

1109939 [2012] RRTA 340 (20 April 2012)

DECISION RECORD

RRT CASE NUMBER:	1109939
DIAC REFERENCE(S):	CLF2011/107356
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Kirsten Young
DATE:	20 April 2012
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.

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2011 and applied to the Department of Immigration and Citizenship for the visa [in] July 2011. The delegate decided to refuse to grant the visa [in] August 2011 and notified the applicant of the decision.
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] September 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 applicant has made a valid application for review under s.412 of the Act.
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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
8. 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.

9. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

16. 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.
17. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's and the Tribunal'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.

Application for a Protection Visa

Application Form

22. According to the information provided in her application for a protection visa, the applicant is a Chinese national born in Urumchi, China, in [month and year deleted]:

s.431(2)]. She claims to be an ethnic Uighur and a Muslim. She is not married. She has a total number of 15 years of education, and describes her occupation before coming to Australia as 'student'. She resided at a single address in Urumchi, Xinjiang Uighur Autonomous (region), from June 2000 to November 2008.

23. The applicant departed China legally, using a passport issued in her own name [in] January 2008. She stated that she had difficulties in obtaining a passport, and that '7 stamps with bribes were required by Chinese authorities to produce passport, and 3 extra months was spent'. She entered Australia [in] November 2008 on a student visa.
24. In response to questions relating to her reasons for claiming to be a refugee, the applicant claimed that she left to escape racism, unfair treatment and to be able to preserve her ethnic, cultural and religious identity. She claimed that in China, as a Uighur, she was forced to assimilate by the Chinese authorities and that she lived under the threat of 'execution'. She also claimed that she faced the threat of 'execution' by the Chinese authorities as a result of the fact that she has lodged an asylum claim in Australia and her political and other activities in Australia. She claimed that both she and her parents have been interviewed about these activities by the security authorities in China. She claimed that she would not be protected by the authorities in China.

Written Statement

25. In a written statement attached to her application for a protection visa, the applicant provided additional details of her claim. She gave general information regarding the oppression of the Uighur people in China, noting for example the mistreatment of the Uighur population during the Olympic games in 2008, the crackdown by Chinese authorities following riots in Urumqi in July 2009, and the repression of Uighur language, culture and Islamic religion.
26. The applicant also provided details of her family in China and outlined several instances of mistreatment of family members after the applicant came to Australia, including the following:
 - About one week after the applicant's arrival in Australia, her parents were threatened by Chinese national security agents that they would be punished if she became involved with any Uighur associations in Australia;
 - Her father was demoted at work after he had visited the applicant in Australia in late June – early July 2009 and following the Urumchi riot on 5 July 2009;
 - Her mother was dismissed from her employment after she had discussed over the telephone with the applicant the mistreatment of Uighurs in Guandong that led to the Urumchi riot in July 2009;
 - Chinese national security agents started to interview her parents regularly regarding the applicant's activities with Uighur associations in Australia.
27. The applicant claimed to have suffered attempts by the Chinese authorities to assimilate her and to deny her the freedom to live in her home in East Turkestan. She claimed that she was chosen to attend a selective school in Beijing where she would be 'brain-washed' by the Chinese authorities and where she would be obliged to speak Chinese,

to convert to communism and be obliged to convert her parents to communism. She claimed that after attending the school she would have been obliged to attend university in Beijing and that her household registration and identity documents would be transferred to Beijing. She claimed that she and her parents then realised that this so-called opportunity was actually a process of assimilation of Uighur youth into Han Chinese culture, and that this made her very scared. She therefore did not enrol in the school in Beijing.

28. The applicant claimed that she did not seek asylum when she first arrived in Australia because Chinese national security agents threatened her parents that they would face trouble if she became involved in Uighur associations in Australia. The applicant claims that she was very scared about the consequences for her parents if she applied for protection, and so she did not.
29. The applicant claims that she returned to China [in] November 2010 to visit her parents as she was worried about them in light of the mistreatment claimed above. She claims that when she arrived in China she was questioned at the airport for three hours, her luggage was searched, and she was strip-searched. She claims that after she arrived in Urumchi she was taken by Chinese national security agents to a hotel where she was questioned about her activities with Uighur associations in Australia for two days. She claims that she remained in China for almost two months after this incident as she could not get an earlier flight back to Australia.
30. The applicant claimed to fear that if she were to return to China she or her children would become a victim of human trafficking and sexual slavery. The applicant claimed that this had happened to many Uighur girls, including some of her friends. She also claimed that Uighurs had been forcibly injected by blood contaminated with the HIV virus and feared that she or her children might suffer a similar fate.
31. Also on file is an English translation of an income certificate in relation to the applicant's father, which states that he works at [company and position deleted: s.431(2)]. (D1, f 43)

Decision of the delegate

32. The delegate found that the applicant was not a person to whom Australia owed protection obligations.

Application for Review

33. [In] September 2011, the applicant applied to the Tribunal for review of the delegate's decision.
34. By letter dated [in] November 2011, the applicant submitted through her agent a detailed written statement to the Tribunal in support of her application for review. The applicant elaborates on certain aspects of her claims and also makes some new claims. In summary, the applicant claims that:
35. In October 2007 she was accused of 'promoting disunity between different ethnic nationalities' and 'inducing separatism' as a result of discussions she had held with fellow classmates about the situation of Uighurs in Turkey and the lack of Uighur

history taught at their school. Her punishment was to write a letter of self-criticism that was broadcast to the school, to be placed under observation for a semester, and to have this entered in her school record. The applicant claims that with such a charge entered on her school record she would not be allowed to study at university or obtain government employment, and that she would also find it difficult to find private employment;

36. While she was at school she and her friends used to secretly pray and fast in their dormitory during Ramadan. They were caught by their teachers, made to eat and drink, and given a 'warning' penalty. They were also threatened with expulsion from school if they continued their religious activities;
37. In 2007 the Chinese government introduced a policy whereby all subjects would be taught in Chinese rather than Uighur. The applicant and her fellow students refused to attend classes for one lesson in protest, but were forced to participate in the class by the school authorities. She claims that they were accused of acting against the unity of nationalities and that her involvement would have been recorded in her student records;
38. In Australia she attended the [Meshrap] [in] June 2011 and a [demonstration] on 5 July 2011 to mark the first anniversary of the Urumqi massacre. At such activities she was able to engage in celebration of Uighur culture and religion and protest the human rights situation in China, activities that would be severely punished in China. She states she did not include these activities in her protection visa application as she did not know they would be helpful for her application and she did them with all sincerity;
39. Since coming to Australia she had been able to practise her religion which was not possible in China;
40. Her ethnic, cultural and religious identity would be under serious threat if she had to return to China, and she would not be able to express her opinion freely there;
41. She would be severely discriminated against in employment opportunities as a result of her activities as a Uighur student and due to her failure to accept the exchange student offer for Beijing.

The Hearing

42. The applicant appeared before the Tribunal [in] December 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Uyghur and English languages.
43. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing by telephone link.
44. The applicant stated that she had prepared the protection application form herself with the help of her friend. She said that she used to live in Urumchi, XUAR, China and that her parents and her sister were still living there. She said that she was in contact with her parents sometimes, although it was very difficult to contact them. She said that her father works at a building company but that she did not know his detailed job description. She said that he had worked in a different place before but he had later

been moved to this company. She stated that her mother used to work in a factory and that she was later moved to the same building company as her father.

45. The applicant said that she came to Australia [in] November 2008 when she was [age deleted: s.431(2)]. She said that she is a practising Muslim, and that she and her family members are religious people who pray 5 times a day. She said that she also fasts in the month of Ramadan and on weekends she goes to the mosque to pray. She said that she is a Sunni Muslim. Asked whether she had any problems in China because of her religion, she said that she had when she was at high school during the month of Ramadan. She stated that it was forbidden to practise religion at her school, and that when she was staying in the school accommodation she would secretly fast and then wake up early in the morning to eat. She said that she and others were caught by the supervisor of their accommodation doing this, and they were taken to the school office and questioned about whether they were fasting for Ramadan. They were given a warning that if they were discovered fasting again they would be expelled from the school. As this took place in the applicant's last year of school the threat of expulsion was never carried out.
46. The applicant stated that another problem that she faced was that she could not pray at school as her religion was forbidden. She said that she found this to be unacceptable discrimination, because not to be able to practise her religion was abuse. Asked by the Tribunal whether she had mentioned these problems before at earlier stages of her visa application, she said that she had not because she did not have any experience before and she did not realise how important it was to include this information in her application. The Tribunal noted that the applicant had been quite specific about the other problems that she had and that it might have difficulty accepting that she did not think that it was important to raise this earlier. The applicant said that she did not think that it was so important that it would affect her application, and that she had not been able to include all of the details of her [life] in China. The Tribunal reiterated that even if she could not include such a level of detail, the fact remained that she had mentioned many problems she and her family had experienced but nothing of what she had just told the Tribunal. The applicant repeated that she did not realise that problems relating to her faith would affect her protection application.
47. The Tribunal asked the applicant what harm she feared she might face if she were to return to China. The applicant said that she is a Uighur and Muslim. When she was at high school she was selected to enrol in high school in an inner city of China but she realised that taking students to Beijing was one of the ways for the Chinese communists to brainwash Uighurs to forget about who they are and where they came from so she decided not to go. Then because she refused to go to the school and also because of her religious practise at school where she was caught, she was punished and this history was entered in her school file. Because of this, she would have difficulty in getting into university or getting jobs and it would affect all her life afterwards. So she came to Australia when she was [age deleted: s.431(2)]. After 3 years here, she had realised how important it is to have full freedom and to live in democracy. If she were to return to China, she would not be able to accept to live under such pressure under the Chinese regime. She stated that she wanted to talk to other Uighurs about this, but once the Chinese government would know what she was doing they would stop her and may put her in jail as a political prisoner.

48. The applicant confirmed that the school in Beijing she was referring to was a selective school. Asked by the Tribunal whether ethnic minorities from all over China were sent there, she said that while it involved all ethnic minorities, in her opinion mainly Uighurs were targeted and that is why the programme was called the Xinjiang Exchange Classes. Asked by the Tribunal how she thought that her treatment in being selected for this school amounted to persecution given that it could be argued that in being selected she was actually receiving privileged treatment, the applicant said that going to the school meant that she would have had to move all of her household registration and identity documents to Beijing. This would mean that she would have to live and work in Beijing and would not be able to return to East Turkestan. All of the subjects were taught in the Chinese language and through these subjects they would only be taught Chinese history, and not their own. They would be punished if they were to speak their own language at the school. The Tribunal noted that even in countries such as Australia, education was conducted in the language of the dominant culture, and asked how this amounted to persecution. The applicant said that in Australia even though all students have to do this they also have the right to their own history and language as well, but in China, as a minority, they did not have any rights to learn or talk to anyone about their culture.
49. Asked whether anything happened to her or her family as a result of turning down the opportunity to go to school in Beijing, the applicant said that the government put pressure on her father to make her accept the school place. As she refused to do so, her father was demoted from his position at work and they entered the matter in the applicant's school file. Asked whether she knew the details of her father's demotion, the applicant said that all that she knew was that they took away his right to go to other cities and have business contacts with other big companies. The applicant stated that she then enrolled in another high school in Urumchi and continued her schooling there. At that school it was prohibited for Uighur students to speak their own language and the applicant and other students organised a demonstration to inform the school management that they did not think that this was fair. The students involved were taken to the school office and questioned about who organised the demonstration and who were the leaders. No one admitted to this, with all of the students, including the applicant, maintaining that they had a right to inform the school management that the policy was not correct. After this incident, the applicant stated that the students involved were punished for having engaged in an act of separatism and that this was entered into their school file. The marks of all of those involved were reduced and in their files they were accused of being against the unity of nationalities. The Tribunal noted that this incident had not been raised by the applicant earlier in the application process. The applicant said that when she first applied, she did not have any experience and that it was only later that she had an idea of what would support her application and so she decided to add it.
50. The applicant said that in September of that same year at school, there was a teacher at her school who went to Turkey and on his return, he published a statement about the life of Uighurs living there, which he also discussed with her class. The teacher said that Uighurs had more rights and a better life in Turkey, and encouraged the students to go there for further study. The applicant said that she discussed this with some of her fellow students. A short time after she was questioned by the acting principal at the school about her discussions with the other students and was accused of being involved in political discussions that were forbidden by the school. She was instructed to write a

letter of self-criticism that she was obliged to read out in front of the whole school, and was placed under 6 months' observation at the school, which was also noted on her record. The Tribunal put to the applicant that it might find it difficult to accept that this incident was not mentioned at an earlier stage in the protection visa application process. The applicant said that when she applied earlier there was no one with any experience of the protection visa application process to help her and to tell her what needed to be included in her application.

51. Asked by the Tribunal what had led her to leave China, the applicant said that it was first because of her refusal to go to the selective school in Beijing and that she feared that this would be put in her file. Once someone has this kind of history that they have a different political opinion in their school file it is much harder to have a future in China. Next, it was because that she had no rights to practise her religion or learn about her culture and this was unacceptable in her life. In order to be able to realise who she was she had to leave China. Asked how long she left after she was placed under 6 months observation at school, the applicant said that she was placed under observation when she was in Year 10 and that she left 1 year later. Asked how long she left after she had refused to take up the offer for the school in Beijing, she said that it was about two and a half years later.
52. Asked by the Tribunal to describe her father's demotion, the applicant said that after she left China the government gave her father a warning that she should not become involved in political activities while she was out of the country. His authority to sign documents was removed. Since then, he visited the applicant in Australia in June 2009, and had to give a bond of 200,000 Chinese yuan and her mother's employment as a guarantee that he would return to China. When he returned, the government accused him of having contact and political discussions with Uighurs in Australia and he was demoted and his salary was reduced. Asked by the Tribunal about her father's position in the Communist Party, the applicant said that most workers in China have to be members of the Communist Party, not because they want to or because they like it, but because they have to if they want to have a normal life. If not, then they cannot support their daily life. Asked whether it was common amongst Uighurs to be Communist Party members, the applicant said that those who joined did so mainly to get a good job. Asked whether his trip to Australia was the only reason for her father's demotion, the applicant said that he was accused of intending to talk to other people in China about what he saw in Australia. The Tribunal referred to the applicant's statement which referred to her father having spoken out for his 'harmed and arrested colleague' and asked what this was about. The applicant said that her father talked about a colleague who had been treated unfairly by the Chinese authorities to Uighurs when he was in Australia and this was one of the reasons he was punished on return.
53. Asked what kinds of activities the applicant was involved in that resulted in her parents being pressured by the Chinese authorities, the applicant said that the authorities were concerned that she might be associating with Uighur organisations in Australia. Asked whether she was, the applicant said that she was involved with the East Turkestan association as well as social events. Asked why the Chinese authorities pressured her parents when many Uighurs were living overseas, she said that they also pressured many other parents who had children living overseas.
54. The Tribunal asked the applicant about the problems that she said her mother had at work. The applicant said that she talked to her mother on the telephone about the

incident which took place on 26 June in Guangdong involving Uighurs that led to the Urumchi riots on 5 July 2009. She said that she gave her mother information about this incident that was not publicly available in Urumchi, including that many Uighurs had been killed, and that her mother discussed this with some of her colleagues at work. As a result, she was dismissed from her position as she was accused of conducting political discussions at work. She said that after this her mother was emotionally very unstable.

55. The applicant said that she returned to Urumchi in November 2010. She said that she was questioned by the police at the airport, who checked all her luggage, just because she was a Uighur. As a result of the time that this took, she missed her connecting flight to Urumchi. In order to get the money to buy another flight to Urumchi, she had to cancel her return flight to Australia. A few days after she arrived in Urumchi, she said that the Chinese secret service came and took her away in a police car to a place where she was blindfolded and taken into a room where she was questioned about her activities in Australia. She says that she was asked about whether she was involved in any political activities in Australia, who she was in contact with, and whether she knew certain people. She was held and questioned for 2 days. The applicant maintained that she was a student and that she had no contact with Uighur groups and did not know any of the people she was questioned about. After 2 days she was released and sent home. Her parents wanted to send her to Australia straight away but they could not organise a ticket until early January as it was the Christmas and New Year period and there were no tickets available. The Tribunal noted that Christmas and New Year according to the Western calendar were not festivals commonly known to be celebrated in China and asked how this affected flight availability. The applicant said that it had become fashionable in China to celebrate these events as well.
56. Asked whether she had been involved with Uighur organisations in Australia that might have led to the Chinese authorities' interest in the issue, the applicant said that at the time she was involved in all sorts of Uighur activities in Sydney in 2009. She said that they were mainly Uighur gatherings where they talked about the Uighur plight. Asked who organised the activities, she said that the East Turkestan Association in Sydney organised some, but most were informal meetings of Uighur young people. Asked whether she went to meetings of the East Turkestan Association, she said that she was mainly involved in meetings organised by the youth and less involved in the East Turkestan Association. Asked whether she attended formal meetings of the East Turkestan Association, she said that she did not go to many formal meetings, but had informal talks with some of their people when they were out together. Asked whether she would characterise these meetings as social or political, she said that it was a bit of both because through the opportunity of socialising they discussed the political situation in East Turkestan. Asked whether she thought that the authorities in China knew about these meetings, she said she did, because there were so many Chinese informers around and no one knew who they were.
57. The Tribunal asked whether the applicant had any other problems while she was in China. She said that her freedom was forbidden and that she could not talk about anything that she was doing while she was in Australia. She said that when she left, the authorities took her passport and luggage at the airport and only returned it to her just half an hour before her flight took off.
58. The Tribunal asked the applicant to describe her activities with other Uighurs in Australia. She said that she had mainly been involved with activities organised by the

East Turkestan Association and with more informal activities with other Uighur young people and as a [student]. The Tribunal asked when she first started engaging in activities organised by the East Turkestan Association. She said that she was first involved in July 2011 and that she had only joined then because prior to this time there had not been many Uighur people in the place where she had been living. Asked whether she was formally a member of the Association, she said that she was a member of one of their gatherings called a meshrap, which she described as an informal gathering of Uighur people where they engage in Uighur cultural activities such as dancing and singing, discuss the situation of the Uighur people in East Turkestan, and where they teach Uighur history and culture. Asked whether this involved formal membership, the applicant said that she thought that if she joined the meshrap then she would also be a member of the East Turkestan Association. Asked if the Association had a formal membership procedure, the applicant said that there was a list of names in the meshrap list. Asked if she could provide a copy of this to the Tribunal, the applicant said that she would try.

59. The applicant also said that she [went] with other members of the East Turkestan Association for the anniversary of the 5 July riot in Urumchi. She said that they held a [demonstration], where they were holding banners and signs. Asked how many people were there, she said that it was not a big event and that around 30 people attended. Asked how long it lasted, she said [for around 2 hours]. Asked whether she had any evidence of her participation in the event, the applicant said that she had only 1 photo that was taken of her with other members of the East Turkestan Association. The applicant handed a copy of the photo to the Tribunal showing 4 women and two men [standing with a Uighur flag]. Asked to describe who was in the photo, the applicant said that one of the men was the leader of the East Turkestan Association in Sydney, that she was one of the women and the others were also members. The Tribunal noted that it seemed to recall that there was reference on the DIAC file about another [photo] of the applicant with four men and the applicant, but the applicant said she did not recall this. The Tribunal could not find the reference to the photo on the DIAC file during the hearing, and asked whether, given the confusions regarding the photos, the applicant could supply the Tribunal with a statement from the leader of the East Turkestan Association confirming her involvement in the activity depicted in the photograph and describing what it was. The applicant agreed to do so.
60. The Tribunal noted that there were only 6 people in the photo and that her evidence had been that 30 people had attended, and asked whether there was any reason that she did not have any photos of the full extent of the demonstration. The applicant said that she did not have a chance to take a photo of the whole demonstration because they were in a hurry and were also concerned that they might get into trouble for filming the event. In the past, the Chinese government had made problems for those who had been photographed at such events. Nonetheless, the applicant thought that the Chinese government would still be aware of the event because it takes place every year and they always seem to know who was doing what.
61. The Tribunal explained that section 91(R)3 of the Act meant that if the Tribunal believed that the only reason the applicant had contacted political organisations was to make herself a refugee then it would have to disregard those activities, and asked her to explain her motivations for becoming involved in political activities in Australia. The applicant said that when she saw people receiving unfair treatment as they had on 5

July 2009 she could not let it go. She felt that she had a general responsibility to bring the plight of her people to the attention of the general public and that was why she had done this.

62. Asked whether there was any reason that she could not safely relocate to another region in China, the applicant said that she could not think of being able to live anywhere else except for East Turkestan. Asked whether there were any other problems that she had or any other reasons why she feared returning to China, the applicant said that if she returned to China she would be a prime target for interrogation about her life in Australia. She said that she had seen a big difference in life in Australia and she wanted to talk to her friends about it but that she would not have that freedom if she return to China. At any time she might be put in jail for trying to do so. She said that she could not accept returning to live under the “pressure” that Uighurs live under in China.
63. The Tribunal then put some issues on which it sought clarification from the applicant. The applicant had initially said that her mother worked in the same building company as her father, and then later said that she had been dismissed from her job. The Tribunal requested clarification of her mother’s situation. The applicant said that her mother had moved from a factory job to the company where her father worked, and then later was dismissed from this position. She said that she had not been working since her dismissal. The Tribunal also asked the applicant to clarify what was the event that triggered her departure from China. She said that it was a combination of factors, her refusal to go to the school in Beijing would be entered into her file and that this would have a huge effect on her study at university and her future in general, and that she was worried about this.
64. The Tribunal also asked the applicant to clarify her claims regarding her father’s status as a member of the communist party. According to her written statement, she said that her family was opposed to her going to the selective school as she would be assimilated by the Chinese communist system, and that once converted, she would be ‘so communist that we can even dedicate our parents’ lives to communism’. The Tribunal noted that there appeared to be a contradiction between this claim and in the fact that her father was already a member of the Community Party, and asked the applicant to clarify this. The applicant said that her father had been forced to join the Party in order to maintain the family’s daily living conditions. If she had gone to the selective school, she would be taught to be a member of the Party in a process that was really brain-washing. In the Chinese system, the government hides the truth and only teaches the other side of things. If she took further studies she would be further brainwashed and might try to convert her parents to what she was seeing or doing.
65. The Tribunal also asked whether the applicant had been involved in any other events since the demonstration to mark the anniversary of the 5 July Urumchi riot. The applicant said that she moved to Melbourne afterwards and so there had been no chance to participate in any other events. She said that there were not many Uighur activities organised in Melbourne, even if she wanted to participate in them.
66. The Tribunal then put some adverse information to the applicant. The Tribunal put to the applicant that there had effectively been two delays in her decision to lodge an application for a protection visa. She had first arrived in Australia in 2008 and then return to Australia in January 2011 after a visit to China where she had experienced problems, but had not lodged her application until July 2011. The Tribunal asked why

this was the case. The applicant said that when she first arrived in Australia her parents had been under pressure by the Chinese authorities about her activities in Australia and so she did not want to do anything that would result in them getting into further trouble with the Chinese authorities. In January 2011, she said that she lived in [another city] and that she did not have any information or support because there were not many Uighur people living there, and so she did not receive such support until July 2011 which is when she lodged the application.

67. Asked if there was anything further she wished to say, the applicant stated that the Chinese authorities would interrogate her and put her in jail and that she had no future there. She said that it was not possible to guarantee people's safety there. She had been in Australia for 3 years and seen the workings of a real democracy. She said that she had an obligation to bring the plight of the Uighurs to the general public so she was begging to be able to live here as a free person.
68. The applicant's agent then made oral submissions. He submitted that the applicant's claim that she was accused of promoting separatism and undermining the unity of nations for her actions in talking about the freedom experienced by Uighurs in Turkey at her school involved a serious danger to her freedom of expression. He also submitted that her lams that she was not allowed to observe Ramadan at school and that she was threatened with expulsion was a serious threat to her freedom of religion. In relation to the applicant's claim that she was punished for protesting against her school's policy forbidding the use of the Uighur language, he submitted that this was also a serious restriction on her freedom of expression. He submitted that her claim that she was punished for refusing to go to the school in Beijing where she would have been cut-off from her homeland, culture and religion amounted to a denial of her cultural identity. He also submitted that the Chinese authorities closely monitor the activities of Uighurs in Australia and that this can result in their family being questioned in China, and that the authorities will not allow Uighurs who obtain Australian passports to return to China. He also submitted that Uighurs who attend political demonstrations in Australia are often not willing to be photographed for fear that these will fall into the hands of the Chinese authorities and that their families will be harmed in China.

Post-hearing documents

69. [In] December 2011, the applicant's agent wrote a letter to the Tribunal responding to the Tribunal's request at the hearing that the applicant provide a statement from the President of the Australian Uighur Association confirming the applicant's participation in the 5 July demonstration, as well as a list of the membership of the [Meshrap]. Her agent indicated that the applicant had not been able to obtain these documents, and was instead providing four Statutory Declarations, which were attached. In relation to the Meshrap membership list, the applicant told her agent that she found out that such a list does not exist due to fears that it would fall into the hands of the Chinese authorities.
70. The four Statutory Declarations annexed to the letter are dated [in] December 2011 and are made by four ethnic Uighur friends of the applicant. They all confirm that a [demonstration] was organised by the Australian Uyghur Association in on 5 July 2011 to protest the massacre of the Uyghur people in Urumqi by Chinese authorities on 5 July 2009. They state that more than 30 people attended, and that the applicant was among those who did so. Two of them also state that they attend activities of the [Meshrap] and that the applicant attended the [Meshrap] in the month of June 2011.

Independent country information

Ethnic discrimination

71. Uighurs are reported to have been mostly left out of the greater prosperity arising out of the rapid development of Xinjiang's economy in the past decade.¹ Other factors contributing to discontent and ethnic tensions in the XUAR are discriminatory government policies, including restrictions on Uighurs' ability to practice their religion freely, language policies making Mandarin Chinese the sole language of instruction in schools, and discrimination in employment.²
72. Discriminatory language policies in the XUAR are gradually ensuring that Chinese is the only language of instruction in the school system. Uighur language instruction is being reduced in schools, and has been eliminated from all university lessons except for Uighur poetry. Graduates of Uighur language schools are disadvantaged due to the dominance of standard Chinese in government, business and academic arenas. For example, these graduates are generally required to undertake intensive Chinese language instruction in order to study Chinese language courses at university. Language requirements also disadvantage Uighur teachers. Some Uighur students and teachers have reported the imposition of fines if even one word of Uighur is spoken on school premises.³
73. Hiring practices which give preferential treatment to Chinese of Han ethnicity have resulted in high unemployment among the Uighur population. Even Uighur university graduates who speak fluent Chinese are denied employment opportunities. Employers at job fairs have reportedly displayed signs stating "Uighurs need not apply", an indication that anti-discrimination laws are not effectively enforced.⁴

Religious discrimination

74. A number of reports highlight widespread repression of the religious freedom of Uighurs in the XUAR, which has intensified in recent years. Restrictions on religious practices include tight controls over mosques, surveillance of mosques, intensive monitoring of religious activities, restrictions on religious texts, and limitations on the ability to participate in *hajj*, the Muslim pilgrimage to Mecca.⁵ The government restricts women, children and government employees in some areas of the XUAR from entering mosques and attending services. It is reported that in some areas, this also

¹ Human Rights Watch 2009, "We Are Afraid to Even Look for Them": *Enforced Disappearances in the Wake of Xinjiang's Protests*, October, p. 9 <http://www.hrw.org/sites/default/files/reports/xinjiang1009webwcover.pdf> - Accessed 22 October 2009 –

² Amnesty International 2010, "Justice, Justice": *The July 2009 protests in Xinjiang, China*, July, ASA 17/027/2010, p. 8 –

³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009: China (includes Tibet, Hong Kong, and Macau)*, 11 March, Section 6; Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009

⁴ Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009; US Department of State 2010, *Country Reports on Human Rights Practices for 2009: China (includes Tibet, Hong Kong, and Macau)*, 11 March, Section 6.

⁵ Freedom House 2010, 'Freedom in the World 2010: China', Freedom House website, July <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 15 July 2010; US Department of State 2009, *International Religious Freedom Report for 2009: China (includes Tibet, Hong Kong, Macau)*, 26 October, Section II; Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009.

applied to anyone under the age of 30. In a number of localities, plain-clothed police officers are positioned outside mosques in order to enforce these restrictions.⁶

75. Furthermore, it has been reported that local authorities in the XUAR “are detaining and fining members of the mostly Muslim Uyghur minority for conducting prayers outside their home villages”. According to village authorities, “cross-village worship” is considered to be a “social crime” The several hundred Uyghurs who were arrested for praying at a village shrine were accused of organising an “illegal gathering” and having a “secret motive” for worshiping outside their home villages.⁷
76. Persons under the age of 18 are not permitted to receive religious education. Teachers and organisers of private religious education classes can be charged with the criminal offence of conducting an “illegal religious gathering”.⁸ A group of Muslim Uighur women were arrested and detained in April 2009 for holding a private gathering. The authorities suspected that the group was participating in Muslim practices. One of the detainees explained that “the police said we can have gatherings for prayer only at the mosque, and we absolutely cannot gather to pray anywhere else, and only the government-appointed imam can teach religion – no one else” While eighteen of the women were released after eight hours of interrogation, seven endured ten days of forced labour. A further five women were sentenced to one month imprisonment.⁹
77. Teachers and students are also restricted from making public expressions of faith such as reciting daily prayers and wearing headscarves, particularly during Ramadan.¹⁰ Government notices displayed during Ramadan called for “effective measures” to be taken against employees and officials who already had beards or veils to ensure that these were removed. Participation in religious activities including mass prayers is also forbidden, and surveillance on mosques is increased.¹¹ On Fridays, a significant day of prayer for Muslims, Uighur students are reportedly prevented from returning home during lunch to pray. Government employees are prohibited from engaging in religious

⁶ US Department of State 2009, *International Religious Freedom Report for 2009: China (includes Tibet, Hong Kong, Macau)*, 26 October, Section II; US Commission on International Religious Freedom 2009, *Annual Report 2009*, May, p.76.

⁷ ‘Uyghurs targeted over prayers’ 2009, *Radio Free Asia*, 2 April
<http://www.uyghuramerican.org/articles/2756/1/Uyghurs-Targeted-Over-Prayers/index.html> – Accessed 8 April 2009.

⁸ Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009; US Commission on International Religious Freedom 2009, *Annual Report 2009*, May, p.76.

⁹ Hoshur, S. 2009, ‘Women Held over Party’, *Radio Free Asia*, 5 June
<http://www.rfa.org/english/news/uyghur/party-06052009144059.html> – Accessed 24 September 2009.

¹⁰ US Department of State 2009, *International Religious Freedom Report for 2009: China (includes Tibet, Hong Kong, Macau)*, 26 October, Section II; Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009; US Commission on International Religious Freedom 2009, *Annual Report 2009*, May, pp.76-77.

¹¹ Branigan, T. 2008, ‘China officials tighten restrictions on Muslim practices’, *The Guardian*, 9 September
<http://www.guardian.co.uk/world/2008/sep/09/china1> – Accessed 10 September 2008; ‘Ramadan – A Time of Repression for Uyghur Muslims’ 2008, Unrepresented Nations and Peoples Organization website, source: *The Associated Press*, 30 September <http://www.unpo.org/content/view/full/8725/236/> – Accessed 26 November 2008; ‘No Tarawih for China Muslims’ 2008, China Aid Association, 6 September <http://chinaaid.org/2008/09/06/no-tarawih-for-china-muslims/> – Accessed 8 September 2008; Wong, E. 2008, ‘Wary of Islam, China tightens a vise of rules,’ *The New York Times*, 19 October
http://www.nytimes.com/2008/10/19/world/asia/19xinjiang.html?_r=1&oref=slogin – Accessed 20 October 2008.

activity and could lose their jobs if they fail to comply.¹² Employees of some private companies are also forbidden to display any symbols of religious affiliation, including wearing headscarves or growing beards.¹³

78. It is reported that restrictions have intensified in recent years, with reports from 2008 claiming that this was the first year that these rules had been published as government notices. One notice on a government website explained that the increased restrictions were necessary to counter the threat of “violent and disruptive activities by religious extremists, separatists and terrorists”. Another county website claimed that officials should “try to reduce Ramadan’s influence on society as much as possible”, by preventing the closure of restaurants in order to discourage fasting, dissuade students from participating in religious activities, and prevent large religious gatherings.¹⁴ The authorities have also reportedly offered free lunches during Ramadan in order to determine whether individuals are fasting.¹⁵

Impact of 5 July 2009 riots on human rights situation in the XUAR

79. On 5 July 2009, a protest was held in Urumqi in the XUAR against perceived Chinese government inaction following the death of Uighur factory workers in Shaoguan in southern China. The protest developed into ethnic rioting. Eyewitness testimonies obtained by Amnesty International refer to the violence having been preceded by a violent police crackdown on peaceful Uighur demonstrators. The Chinese authorities, however, blamed overseas Uighur groups for what they described as “premeditated violence”.¹⁶ Official media reports indicate that 197 people died and 1,700 were injured during the rioting.¹⁷ According to Amnesty International, eyewitness testimonies supported the view that the official figures under-represented the number of Uighurs who died resulting from the use of force by the police and security forces. The Chinese authorities were reported to have prevented adequate investigation of the July 2009

¹² US Department of State 2009, *International Religious Freedom Report for 2009: China (includes Tibet, Hong Kong, Macau)*, 26 October, Section II; Amnesty International 2009, *Uighur Ethnic Identity under threat in China*, April, ASA 17/010/2009; US Commission on International Religious Freedom 2009, *Annual Report 2009*, May, pp.76-77.

¹³ ‘China defends control over religion in Uighur region’ 2006, Uyghur Human Rights Project website, source: *Reuters*, 17 October <http://www.uhrp.org/articles/317/1/China-defends-control-over-religion-in-Uighur-region/China-defends-control-over-religion-in-Uighur-region.html> – Accessed 23 September 2009.

¹⁴ Branigan, T. 2008, ‘China officials tighten restrictions on Muslim practices’, *The Guardian*, 9 September <http://www.guardian.co.uk/world/2008/sep/09/china1> – Accessed 10 September 2008; ‘Ramadan – A Time of Repression for Uyghur Muslims’ 2008, Unrepresented Nations and Peoples Organization website, source: *The Associated Press*, 30 September <http://www.unpo.org/content/view/8725/236/> – Accessed 26 November 2008; ‘No Tarawih for China Muslims’ 2008, China Aid Association, 6 September <http://chinaaid.org/2008/09/06/no-tarawih-for-china-muslims/> – Accessed 8 September 2008; Wong, E. 2008, ‘Wary of Islam, China tightens a vise of rules,’ *The New York Times*, 19 October http://www.nytimes.com/2008/10/19/world/asia/19xinjiang.html?_r=1&oref=slogin – Accessed 20 October 2008.

¹⁵ ‘Muslims face new curbs’ 2010, *Radio Free Asia*, 26 May <http://www.rfa.org/english/news/uyghur/directive-05252010175508.html> – Accessed 27 May 2010.

¹⁶ Amnesty International 2010, “Justice, Justice”: *The July 2009 protests in Xinjiang, China*, July, ASA 17/027/2010, pp. 5-6 –

¹⁷ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – China (includes Tibet, Hong Kong, and Macau)*, April, Section 1(a) –

protests and their background, and many details of the events consequently remained disputed or were unknown.¹⁸

80. The authorities declared that they would deal decisively with the perpetrators of the violence.¹⁹ The crackdown following the clashes reportedly included large-scale disappearances, imprisonment, torture and executions of Uighurs.^{20 21} The XUAR government “instituted sweeping security measures and campaigns to promote ‘ethnic unity,’ curb free speech, and halt any independent religious activity or public protest over restrictions on religious practice” following the July 2009 riots.²²
81. In November 2009, Chinese state media reported that the authorities had launched a “strike hard and punish” campaign in Xinjiang. The regional ministry of public security said that the campaign would run until the end of the year, with the police continuing to hunt for riot suspects and on high alert for terror plots.²³ Also, revisions which placed new prominence on “striking hard” against crimes of endangering state security (ESS) were made to the Regulation for the Comprehensive Management of Social Order in the XUAR in December 2009, effective from 1 February 2010.²⁴
82. During 2010, the authorities in the XUAR were reported to have continued to implement repressive policies and to have targeted the ethnic Uighur population. The US Department of State 2010 report on human rights practices in China indicates that XUAR officials “continued to implement a pledge to crack down on the government-designated ‘three forces’ of religious extremism, ‘splittism’, and terrorism and outlined efforts to launch a concentrated anti-separatist re-education campaign.” Sometimes, it was “difficult to determine whether raids, detentions, and judicial punishments directed at individuals or organizations suspected of promoting the three forces were actually used to target those peacefully seeking to express their political or religious views. The government continued to repress Uighurs expressing peaceful political dissent and independent Muslim religious leaders, often citing counterterrorism as the reason for taking action.”²⁵ In October 2010, the Congressional-Executive Commission on China reported that in Xinjiang, the “[a]uthorities continued to politicize security concerns, targeting peaceful human rights activity, political dissent, and free expression as threats to the region’s security.”²⁶ According to Freedom House, “[e]xisting political indoctrination programs, curbs on Muslim religious practice, policies marginalizing use

¹⁸ Amnesty International 2010, “*Justice, Justice*”: *The July 2009 protests in Xinjiang, China*, July, ASA 17/027/2010, pp. 6 & 20 –

¹⁹ Human Rights Watch 2009, “*We Are Afraid to Even Look for Them*”: *Enforced Disappearances in the Wake of Xinjiang’s Protests*, October, p. 4 <http://www.hrw.org/sites/default/files/reports/xinjiang1009webwcover.pdf> - Accessed 22 October 2009 –

²⁰ Freedom House 2011, *Freedom in the World 2011 – China*

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8016> - Accessed 28 June 2011 –

²¹ Amnesty International 2011, ‘China: Authorities Grow Bolder In Uighur Crackdown’, AI website, 4 July <http://www.amnesty.org/en/news-and-updates/china-authorities-grow-bolder-uighur-crackdown-2011-07-04> - Accessed 18 July 2011 –

²² US Commission on International Religious Freedom 2011, *Annual Report 2011 – People’s Republic of China*, May, pp.124-140, at p. 127 –

²³ Branigan, T. 2009, ‘China launches “strike hard” crackdown in Xinjiang’, *Guardian Unlimited*, 3 November – CISNET China

²⁴ Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 201 –

²⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – China (includes Tibet, Hong Kong, and Macau)*, April, Section 6 –

²⁶ Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 201 –

of the Uighur language in education, and government efforts to alter the region's demography continued throughout 2010, and in some instances grew worse."²⁷

83. A Minority Rights Group International report indicates that the Chinese government "continued to implement restrictive measures to limit civil society engagement and action on minority rights issues" during 2010, particularly in Tibet, Inner Mongolia and the XUAR. There were also indications that some social and economic issues underlying the 2009 unrest in the XUAR and the discontent of minority groups more generally were being addressed, although many others were ignored. In the XUAR, communication channels shut down after the riots were re-established and unpopular Party Secretary Wang Lequan removed.²⁸ Wang Lequan, Xinjiang's hardline Communist Party leader for 16 years, was reported in April 2010 to have been replaced by a relative liberal, Zhang Chunxian, although the change in leadership was considered unlikely to lead to a reversal of Wang Lequan's hardline security policies.²⁹ In July 2011, it was reported that although he appeared more affable than his predecessor, Zhang Chunxian "is just as tough on separatists. Uighur exiles accuse the local government of tarring any expression of Uighur nationalism with the brush of terrorism. Mr Zhang, like Mr Wang before him, portrays Xinjiang as a target of an al-Qaeda-inspired jihad."³⁰
84. In its most recent annual report dated 10 October 2011, the Congressional-Executive Commission on China refers to human rights conditions in the XUAR remaining poor, and to the XUAR authorities continuing "to use security measures to bolster political and social controls in the region." High-level officials "continued to emphasize 'placing stability above all else' and 'striking hard' against the 'three forces' of terrorism, separatism, and religious extremism." The authorities also "reiterated the Xinjiang Work Forum's call for 'developments by leaps and bounds' and 'long-term stability' in the XUAR". According to the report:

Following demonstrations and riots in the region in July 2009, authorities maintained repressive security policies that targeted peaceful dissent, human rights advocacy, and independent expressions of cultural and religious identity, especially among Uyghurs, as threats to the region's stability. Authorities bolstered security in the region in summer 2011 following incidents they described as terrorist attacks and in advance of an expanded trade expo. The government continued to obscure information about people tried in connection to the July 2009 demonstrations and riots, while overseas media reported on cases of people imprisoned for peaceful speech and assembly during that time. Implementation of a series of central government-led development initiatives, first announced at a May 2010 meeting known as the Xinjiang Work Forum, spurred an intensification of longstanding policies – including Mandarin-language schooling, herder resettlement, and urban development projects – that have undermined the rights of Uyghurs and other non-Han groups to maintain their cultures, languages, and livelihoods. Authorities enforced tight controls over religion, especially Islam, and maintained restrictions on religious practice that are harsher than curbs articulated in national regulations. Discriminatory job hiring practices against Uyghurs and other non-Han groups, who comprise roughly 60 percent of the XUAR population, continued in both the government and private sectors. The Chinese government maintained its disregard of international legal protections for refugees, asylum seekers, and migrants, and

²⁷ Freedom House 2011, *Freedom in the World 2011 – China*

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8016> - Accessed 28 June 2011 –

²⁸ Minority Rights Group International 2011, *State of the World's Minorities and Indigenous Peoples 2011*, July, pp. 169-170 –

²⁹ Garnaut, J. 2010, 'Beijing ousts chief of troubled Xinjiang', *The Age*, 27 April

<http://www.theage.com.au/world/beijing-ousts-chief-of-troubled-xinjiang-20100426-tna0.html> - Accessed 11 May 2010 –

³⁰ 'Let them shoot hoops' 2011, *The Economist*, 30 July – FACTIVA

information on the status of Uyghurs forcibly returned to China in recent years, including multiple cases in 2011, remained limited.³¹

Treatment of Uighurs returning to China from Australia

85. Department of Foreign Affairs and Trade (DFAT) advice from May 2006 refers to the potential adverse treatment by the Chinese authorities of returning Uighurs who have been involved with the East Turkistan Australian Association. The advice states that “[t]he use of “East Turkistan” in naming an organisation would be perceived by China as indicating that an organisation has separatist intentions”. There is a likelihood that the Chinese authorities would attempt to monitor the activities of Uighur groups in Australia and gather information on members and supporters of such groups. It is also thought to be likely that these people would be subject to surveillance and possible detention upon their return to China. However, the seriousness of such consequences would be equated to a person’s perceived involvement in a Uighur group and, in particular, whether an individual’s actions were deemed to be criminal activities. Advocating the XUAR’s independence from China is regarded by the authorities as separatist and therefore criminal, regardless of whether a person is within or outside China, and irrespective of whether a person’s activities are violent or not. Advocacy of violence is likely to result in more severe consequences. It is possible, however, that the authorities would take more moderate action if a person renounces their political sentiments and makes a promise to cease their political activities.³²
86. Furthermore, Minority Rights Group International states that “China has been accused of detaining, torturing and executing Uighur asylum-seekers upon return, even in cases where the individual had gained refugee status”.³³ In June 2006, DFAT advised that there was a slim chance that the Chinese authorities would be aware of an individual’s application for asylum. Nevertheless, if this information did come to the attention of the authorities, it is probable that failed asylum seekers would be subject to “official scrutiny” on their return to China.³⁴ If a person was involved in a Uighur organisation outside of China, it is more likely that the authorities would be aware of their activities and detain them upon returning to China. A failed asylum attempt may be recorded on a persons’ dossier and could have an adverse effect on that person’s employment or further education opportunities. The degree of knowledge about an individual’s activities is likely to increase as their level of involvement increases, and the consequences upon their return would become more severe.³⁵

³¹ Congressional-Executive Commission on China 2011, *Annual Report 2011*, 10 October, p. 194

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_house_committee_prints&docid=f:68442.pdf

– Accessed 13 October 2011 –

³² DIMIA Country Information Service 2006, *Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006), 26 May.

³³ Minority Rights Group International 2010, ‘State of the World’s Minorities and Indigenous Peoples 2010: Events of 2009’, July, pp.125-126 <http://www.minorityrights.org/download.php?id=840> – Accessed 15 July 2010.

³⁴ DIMIA Country Information Service 2006, *Country Information Report No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, (sourced from DFAT advice of 28 June 2006), 29 June –

³⁵ DIMIA Country Information Service 2006, *Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006), 26 May; DIAC Country Information Service 2007, *Country Information Report No. CHN8990 – CIS Request CHN8980: China: Publication of client details*, (sourced from DFAT advice of 20 March 2007), 22 March.

87. A 2005 Amnesty International report similarly explains that Uighurs who are suspected to have applied for asylum will be questioned by the Chinese authorities upon their return. It is argued that forcibly returned Uighur asylum seekers may be viewed as “political suspects” Indications to the authorities that a person has claimed asylum could include an expired passport or a lengthy period overseas without valid travel documentation. A Uighur who is suspected of claiming asylum may face arbitrary detention, torture or ill-treatment, particularly if they are also suspected to be active in political opposition movements or religious activities currently prohibited in the XUAR. More severe measures, such as lengthy imprisonment or even execution, are likely to be imposed on Uighurs who are suspected of taking a lead role in “separatist” or “illegal religious” activities.³⁶ DFAT advice from August 2006 similarly explains that politically active Uighurs are of particular concern to the Chinese authorities, who “view Uighur political activity as having separatist objectives”.³⁷
88. A number of sources indicate that the Chinese government has forcibly sought the repatriation of Uighurs seeking asylum in neighbouring countries. Pakistan and Cambodia have both recently been pressured into returning Uighur asylum seekers who were at risk of torture and execution in China.³⁸ A number of reports describe the fate of 20 Uighur asylum seekers forcibly returned to China from Cambodia in December 2009, even though Cambodia had initially supported the group’s claims for asylum. Since their return, the group has ‘disappeared’ and the Chinese authorities have provided no information regarding their whereabouts or any charges brought against them. An unconfirmed report indicated that some members of the group had been sentenced to death. The Chinese government has labelled the asylum seekers ‘criminals’ who are wanted for their roles in the Urumqi riots, as well as “other incidents”, although no evidence has been provided to support these claims. Some men in the group expressed concern for their safety because they had witnessed the Urumqi violence.³⁹
89. Human Rights Watch argues that “China’s record of torture, disappearance, and arbitrary detention of Uighurs, as well as the politicized nature of judicial proceedings in past cases of forced repatriation, raise serious concerns that these individuals are currently at risk of torture and ill-treatment”.⁴⁰ Amy Reger of the Uighur-American Association similarly states that the returned Uighurs would be subject to “a terrible

³⁶ Amnesty International Canada 2005, *Amnesty International concerns on Uighur asylum seekers and refugees*, June http://www.amnesty.ca/Refugee/Concerns_Uighur_June2005.pdf – Accessed 17 January 2006.

³⁷ 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), 25 August.

³⁸ Freedom House 2010, ‘Freedom in the World 2010: China’, Freedom House website, July <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 15 July 2010; US Department of State 2010, *Country Reports on Human Rights Practices for 2009: China (includes Tibet, Hong Kong, and Macau)*, 11 March, Section 6.

³⁹ ‘China: Account for Uighur Refugees Forcibly Repatriated to China’ 2010, Human Rights Watch website, 28 January <http://www.hrw.org/en/news/2010/01/28/china-account-ughur-refugees-forcibly-repatriated-china> – Accessed 14 July 2010; ‘China: Forcibly Returned Uighur Asylum Seekers At Risk’ 2009, Human Rights Watch website, 22 December <http://www.hrw.org/en/news/2009/12/22/china-forcibly-returned-ughur-asylum-seekers-risk> – Accessed 14 July 2010; Minority Rights Group International 2010, ‘State of the World’s Minorities and Indigenous Peoples 2010: Events of 2009’, July, p.125 <http://www.minorityrights.org/download.php?id=840> – Accessed 15 July 2010.

⁴⁰ ‘China: Account for Uighur Refugees Forcibly Repatriated to China’ 2010, Human Rights Watch website, 28 January <http://www.hrw.org/en/news/2010/01/28/china-account-ughur-refugees-forcibly-repatriated-china> – Accessed 14 July 2010.

fate – possibly execution, and likely torture”, particularly given China’s past record of adversely treating Uighur asylum seekers forcibly returned from other countries. Human Rights Watch also argues that the “Chinese authorities have a history of executing or harshly sentencing Uighurs forcibly repatriated from neighboring countries”.⁴¹ However, it is unclear whether a failed asylum seeker whose return to China has not been requested by the Chinese government would face the same treatment.

Monitoring by the Chinese government of Uighurs in Australia

90. In May 2006, the Department of Foreign Affairs & Trade (DFAT) advised that it was “likely that the Chinese authorities seek to monitor Uighur groups in Australia and obtain information on their membership and supporters.” DFAT also advised that:
91. 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).
92. If the Chinese authorities establish that the person has been in contact with any of the four East Turkistan organisations which China considers to be terrorist organisations (the East Turkistan Liberation Organisation, the East Turkistan Islamic Movement, the World Uighur Youth Congress and the East Turkistan Information Centre), it is likely that the Chinese authorities would consider that the individual has been involved in criminal activities. The use of “East Turkistan” in naming an organisation would be perceived by China as indicating that an organisation has separatist intentions.⁴²
93. In November 2010, DFAT repeated its earlier advice that it was likely that Chinese authorities sought to monitor Uighur groups in Australia and obtain information on their membership and supporters.⁴³
94. DFAT also commented in June 2006 on the likelihood that secondary school students with no political profile would be forced to become informants within the Chinese Uighur community in Australia. DFAT advised that “[i]n pursuing information, Chinese authorities would not necessarily exclude sources who do not have a political profile. It is therefore conceivable that Chinese authorities would approach Uighur secondary school students to inform on the Chinese Uighur Community in Australia.”⁴⁴

⁴¹ Minority Rights Group International 2010, ‘State of the World’s Minorities and Indigenous Peoples 2010: Events of 2009’, July, p.125 <http://www.minorityrights.org/download.php?id=840> – Accessed 15 July 2010; ‘China: Account for Uighur Refugees Forcibly Repatriated to China’ 2010, Human Rights Watch website, 28 January <http://www.hrw.org/en/news/2010/01/28/china-account-uighur-refugees-forcibly-repatriated-china> – Accessed 14 July 2010.

⁴² DIMIA Country Information Service 2006, *Country Information Report No. 06/18 – China: Return of Australian Uighur Association Members*, (sourced from DFAT advice of 26 May 2006), 26 May – CISNET China

⁴³ Department of Foreign Affairs & Trade 2010, *DFAT Report No. 1205 – China: RRT Information Request: CHN37428*, 1 November –

⁴⁴ DIMIA Country Information Service 2006, *Country Information Report No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, (sourced from DFAT advice of 28 June 2006), 29 June – CISNET China

95. In November 2007, it was reported that Chinese diplomat Chen Yonglin, who had defected from the Chinese Consulate in Sydney in 2005, had “alleged that his work involved monitoring dissidents in Australia, and that 1000 spies worked for the Chinese government in Australia.” He had been “required to monitor the activities of ‘five poisonous groups’”, including “[s]upporters of independence for Muslim Xinjiang”.⁴⁵ He said that as the embassy’s first political officer, officials reported to him, and he had access to a database with hundreds of blacklisted names. Once a fortnight, officials filed reports, including on Uighurs in the Australian community who wanted an East Turkistan homeland.⁴⁶ In June 2005, Dr John Fitzgerald, who was then professor in Asia-Pacific Studies at the Australian National University, wrote that “Chen Yonglin’s estimate of 1000 informants in Australia as likely underestimates as overstates the extent of the informant network at any point in time”⁴⁷ Also in June 2005, a former intelligence analyst and a former agent interviewed by the ABC said that the figure of 1,000 Chinese spies operating in Australia was exaggerated, but it was “possible a network of informants, rather than trained spies, could be operating on that scale.”⁴⁸
96. In July 2009, Beijing was reported to have “called on the Chinese diaspora to unite around the Communist Party on the basis of ‘blood lineage’ and to spread the ‘truth’ about separatism in Xinjiang.” It was also reported that institutions such as the United Front Department, the State Council’s Overseas Chinese Affairs Office, Chinese embassies and consulates and the Ministry of State Security were all “responsible for organising and monitoring overseas Chinese business, student, cultural, media and political networks.”⁴⁹ According to a July 2011 report, “[h]uge resources are deployed to monitor the Chinese diaspora”.⁵⁰

FINDINGS AND REASONS

97. On the basis of the applicant's evidence and the copy of the applicant's passport on file, the Tribunal accepts that the applicant is a citizen of China. It has assessed her claims against that country as her country of nationality.
98. The applicant claims to have a well-founded fear of persecution on a number of interrelated grounds. The applicant claims she is at risk of serious harm as a member of the Uighur Muslim population generally in the XUAR, as evidenced by reports of widespread and systematic discrimination and human rights violations. In this context she refers to reports on human trafficking of young Uighur girls and claims she may be at risk of similar treatment if she were to return to China. She also claims she and members of her family have experienced a number of instances of discrimination and repression on the grounds of being Uighur Muslims, and that she has also been

⁴⁵ Hyland, T. 2007, ‘Hard power, soft targets’, *The Age*, 11 November

<http://www.theage.com.au/articles/2007/11/10/1194329562764.html> – Accessed 1 July 2008 –

⁴⁶ Kremmer, J. 2005, ‘Chinese defector details country’s espionage agenda’, *Christian Science Monitor*, 30 June – FACTIVA

⁴⁷ Fitzgerald, J. 2005, ‘A lesson in diplomacy’, Australian Policy Online, 21 June

http://www.apo.org.au/webboard/print-version.shtml?filename_num=12165 – Accessed 21 November 2007 –

⁴⁸ ‘Chinese defector offers information on secret agents’ 2005, *The World Today*, 6 June

<http://www.abc.net.au/worldtoday/content/2005/s1385487.htm> – Accessed 27 April 2010 –

⁴⁹ Garnaut, J. 2009, ‘Rally around flag, China tells diaspora’, *The Sydney Morning Herald*, 27 July – CISNET China CX233958

⁵⁰ McDonald, H. 2011, ‘World’s a stage for softly, softly diplomats’, *The Sydney Morning Herald*, 23 July

<http://www.smh.com.au/national/worlds-a-stage-for-softly-softly-diplomats-20110722-1hswu.html> - Accessed 27 July 2011 –

mistreated due to her imputed political opinion. In this respect, she claims that she experienced various forms of ethnic/religious discrimination and repression at school, including not being able to practice her religion. She also claims that she was involved in various activities at school protesting this discrimination that resulted in punishment and a bad school record that would result in future discrimination in education and employment opportunities. She also claims that her failure to take up an offer to be an exchange student in Beijing would result in adverse political opinions being imputed to her and her family and that she would suffer future discrimination in education and employment opportunities as a result. She claims that her father was demoted at work for reasons relating to his ethnicity and imputed political opinion and that her mother was also dismissed from her employment for reasons related to her ethnicity and imputed political opinion. She claims that on a return trip to XUAR in 2010 she was questioned for two days by Chinese security agents about her association with Uighur organisations in Australia. She also claims that her parents have been regularly interviewed and threatened by the Chinese authorities about the applicant's activities with Uighur associations in Australia. The applicant claims that these past instances of harm demonstrate that her future fears of returning to China are well-founded and also that they reinforce the findings of independent country information about the risk of harm to Uighurs in the XUAR generally.

99. The applicant also claims that her association with the Uighur Association of Australia, her participation in a [demonstration] in July 2011 and her application for asylum in Australia will increase her risk of harm upon return to China, as the Chinese authorities would punish her and her family for her involvement in such activities.
100. The Tribunal accepts the applicant's claims regarding her past experiences in China. The Tribunal finds that these claims are consistent with widely reported experiences of other Uighur Muslims in XUAR and the applicant's evidence on these matters was generally consistent and credible. While the Tribunal had some reservations about the fact that the applicant did not raise a number of important elements of her claim until her pre-hearing submissions, it accepts her explanation that she did not fully understand what was important to her application until she received advice from a migration agent for the first time after her application was rejected by the Department.
101. In relation to the applicant's activities since arriving in Australia, the Tribunal notes that the applicant's evidence regarding her level of involvement with Uighur associations in Australia was at times unclear and inconsistent. On the one hand, she gave evidence that she was regularly involved in social activities of the meshrap and agreed to the Tribunal's request to provide evidence of her involvement in the form of the membership list of the meshrap. By contrast, after the hearing she was only able to provide evidence that she had attended one meeting in Sydney in June 2011 and was unable to provide a membership list. Similarly, on the one hand she claimed at the hearing that one of the people who was photographed with her [at the demonstration] was the President of the East Turkestan Australian Association and that she could obtain a statement from him confirming her participation in, and details of, the event. By contrast, after the hearing she was not able to provide a statement from the President of the ETAA and was only able to provide statutory declarations from individuals of Uighur ethnicity who had participated in the event. In addition, she claimed at the hearing that the event was organised by the ETAA when the Statutory Declarations provided after the hearing indicate that it was organised by the Uighur Association of

Australia rather than the ETAA. While the Tribunal acknowledges that it is possible that this is one and the same organisation, the applicant's evidence has not made this clear.

102. Considering these matters in the context of the applicant's evidence in its entirety, however, the Tribunal has found that the difficulties with the evidence are not sufficient to outweigh those matters which support a finding that the applicant did participate in Uighur events in Australia. The Tribunal accepts the supporting statements provided by the applicant's witnesses that she attended a youth meshrap in Sydney in June 2011 and a [demonstration] on 5 July 2011 organised by the Australian Uighur Association protesting the 5 July riot in Urumchi.
103. Under subsection 91R(3), the Tribunal is required to disregard conduct engaged in by the person in Australia unless it is satisfied that the person engaged in the conduct otherwise than for the purpose of strengthening their claim to be a refugee. While it is possible that part of the reason the applicant did develop her connection with the Uighur Association of Australia was to strengthen her protection claim, the Tribunal accepts that it was not her sole reason for doing so. The Tribunal accepts that the applicant was also motivated by a desire to meet with other Uighur people and participate in cultural activities, as well as to learn more about her culture and ethnicity. The Tribunal also accepts that after experiencing discrimination and repression in China, the applicant would wish to participate in a demonstration in Australia against the repression of Uighur people in China. Accordingly, the Tribunal finds that the applicant engaged in this conduct in Australia otherwise than for the purpose of strengthening her claim to be a refugee.
104. The Tribunal accepts that the applicant is both Uighur and Muslim, noting that her claims in this respect were generally credible and that she participated in the hearing with the use of a Uighur interpreter. In considering whether the applicant's Uighur ethnicity amounts to membership of a particular social group for the purposes of the Convention, the Tribunal has had regard to the High Court's decisions in *Applicant A & Anor v MIEA & Anor* (1997) 190 CLR 225 and in *Applicant S v MIMA* (2004) 217 CLR 387. In *Applicant S*, Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of a particular social group at [36]:

...First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group".....
105. Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However, it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.
106. In considering the social group "ethnic Uighurs", the Tribunal has taken into account the country information above and considers that all members of the group share

common characteristics, that these shared characteristics are not limited to a shared fear of persecution, and that they clearly distinguish the group from society at large. The Tribunal therefore accepts that the applicant's ethnicity amounts to membership of a particular social group for the purposes of the Convention.

107. The Tribunal accepts that the applicant's Uighur ethnicity, Muslim religion and imputed political opinion arising from her actions in challenging official policies relating to Uighurs, are the essential and significant reasons for the relevant harm feared.
108. The Tribunal accepts the applicant's evidence that she subjectively fears ethnic and religious discrimination and repression if returned to China. It also accepts her evidence that she subjectively fears other forms of harm for her real or imputed political opinion as a result of her activities in China and in Australia. The Tribunal notes that evidence that the applicant had been persecuted in the past gives support to a finding that there is a real chance that she would face similar treatment on return to China now or in the reasonably foreseeable future (*Abebe v The Commonwealth* (1999) 197 CLR 510 per Gleeson CJ & McHugh). The Tribunal also accepts from the independent country information referred to earlier that those fears are objectively well-founded. In this regard, the Tribunal notes the widespread reports of ethnic and religious oppression and discrimination by the Chinese authorities in XUAR against the Uighur population, as well as the past experiences of the applicant and her parents accepted above in being subjected to forms of ethnic and religious repression and discrimination. The Tribunal also notes the country information regarding the monitoring of Uighur organisations abroad and the treatment of Uighurs returning to China from abroad.
109. The Tribunal notes that many of the forms of ethnic/religious discrimination and repression referred to by the applicant arise from the implementation of official laws and policies of the Chinese authorities. However, the Tribunal accepts from independent country information referred to earlier that these laws and policies are not appropriate and adapted to achieve some legitimate state object and that they adversely target Uighur Muslims for denial of fundamental human rights on the basis of their ethnic/religious identity. In these circumstances, the Tribunal does not regard such laws and/or policies to constitute laws of general application such that harm arising from their enforcement cannot be regarded as persecution for the purposes of the Convention.
110. The Tribunal accepts from independent country information that the relevant harm feared involves systematic and discriminatory conduct for the purposes of s 91R(1)(c), noting that the information clearly indicates that the Uighur community have been targeted by the Chinese authorities for discrimination and religious repression.
111. The Tribunal has considered whether the conduct feared by the applicant rises to the level of persecution and amounts to 'serious harm' for the purposes of s 91R(1)(b) of the Act. The Tribunal has taken guidance from the reasoning of McHugh J in *Chan v. MIEA* (1989)169 CLR 379 at 431, that "...the denial of access to employment, to the professions and to education or the imposition of restrictions on the freedoms traditionally guaranteed in a democratic society such as freedom of speech, assembly, worship or movement may constitute persecution if imposed for a Convention reason". The Tribunal has also considered the Revised Explanatory Memorandum to s.91R(1)(b) and (2) which expressly recognises that "...serious harm can arise from a series or number of acts which, when taken cumulatively, amount to serious harm of the

individual”. The Tribunal finds that the combined and sustained effect of the various forms of discrimination and repression that the applicant has experienced in the past, widely experienced by the Uighur population in the UXAR generally, and feared by the applicant in the future, amounts to persecution and “serious harm” within the meaning of the Act.

112. The Tribunal has also taken into account the submissions of the applicant’s agent at the hearing that the applicant’s fears regarding what would happen to her on return to China are cumulative. The Tribunal accepts that there is a real chance that her political and ethnic activities in Australia, coupled with her history of having an adverse political opinion imputed to her for having refused to go to the selective school and opposing certain school policies, and the treatment of her parents through employment discrimination and repeated questioning regarding her activities abroad, would all result in adverse treatment of the applicant upon return now or in the reasonably foreseeable future. The Tribunal accepts the independent country information that the Chinese authorities subject Uighur Muslims to extensive scrutiny on return from extended periods abroad, and that her return to China would give rise to a heightened level of police interest in her and her family. The Tribunal accepts that on her return these cumulative factors would give rise to a real chance of serious harm by the Chinese authorities now or in the reasonably foreseeable future.
113. The Tribunal is satisfied that state protection against the feared persecution would not be available to the applicant in China given that the agent of the feared persecution is the Chinese authorities.
114. The Tribunal finds that internal relocation to another part of China would not be reasonable on the basis of independent country information that Uighurs face discrimination and mistreatment throughout China.
115. Taking into account all of the above, the Tribunal finds that the applicant faces a real chance of serious harm for reasons of her ethnicity, religion and imputed political opinion if returned to China now or in the reasonably foreseeable future. The Tribunal also finds that the feared harm constitutes persecution and that the essential and significant reason for that persecution is because of the applicant’s religion, ethnicity and political opinion. It follows that the Tribunal accepts that the applicant has a well-founded fear of persecution for a Convention reason.
116. There is no evidence before the Tribunal that the applicant has a right to enter and reside in any third country for the purposes of s 36(3) of the Act and, accordingly, the Tribunal finds that she does not have any such right.

CONCLUSIONS

117. 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

118. 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.