

1314174 [2014] RRTA 201 (10 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1314174
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Kira Raif
DATE: 10 March 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

Application for review

1. The applicant is a national of [China]. According to his passport, which he included with his application, he was granted a student visa and entered Australia [in] August 2012.
2. The applicant applied for the Protection (Class XA) visa [in] April 2013. The applicant stated on the application form that he is married and his wife, child and parents remain in China, He completed [schooling], and had worked as a mechanic until August 2012. The applicant gave one address, on the application form, where he lived until August 2012.
3. The delegate decided to refuse to grant the visa [in] September 2013 because the delegate was not satisfied that the applicant was a person to whom Australia had protection obligations or complementary protection obligations.
4. The applicant sought review of the delegate's decision [in] September 2013. The applicant appeared before the Tribunal [in] March 2014 to give evidence and present arguments. The issues that arise on review are
 - a. Does Australia have protection obligations to the applicant under the Refugee Convention;
 - b. Does Australia have protection obligations to the applicant under the complementary protection criterion.

Relevant law

5. The criteria for a protection visa are set out in s.36 of the Act and 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
6. 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 in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. 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 in respect of 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').
8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –

PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Brief summary of applicant's claims

The applicant claims, essentially, that he helped his parents with farm work. When the tax officials came to collect taxes, his family did not have the funds to pay. There was a dispute with the tax official and he punched the official. Later on the police came and arrested him, while his family was beaten. He was detained for 15 days and tortured. After his release, he started to make arrangements to leave the country. Before he left, he sent a complaint letter to the authorities and his family have informed him that this has become known to the tax official. His family has warned him not to come back. He is concerned about his family.

Consideration of claims and evidence

9. The applicant travelled to Australia on a Chinese passport and claims to be a national of China. The Tribunal accepts that the applicant is a national of China and has assessed his claims against China as his country of nationality.
10. The Tribunal has considered the applicant's evidence. The Tribunal has formed the view that the applicant has not been truthful in his claims. He had considerable difficulties providing any details of the claims he made and was able to provide explanations for matters that he should have been aware of, if he did experience them as he claims. There were also a number of inconsistencies in his evidence. The Tribunal's concerns are noted below.
 - a. The applicant informed the Tribunal that he has never studied in Australia, even though he claims to have pre-paid tuition fees for three months of language study. He claims that he has been working since 2012, that is, shortly after he first entered Australia. When asked by the Tribunal if he came to Australia to work, the applicant agreed, although he later stated that the purpose of his travel to Australia was not employment. The fact that the applicant did not pursue any study in Australia despite having prepaid the tuition fees, that he had preferred employment to study and waited until the expiry of his visa before seeking protection, suggests that employment was the sole reason the applicant entered Australia.
 - b. The applicant was unable to explain to the Tribunal how he was able to show funds to obtain the student visa. He initially stated that he found a migration agent, but that does not explain how he was able to show funds. He then said that a bank issued a statement and that such a statement could be issued even if there was no money in the bank. The Tribunal does not accept that evidence. The applicant then suggested that documents may be forged. While the Tribunal accepts that documents may be forged, in the Tribunal's view, an equally plausible explanation, particularly in light of the applicant's comments about the bank statements, is that the applicant did have money in the bank, which would contradict the entire basis of his claim that the dispute arose because the family was unable to pay taxes.
 - c. The applicant informed the Tribunal in oral evidence that he stopped working in February 2012. The applicant referred to August 2012 in the application form as the time

when he stopped working. When the Tribunal asked the applicant to explain this inconsistency, he said that his child was [born] and he did not work full-time after that but worked less hours, which contradicts his earlier claim that he stopped working in February 2012. The applicant response to that was ‘whatever’.

- d. The applicant claims that his family owned 20 mu of land (which is about 13,300 square meters – see <http://www.convertunits.com/from/mu/to/square+meter>). He claims the tax on his family’s land was RMB 800 per mu. The official Chinese government website relating to taxation laws in China (<http://www.chinatax.gov.cn/n6669073/n6669133/6887407.html>) indicates that the tax on arable land is between RMB 5 and 50 per square meter, which would mean the family would have to pay between RMB 66,500 and RMB 665,000, not the RMB 16,000 to which he refers in his statement. When asked to explain, the applicant stated he did not know, but that is how much his family was charged.
- e. The applicant was unable to state how soon after the end of the financial year the taxes are collected and he appeared to have little knowledge of the taxation system or laws. The applicant initially said in February the authorities issued a notice about the collection of taxes (which contradicts the written claims that such notice was issued in January). He then corrected himself and said that the notice was issued in January but in February the collectors came. The applicant was not able to explain what he meant when he stated the notice was issued in February. He ultimately stated there was one notice issued in January and one in February. The Tribunal has formed the view that the applicant was fabricating his answers to address the Tribunal’s concerns.
- f. When asked why the applicant presented no paperwork relating to taxation matters, he said that it was done orally and many cities in China operate like that. The Tribunal considers it entirely implausible that there would be no paperwork relating to the taxation obligations of the applicant’s family and demands for taxation payments. Again, the website of the Chinese government relating to tax matters (<http://www.chinatax.gov.cn/n6669073/index.html>) suggests the tax system in China is well developed and subject to many laws and regulations and it would be expected that it would produce paperwork in relation to taxation matters. The Tribunal does not accept that it operates on oral communications, as the applicant suggests.
- g. The Tribunal considers it entirely implausible that when the tax officers could not obtain money from his family, they started to take goods from the household, such as TV, fridge and washer. The Tribunal rejects the applicant’s explanation that “in China it is like this”.
- h. The applicant informed the Tribunal that [in] February a group of fee collectors came to his house to arrest him. He specifically confirmed they were fee collectors who came to arrest him. When the Tribunal queried why the fee collectors would have the power to arrest and jail people, he said they are all together. However, in his written statement the applicant claims it was the police who came to arrest him. When this discrepancy was put to him, the applicant said that both the police and the fee collectors came to arrest him. That contradicts both his initial oral evidence when he claimed, and confirmed, that it was the fee collectors who came to arrest him, and his written claims when he stated it was the police who arrested him.
- i. The applicant informed the Tribunal he was released [in] March. He claims he was detained for 15 days, which means he would have been released [two days later in]

March and not [earlier in] March. When the Tribunal pointed this out and reminded the applicant that there were 29 days in February 2012, the applicant then said that must have been released after 14 days or on [the next day in] March. That contradicts his earlier oral as well as his written claims concerning the period of detention and the date of release.

- j. The applicant informed the Tribunal that nothing happened to him between March and August 2012 when he left China. The Tribunal notes that the applicant claims to have been harassed by the official in February - March 2012 when he had punched the tax collector and refused to apologise. He claims that he has been threatened with death during the punch-up. Yet he remained in China until August 2012, at his own home and continued with his employment, with nothing happening to him. That suggests that he was of no interest to anybody and contradicts his claim that he is wanted for assaulting the tax official.
- k. The applicant informed the Tribunal that the letter he sent was about the corruption of the tax collectors. He was unable to explain why he thought tax collectors collecting taxes under the Chinese law acted corruptly. The applicant then said that part of the taxes went to the tax officials but he stated he was unable to explain on what basis he made that assertion.
- l. The applicant had considerable difficulty providing details of the letter he claims to have sent. He said it was sent to the city PSB but he could not state the address of it, or even the area where the PSB was located. The applicant then stated that they do not have areas or suburbs in China, which is clearly not the case. (The Tribunal is mindful that the applicant provided his full residential address, including the number and area, on the application form.) The applicant then said that he did not write the address on the envelope but he only addressed it to the city PSB. The Tribunal has formed the view that the applicant was simply creating evidence because he was unable to provide the information sought. The applicant was also extremely vague when asked about the content of the letter. When asked what was in the letter, he initially replied by stating it contained what he wrote. When pressed further, he said that he referred to them breaking into the house and taking things but he could not provide any more details, stating that he could not give other information. The applicant's inability to provide any details about the letter or where it was addressed suggests the applicant had never sent such a letter.
- m. The applicant informed the Tribunal that his family has now borrowed money and has paid the taxes. When asked why this could not have been done before, the applicant said that his family could have borrowed money earlier. If that is the case, it is unclear why his family did not borrow the money to pay the taxes in 2012 to avoid the goods being taken away and the other persecution and the harm and the arrest to which the applicant refers in his application. The Tribunal also notes that in his written submission the applicant claims that the banks would not lend them money and that the family was unable to borrow money.
- n. After giving evidence for some time, the applicant stated that the officials were asking for more tax than was legally required. That appears to contradict his earlier evidence. When previously asked if he had any basis for claiming that the tax officials were corrupt, the applicant said that he did not. Also in his written statement the applicant suggested that his family owned 20 mu of land and the tax was RMB 800 per mu, there was no suggestion that this was in addition to, or higher than, the legal amount of tax.

- o. The applicant claims in his written information that the authorities are looking for him. Any check of his movements, or records kept when he left Chinese borders, would show that he has left the country. The applicant was unable to explain why that information would not be available to the authorities and why they would be looking for him.
- 11. For all these reasons, the Tribunal has formed the view that the applicant has been entirely untruthful in his evidence. The Tribunal does not accept the applicant's claims. The Tribunal does not accept that the applicant's family was required to pay tax which they were unable to pay. The Tribunal does not accept that officials from the tax office came to the applicant's home and took good in lieu of tax. The Tribunal does not accept that the applicant or his father had a fight with the officials and that the applicant punched the tax official. The Tribunal does not accept that the applicant was taken into custody, beaten and tortured and detained for 15 days. The Tribunal does not accept that the applicant wrote a letter appealing to the higher government. The Tribunal does not accept that the applicant had any difficulty obtaining the passport for that he left China to avoid persecution. The Tribunal does not accept that the applicant sent an appeal letter on his way to Australia and that such appeal became known to the agricultural officer. The Tribunal does not accept that the officials, including the agricultural officer, would have any concerns about the applicant sending the appeal letter, even if he did (and the Tribunal does not accept that he did). The Tribunal does not accept that the applicant is being tracked by the agricultural officer and the local police or that his family warned him not to return. The Tribunal rejects the entirety of the applicant's claims and finds that the applicant had fabricated his claims for the purpose of his protection visa.
- 12. Having rejected the entirety of the applicant's claims, the Tribunal finds that there is no real chance that the applicant will be persecuted for any Convention reason, or combination of reasons, if he returns to China now or in the reasonably foreseeable future.
- 13. Having considered all of the applicant's claims singularly and cumulatively, the Tribunal finds that there is no real chance that the applicant will be persecuted for any Convention reason or reasons if he were to return to China now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason. He does not meet the refugee criterion in s.36(2)(a).

Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia, there is a real risk that he will suffer significant harm?

- 14. The Tribunal also finds that the applicant is not entitled to complementary protection. The Tribunal has rejected the entirety of the applicant's evidence in relation to events in China as the Tribunal has formed the view that such claims have been fabricated. The Tribunal does not consider there is a real risk the applicant will suffer significant harm as a result of events he claims to have taken place in China.
- 15. The Tribunal finds that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country (China), there is a real risk that he will suffer significant harm. The Tribunal finds that the applicant does not meet the complementary protection criterion in s.36(2)(aa).

Conclusion

16. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
17. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
18. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

19. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.