

N02/42226 [2003] RRTA 615 (30 June 2003)

REFUGEE REVIEW TRIBUNAL

DECISION AND REASONS FOR DECISION

RRT Reference: N02/42226

Country of Reference: Uzbekistan

Tribunal Member: Dr Pamela Gutman

Date decision made: 30 June 2003

Place: Sydney

Decision: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

In accordance with section 431 of the Migration Act 1958 the Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

BACKGROUND

The applicant, who claims to be a citizen of Uzbekistan, arrived in Australia on 29 October 2001. On 29 November 2001 she lodged an application for a protection (class XA) visa with the Department of Immigration and Multicultural and Indigenous Affairs under the Migration Act 1958 (the Act). An applicant for a protection (class XA) visa is entitled to be considered against the criteria for each of its subclasses: 785 (Temporary Protection) and 866 (Protection). On 25 March 2002 a delegate of the Minister for Immigration and Multicultural and Indigenous Affairs refused to grant a protection visa and on 9 April 2002 the applicant applied for review of that decision.

THE LEGISLATION

Under s.65(1) of the Act a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied.

Subsection 36(2) of the Act relevantly 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 as amended by the Refugees Protocol. (Subsection 36(2) of the Act as in force before 1 October 2001 was substantially to the same effect.) "Refugees Convention" and "Refugees Protocol" are defined to mean the 1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of

the Act. Further criteria for the grant of a protection (class XA) visa subclasses 785 and 866 are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994 respectively.

Australia is a party to the Refugees Convention and the Refugees Protocol and, generally speaking, has protection obligations to people who are refugees as defined in them.

DEFINITION OF “REFUGEE”

Article 1A(2) of the Convention relevantly defines a refugee as any person who:

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v Minister for Immigration & Ethnic Affairs* (1989) 169 CLR 379, *Applicant A & Anor v Minister for Immigration & Ethnic Affairs & Anor* (1997) 190 CLR 225, *Minister for Immigration & Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559, *Chen Shi Hai v Minister for Immigration & Multicultural Affairs* (2000) 201 CLR 293, *Minister for Immigration & Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1, and *Minister for Immigration & Multicultural Affairs v Khawar* (2002) 187 ALR 574.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need

not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be solely attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. Whenever the protection of the applicant’s country is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department’s file, which includes the protection visa application and the delegate’s decision record. 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.

It is apparent from the applicant’s DIMA file that the applicant entered Australia from NZ on a temporary business visa. She had travelled to NZ via Thailand, where she stayed from September to October 2001. Documents on the file indicate that she together with other Uzbekistani women proposed to attend a Qantas training program. The applicant entered Australia on an Uzbekistan passport issued in February 2001 endorsed for foreign travel until 7 September 2003. She made her application for a protection visa with the assistance of Ms Tanya Nguyen of B.T. and NG. Consultants. In her application she claimed to fear persecution because she had been active in launching a campaign against Shi’ite Hazara refugees from Uzbekistan by the Sunni-

dominated government. She authorised Mr Samouil Chilman to act as her adviser on 28 December 2001. She did not attend an interview with an officer of the Department in February 2002.

Dr Mahmoud Ajjawi assisted the applicant in her application to the Tribunal in April 2002, stating on her behalf that “generally speaking, the applicant stands by her statement”. In April 2003 the applicant engaged Mr Graham Jones of Refugee Advice and Casework Service to act on her behalf. A hearing of the Tribunal scheduled for 2 May 2003 was deferred until 3 June 2003 at her adviser’s request. On 28 May 2003 the applicant’s adviser sent the Tribunal a statement made by the applicant and a translation of a document from the Department of Internal Affairs in Uzbekistan.

The statement gave a detailed account of the applicant’s claim, viz:

1. The information that was given in my application for a Protection Visa was not correct and I shall explain below the reasons for this situation arising.
2. I am from Uzbekistan which is a former Soviet Republic.
3. I had a girlfriend, named Natasha, who suggested that I should learn to be an air stewardess as it is a well-paid position. She said that she could introduce me to someone who could help me to get a training position. The employment would have been with an Asian airline.
4. Natasha introduced me to a man named Sam who told me what would happen. He said I would go to Thailand and then travel to New Zealand for three months of training. After the training I would return to Thailand and work for an Asian airline.
5. When I arrived in Thailand I was introduced to a man called Steven. He was the person who arranged the visa to travel to New Zealand. I was in Thailand for two weeks before I travelled to New Zealand.
6. I was told that I would travel to New Zealand and stay there until I completed the study successfully and then I was to return to Thailand.
7. In Thailand I met two other girls named Alis and Alina.
8. A man named Aaron travelled with us from Thailand to New Zealand and we stayed at his house in Auckland for about two weeks.
9. Upon arrival in New Zealand Aaron said that the school was full and that we had to travel to Australia to do the training.
10. I and the two other girls travelled to Australia as we thought it was a genuine offer of study.
11. In regard to our passports, Steven took these so he could apply to the New Zealand embassy in Thailand for visas to travel to New Zealand. When in New Zealand, Aaron kept control of the passports.

12. When we travelled from New Zealand to Australia we had our passports for Immigration purposes. We noted that the visas were business visas. We asked Aaron about this and he said that when in Australia it can be changed to a student visa. After arrival in Australia, Aaron took the passports.

13. We stayed in a hotel for one day after our arrival. We then met a woman named Jenny who is Vietnamese. Her husband is named Ken.

14. Jenny took us to a house in Marrickville in Sydney. We first met Ken at this house. Ken is a man of Vietnamese extraction.

15. Aaron had given our passports to Jenny and she gave them to Ken.

16. We stayed at this house for a period of one week. Ken and Jenny rented a 3-bedroom house nearby and we then stayed there.

17. At all times since leaving Thailand we were under the control of the abovementioned people. They had control of our passports and would not let us go anywhere without one of them being with us.

18. We were then taken back to the house in Marrickville. We then realised what had happened to us. Ken said that as his boss brought me and the two other girls to Australia I would have to work in the house. When he said he brought me and the other girls to Australia, he meant that he paid for the airfares, accommodation and visas.

19. The house was actually a brothel.

20. I and the other two girls said words to the effect, "No!" We did not want to work there.

21. Ken said words to the effect: "You have to work for one year here in order to pay off your debts to us." He showed us a gun and we felt very threatened by him.

22. After about two weeks working in the brothel Ken took us to a so-called "lawyer". We were told to sign some blank forms. I did not know what they were for but I still signed the forms. I was very scared.

23. I worked there for four months. During the time I was working there Ken said words to the effect, "You can not go to the police. Australians have very strong laws and you will be put in jail".

24. My two friends ran away on 13 January 2002.

25. After the girls ran away he changed my location of work. I was forced to work somewhere in the city. I do not know the name of the street where this new brothel was located.

26. When the other two girls ran away Ken was very upset and said words to the effect, I will kill them if I get them! I will kill you if you try to run away!"

27. He took out his frustrations by pushing me, I was very surprised and my face hit the door and I broke my nose and two front teeth.
28. I ran away in February 2002. I had a client who was Russian and he helped me to escape. I then lived in a motel at Bondi for about one month. Its address is 19 Lamrock Avenue, Bondi Beach.
29. At Bondi I met a man from Jordan and he became my boyfriend and I lived with him in Bankstown.
30. I did not tell him about what had happened to me. One day he asked about my immigration status and he recommended me to go to a lawyer in Punchbowl.
31. I was very shy and embarrassed about what had happened to me. I therefore did not tell the lawyer what had happened to me.
32. In August I called my family in Uzbekistan. My mother was very upset, she was crying and she hung up the phone.
33. After one week, I called again. She told me that my father is "very shamed in the mosque".
34. She told me that someone had sent a videocassette of me working at the brothel. Apparently they had a video camera that showed me having sexual intercourse with customers of the brothel. It also showed the way I dressed and how I had to behave for the customers.
35. My mother said my father was very upset and will kill me if I return to Uzbekistan.
36. My mother said there is a document that states that I should report to the police. My husband had apparently gone to the police. He also said he would kill me. My mother said that my husband found out about the cassette because my father showed it to him.
37. My husband was very upset and said he would kill me if he sees me. He took the cassette to the police and that is why the police have asked me to attend the police station.
38. My father is a very important person in the mosque. He is a leader in the mosque, a "sheik". Because of this position he knows people in all the mosques in Uzbekistan.
39. My family will persecute me because I have not adhered to my religious beliefs, by having engaged in sexual conduct outside of marriage, and/or been involved, even involuntarily, in prostitution.
40. Likewise I will be persecuted by other people in Uzbekistan for the same reasons.
41. The police will not protect me as they will put me in jail for what I have done. That is the reason why I have been requested to attend the police station.

43. I shall be persecuted because it will be perceived by my family and the rest of society that I have not adhered to the religious norms in the country. Thus my fear of persecution arises out of my not having adhered to the religious norms of Uzbekistan.

44. I also fear I will be persecuted because I am a member of a social group. I am a person who will be considered by society in general as one who has not abided by the social norms of the country. I will be persecuted because of my membership of this particular social group.

A photocopy of a document in the Russian language and an authorised translation accompanied the statement. The document is a summons dated 2 January 2003 requesting the applicant to attend an interview at Sergeli police station.

The applicant gave oral evidence to the Tribunal on Tuesday, 3 June 2003.

Before the Tribunal the applicant confirmed that the claims she had made to the Department should be disregarded, as she had not been aware of what had been stated on her behalf. She stated that she had completed nine years of schooling before going to college, where she studied dressmaking for a year. She was married with one child, now two years old. Her father was a Sheikh who preached at the local mosque and at other mosques, and was influential in the community.

I told the applicant that the account of her experiences from the time she left Tashkent until she arrived at the brothel in Marrickville in her statement of 28 May accorded with the cases of two other women who had appeared before me, and was also substantiated by documents held on her file. I asked her whether there were particular aspects which she would like to bring to my attention. She claimed that she had been forced to work at the brothel for three months. After the other two women had escaped Ken, the brothel keeper, had beaten her severely and had broken her teeth. It was evident that her front teeth had been broken. Two months later she had managed to escape with the help of a Russian client. On her birthday she had called her mother who had been distraught and refused to speak to her. When the applicant had called again her mother told her that someone had given her father a videotape showing her working in the brothel. She considered that this was Sergei, the Russian Korean who had made the initial arrangements for her departure. Her father, who has a weak heart, had to be hospitalised after watching it. He had given the tape to the applicant's husband who had threatened to divorce her and possibly had done so by now. She was of the opinion that she had been summonsed to the police station because her husband was attempting to gain custody of her child. Her mother had told her that two earlier summonses had arrived for her, but had only sent her the latest.

When I discussed the possibility of relocation elsewhere in Uzbekistan she claimed that because her father was an influential person he would be able to find her anywhere.

On 23 June 2003 the applicant's adviser, on her behalf, stated that she feared that her life would be in danger from her husband and her father because of her unwilling involvement in the sex industry in Australia, and that the authorities will not protect her because she is a woman and as such in domestic violence situations the state is reluctant to become involved. He submitted that the applicant's fears amount to

persecution as defined in the *MIMA v Khawar* [2002] HCA 14 where Gleeson CJ at para 30 stated that persecution

may result from the combined effect of the conduct of private individuals and the State or its agents; and a relevant form of State conduct may be tolerance or condonation of the inflicting of serious harm in circumstances where the state has a duty to provide protection against such harm.

Gleeson CJ and also Kirby J (and at para 118) held that the authorities withheld protection that victims were entitled to expect by not enforcing the criminal law against perpetrators of domestic violence, and that this was evidence of toleration and condonation of such behaviour. He cited the HRW account of Women's Human Rights in Uzbekistan, (see *infra*) as evidence detailing denying women access to proper procedures in law enforcement, and submitted that the lack of effective protection because of culturally entrenched attitudes was both systemic and discriminatory. The adviser also submitted that there was a real chance that the applicant's father and her husband would commit violent acts upon her, and that she was unlikely to be protected from this violence by the government of Uzbekistan. The adviser submitted that the applicant was a member of a particular social group, and suggested a range of possible groups, including "women whose husbands and/or relatives abuse them either psychologically or physically and who are unable to obtain appropriate protection from the authorities or society" and/or "women who are seen as not conforming with societal norms" and/or "women who have been trafficked for sexual purposes and cannot and/or are unable to access protection".

Independent Evidence

The USDOS 2001 Country Report on Human Rights Practices in Uzbekistan states at Section 5 "Discrimination Based on Race, Sex, Religion, Disability, Language or Social Status":

Both the Constitution and the law prohibit discrimination on the basis of sex, religion, language, or social status; however, societal discrimination against women persisted.

Women

Violence against women is a problem and spousal abuse is common, but no statistics on the problem are available. Wife beating is considered a personal family affair rather than a criminal act; such cases usually are handled by family members or elders within the community (mahalla) and rarely come to court. The law punishes physical assault; however, no legal provisions specifically prohibit domestic violence. Police often discourage women from making complaints against abusive husbands and abusers are rarely taken from home or jailed.

In December 2000, the NGO Minnesota Advocates for Human Rights released a major study on domestic violence in the country. While the lack of reporting prevented the authors from determining the number of cases annually, the study concluded that domestic violence was widespread and that the Government had failed to combat or even acknowledge the problem. Another NGO, Winrock International, which helps develop women's organizations in the country, agreed with the

conclusions of the study but noted that public officials were willing to speak openly about the problem of domestic violence.

Trafficking in women to other countries for the purpose of prostitution was a problem (see Section 6.f.). Prostitution within the country is a growing concern as a result of the worsening economic situation.

Although the law prohibits discrimination against women, traditional, cultural, and religious practices limit their role in everyday society. For these reasons, women are underrepresented severely in high-level positions. In accordance with tradition, women--particularly in rural areas--usually marry before the age of 20, bear many children, and confine their activities to within the family. In rural areas, women often work in the cotton fields during the harvest season. However, women are not impeded formally from seeking a role in the workplace, and women who open businesses or seek careers are not hindered legally. Women are underrepresented in the industrial sector; however, they are fairly well-represented in the agricultural and small business sectors. In September 2000, the National Women's Committee sponsored a meeting commemorating the fifth anniversary of the Beijing Conference. A deputy prime minister at the cabinet level is charged with furthering the role of women in society and also is head of the National Women's Committee....

Several dozen NGO's address the needs of women. For example, a center in Tashkent conducts seminars on sexual harassment, domestic violence, and the legal rights of women. Another center in Samarkand operates a crisis hot line and provides educational services on alcoholism, sexually transmitted diseases, and family counseling. In September the Businesswomen's Association in Kokand held a conference of NGO's working on women's needs in the Kokand Region. The American Bar Association operates programs geared toward protecting women's legal rights in the Ferghana region. A women's group in Surkhandarya works with women with disabilities and promotes their rights.

In parts of the country, some women and girls resort to suicide by self-immolation. There are no reliable statistics on the extent of this problem because most cases go unreported. After marriage many women or girls move into the husband's home, where they occupy the lowest rung on the family social ladder. A conflict with the husband or mother-in-law, who by tradition exercises complete control over the young bride, usually is the stimulus for suicide.

A 1997 research study indicated that the number of women enrolling in higher education was diminishing; for example, women's enrollment in the finance and banking institute dropped from 65 percent in 1991 to about 25 percent in 1997. Cutbacks in government funding to universities and the need for families to fund a higher percentage of educational costs continued during the year, leaving many families in the position of being able to fund the education of only one child, either a son or a daughter. The report stated that university faculty "steer" women into occupations traditionally performed by females and suggested that administrators may deliberately bar entrance to women in some fields.

....

f. Trafficking in Persons

There are no laws that specifically prohibit trafficking in persons, and trafficking in women and girls from Uzbekistan for the purpose of prostitution was a problem, particularly to the Persian Gulf, South Korea, Thailand, and Turkey. There are no reliable statistics on this problem; and it does not appear to be widespread, although anecdotal reports from NGO's indicate that the number of young women from Uzbekistan who are trafficked into prostitution abroad is growing. Many victims are unwilling to come forward due to both societal pressure and the fear of retaliation from their traffickers. Traffickers most often target young women between the ages of 18 and 30. Agents in nightclubs or prostitution rings solicit these women, many of whom previously engaged in prostitution. In large cities such as Tashkent and Samarkand, traffickers use newspaper advertisements to lure women by promising high-paying work or marriage abroad. Travel agencies promising tour packages and work in Turkey, Thailand, and the United Arab Emirates (UAE) also solicit prostitutes. Victims often are promised jobs as dancers or waitresses in nightclubs or restaurants in the destination country. In its 2000 annual report, Human Rights Watch claimed that, traffickers after bribing law enforcement officials, had arranged for women and girls as young as 13 to work as prostitutes in the UAE.

The Government has not acknowledged the problem of trafficking publicly, but has taken some measures to combat it. According to NGO representatives, the police force in Samarkand formed a special unit on trafficking in women in 1998, but the unit's effectiveness has been hampered by a lack of resources. Border guards at airports were directed to give more scrutiny to unaccompanied young women traveling to Turkey, the UAE, and South Korea; they are authorized to deny such women permission to leave the country. There was no information available on whether the Government had prosecuted any traffickers, by year's end. There is no government program to educate or assist potential victims.

There are no NGO's that address trafficking specifically, although several have attempted to gain information on the subject.

The Human Rights Watch World Report 2002: Women's Human Rights
<http://www.hrw.org/reports/2001/uzbekistan/Uzbek0701-04.html>, downloaded on 24 June 2003 states:

In Uzbekistan, instead of protecting women from domestic violence, the state enforced a policy of "reconciliation" aimed at limiting the number of divorces. Local officials and community leaders coerced women into remaining with abusive partners, often thwarting their efforts to escape the violence by leaving their marriages. In some cases, local authorities refused to provide documents to women attempting to file for divorce. More frequently, officials and medical doctors sought to convince the women to return to violent spouses in order to "save the family," and be "better wives." Local law enforcement only rarely completed police reports of women's complaints or investigated cases of domestic violence, more often placing families on a list for periodic police visits that did little to protect women from ongoing abuse. Under article 103 of the Criminal Code for "driving a person to suicide," authorities pursued charges against perpetrators of violence against women only if the woman committed suicide. NGOs in Uzbekistan attempted to provide hotlines and services to victims of

domestic violence, but their resources were limited, and their services rarely reached beyond urban areas.

The USDOS Victims of Trafficking and Violence Protection Act 200: Trafficking in Persons Report, Office to Monitor and Combat Trafficking in Persons, June 11, 2003, section on Uzbekistan states:

Uzbekistan is primarily a source and to a lesser extent, a transit country for the purposes of prostitution and labor. Confirmed information on the extent of trafficking from Uzbekistan only recently emerged, and there is a concern that the deterioration in the economy may lead to a growing problem. Known destinations are Kazakhstan, UAE, South Korea, Malaysia, Thailand, Kosovo, and Israel. According to economists, 40-80% of the population has fallen into poverty in the eleven years since independence from the Soviet Union. Many of these newly poor earn less than \$1 per day.

The Government of Uzbekistan does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The Government of Uzbekistan only recently recognized that it has a problem with trafficking in persons, and that trafficking could become a greater problem if left unchecked. During the spring of 2003, central government authorities showed a greater willingness to focus on the issue, especially through improved dialogue with victim assistance NGOs. This recognition came late in the reporting period, and now its treatment of known victims and of women fitting the victim profile must be improved.

Prevention

The government has thus far taken only limited preventive actions of its own. The government denies exit from Uzbekistan to young women and does not screen them to determine if they are victims and does not offer them preventive information on trafficking. The government worked alongside other organizations on prevention in some instances, such as the permission granted by the Ministry of Education to one NGO to conduct anti-trafficking programs in schools. Some regions have been more proactive than the central government, with the regional government's Women's Committee in Samarkand engaging with NGOs to establish information-sharing and referral for victims.

Prosecution

The criminal code does not contain an anti-trafficking law. Other criminal articles prohibit various aspects of trafficking in persons, and the government pursued some criminal investigations under these laws, but there have been no final prosecutions or convictions of traffickers in Uzbekistan. An organized trafficking ring from Uzbekistan to Kazakhstan was exposed in February 2003. Under international pressure, the government investigated this case and has expelled the two North Koreans responsible. However, the Prosecutor General has taken actions against illegal recruitment, especially through marriage agencies and tourist firms and is pursuing a case involving 56 men who may have been labor trafficking victims in Siberia. It is also investigating the case of a girl trafficked for sex to the UAE. Border

guards reportedly harass returning victims and require pay-offs at the border for women possibly fitting the victim profile. While no actions against this corruption were reported for the period covered by this report, in early 2002 the government convicted two border guards on corruption charges for allowing people to be trafficked.

Protection

The government does not have a mechanism for screening, recognizing, sheltering or otherwise assisting victims, nor does it have a referral mechanism to victim-assistance NGOs. However, it is increasing its efforts at victim assistance and protection. In late spring 2003, the government began to share information with one victim-assistance NGO, and border officials informally agreed to provide that NGO greater access to returning victims at the airport. However, victims complain of harsh treatment by police and border agents when returning. The government continued to charge a \$25 fee to victims abroad who are seeking new travel documents. Most victims were not able to pay this fee. NGOs were unable to secure effective assistance from consular officers in many cases throughout the year, but in spring of 2003, the government began to respond to some of the pleas of NGOs advocating for and assisting in the repatriation of victims, and it began using temporary travel documents to bring trafficking victims home from abroad. The government engaged in discussions with IOM regarding a repatriation program, but still has not entered into any agreement for such a project.

FINDINGS AND REASONS

The applicant has claimed that she fears persecution by her male family members because she has been unwillingly forced into prostitution, contravening Uzbek religious and societal codes.

I have no doubts as to the applicant's credibility, and accept her account that she was wanting to improve her economic situation in the context of a declining economy and consequent limited employment opportunities in Uzbekistan, especially for women. I accept her account of having been unwittingly trafficked, and that she was not aware of her fate until some days after her arrival in Australia. I accept that the people responsible for trafficking her retaliated after she escaped from the brothel in which she had been forced to work by sending her father a videotape of her working there.

Considering the above cumulatively, I find that the applicant has a well-founded fear for reason of her membership of a particular social group, Uzbekistani women forced into prostitution abroad who are perceived to have transgressed social mores.

I find that there is a real chance that either her father or her husband would harm her for reasons of the membership of this particular social group. This is more than substantiated by the accounts of the treatment of women in Uzbek society and under the Uzbekistan law cited in the independent evidence. From this evidence it is apparent that this is a society where a woman who has been victimised, either by a family member or by being trafficked as she was, is unlikely to be able to access effective protection.

In relation to the position of young women in the family the Minnesota Advocates for Human Rights report, *Domestic Violence in Uzbekistan* (December 2000) notes that “Men’s criminal conduct was frequently justified based on what they and others considered the socially inappropriate behavior of their wives or girlfriends. ... Young women have little freedom; they may also be considered “bad” or promiscuous for merely talking to other men or leaving the home...” The HRW Report cited supra refers to “cultural norms that place high value on women’s sexual purity” (p.38). A woman who is known to have prostituted herself, even at gun-point as in her case, would be seen as having transgressed this most important societal norm by her family members.

I am also of the opinion that the applicant’s father’s position in society would militate against her being able to avail herself of state protection. It is evident from the applicant’s description that her father would have a prominent position within the mahalla system which normally adjudicates in such matters. The USDOS Human Rights Report, for instance, has “Violence against women is a problem and spousal abuse is common, but no statistics on the problem are available. Wife beating is considered a personal family affair rather than a criminal act; such cases usually are handled by family members or elders within the community (mahalla) and rarely come to court. The law punishes physical assault; however, no legal provisions specifically prohibit domestic violence. Police often discourage women from making complaints against abusive husbands and abusers are rarely taken from home or jailed”. Similarly, the HRW Report cited above states “ Local law enforcement only rarely completed police reports of women’s complaints or investigated cases of domestic violence, more often placing families on a list for periodic police visits that did little to protect women from ongoing abuse. Under article 103 of the Criminal Code for “driving a person to suicide,” authorities pursued charges against perpetrators of violence against women only if the woman committed suicide”. It refers to the mahalla system whose officials are (pp.47-8) “effectively representatives of the executive branch, [who] consistently block women’s access to legal remedies, to divorce, or to criminal justice, [which] means that the state permits the existence of discriminatory barriers to women’s equal protection under the law. Moreover, the USDOS Trafficking in Persons Report states that “The government does not have a mechanism for screening, recognizing, sheltering or otherwise assisting victims [of trafficking], nor does it have a referral mechanism to victim-assistance NGOs.” I therefore find that the applicant will not be able to avail herself of the protection of the state.

I have also considered whether relocation within Uzbekistan would be an option for the applicant. She has had little training apart from a year of a dressmaking course. She would not be able to get assistance in re-establishing herself from either her family or the state. Her father’s influence as a Muslim leader might well extend beyond Tashkent, making it unlikely that she could live in another city, while attempting to make a living in a rural area without having any family connections would not be reasonable in the context of Uzbekistan’s continuing economic decline.

CONCLUSION

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees

Protocol. Therefore the applicant satisfies the criterion set out in s.36(2) of the Act for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

Dr Pamela Gutman

30 June 2003