to the Department and which appeared to have been a report supplied in response to something the applicant had written. That report states that the fire started as a result of alleged arson by unidentified persons. The applicant explained that the unit of his neighbour, [Corporal H], who lived below the applicant had been affected by the water used to extinguish the fire and [Corporal H] was threatening to sue the applicant on the basis of the initial report the Fire Service had made as to how the fire started. The applicant therefore insisted on the Fire Service making a proper investigation and it was as a result of that investigation that the further report was prepared.
60. The Tribunal asked the applicant how it was that he had this report with him. He said that he had been in touch with his mother in Russia and, although the Fire Service now no longer exists, friends of hers had managed to obtain a copy of the report from Fire Service files.
61. In response to the Tribunal's request that the applicant explain how his second hand car sale business operated, he said that, when he started, [business details deleted: s.431(2)]. He saw an advertisement in the newspaper about Russian companies which operated in Japan and had contacts there. Through one of the companies, he imported a second hand car and sold it at a local car market. The business built up from there and the applicant made many trips to Japan to acquire cars and have them shipped to Russia, through the ports of Nakhoda, Vrangel and Slavyanka. Shipping would normally take three days. After the cars arrived, the applicant would take them to [City 2] for any necessary panel beating and to prepare them for sale. He would sell the cars at the car market at Green Corner, Vladivostok, and at the car market in [City 1]. When he started his car selling business, he would obtain a deposit from the purchaser, acquire the car through his Russian contact in Japan at an agreed wholesale price and, after selling the car, remit to the Russian contact the agreed wholesale price. Profit per car would vary but could be USD \$300-500. At the height of the business the applicant was selling up to 30 cars a month.
62. The Tribunal asked him about the rise in import duties. He said that, before the rise in duties, the amount of duty would depend on the cubic capacity of the engine and the year of manufacture of the vehicle. Duty on a Toyota Corolla, for example, would be in the order of USD\$1500-1800. The duty would become payable when the vehicles were placed into Customs control at the ports. The applicant would ensure that, when he went to Japan to buy cars, he had enough funds to pay the import duty. Later, he partnered with a large car sale company in Vladivostok, which would meet the expense of the Customs duty, allow him to sell cars on commission and give him two months to reimburse the company for the payment of duty.
63. The import duties increased on 11 January 2009. There had been warnings about the rise in duties in that there had been discussions in the Duma in 2008 about a potential rise. In the end, however, the change was sudden. The increase had a significant effect on the applicant's business. He had bought a number of second hand cars for sale in

December 2008 and the increase in duty meant that, to cover the duty, the sale price had to almost double. Customers were unable to afford the increase and stopped buying. The effects were huge in the Primorskiy Krai region, where the car industry was extensive, supplying cars all over Russia. There were knock-on effects to other business which depended on the vehicle import industry. In the applicant's case he had to sell cars at a loss to pay debts and his suppliers in Japan. The particular contact the applicant used in Japan went bankrupt and the applicant too went bankrupt.

64. The first protest about the imminent change in duties took place in Vladivostok on 14 December 2008. About 6,000 people took part. The applicant decided to join the protest and drove with others to Vladivostok but could not reach the city because of the traffic jam so had to proceed on foot to the airport, where the protest was being held. The airport was chosen as the venue because the organisers wanted to bring the protest to the attention of the authorities and also because the Primorskiy Krai governor was due to fly out that day. At the protest demands were made that, unless there was a response from government, another protest would take place on 21 December.
65. The second protest took place on that date in Revolution Square, Vladivostok. Again the applicant made a decision to take part. Initially, the protest was peaceful. Then at about 11 am, 10 buses carrying militia from Moscow arrived. The militia tried to disperse the protestors and began beating them. The applicant received a blow to the head which caused his head to bleed and he was taken to one of the buses. From there he and others were taken to [a] District Police Station. There the applicant was placed in a cell before being taken to a room where he was charged with public affray and with taking part in an unauthorised meeting. He was outraged because he had been beaten and was bleeding. He told the police that he was not feeling well. He was told not to complain and that his case would be sent to [City 2] to be dealt with. He was told that he was blacklisted and would be put under surveillance. He later received a court summons and was fined 1,000 roubles.
66. The Tribunal questioned him about what he meant by his being blacklisted. He replied that it involved registration of the individual's name with the police and police monitoring of the individual.
67. The Tribunal asked the applicant about his role with TIGR. He said that, at a further protest [in] January 2009, the protestors decided to set up a body to represent them, and TIGR was the result. The TIGR group would congregate at the markets at [City 1] and it was decided that there should be a branch in every town or city. The applicant set the branch up in [City 2].
68. The Tribunal asked him whether he was concerned about doing this given the warning he had been given by the police when taken into custody. He replied that he had concerns but rationalised to himself that he lived in modern times and did not believe the authorities could do anything to him. His wife also queried with him whether it was worth getting involved but he asked her what else he could do. He also hoped that, with the involvement of others, he would not be singled out.
69. The Tribunal asked the applicant how he had obtained the certificate under the seal of TIGR as to his [office] of the [City 2] branch (Department file, f.188). He said that the branch of the organisation in [City 2] had not been registered, so he had contacted a friend, asking him to approach the headquarters of the organisation in Vladivostok and

get a certificate. The certificate was given as a result and the applicant's friend mailed it to him in Australia. The applicant said that he had the original certificate and could provide it to the Tribunal. He subsequently did so, including with it what was said to be a TIGR membership card (in Russian) (Tribunal file, f.138). He told the Tribunal at the hearing that he was elected [an official] of the [City 2] branch of TIGR [in] June 2009.

70. In response to the Tribunal's question about the threatening phone calls which the applicant said he received, he said that the calls came at first to his mobile and the anonymous caller said things like, "Do you want to lose your life?" At first the applicant paid little attention, dismissing the calls as calls of hooligans. Then in later calls the caller warned the applicant he had better look out for his family and, when the applicant was away from home in March 2009, his wife received a call on the landline, threatening her to watch out. In that same month the applicant received a call from [Mr I]. He was employed by the Town Administration. The applicant knew him and knew that he was a member of the One Russia Party. [Mr I] threatened the applicant, telling him to toe the line and leave TIGR, otherwise [Mr I] would cut him off at the knees and clamp his tongue so that he could not talk.
71. After these events occurred, it became difficult for the applicant to move around town. His car was stopped and inspected and the police tried to provoke him. He tried to ensure that he always had someone travelling with him in the car. [In] March, the day before one of the planned protests, the applicant had attended a TIGR branch meeting in which arrangements for travel to the protest were discussed. After the meeting he had driven in his car to the car park near his home where he normally parked the car. When he got out of the car, a police car came up, the police got out and handcuffed him and he was taken to a police station. There he was told that he was under suspicion for committing a crime of hooliganism.
72. The applicant told the Tribunal that he assumed his telephone was being tapped because the police seemed to know his every move.
73. The Tribunal asked the applicant what happened to him in November 2009. He said that he was bashed and thinks the men responsible wanted to murder him. He was feeling stressed at the time because of what had been happening to him so would not walk home by himself. On the evening in question, he had parked his car at the garages about 100 metres from his home, thinking that he would be safe, given the lighting and the short walk involved. As he walked past a group of men, he was struck on the head and knocked to the ground. He covered his head and face with his hands as the men kicked him as he lay on the ground. He passed out. When he came to, he still had his money and his mobile, which he kept in a small bag. He managed to telephone his wife for help. She asked where he was. Initially he was not sure but then realised that he was behind the garages near his house and was able to tell her that. She took him to hospital.
74. The Tribunal asked how he had obtained the hospital report of the surgery performed on him (Department file, f.179). He said that, after arriving in Australia, he asked his mother to get the records. She obtained them through the surgeon who operated on the applicant.
75. The anonymous letter the applicant received while he was in hospital (Department file, f.169) the applicant said was found by his wife in the letter box at home. The applicant said that he had no idea where the letter came from. However, he was well-known in

[City 2] and, when he was in hospital, a policeman he knew visited him and told him that the policeman was aware that a serious criminal case was being prepared against him.

76. The Tribunal asked the applicant why he feared returning to Russia. He said that he could not say if his troubles with the authorities had blown over. In Russia people tended not to forgive. The applicant feared being imprisoned, which would be a fate worse than death. He was scared because his health had been damaged by what had happened to him and his surgical wounds were still weeping after he came to Australia.
77. He showed the Tribunal the scar on his neck and the large, and still red, scars on the front of his abdomen. The scars appear to be surgical scars.
78. The Tribunal pointed out to him that he had arrived in Australia in January 2010 but had not made a protection visa application until April 2010. The Tribunal invited his response to the suggestion that the three month delay might be an indication that he had no subjective fear of returning to Russia. He said that, when he arrived in Australia, he was in terrible physical condition and his mental state was affected. It was only some time after he arrived that he found out about protection visas and he was told then that he would need to get documents such as birth certificates to accompany any application. These took some time to obtain.

***Evidence of second named applicant***

79. The Tribunal asked the applicant's wife if she would tell the Tribunal about her husband's involvement with TIGR. She said that he had set up the [City 2] branch. The branch included other businessmen who had lost their businesses. The Tribunal asked her if she had had concerns about her husband's involvement. She said that she had, after all that had happened to him. After he was detained in [City 2], she realised that things had taken a serious turn.
80. She said that her husband's first arrest after joining TIGR was in March 2009. He had been at a TIGR meeting and was expected home after that but he did not arrive and she did not know where he was. He arrived home the following day after lunch.
81. The Tribunal asked her about the incident which left him hospitalised. She said that he had rung her on the evening concerned to say he was on his way home. She later received another call from him and he told her that he was behind the garages near their home. She found him and, with the help of a friend, took him to hospital.
82. The Tribunal asked her about the threatening calls she had received at home. She said that they came on the landline and most were at night, after 9pm. The calls terrified her. The male caller would ask if the applicant was home and, if he was not, would say that he may not be coming home at all. The caller would also say things like, "You have a son. He may end up leading life as a cripple." As a result of the calls, she took care to drive her son to and from school and warned him not to talk to strangers. There were about 10 calls in all. Sometimes the phone would ring and, when she answered it, there would be silence at the other end.
83. In response to the Tribunal's request to tell it about the police search at the house, the applicant's wife said that it occurred about three days after her husband had been

moved out of the intensive care unit and into a general ward at the hospital. She was about to leave home to visit the hospital when the doorbell rang. She looked through the eye hole in the door and saw a policeman at the door. When she opened the door, she saw that there was another policeman there also. They told her they were searching for drugs. She could not believe what they said. She asked if they had a warrant. They showed her a piece of paper but she did not know what it was. They said that she would later receive formal documents but she never did. They conducted a search of the house and left, taking with them some TIGR literature and a computer disk.

### ***Further evidence of applicant***

84. After his wife gave her evidence the Tribunal asked the applicant some further questions. The Tribunal asked him why his son had come to Australia the first time. The applicant said that he came in June 2009 for a month to study English. He travelled with the son of friends as the applicant and his wife wanted to be sure that he was safe while in Australia.
85. The Tribunal asked the applicant how the tourist visas had been arranged for the family's later travel to Australia. The applicant said that his wife arranged the visas through a travel agency. The applicant was apprehensive whether, because he was on a blacklist, he would be able to leave Russia. As it turned out, he and his son got through the barrier at the airport without difficulty but there was a moment of concern when the applicant's wife was stopped for a time. The family left for Australia from Vladivostok airport, transiting through [Asia].

### ***Evidence of [Mr A]***

86. The Tribunal took evidence by telephone from [Mr A] who gave his address as [address deleted: s.431(2)], [City 1] and said that he was an engineer in a [depot], [City 1].
87. He said that he had known the applicant for about 5 years and knew that the applicant was involved in the car business. [Mr A] also traded at the car market in [City 1]. The Tribunal referred him to the written statement he had given and asked him if he recalled the statement. He said that he did and that, like the applicant, he had become involved in the protests about the increase in duty because he did not like government impinging on people's right to trade. He wrote the statement after receiving a call from the applicant asking [Mr A] if he would provide a statement that he was involved in the protests.
88. The Tribunal directed [Mr A] to that part of his statement where he said that the applicant had been persecuted and beaten. The Tribunal asked [Mr A] how he knew about that. He said that people talked about it; [City 1] was not a big place and, once when the applicant came to the market, [Mr A] could see that he had been beaten.
89. [Mr A] said that TIGR had been established by people involved in the car business. [Mr A] was aware that the applicant was [an official] of TIGR in [City 2] and that he stood up for his rights and the rights of his family despite being beaten. [Mr A] was not himself a member of TIGR but shared their views and participated in their activities.

## Country of origin information

### *Tariff increases on imported cars*

90. Sources confirm that on 11 January 2009, the Russian Government substantially increased import duties on new and used foreign cars.<sup>1</sup> For used cars three to five years old the minimum tariff rose from 25 to 35 per cent and was higher for cars five years or older.<sup>2</sup> The increase was designed to protect domestic car production in Russia amid the global financial crisis.<sup>3</sup> According to a 31 August article from the RiaNovosti news website, the importation of used cars over three years old virtually ceased following the increase.<sup>4</sup> No information was found by the Tribunal which indicated the measures specifically affected Japanese imports. However, a high percentage of used car imports in Russia come from Japan.<sup>5</sup>
91. The increase reportedly sparked protests across Russia when it was announced in December 2008, particularly in the far east of the country where up to 90 per cent of vehicles are second hand imports from Japan.<sup>6</sup>
92. Sources indicate the new duty only applied to cars imported after it came into effect on 11 January 2009, though this was not explicitly stated.<sup>7</sup>

---

<sup>1</sup> 'National Trade Estimate Report on Foreign Trade Barriers – Russia' 2009, Office of the United States Trade Representative, p.412

[http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset\\_upload\\_file60\\_15502.pdf](http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset_upload_file60_15502.pdf) – Accessed 10 June 2011; 'Controversial higher tax on Russian car imports comes into effect' 2009, RiaNovosti website, 12 January <http://en.rian.ru/russia/20090112/119431521.html> – Accessed 10 June 2011.

<sup>2</sup> 'RUSSIA: Used car tax 'efficient' – Putin' 2010, Just Auto website, 7 December [http://www.just-auto.com/news/used-car-tax-efficient-putin\\_id107837.aspx](http://www.just-auto.com/news/used-car-tax-efficient-putin_id107837.aspx) – Accessed 10 June 2011; 'Customs Union Keeps Foreign Cars Expensive' 2010, Ekaterinburg news website, 9 July [http://www.ekaterinburg.com/news/spool/news\\_id-330361.html](http://www.ekaterinburg.com/news/spool/news_id-330361.html) – Accessed 10 June 2011.

<sup>3</sup> European Bank for Reconstruction and Development 2009, *Transition Report 2009 – Country Reports – Russia*, p.212 <http://www.ebrd.com/downloads/research/economics/russia.pdf> – Accessed 10 June 2011; 'Customs Union Keeps Foreign Cars Expensive' 2010, Ekaterinburg news website, 9 July [http://www.ekaterinburg.com/news/spool/news\\_id-330361.html](http://www.ekaterinburg.com/news/spool/news_id-330361.html) – Accessed 10 June 2011.

<sup>4</sup> 'Russia to raise import taxes on foreign cars to boost domestic market' 2010, RiaNovosti news website, 31 August <http://en.rian.ru/business/20100831/160406846.html> – Accessed 10 June 2011.

<sup>5</sup> 'RUSSIA: Used car tax 'efficient' – Putin' 2010, Just Auto website, 7 December [http://www.just-auto.com/news/used-car-tax-efficient-putin\\_id107837.aspx](http://www.just-auto.com/news/used-car-tax-efficient-putin_id107837.aspx) – Accessed 10 June 2011; 'Controversial higher tax on Russian car imports comes into effect' 2009, RiaNovosti website, 12 January <http://en.rian.ru/russia/20090112/119431521.html> – Accessed 10 June 2011.

<sup>6</sup> 'RUSSIA: Used car tax 'efficient' – Putin' 2010, Just Auto website, 7 December [http://www.just-auto.com/news/used-car-tax-efficient-putin\\_id107837.aspx](http://www.just-auto.com/news/used-car-tax-efficient-putin_id107837.aspx) – Accessed 10 June 2011; 'Controversial higher tax on Russian car imports comes into effect' 2009, RiaNovosti website, 12 January <http://en.rian.ru/russia/20090112/119431521.html> – Accessed 10 June 2011.

<sup>7</sup> European Bank for Reconstruction and Development 2009, *Transition Report 2009 – Country Reports - Russia*, p.212 <http://www.ebrd.com/downloads/research/economics/russia.pdf> - Accessed 10 June 2011; 'National Trade Estimate Report on Foreign Trade Barriers – Russia' 2009, Office of the United States Trade Representative, p.412 [http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset\\_upload\\_file60\\_15502.pdf](http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset_upload_file60_15502.pdf) - Accessed 10 June 2011; 'RUSSIA: Used car tax 'efficient' – Putin' 2010, Just Auto website, 7 December [http://www.just-auto.com/news/used-car-tax-efficient-putin\\_id107837.aspx](http://www.just-auto.com/news/used-car-tax-efficient-putin_id107837.aspx) - Accessed 10 June 2011; 'Controversial higher tax on Russian car imports comes into effect' 2009, RiaNovosti website, 12 January <http://en.rian.ru/russia/20090112/119431521.html>- Accessed 10 June 2011; 'Customs Union Keeps Foreign Cars Expensive' 2010, Ekaterinburg news website, 9 July [http://www.ekaterinburg.com/news/spool/news\\_id-330361.html](http://www.ekaterinburg.com/news/spool/news_id-330361.html) - Accessed 10 June 2011; 'Russia to raise import taxes on foreign cars to boost domestic market'



## TIGR

93. Sources indicate that *Tovarishchestvo Initsiativnykh Grazhdan Rossii* (TIGR) has various English versions of its name including the Association of Citizens with Initiative of Russia and the Association of Initiative-taking Citizens of Russia.<sup>8</sup> TIGR is a grassroots protest movement in Russia which formed in December 2008 and is not affiliated to any political party.
94. On 29 January 2009, *BBC Monitoring Former Soviet Union* published a report by *Moskovskiy Komsomolets*, a Russian newspaper, which states that TIGR was created by car dealers who reacted against the governments raising of customs duties on imported cars.<sup>9</sup> TIGR has called for the dropping of tariffs on imported cars. TIGR has also protested for political reforms such as freedom of speech and the resignation of Prime Minister, Vladimir Putin.<sup>10</sup>
95. Reports indicate that TIGR has been primarily active in Eastern Russia, particularly the city of Vladivostok located in Primorsky Krai.<sup>11</sup> A report dated 11 March 2009, published by *Agence France Presse*, indicates that thousands of Russians in the Far Eastern Region earn their livelihood from dealing or repairing imported cars, mainly from Japan.<sup>12</sup> This may account for their support in this region.

---

2010, RiaNovosti news website, 31 August <http://en.rian.ru/business/20100831/160406846.html> - Accessed 10 June 2011.

<sup>8</sup> 'Russia' 2011, CIA website, 26 May [https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate\\_rs.html](https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate_rs.html) - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\russia.doc

<sup>9</sup> 'Vladivostok gears up for new motorists' protest' 2009, *BBC Monitoring Former Soviet Union*, 29 January, source: Vladivostok supplement to *Moskovskiy Komsomolets* newspaper -

\\NTSSYD\REFER\Research\2011\FACTIVA\Vladivostok gears up for new motorists.doc

<sup>10</sup> Blomfield. A. 2009, 'Thousands of Russians march in protest over Vladimir Putin and the economy',

*Telegraph*, 31 January <http://www.telegraph.co.uk/news/worldnews/europe/russia/4411195/Thousands-of-Russians-march-in-protest-over-Vladimir-Putin-and-the-economy.html> - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\Thousands of Russians march in protest over Vladimir Putin and the economy.doc; 'Russia' 2011, CIA website, 26 May [https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate\\_rs.html](https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate_rs.html) - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\russia.doc; Orttung, R.W. 2010, *Nations in Transit 2010: Russia*,

Freedom House website <http://www.freedomhouse.eu/images/Reports/NIT-2010-Russia-final.pdf> - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\Nations in Transit 2010 Russia.pdf; Aron, L. 2010,

'Russia's New Protesters', American Enterprise Institute for Public Policy Research

<http://www.aei.org/docLib/RO-Spring-2010-g.pdf> - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\Russia's New Protesters.pdf

<sup>11</sup> Aron, L. 2010, 'Russia's New Protesters', <http://www.aei.org/docLib/RO-Spring-2010-g.pdf> - Accessed 7

June 2011 - ; Blomfield. A. 2009, 'Thousands of Russians march in protest over Vladimir Putin and the economy', *Telegraph*, 31 January

<http://www.telegraph.co.uk/news/worldnews/europe/russia/4411195/Thousands-of-Russians-march-in-protest-over-Vladimir-Putin-and-the-economy.html> - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\Thousands of Russians march in protest over Vladimir Putin and the economy.doc

<sup>12</sup> 'Russian Communists probed for 'Putler' slogan: report' 2009, *Agence France Presse*, 11 March -

\\NTSSYD\REFER\Research\2011\FACTIVA\Russian Communists probed for 'Putler' slogan.doc

96. Reports indicate that during early 2009 some TIGR demonstrators were subject to threats and detention by police.<sup>13</sup> *Moskovskiy Komsomolets* reported on 29 January 2009 that police officers visited TIGR activists, referred to as motorists, prior to a protest on the 31 January 2009. The report states that:

The police warn the motorists about the dangers of extremist activities and the responsibility they might have to bear. Some of the activists added that their employers had been warned by law-enforcement agencies about the possible negative consequences of anti-government protests and advised “to take measures” against the protesters.<sup>14</sup>

97. On 31 January 2009, *The Telegraph* reported that the TIGR were involved in organising an anti-government protest in Vladivostok, Eastern Russia. According to the report approximately 2000 people took place in the demonstration. The protestors were reportedly mostly marching for economic reasons and called for the removal of Putin. The report states that, in response to the protest authorities shut down the TIGR website, arrested two leading members and interrogated TIGR website bloggers. The article provides the following overview of the TIGR (referred to as tiger):

Even more worrying for the government, the rally was led by the Communist party -- which has been wary of criticising Mr Putin in the past -- and a new grassroots movement called Tiger, which draws together a range of disaffected residents from Russia’s far east.

Tiger is the kind of organisation that the Kremlin particularly fears, a civil rights movement with no political allegiance.

Only formed last month, the movement has spread rapidly across eastern Russia. A 14-point manifesto released earlier this month demanded that the new tariffs on foreign car imports be dropped. But it also called for the resignation of Mr Putin, the restoration of free speech and government respect for the constitution.

The authorities responded forcefully, shutting down Tiger’s website, arresting two prominent members and sending the feared FSB, the KGB’s successor, to interrogate youngsters who had posted messages on the organisation’s website<sup>15</sup>

---

<sup>13</sup> ‘Vladivostok gears up for new motorists’ protest’ 2009, *BBC Monitoring Former Soviet Union*, 29 January, source: Vladivostok supplement to *Moskovskiy Komsomolets* newspaper - \\NTSSYD\REFER\Research\2011\FACTIVA\Vladivostok gears up for new motorists.doc; Blomfield. A. 2009, ‘Thousands of Russians march in protest over Vladimir Putin and the economy’, *Telegraph*, 31 January <http://www.telegraph.co.uk/news/worldnews/europe/russia/4411195/Thousands-of-Russians-march-in-protest-over-Vladimir-Putin-and-the-economy.html> - Accessed 7 June 2011 -

\\NTSSYD\REFER\Research\2011\Web\Thousands of Russians march in protest over Vladimir Putin and the economy.doc

<sup>14</sup> ‘Vladivostok gears up for new motorists’ protest’ 2009, *BBC Monitoring Former Soviet Union*, 29 January, source: Vladivostok supplement to *Moskovskiy Komsomolets* newspaper - \\NTSSYD\REFER\Research\2011\FACTIVA\Vladivostok gears up for new motorists.doc

<sup>15</sup> Blomfield. A. 2009, ‘Thousands of Russians march in protest over Vladimir Putin and the economy’, *Telegraph*, 31 January <http://www.telegraph.co.uk/news/worldnews/europe/russia/4411195/Thousands-of-Russians-march-in-protest-over-Vladimir-Putin-and-the-economy.html> - Accessed 7 June 2011 - \\NTSSYD\REFER\Research\2011\Web\Thousands of Russians march in protest over Vladimir Putin and the economy.doc

98. On 24 March 2009, *BBC Monitoring Former Soviet Union*, published a report by *Gazeta News*, a Russian news source, which states that government authorities launched an official investigation into the funding sources for TIGR demonstrations. The investigation found that a demonstration, held on 15 March 2009 in Vladivostok, co-ordinated by the TIGR and CPRF (a communist organisation) was funded by grants received from several foreign human rights organisations. TIGR denied the claims and stated that all funding comes from activists and sympathisers. The report provides the following information on TIGR:

It will be quite difficult to catch TIGR in anything, however. This network organization does not have a single leader or anything like a managing centre. The members of the movement communicate with one another in the organization's forum and in special groups in popular social networks and are mobilized only for actual demonstrations.<sup>16</sup>

99. On 26 August 2009 *BBC Monitoring Former Soviet Union* published a report from *Ekho Moskvy*, a Russian radio station, which states that TIGR gained official registration on 25 August after four unsuccessful registration attempts. A TIGR member is cited as stating that this would allow the organisation to collect donations from individuals.<sup>17</sup>

100. Reports indicate that the TIGR continued to be active in protests in Vladivostok during 2010:

- On 3 March 2010 the Centre for Eastern Studies reported that the TIGR formed a coalition in Vladivostok with other opposition parties against the “destructive politics of the government and the One Russia party” The coalition included the groups Jabolo, the National Democratic Union, and Solidarity. The coalition planned to hold a rally on 20 March 2010 calling for the resignation of Putin’s government.<sup>18</sup>
- On 22 March 2010, the TIGR reportedly participated in an anti-government rally in Vladivostok which included approximately 2000 people. ‘Day of Wrath’ demonstrations were reportedly held across Russia.<sup>19</sup>
- On 8 November 2010, *Vosotok Media*, reported that TIGR activists participated in a 150 person demonstration in Vladivostok. The report states that “the demonstrators carried banners demanding the government to check

---

<sup>16</sup> ‘Russia’s ruling party targets Maritime Territory opposition protest movement’ 2009, *BBC Monitoring Former Soviet Union*, 24 March, source: *Gazeta.ru news* - \\NTSSYD\REFER\Research\2011\FACTIVA\Russia's ruling party targets Maritime Territory opposition protest movement.doc

<sup>17</sup> ‘Movement gets registered after three refusals’ 2009, *BBC Monitoring Former Soviet Union*, 26 August, source: *Ekho Moskvy* - \\NTSSYD\REFER\Research\2011\FACTIVA\Movement gets registered after three refusals.doc

<sup>18</sup> ‘Russia: Far East opposition parties join forces’ 2010, Centre for Eastern Studies website, 5 March <http://www.osw.waw.pl/en/wiadomosci/45> - Accessed 7 June 2011 - \\NTSSYD\REFER\Research\2011\Web\Far East opposition parties join forces.doc

<sup>19</sup> ‘Wrath in Russia, feminists in Kiev’ 2010, *The Moscow News*, 22 March - \\NTSSYD\REFER\Research\2011\FACTIVA\Wrath in Russia, feminists in Kiev.doc

the growth in food prices and utility rates, as well as to increase pension benefits and salaries.”<sup>20</sup>

101. A 2010 report published by Freedom House indicates that TIGR protests have occurred within the context of the global economic crisis. According to the report the economic crisis resulted in social protest movements within Russia. The report states that:

The [global] economic crisis gave steam to social protest movements and trade union activity. According to a Web site associated with opposition leader Gary Kasparov, Russians took part in a wide variety of public demonstrations focusing on environmental, urban planning, road building, and local political issues.

Automobile associations, especially the Association of Initiative-taking Citizens of Russia (TIGR) and the Federation of Automobile Owners of Russia, were particularly active in challenging governmental attempts to restrict car imports.

Lacking institutionalized ways to influence state policy, the organizations used street protests to make themselves heard<sup>21</sup>

***Operation of the One Russia Party in the region of [City 2]***

102. [Information deleted: s.431(2)].<sup>22</sup> [Information deleted: s.431(2)].<sup>23</sup>

**FINDINGS AND REASONS**

103. The applicant travelled to Australia on what appears to be a valid passport issued to him by the Russian Federation. He claims to be a citizen of the Russian Federation. The Tribunal finds that he is a citizen of the Russian Federation and has assessed his claims against that country as his country of nationality.
104. The applicant claims to fear persecution by the authorities of the Russian Federation. He fears persecution because he was involved in protests against the government and because of his key role with the protest organisation, TIGR.
105. The applicant said that he and his family lived in the city of [City 2] in the Primorskiy Krai region of Russia and that he was for some years an instructor in [a military base] in the area. The Tribunal accepts this evidence of the applicant. His passport shows that he was born in the Primorskiy Krai region and a number of documents before the Tribunal support his evidence that he lived with his family in [City 2]. His descriptions before the delegate and before the Tribunal of his work at [the military base] were plausible and consistent.

---

<sup>20</sup> ‘Vladivostok Communists Stage Meeting to Mark Anniversary of October Revolution’ 2010, *Vostok-Media*, 8 November [http://vostokmedia.com/\\_print88739.html](http://vostokmedia.com/_print88739.html) - Accessed 7 June 2011 - Accessed 7 June 2011 - \\NTSSYD\REFER\Research\2011\Web\Vladivostok Communists Stage Meeting to Mark Anniversary of October Revolution.doc

<sup>21</sup> Orttung, R.W. 2010, *Nations in Transit 2010: Russia*, Freedom House website <http://www.freedomhouse.eu/images/Reports/NIT-2010-Russia-final.pdf> - Accessed 7 June 2011 - \\NTSSYD\REFER\Research\2011\Web\Nations in Transit 2010 Russia.pdf

<sup>22</sup> [Source and website deleted: s.431(2)].

<sup>23</sup> [Source and website deleted: s.431(2)].

106. The applicant claims that a fire was deliberately lit in his unit after he quit the communist party and was criticised by his superiors at [the military base] for becoming involved in private business initiatives. He claims that persons he worked with at the military base were responsible for this fire. While the Tribunal is prepared to accept that a fire occurred at the applicant's flat as he claims, the Tribunal has difficulty accepting the applicant's assertions about who was responsible. The events occurred a long time ago and the report of the Fire Protection and Rescue Service which the applicant produced says nothing more than that the fire was started as a result of "alleged" arson. In any event, it is not necessary for the Tribunal to make any finding about this matter.
107. The applicant further claims that he had a business of importing from Japan, and selling, second hand cars before the business collapsed following the introduction by the Russian Government of increased import tariffs on imported cars. The Tribunal accepts these claims. He described to the Tribunal in convincing fashion the operations of his car importation and sales business and the entries in his passport support his claims that he made frequent trips to Japan to buy cars. The country of origin information referred to above supports his claims about the increases in import duty introduced by the Russian Government in January 2009 and the effect that the increases had on the car industry, particularly in the Primorskiy Krai region.
108. In general, the applicant was a convincing witness. His written and oral testimony was broadly consistent. Some key elements of his testimony were corroborated by the testimony of his wife, given independently of the applicant's oral evidence, and by the testimony of [Mr A]. The agitation which the applicant displayed at times was consistent with his claims of having suffered trauma. He displayed genuine emotion when he heard the evidence his wife gave about finding him behind the garage after the attack which was allegedly made on him and about the anonymous and threatening phone calls which she allegedly received.
109. The Tribunal accepts that, following the devastating effect on the car importation and sales industry which independent country information confirms the rise in import duties had in January 2009, the applicant was one of many in the industry who became involved with TIGR. The Tribunal also accepts that he became [an official] of TIGR in [City 2]. His testimony in this regard is supported by the evidence of his wife and [Mr A], as well as by the written statement of [Mr C], the certificate of [Mr D] of the TIGR organisation and the TIGR membership card which the applicant produced. The Tribunal also accepts that the applicant became involved in protests as he alleged. The details he gave of the protests are consistent with country information about the protest rallies and his evidence of his involvement in the protests is supported by the evidence of his wife and the evidence of [Mr A] and [Mr C].
110. The Tribunal accepts the evidence the applicant gave about his arrest at the protest in Vladivostok on 21 December 2008 and about the surveillance of him in [City 2] that subsequently occurred. Further, the medical evidence of the laparotomy, abdominoscopy, enterectomy and other surgical procedures performed on him at [City 2] City Hospital [in] November 2009 and of the report of the medical examination performed on him in Australia in connection with his protection visa application supports his claims that he was attacked on the evening [in] November 2009 as he asserts. His wife's evidence about finding him, injured, behind the garages on that date

also provides support for those claims, as does the Tribunal's observation of the wounds on his neck and abdomen.

111. The Tribunal gives weight to the psychological report dated [in] April 2011 provided by [Mr F], Clinical Psychologist. [Mr F]'s report indicates that he took a comprehensive history of the applicant and that [Mr F] conducted psychometric testing of him. [Mr F]'s opinion as expressed in the report is that, "based on presentation, self report and psychometric testing...[ the applicant ] is currently suffering from a psychological/psychiatric disorder, Posttraumatic Stress Disorder and an associated reactive depression and that this is the consequence of an assault [the applicant] suffered in Russia by persons unknown on the evening of [date] (sic) November 2009." The report supports the applicant's claims that he suffered a traumatic assault in November 2009.
112. The Tribunal gives little weight to the expert report of [Ms G]. The report shows little evidence of an examination having been made of the applicant. It expresses the opinion that his return to Russia will exacerbate his psychological condition but the basis for that opinion is not clear.
113. It is possible that the attack which the applicant suffered in November 2009 was not carried out by the authorities or by persons acting on their behalf. On the other hand, given that the Tribunal accepts that the applicant was engaged in protests against the government, that he had been warned by the authorities about those activities and that he had received threatening telephone calls, the Tribunal accepts that it was more likely than not that the attack on him was related to his activities with TIGR. The fact that his mobile phone was not taken in the attack (enabling him to use it to call his wife for help) suggests that robbery was not the motive for the attack.
114. The attack on the applicant which he described involved serious harm within the meaning of s.91R(1)(b) of the Act in that the harm constituted significant physical ill treatment of him as referred to in s.91R(2)(c). The attack and his earlier detention and the ongoing surveillance of him involved systematic and discriminatory conduct as referred to in s.91R(1)(c). The Tribunal is satisfied that his political opinion as an opponent of the increases in import duties on cars was the essential and significant reason for the harm suffered by him (s.91R(1)(a)).
115. The Tribunal is also satisfied that the applicant's fear of persecution is well-founded. He fled Russia with his family before fully recovering from surgery performed on him after the attack he suffered. The Tribunal accepts his explanation that the delay that occurred in the making of his protection visa claim in Australia was due to a combination of his poor physical and mental state, his lack of knowledge about making a protection visa claim and his understanding that he needed to get some supporting documents from Russia before lodging his claim.
116. Based on all the above, the Tribunal cannot exclude the possibility that, if the applicant returned to Russia, he would not again be seriously harmed by the authorities or by persons acting on their behalf. The Tribunal accepts that he is on a blacklist of the authorities and that he has been a key figure in [City 2] in protests against the government. On the basis of the anonymous letter the applicant received and the nature of some of the threats the police made to him, the Tribunal further accepts that a false criminal case was being prepared against him when he fled from Russia. The fact that

the police took certain items from his house in the search they conducted of the house shortly before he left Russia further suggests that there is a real chance of persecution should he return to Russia.

117. Accordingly, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of his political opinion.
118. The Tribunal has considered whether it would be reasonable for the applicant to relocate within Russia to a region where, objectively, there would be no appreciable risk of the occurrence of the feared persecution. However, the Tribunal has concluded that there is no part of Russia to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears. The Tribunal accepts that the persecution feared could not be said to be localised given that he is on a blacklist of the authorities because of his activities and given the residence registration system introduced into law in Russia in 1993, whereby a person is required to register their temporary or permanent residence at a new location with local authorities within a specified time. The granting of residence registration is the responsibility of the police (US Department of State 2009, *2008 Human Rights Report: Russia*, 25 February, 'Internally Displaced Persons, Protection of Refugees, Stateless Persons').

## CONCLUSIONS

119. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore, he satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, if he satisfies the remaining criteria for the visa.
120. The Tribunal is satisfied that the second and third named applicants are the wife and son of the first named applicant and are members of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of their application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicants will be entitled to a protection visa if they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

## DECISION

121. The Tribunal remits the matter for reconsideration with the following directions:
  - (a) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
  - (b) that the second and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.