

Immigration and  
Refugee Board of Canada

Refugee Appeal Division



Commission de l'immigration  
et du statut de réfugié du  
Canada

Section d'appel des réfugiés

RAD File No. / N° de dossier de la SAR :

*Private Proceeding / Huis clos*

## Reasons and decision – Motifs et décision

Person who is the subject of the  
appeal

Personne en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit à

Date of decision

April 11, 2014

Date de la décision

Panel

Stephen J. Gallagher

Tribunal

Counsel for the person who is the  
subject of the appeal

M<sup>c</sup> Bassam Azzi

Conseil de la personne en cause

Designated representative

N/A

Représentant désigné

Counsel for the Minister

N/A

Conseil du ministre

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## REASONS FOR DECISION

[1] X is appealing a decision of the Refugee Protection Division (RPD) rejecting his claim for refugee protection. The Appellant has presented new evidence and has requested an oral hearing. The Appellant has also presented an application to introduce new documentary evidence that was not provided with the Appellant's record, in accordance with rule 29(2) of the RPD rules. This application was received by the RAD on February 21<sup>st</sup> 2014.

### DETERMINATION OF THE APPEAL

[1] Pursuant to ss. 111(1)(b) of the *Immigration and Refugee Protection Act (IRPA)*, the RAD sets aside the determination of the RPD and substitutes the determination that X is a "Convention Refugee" pursuant to s. 96 of IRPA.

### BACKGROUND

[2] The Appellant, who is a citizen of China of Uyghur ethnicity, alleges that he is a practicing Muslim who is perceived by the Chinese government as an 'activist'. The Appellant alleges he is at risk of being persecuted for his race, religion and political beliefs.

[3] The Appellant came to Canada to study in August 2011 at age 16 but returned to China and his home in early December 2011. At that time, he allegedly visited an uncle whose home in the village of Kartuy had been confiscated by the government of China to accomplish the building of a railway. Kartuy is allegedly a village which is 90 kilometres west of the Appellant's home in the city of Kumul in the Xinjiang Uyghur Autonomous Region (XUAR).

[4] The Appellant alleges that while visiting Kartuy, he became involved in questioning government officials and in fact, took a leadership role in organizing 'villagers' to confront the authorities. The Appellant alleges that he was arrested by Chinese authorities but was released three days later after his mother paid a bribe.

[5] The Appellant alleges that he left China soon after which was lucky because there was a fear that his passport would be seized. The Appellant has since learned that Chinese authorities

are searching for him and view him as an activist. After considering his options, the Appellant sought Canada's protection in August 2013.

[6] The RPD heard the Appellant's refugee claim and in a decision dated October 25, 2013, denied the claim. X appealed the RPD decision in a Notice of Appeal received by the IRB on November 22, 2013. The Appellant subsequently attended a protest outside of the Chinese Consulate in Toronto on February 5, 2014.

### SUBMISSIONS

[7] The Appellant alleges that the RPD committed several errors in its decision. The Appellant argues that the RPD "ignored and misinterpreted" the evidence that would establish that the Appellant is a Muslim Uyghur student who faces a serious possibility of persecution based on this profile. The Appellant also argues that the RPD reached unreasonable credibility conclusions. The RPD should not have reached negative credibility conclusions based on the fact that the Appellant did not provide corroborative evidence with respect to the expropriation of his uncle's property and with respect to some form of documentation of the Appellant's arrest or troubles with the authorities. Furthermore, the Appellant argues that the RPD misapprehended the facts with respect to the extent of the Appellant's actions in China and his ability to leave the country without interference from the Chinese authorities.

[8] The Appellant also argues that the RPD's conclusion related to a 'delay in claiming' is unreasonable. In addition, although not explicitly stated, implicit in the Memorandum of Argument (Paragraph 47), the Appellant's affidavit (Appellant's record, pp. 11-13) and the provision of the initial new evidence, is an argument of *sur place* risk. This is to say that the Appellant's activities in Canada including his membership in the Uyghur Canadian Society, creates a risk for the Appellant because the Chinese government monitors the activities of activists in foreign countries. Later the RAD received additional new evidence which, as noted below, explicitly sets out a *sur place* claim.

[9] The Appellant seeks to have the RPD decision reversed arguing that there is enough in the record for the RAD to grant the Appellant protection. The Appellant also argues that if the RAD does not reverse the RPD's decision it should, in the alternative, schedule an oral hearing to

provide an opportunity for the RAD to reassess the credibility of the Appellant based on the new evidence provided. In addition, the Appellant also notes the further alternative open to the RAD which would be to return the file to the RPD for a redetermination.

**NEW EVIDENCE: Should the RAD accept new evidence and an oral hearing in this appeal so as to assess the Appellant's *sur place* allegation?**

[10] My approach to the issue of the new evidence presented with the Appeal (Appellant's Record, pp. 165-167) and to the late evidence received on February 21, 2014 is to incorporate an analysis of how these documents affect or match up with the analysis of the RPD, to reach a conclusion on whether it meets criteria needed to warrant its acceptance and the holding of a hearing.

[11] Based on Section 110(4), this evidence meets a first threshold in that it was not reasonably available at the time when the RPD rejected the claim. With respect to the evidence received on February 21, 2014, this meets the new evidence threshold because it occurred after the rejection of the Appellant's RPD claim. I would argue, however, that whether this evidence is admitted must also be based on the various tests found in *Raza*<sup>1</sup> which is a Federal Court of Appeal case assessing the admission of evidence in Pre-removal Risk Assessment (PRRA) claims. There are parallels in the legislative wording of the acceptance of evidence to the RAD appeal and to a PRRA claim, therefore, I would argue that the *Raza* case has relevance and gives guidance in this assessment.

[12] Using *Raza*, the admission of this evidence is dependent on whether it meets the criteria of credibility, newness, relevance and materiality. As noted below, I conclude that some of this evidence can be viewed as 'material', which is understood to mean that the evidence is of a quality which could cause a reversal of the RPD decision.

[13] With respect to this evidence, the elements that arrived with the Memorandum of Appeal basically set out that the Appellant faces a threat because of his recent involvement with the Uyghur Canadian Society. I view this evidence and argument as an attempt of the Appellant to create new grounds to seek a status in Canada. I note that in the documentation the Appellant

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<sup>1</sup> *Syed Masood Raza et al. v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, Canada: Federal Court of Appeal, December 6, 2007.



states that he first contacted the organization in ‘Spring 2013’ but that his ‘contributions’ only began after his RPD hearing on October 7, 2013 (Appellant’s Record, p. 12).

[14] The material which the IRB received on February 21, 2014 provides ‘material’ evidence of a *sur place* risk. This evidence shows pictures of the Appellant protesting outside the Chinese Consulate in Toronto on February 5, 2014. The Appellant notes that “During the protest, employees came out of the Chinese Consulate and took several photos of me and the other protesters” (Exhibit H-1: New Documentary Evidence for Appeal of X February 20, 2014, p. 7).

[15] I note that during the RPD hearing the Appellant was asked about all of his risk concerns and only two were identified noted below, specifically the general problems of being a Uyghur and the events that surrounding his visit to Kartuy. This questioning was thorough and open-ended and the questions were repeated. I conclude that the RPD was fully aware of the potential for the Appellant to make a *sur place* claim which is a feature of many Falun Gong claims from China<sup>2</sup> and the questioning gave the Appellant every opportunity to make this allegation.

[16] I note that later in the hearing during the period provided the Appellant’s counsel to ask questions, the Appellant’s counsel, asked the Appellant the leading question “Do you feel a risk from the Chinese government here?” (RPD Hearing Recording @ 1:33 minutes). I note that at one point in the hearing the RPD member requested that the Appellant’s avoid asking leading questions of the Appellant. In this case, this latter question overtly affords the Appellant the opportunity to note the surveillance of Chinese ‘spies’ in Canada. The response of the Appellant was only to state that he faced isolation and was discriminated against by other Chinese students in Canada because they are Han and he is Uyghur. At the same time, I note the Appellant was aware in testimony that Uyghur do in fact face discrimination in China and the Appellant can identify human rights problems in China (RPD Hearing Recording @ 1:50-2 minutes).

[17] With respect to the new evidence, there are two letters included with the Appellant’s Record, the first dated December 7, 2013 from the Uyghur Mosque in Toronto. It states that the Appellant “is a practising Muslim and regularly attends prayers” (Appellant’s Record, p. 165).

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<sup>2</sup> *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993; *Yang v Canada (Minister of Citizenship & Immigration)*, 2012 FC 849; *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067..

The second letter is from Mr. Kayum Masimov and dated December 10, 2013 constitutes a support letter stating that in fact Uyghur people do face persecution in China. It describes the Appellant as an “Uyghur activist and a practicing Muslim” (Appellant’s Record, p. 167). With respect to the material given to the IRP on February 21, 2014, it constitutes evidence of the Appellant’s alleged “proactive involvement in the Uyghur community in Canada” and includes pictures of the February 5, 2014 protest noted above (Exhibit H-1: New Documentary Evidence for Appeal of X February 20, 2014).

[18] I note that just prior to the hearing the RAD received additional evidence in the form of a letter from Mr. Parhat Zunun dated April 2, 2014 (Exhibit H-2) which attests to the fact that the Appellant demonstrated in front of the Chinese Consulate on February 5, 2014.

[19] I conclude that at the time of the rejection of the Appellant’s claim by the RPD the Appellant did not view himself at risk from the surveillance activities of Canadian based representatives of the Chinese government, nor had he joined the Uyghur Canadian society (Appellant notes joining in “late October”) and objectively did not face a serious possibility of persecution or a risk as understood in Section 97 of IRPA if he were to have returned to China.

[20] I conclude that the Appellant has since attempted to create an additional risk of return (self-induced refugee status). This being said I find there was a real possibility that objectively the Appellant has succeeded in this endeavour given the documentation with respect to the capacity of Chinese authorities to effectively monitor activists. I conclude that this new evidence meets the various criteria of *Raza* including the threshold of materiality. I therefore accept the evidence and held a hearing to assess the Appellant’s credibility in light of this new evidence. This hearing took place on April 3, 2014.

## STANDARD OF REVIEW

[21] The RPD found that the determinative issue in this claim was credibility. For a number of reasons the RPD did not believe the Appellant was at risk of political persecution or at risk for a section 97 reason because it concluded the Appellant did not meet his burden of establishing that his story was true on a balance of probabilities. I conclude that an assessment of the RPD’s determination with respect to the Appellant’s credibility, attracts a ‘reasonableness’ standard.

[22] The federal court uses this standard of review to evaluate RPD decision-making in the area of credibility (*Qazi v. M.C.I.* (2005) FC 1204) and I would argue this should be the standard of review for the RAD in its evaluation of RPD credibility assessments. This conclusion also derives from a reading of a decision of the Alberta Court of Appeal in *Newton v. Criminal Trial Lawyers' Association* (2010) ABCA 399, which is one of the few Canadian judicial decisions where the role of an appellate branch of a specialized knowledge tribunal is analyzed. The *Newton* decision provides an analysis of the role of an Alberta based appellate board vis-à-vis a first instance determination process (undertaken by a 'presiding officer') to consider whether a *de novo* hearing is required in every case where there is an appeal on a question of fact. The Court in this case notes that "... the Board is not a tribunal of first instance, and cannot simply ignore the proceedings before the presiding officer, and the conclusions reached by him" (Paragraph 82). The Court went on to conclude that: "a decision on such questions of fact by the presiding officer, as the tribunal of first instance, are entitled to deference. Unless the findings of fact are unreasonable, the Board should not interfere" (Paragraph 95).

[23] I conclude that an analysis of the RPD's credibility assessment in this case involves an analysis of issues of fact and using *Newton* as a guide, I conclude that such issues attract a deferential standard of review which is 'reasonableness'. This is because the RPD held a hearing and directly questioned ✕ The RPD was also directly reviewing the evidence in a hearing setting to reach its conclusion.

[24] My objective is therefore to review the credibility elements of the RPD decision for reasonableness which is defined in the jurisprudence as the "existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". This understanding flows from *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.

[25] With respect to the *sur place* elements of the claim, I held a hearing to reach a conclusion on whether the Appellant has met his burden of establishing the credibility of his allegations on a balance of probability. Should this threshold be reached, I must continue to consider whether the Appellant faces a serious possibility of persecution if he returns to China.

## ANALYSIS

### **Issue 1: Did the RPD err in not giving sufficient weight or ignoring evidence that the Appellant faces persecution as a Uyghur student?**

[26] I note that the Appellant is arguing that the RPD did not effectively weigh evidence such that it reached a conclusion that the Appellant did not face persecution.

[27] I must conclude that it is trite law that the RPD need not refer to all the documentation that relates to an issue at hand. I conclude that this area was analyzed by the RPD and there was a clear recognition that some in the Appellant's area have faced persecution because of their militancy or confrontations with Chinese authorities over cultural, religious or territorial beliefs. The Appellant was asked numerous questions by the RPD and the specific circumstances of the Appellant were investigated to assess the applicability of the evidence supplied by the Appellant to the Appellant's specific circumstances (Appellant's Memorandum, Paragraph 10-11). The Appellant's testimony exposed some general concerns of discrimination, however, specifics or details of how the Appellant, as a Uyghur, faced severe treatment or other indicators of persecution were not uncovered. I was particularly struck by testimony, which implied that the Appellant was not even particularly aware or concerned about Muslim dietary rules, when he testifies that his parents would never shop at a supermarket preferring instead to buy fresh meat at the market (RPD Hearing Recording @ 1:10 minutes). This implies that the Appellant did not face danger, persecution or even onerous conditions in Kumul. In terms of details, the RPD extracted from the Appellant in testimony the fact that he could eat halal food and that it was available in the markets of Kumul and that he could celebrate Muslim holidays (RPD, Paragraph 15). In testimony, aside from the specific allegations related to Kartuy, the Appellant only identifies the incident of being denied a hotel room as a persecution event.

[28] I also note that the Appellant confirms in testimony that his risk arises basically from the events which occurred when the Appellant allegedly sought to aid his uncles with their expropriated property. I find it reasonable for the RPD to conclude that with respect to the specific circumstance of the Appellant, he is not at a serious risk of persecution because he is a

member of a social group or ethnicity: Uyghur in China. I therefore find it reasonable for the RPD to conclude that:

“However, during his testimony, the claimant indicated that he was able to eat halal food in his town of Kumul, as it was available in some markets. He also indicated that he was regularly able to celebrate Eid and other Muslim holidays. He also indicated that both his parents held good jobs in China; his mother was a governmental employee and his father was a bank teller. Finally, the claimant mentioned that his main problem for returning to China stems from his involvement in trying to confront Chinese officials over the expropriation of the farmland of his uncle. Therefore, the tribunal concludes that the claimant did not demonstrate a well-founded fear of persecution because of his Uyghur ethnicity (RPD, Paragraph 15).”

**Issue 2: Did the RPD err in requesting corroborative evidence to reach credibility findings, which should be viewed as unreasonable?**

[29] The Appellant alleges that the RPD did not undertake an effective credibility evaluation with respect to the Appellant’s allegations about the risk he faced because of his alleged activism. The Appellant argues that the RPD conclusion was therefore unreasonable. The Appellant begins by questioning why the RPD should have any credibility concerns to begin with. The Appellant argues that “There was no reason to doubt the claimant’s sworn testimony” (Memorandum of Argument, Paragraph 15). The Appellant goes on to make the argument that given that there were no “inconsistencies or contradictions in the Appellant’s narrative, testimony or evidence” the RPD should have no reason to seek out corroborative evidence (Memorandum of Argument, Paragraph 15).

[30] I cannot accept this argument. At the time of the confrontation with Chinese authorities alleged by the Appellant in 2011, the Appellant was 16 years old. He was allegedly visiting uncles in Kartuy, a village 90 kilometers from his home city Kumul, where his family is obviously relatively affluent given that they have the skills and finances to afford to meet the visa and passport requirements and pay for their son to attend school in Canada. Regardless, when the confrontation with Chinese authorities in Kartuy occurred, with less than two weeks remaining before returning to Canada (Appellant returns to Canada on January 14, 2011), the Appellant is organizing villagers to confront Chinese authorities. It is not clear who was monitoring or taking care of the Appellant in the village, but after the first incident where the Appellant talked to a security guard to seek to talk to authorities, it is hard to imagine that the Appellant’s parents

would not be informed and get involved. This did not occur and the 16 year old student, who has been in the village for perhaps two days, then allegedly organizes 20 to 40 villagers to confront authorities and gets himself arrested.

[31] It should be noted that in questioning the Appellant states that he was aware that his activities would be hard and dangerous. According to the Appellant, "I knew that it could be really hard... also could be really dangerous too..." The Appellant goes on to state that he "just wanted to help" his uncles and the villagers (RPD Hearing Recording @ 1:00 minutes). Again, it is hard to imagine that the Appellant's parents would not have been aware of the risk to their only son's student visa and not have heard of or had a say in what was occurring in the village, if not on the first day, then before the second incident when the Appellant was arrested.

[32] Also, although not set out in the RPD decision itself, in testimony the RPD uncovers an important contradiction comparing the dates in the forms and the testimony. In the earliest form (Schedule 12) the Appellant sets out that his arrest and detention in the village occurred from December 17-20, 2011 (RPD Record, p. 264). The Appellant amends these dates in testimony to sometime around 7-9 of January 2011. This is not consistent with the BOC narrative. In the BOC narrative, it reads: "near the end of December I also went to visit my old uncle in a neighbouring town of Kartuy" (RPD Record, p. 215). This is not consistent with the timeline set out in testimony, which has the Appellant in Kartuy for perhaps 5-7 days, then have the Appellant back home in Kumul to leave China three day later. In this timeline he would have gone to Kartuy in January.

[33] Specifically, in testimony the RPD clarified the interval of the events. The Appellant went to Kartuy and on the first day went to talk to the guard. Two days later, with the villagers, he went to the government office and was detained for 3 days (RPD Hearing Recording @ 2:07-2:09 minutes). In other words, the RPD clarified that the Appellant was in Kartuy perhaps 6 days. The contradiction exists, as set out below, because the Appellant is arguing in testimony that he left China 3 days after being released from detention, which was allegedly lucky because the authorities did not have time to track him.

[34] This element of the logic of the claim is not found in the earliest information nor is it consistent with the BOC narrative where he specifically sets out that “I didn’t think I would have any problems leaving the country because it had been local authorities that had detained me and I already had my return ticket to Canada and study permit” (RPD Record, p. 217).

[35] The credibility concern is that the logic of the story changes between the forms (including the BOC narrative) and testimony. In testimony the logic is that while the Appellant might not have been aware of the risk, the Appellant’s parents were aware of the risk and were allegedly relieved that the time before departure was short. Such a change in the timeline might be viewed as an effort to close off an important credibility concern that if the Appellant were really viewed as a problem by Chinese authorities, he would not have been allowed to leave China. In fact, even with the modified/shortened timeline set out in testimony the RPD concludes that if the Appellant were telling the truth he “would probably not have been able to exit China as easily as he did” (RPD, Paragraph 20). My point would be that for the Appellant to address this concern requires that the dates of the Appellant’s detention be moved closer to the Appellant’s departure date which, however, creates an inconsistency with the contents of earlier document based dates (i.e., BOC narrative).

[36] Although it is clear to me the RPD fully develops the credibility problems with respect to the dates of the Appellant’s detention in his questioning of the Appellant, including the Appellant’s response (memory not good/not ‘refreshed’ when filling in form – Hearing Recording @ 2:05-6 minutes) I do not view it as a problem that such credibility concerns do not factor in the decision. This is because I must conclude that the delay in claiming is so glaring and corrosive of the credibility of the Appellant that there is no need to go further. The Appellant waited until his courses were finished in June 2013 before he sought Canada’s protection even though he had known for more than a year that he could not allegedly return to China. The RPD therefore finds that the actions of the Appellant are not consistent with the behaviour of someone who is alleging that the Chinese authorities are intent on treating him as an anti-government activist and perhaps even a ‘terrorist’ given how the Appellant characterizes how activist Uyghurs are perceived by the Chinese government. I conclude, if nothing else, that this conclusion on credibility provides a reasonable basis for requesting corroborative evidence in the



form of documentation of arrest or summons or the disposition of the property of the Appellant's uncles.

[37] With respect to corroborative evidence itself, the Appellant argues that there is documentation that would allow for the possibility that Chinese authorities may not always use official documents to expropriate land and need not use official arrest warrants to detain and 'disappear' militants and anti-government activists.

[38] I note that the RPD examines the China documentation in detail to reach a conclusion that if the events had occurred in the village as alleged or if the Appellant were sought by authorities as alleged, the RPD would 'expect' to see corroborative evidence (RPD, Paragraph 18). This leads the RPD to conclude that the Appellant is not at risk of persecution in China. I conclude that based on the evidence and analysis of the RPD, this is a reasonable conclusion.

[39] With respect to the problem identified with the RPD's reference to the Appellant's mother having a government job which is allegedly taken to imply a 'good job' (Appellant's Memorandum, Paragraph 12) I do not see that the RPD has erred. The Appellant is describing his father as a 'bank teller' and his mother as a 'first level' government office worker making \$300 a month (RPD Hearing Recording @ 49-50 minutes). Given the resources that would be required for the Appellant to attend school in Canada, I find that it is reasonable for the RPD to assume that the Appellant's family is not without resources.

**Issue 3: Did the RPD err in putting 'undue weight and emphasis' on the Appellant's delay in claiming?**

[40] The Appellant alleges that the RPD was unreasonable to find that the Appellant's behaviour showed a lack of subjective fear solely because he delayed claiming (Memorandum of Argument, Paragraph 30). The Appellant alleges that the RPD should have accepted the explanation of the Appellant that for a number of reasons he simply did not apply for Canada's protection earlier (Memorandum of Argument, Paragraph 35).

[41] I note that the RPD extensively questioned the Appellant on why he waited before claiming. This was the case even though the Appellant is alleging that he knew from April 2012



that he would not be able to return to China. The RPD notes the time and opportunities that the Appellant possessed to seek aid. In addition, the RPD draws attention to the general capacities, skills and activities of the Appellant, which, taken together, is inconsistent with the Appellant's response that he did not have time to sort out his long term residence status. I conclude that it is reasonable for the RPD to reach an adverse credibility conclusion.

[42] Overall, after reviewing the evidence before me, I must conclude that it is reasonable for the RPD to reach a conclusion that the Appellant has not met his burden of showing that his allegations are true, on a balance of probabilities. I therefore conclude that this decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

**Issue 4: Has the Appellant sustained a *sur place* claim by participating in a demonstration in front of the Chinese Consulate in Toronto?**

[43] With respect to the *sur place* claim, this must be viewed as a different claim from the Appellant's RPD claim and I view it as being based on different principles. The initial claim reviewed by the RPD addresses the general question of the treatment of Uygurs and the risk faced by someone who has identified corruption in the actions of public officials. This new claim connects up the Appellant with an independence movement which has connections with religion in the sense that Uyghur nationalism is often associated with the Islamic faith.

[44] The key incident in this claim is that the Appellant was photographed by Chinese consulate officials protesting and holding the symbols, including the flag or 'blue banner' (Kök Bayraq) of those who support the independence of East Turkestan which is part of the XUAR. The Appellant notes that this particular protest was not well attended because of bad weather and there were perhaps 6 protesters altogether.

[45] With respect to subjective fear of persecution, I conclude the Appellant has little fear of persecution. I believe the Appellant is seeking a status in Canada and these actions advance this goal. With respect to testimony, I find numerous elements of his testimony evasive and misleading. I find this is not, for the most part, a function of translation. For example, I conclude

that the Appellant's description of the employment of his parents (RAD Hearing Recording @ 20-26 minutes) is evasive and purposefully lacking in clarity.

[46] I also note that the Appellant's description of Kumul and various features of the area is not consistent with even a cursory survey of the area. For example, the Appellant notes that there is no highway going through Kumul whereas in fact, looking at Google Earth, the G30 Expressway, which connects Kumul to other cities in the region, is a major divided highway although parts are under construction. In addition, this whole area has numerous major construction developments and projects. The Appellant states that his memory of the road network is unclear because he has not been there in three years and, of course, he was relatively young when he was last in the region. Overall, I can not accept the general characterization, provided by the Appellant, of this area as some lesser developed agrarian backwater.

[47] Part of this conclusion on subjective fear relates to the logic of the Appellant's appearance at the protest. The Appellant was questioned on the implications of his being denied refugee status by the RPD and he admits to understanding that this could result in his removal from Canada (RAD Hearing Recording @ 35 minutes). The Appellant basically states that he was aware that if he were seen with so few protestors he would be identified in photographs (notes a "high probability") taken by Chinese officials and if he returned to China he would be 'tortured' by Chinese authorities (RAD Hearing Recording @ 1:00 minutes).

[48] When questioned on why he would accept this risk the Appellant argues that he was already in trouble given his activities confronting corruption in China examined at the RPD level and he wanted to 'raise awareness' of the brutal treatment of Uyghur people at the hands of the Chinese government. I note that the Appellant is aware that this protest activity in Canada is a different and a "stronger" security concern of the Chinese authorities in that he was now connecting himself to a "separatist" movement (RAD Hearing Recording @ 1:01-1:03 minutes).

[49] The Appellant was asked about any possible repercussions of his actions on his parents and the Appellant does not appear to have given this much thought. He argues that because he has not told his parents of his activities, being aware that the government monitors communications, they would be considered 'innocent'. The logic appears to be that it is only if

his parents are aware of his activities that they would be 'recognized' as a terrorist family (RAD Hearing Recording @ 1:06). Given that the Appellant has not mentioned his activities of protesting against China in Canada during Skype conversations with his family, they are not at risk. My conclusion is that the Appellant does not have subjective fear of return to China.

[50] With respect to objective risk, I must conclude that there is a serious possibility that Chinese authorities will identify the Appellant and investigate his activities. There is little doubt that Uygur nationalism is a concern of Chinese authorities. There have been a number of high profile terrorist attacks in China associated with Uygur nationalism. Chinese authorities have put significant developmental resources into the Appellant's home region and has supported a substantial migration of Han Chinese into the area.

[51] When applied to the Appellant, I find that, based on the testimony and evidence, Chinese authorities are likely aware of the Appellant's activities and he has been entered into data bases of individuals who have protested against the Chinese government overseas. Given the sophistication of the Chinese state, this creates an objective risk for the Appellant if he were to return to China. I can conclude, for example, that if he returns to China he is at a real risk of having his passport seized. According to the US DOS report,

Ethnic Uighurs, particularly those residing in the XUAR, reported that it was very difficult to get a passport application approved at the local level. They were frequently denied passports to travel abroad, particularly to Saudi Arabia for the Hajj, other Muslim countries, or Western countries for academic or other purposes. Authorities reportedly seized valid passports of some residents of the XUAR and other citizens.<sup>3</sup>

[52] I suspect the Appellant believes that he would be lost in a crowd; that the scale of China and numbers involved will not put him at risk of return such that if he were granted a status through Canada's refugee system he could still return to China at some point. On a balance of probability, I would agree with this assessment. The Appellant might be simply questioned and released without mishap. At the same time, the documentation suggests that Chinese authorities view the type of activity which the Appellant has now identified himself with, very seriously. According to the US DOS report,

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<sup>3</sup> National Documentation Package, China, May 3, 2013, Tab 2.1, p. 41.

“Officials in the XUAR continued to implement a pledge to crack down on the government-designated “three forces” of religious extremism, ethnic separatism, and terrorism and outlined efforts to launch a concentrated antiseparatist reeducation campaign. It was believed that some raids, detentions, and judicial punishments ostensibly directed at individuals or organizations suspected of promoting the “three forces” were actually used to target groups or individuals 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.<sup>4</sup>”

[53] I must therefore conclude that although it may not have been his intention, the Appellant may have, in fact, created a real risk for himself if he were to return to China. This is because of his profile. He is young, intelligent with excellent language skills. He is also clearly a risk taker. Coupled with his western education this profile of the Appellant as a supporter of a free East Turkestan could lead Chinese authorities to view him as a security threat. I therefore conclude that there is a serious possibility that Chinese authorities could respond to the Appellant with measures which meet the level of severity consistent with being accepted as a Convention refugee.

#### REMEDIES

[54] For all these reasons, the RAD sets aside the determination of the RPD and substitutes the determination that X is a “Convention refugee”. Therefore, the appeal is accepted.

*Stephen J. Gallagher*

**Stephen J. Gallagher**

*April 11, 2014*

**Date**

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<sup>4</sup> Ibid., p. 67.