

1419000 (Refugee) [2016] AATA 3686 (12 April 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1419000
COUNTRY OF REFERENCE:	China
MEMBER:	Amanda Paxton
DATE:	12 April 2016
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 12 April 2016 at 11:40am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China, applied for the visa [in] March 2014 and the delegate refused to grant the visa [in] November 2014.
3. The applicant appeared before the Tribunal on 10 November 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicant was represented in relation to the review by her registered migration agent.

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 of the same class.

Refugee criterion

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. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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)). Examples of 'serious harm' are set out in 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.

11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A '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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

19. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken 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.

CONSIDERATION OF CLAIMS AND EVIDENCE

20. The Tribunal has before it material including:
- Application for protection visa which includes a statement of the applicant's claims;
 - Photos of the applicant with involved in church activities;
 - Copy of the applicant's passport;
 - A supporting letter and translation, dated [October] 2015 from [two named] co-coordinators of the Local Church in [City 1];
 - A supporting letter and their translation dated [October] 2015, from [four named] members of the Local Church in [City 2];
 - A supporting letter and translation, dated [November] 2015, from [another named] member of the Local Church;
 - A supporting letter, and translation, dated 3 November 2015, from [another named] member of the Local Church;
 - A supporting letter and translation, undated, from [another named] member of the Local Church;
 - A supporting letter, and translation, dated 29 October 2015, from [another named] member of the Local Church.
21. The applicant married in Australia in [2013] and has a [child]. Her husband and [child] are not included in this application.
22. The applicant's claims can be summarised as follows:
23. The applicant, who lived in Fuzhou, Fujian was introduced to the Christian faith in October 2003, when she was [age] years old. The applicant's mother joined a Local Church in August 2003. At that time, her father, [an occupation], was injured at work and her mother started selling [products] to a person who was a member of the Local Church, [Ms A]. When [Ms A] heard of their situation, she and others came to the applicant's house and prayed for them. Her mother found peace and after this she believed in the Lord.
24. The applicant was baptised with her father and [sibling] in February 2004. They were in a rural area, and were immersed in water a plastic water pool.

25. The applicant, who was at school, attended a Local Church service at a member's home at the weekend and during the week she attended an evening gathering held near to the school. Gatherings were held in different places to keep their location secret.
26. The applicant's parents became involved in the activities of their Local Church through [Ms A]. [Ms A's] husband, [Mr B], a businessman based [in] Anhui Province, was also a Local Church evangelist and co-ordinator travelling between Anhui and Fujian. On one occasion, at the request of [Mr B], the applicant's family accommodated [people] from Anhui who were in Fuzhou to attend Local Church training.
27. [In] December 2007, the applicant and mother were arrested along with [other] Church followers. Five of those arrested had come to their place for the training meeting. The police had found photos in Anhui which showed that they went to the applicant's family place for this training. The applicant was also in photos participating in the gatherings. The Public Security Bureau (PSB) wanted details of [Mr B]. They were also looking for her parents because they had established a gathering of the church along with [Mr B].
28. The applicant was in class when PSB officers came and took her to the PSB building. There they questioned her about the whereabouts of [Mr B]. One of the three police officers who questioned her, a female officer, was very aggressive, and when she did not respond to their questions about [Mr B], she slapped her on the face. The applicant believes that the police thought it would be easy for them to convince her to reveal information about [Mr B] because of her age – she was [age] years old at the time. She was then transferred to a detention centre, where she remained for [number] days until her father bribed the officials and she was released. During this time they continued to ask her questions and torture her about [Mr B]. They shone a bright light into her face and slapped her when she fell asleep.
29. The applicant has no evidence of her own arrest or of her mother's arrest and stated that this was difficult to obtain.
30. After her release from detention, the applicant stayed at home. She was scared to go to school because when the police had gone to the school, they had said she was a heretic.
31. The applicant had applied for a visa to study in Australian in July 2007. She waited at home until the visa arrived in March 2008.
32. The applicant used her own passport to depart China in April 2008. Her father bribed [an] officer to enable her depart. The officer at the airport hesitated, but let her go.
33. The applicant had been advised by an agent that it was beneficial to come to Australia for [school studies] because she could then go on to graduate at high School. She went to [City 2] to study but her father had spent all his money to get her to Australia and she could not pay for study. She could not focus on her study because she had to work. She found part-time work in a [business].
34. The applicant commenced attending the Local Church in [Suburb 1] in February 2009. She had learned about a Chinese church from a workmate and when she went there she found that it was a Local Church. She attended various activities regularly in [City 2]. She has continued her involvement in the church since moving to [City 1] with her husband in May 2014 because her husband found work here.
35. The applicant's husband, who is also from Fuzhou, is also now a Christian after hearing the message of the Lord from the applicant. He has been baptised and also attends services with her when he can.

36. The applicant's mother was released from detention after 3 months [in] 2008. Her parents and her [sibling] moved to a neighbourhood village to a relative's place because the police came often to their place in Fuzhou looking for her parents. In February 2009, when her father got a job in his [relative]'s [business] in [City], they moved to Anhui Province.
37. [Mr B] was arrested in [February] 2014 and from that time was difficult for her parents to go to the Local Church gatherings.
38. Since the arrest of [Mr B], her father has taken on the role of co-ordinator of his Local Church. Her mother no longer participates in the Church gatherings for fear of arrest. This is painful for her mother.
39. The applicant fears return to Fujian because she will be identified as someone with a police record and will be of particular interest to the police. They will pay attention to her because they will know that she has a record. The police are also concerned about Local Church members, like her, who return from overseas because they are afraid they will take advantage of overseas powers. She is afraid she will be arrested again for these reasons. She was under 18 when arrested in the past and she cannot imagine what they might do now that she is an adult.
40. The applicant will not be able to live in her husband's place in Fuzhou because she and her [child] will need to register for *hukou*. When they do this, the police will know where she is and will watch her.
41. The applicant is afraid that once she returns to China, she will not be able to enjoy the freedom to practise her religion and serve the Lord as she does now.
42. The applicant is worried that her [child] will lose [his/her] faith in China.

Country of reference

43. The applicant claims to be a Chinese national. Based on the copy of the applicant's passport, I find that China is her country of nationality for the purposes of the Convention and also her receiving country for the purposes of s.5(1) and s.36(2)(aa) of the Act.

Credibility

44. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pam Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

45. The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt'. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's

general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

46. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
47. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
48. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out (see *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
49. The Tribunal notes that it is also legitimate to take into account an applicant's delay in lodging an application for a protection visa in assessing the genuineness, or at least the depth, of the applicant's claimed fear of persecution (per Heerey J, *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347).

Assessment of claims

50. The applicant presented as genuine and knowledgeable in discussion with the Tribunal about her faith, including her frequent involvement in various Local Church meetings at a number of locations, Lord's Day services of worship, Bible sharing meetings and prayer meetings, youth meetings and annual Local Church conferences. The applicant was able to accurately describe characteristics of the Recovery Bible. The Tribunal was satisfied that the applicant holds a strong devotion and commitment to the Local Church. The Tribunal accepts that if the applicant returns to China, she would attend gatherings of the Local Church.
51. On the basis of the applicant's oral evidence and the supporting documentation of photos and letters from the Church members in [City 2] and [City 1], the Tribunal accepts that the applicant is an adherent of the Local Church in Australia.
52. On the basis of the applicant's description of her baptism and general knowledge of Local Church background in China, the Tribunal accepts the applicant's faith commenced in China in the setting of her family. The Tribunal accepts that in China, the applicant, as a girl, she participated in, and supported her mother in Local Church gatherings and activities. However the Tribunal notes that the applicant has not suggested that she was involved in proselytising in China. The Tribunal has also considered the applicant's statements supported by documentation from church members about the nature of her church activities in Australia. On this evidence the Tribunal accepts that the applicant has been active in discussing her faith and encouraging others to share her faith within the church and her social and domestic circle in Australia, such as her current housemate and her husband. On the evidence before it, the Tribunal does not consider that the applicant has been involved in proselytising more broadly in Australia. The Tribunal does not accept that she would proselytise to a greater extent than she currently does if she returned to China, now or in the reasonably foreseeable future.

53. Based on the oral evidence of the applicant, the Tribunal accepts that the applicant's parents have been involved in the Local Church and have attended gatherings. The Tribunal accepts as plausible that the applicant's father is coordinating a gathering in Anhui.
54. The Tribunal has considered the applicant's claim to fear harm from the Chinese authorities because she and her mother were arrested and detained in Fuzhou in December 2007 because the PSB wanted information about the Local Church evangelist, [Mr B] and were aware of their involvement in the Local Church. The Tribunal does not accept these claims because the Tribunal is not satisfied that the applicant is a credible witness in this regard for the following reasons:
- The claim that the applicant and her mother, along with [Ms A] and [other] church members were arrested in December 2007, is inconsistent with reports contained in independent sources, which report no incidents of arrests or harassment of Local Church members or unregistered Christians in Fujian province in 2007¹. For example, China Aid's Annual Report of Chinese Government Persecution of Christians House churches within Mainland China for 2007 contains tables setting out incidents of claimed persecution of Christians in China, providing details of 788 cases of persecution and the detention of 693 persons across China tabulated by region and municipality. There were 17 cases of physical abuse in the persecution (beating, torture and psychological abuse). That report does not suggest that any of those incidents occurred in Fujian province, nor that any person was detained or arrested in that province during 2007. Nor does the United States Department of State International Religious Freedom Report for 2007 make any mention of such events occurring².
 - The applicant's claims are also inconsistent with information from 2009, a similar period, that the local government in Fujian is fairly tolerant of unregistered believers as it is rare that one reads of cases of persecution of Christians in the province.³
 - The applicant has provided no evidence of any kind of her own arrest or of her mother's claimed detention for 3 months.
 - At the Tribunal hearing, the applicant explained why she applied to study in Australia, i.e. she wanted to come to study and to work. The applicant explained that when she was [age] years old, an agent (organised through the school) came to the school handing out fliers advertising study in Australia. He said that if you need to make money in Australia conditions were good and it was easy to get a job and also you can learn English. The agent advised that it was good to go to Australia when doing [school studies] because it enabled you to graduate with a high school certificate and then do university in Australia. The applicant stated she decided to do this and the agent made all the arrangements and they just paid him. The applicant commenced making visa enquiries in July 2007, five months before the claimed arrest. In this discussion, the applicant did not state that she came to Australia for any reason other than to study and she did not mention any concerns related to the practice of her faith, such as concern that she had to gather in secret for services and prayer. The Tribunal drew the conclusion that the practice of her religion was not a concern at the time she made her visa application and that on the evidence of the applicant her planned travel to Australia was not motivated by fears of harm due to her religion.

¹ China Aid, Annual Report of Persecution by the Government on Christian House Churches within Mainland China, January 2007—December 2007, China Aid Association USA, February 2008

² <http://www.state.gov/j/drl/rls/irf/2007/90133.htm>

³ "The Protestant Church in Fujian Province", *OMF International*, 01 January 2009, CX236260

- The Tribunal has considered that the applicant arrived in Australia in April 2008 and that she started going to church in February 2009, i.e. a period of almost one year after her arrival. On the basis of the supporting documentation from the co-ordinators of the Local Church in [Suburb 1], the Tribunal accepts that the applicant attended the Local Church in [Suburb 1] from February 2009 until her move to [City 1] in 2014. In response to enquiries that there was a long delay between her arrival in Australia and her attendance at Church, the applicant stated that she did not join with others on arrival but she prayed at home every day. She stated that she learned about the church from a workmate who said there was a Chinese church and when she went there she found it was a Local Church. The applicant stated that she still feels guilty that it took her so long to connect with her Church, but that at the time she was focused on herself only. When she first came to Australia she relied heavily on the Lord, but she had problems with work and on the money side so she concentrated on looking for a job. The Tribunal finds it difficult to accept that the given the level of personal commitment to the Local Church that led her to be detained, questioned and tortured in China, as claimed by the applicant, she would not quickly seek to establish connections with the Local Church in [City 2], information about which is readily available. The Tribunal finds the applicant's behaviour in this respect is inconsistent with her claim she was an active member of the Local Church such that she was arrested and detained by the PSB.
 - In considering the applicant's claim to fear harm from the authorities in China due to her religious beliefs and because she was arrested and detained in connection with those beliefs, the Tribunal has considered that the applicant did not raise any claim to need protection until [March] 2014, more than six years after her arrival in Australia, and four years after her visa was cancelled through all of which time she remained in Australia illegally. When the Tribunal indicated that it considered that if the applicant had concerns about her need for protection, she would have put these forward at the earlier possible time, the applicant stated that she did not raise this matter earlier because she made up her mind when God took her to Australia and showed His love for her by letting her come to Australia, that she would not be greedy and ask for more. She could not persuade herself to take advantage of the Lord. She was scared but put aside her natural fear and believed that she was meant to suffer for her God. She passed everything to the Lord believing "that if you suffer for God your gift will be bigger." The applicant indicated that she made her application for protection when [Mr B], the evangelist from Anhui, was arrested in February 2014. The Tribunal has considered this response, but as discussed with the applicant at the hearing, the Tribunal is not satisfied that it accounts for the absence of the applicant's actions to seeking protection. The Tribunal would expect that had the applicant feared harm from the authorities on return to China, she would have applied for protection at the earliest possible time. The Tribunal also finds it illogical that the applicant would later be motivated to lodge a protection visa application so long after her arrival on the event of the [Mr B's] claimed arrest. The Tribunal would expect that she put forward her claims at an earlier time. These considerations cause the Tribunal to have further doubt as to the credibility of the applicant's claims to be in need of protection because she was arrested and detained in connection with her religion.
55. Given these significant concerns about the applicant's credibility, the Tribunal does not accept that the applicant was arrested, along with [others] including her mother, and detained by the authorities for [number] days in December 2007. The Tribunal does not accept that the applicant was questioned, slapped or tortured by the PSB. The Tribunal does not accept that the applicant was released after [number] days because her father bribed officials. It follows that the Tribunal does not accept that after her mother's release, the PSB went often to the applicant's parent's place. The Tribunal does not accept that the applicant's father bribed officials to enable the applicant to depart China. The Tribunal does not accept that the applicant is of any adverse interest to the Chinese authorities because of her

religious beliefs or her activities connected with them in China. The Tribunal does not accept that the applicant faces a real chance of serious harm or a real risk of significant harm from the Chinese authorities on the basis that she has an adverse profile with the authorities because she was arrested and detained in 2007 because of her religious activity.

56. In making its findings, the Tribunal has taken into account the Tribunal's Guidelines on the Assessment of Credibility. However, these do not overcome the significant concerns I have about the applicant's credibility set out above.
57. The applicant has claimed that she cannot live in her husband's place in Fuzhou, because she will be required to register for the household register, *hukou*, and that, because she has a police record, the police will straight away know where she is. Given the Tribunal has found that the applicant was not arrested or detained as claimed, the Tribunal finds that the authorities will have no interest in her when she registers for *hukou* in her husband's home area on this basis.
58. The Tribunal has accepted that the applicant has a genuine belief in the teachings of the Local Church and will continue participation on return to China. The applicant claims she fears that once she returns to China, she will not be able practice her religion in freedom and serve the Lord as she does now. The Tribunal has considered whether the applicant faces a real chance of serious harm or a real risk of serious harm on this basis. On the basis of country information, the Tribunal accepts that Local Church membership is officially banned in China as an "evil cult".⁴ In making its findings, the Tribunal has also taken into account DFAT's March 2015 report⁵ and the information contained therein and put to the applicant, inter alia it is stated that believers in unregistered Protestant Christian organisations, number approximate 70 to 100 million and that home churches can be found across China. Gatherings of 30 to 40 people are generally tolerated, although DFAT are aware of cases where gathering of fewer people have attracted negative attention by the authorities. Whilst DFAT assess that members of unregistered church movements could be mistreated by authorities, they do not refer to any such incidents occurring to members of the Local Church or other unregistered groups in Fujian province.
59. As put to the applicant at the hearing, in its Annual Report published in April 2015, China Aid includes a diagram of the total number of people detained by Province, however Fujian province is not included in the diagram.⁶ The Tribunal acknowledged that despite a relatively liberal approach to religious practice in Fujian, a range of organisations that report on China, such as Amnesty Information and Human Rights Watch, in 2015, indicate that there have been occasional crackdowns churches which are regarded as unlawful, but none reported in Fujian, and these actions have not extended to the Local Churches. China Aid reported that since the inception of Chairman Xi Jinping's Administration, the scope, depth, and intensity of persecution against religious practitioners increased.⁷ However, whilst DFAT assess that members of unregistered church movements could be mistreated by authorities, they

⁴ Department of Foreign Affairs and Trade, DFAT Thematic Report, Unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015.

⁵ Department of Foreign Affairs and Trade, DFAT Thematic Report, Unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015.

⁶ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.13, Table 4 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

⁷ 'Guangdong house church persecuted in authorities' attempt to suppress Eastern Lightning following Shandong attack' 2014, *China Aid Association*, 19 June <<http://www.chinaaid.org/2014/06/guangdong-house-church-persecuted-in.html>> <CXBD6A0DE15057>

do not refer to any such incidents occurring to members of the Local Church or other unregistered groups in Fujian province.⁸

60. In response, the applicant stated that because the origin of the Local Church is in Fuzhou and they have the largest number of followers - a huge number - the Local Church attracts the most serious oppression. She stated that the Local Church is still regarded as heretical and that religious freedom is reserved for the Three Self Patriotic (TSP) movement and approved government groups. The Local Church is purely a religious group and they do not want to be involved in any government power. The Tribunal has taken the applicant's comments into account, but considering the independent country information as whole and the applicant's individual circumstances, the Tribunal does not accept that the applicant will be arrested or harmed because of her Local Church activities. The Tribunal does not accept that there is a real chance that the applicant would be seriously harmed or a real risk that she would face significant harm from the Chinese authorities because of her participation in Local Church activities if she returns to China, now or in the foreseeable future.
61. The applicant claimed that her father, now living in Anhui, has taken over the role of co-ordinator of their Local Church from [Mr B], since his arrest in 2014. The Tribunal has considered whether the applicant faces a real chance of serious harm or a real risk of significant harm on this basis. The Tribunal considered that the applicant's evidence in relation to her parents was not logical because she stated that her mother no longer participates in Local Church gatherings because she fears arrest and the Tribunal considers it would be logical in that situation that the applicant's father would have a similar fear. The Tribunal also notes that this claim was not made in the applicant's application despite this being lodged after [Mr B's] arrest. Given the Tribunal's concerns about the overall credibility of the applicant, the Tribunal doubts about the veracity of this claim. The Tribunal does not accept that the applicant's father has taken a higher level involvement in his Local Church since 2014. The Tribunal is willing to accept that the applicant's father is an adherent of the Local Church. In its consideration, the Tribunal noted DFAT Country Advice⁹, put to the applicant, that there was no information to indicate that children of adherents to Local Church members had been subject to harassment, ill treatment in China, and the applicant's response that her claims were on the basis of her own church membership, not just as a child of her parents. On the basis of the country information and the applicant's individual situation, the Tribunal does not accept that the applicant faces a real chance of serious harm or a real risk of significant harm from the Chinese authorities because her father is an adherent of the Local Church in Anhui.
62. The Tribunal has also considered the applicant's claim that she will be arrested because she will attract heightened interest from the authorities because they are concerned that people who return from overseas will take advantage of the society. In making findings, the Tribunal has taken into account advice from the US State Department that house churches face more risks when they forge links with other unregistered groups or co-religionists overseas.¹⁰ The Tribunal has considered the applicant's profile in the Local Church i.e. that of an adherent and regular participant, is of significance such that she will be regarded as having the capability to forge links with other unregistered groups or co-religionists overseas. On this

⁸ China Aid Association, *China Aid, 2014 Annual Report, Religious and Human Rights Persecution in China*

⁹ DIAC Country Information Service 2012, *CIS Request No. CHN 13172: The Shouter sect in Fujian province and the situation of Chinese citizen spouses of Australian PV holders*, (sourced from DFAT advice of 30 April 2012), Country Information Report No. 12/68, 6 December, CISNET China CX300339

¹⁰ US Department of State 2009, *International Religious Freedom Report 2009 – China*, 17 November, CISNET

basis, the Tribunal does not consider that her overseas connections will raise her profile such that her links with the Local Church in Australia will be of any adverse interest to the Chinese authorities. The Tribunal does not accept that the applicant faces a real chance of serious harm or a real risk of significant harm from the Chinese authorities on this basis.

63. The Tribunal has considered the applicant's claim that she is concerned that her [child] might lose [his/her] faith growing up in China. The Tribunal notes that the applicant's [child] is not included in this application for protection. The Tribunal therefore will not address this claim from the applicant's [child]'s perspective. The Tribunal has considered whether the applicant may experience psychological harm in the event her [child] does not grow up with the applicant's faith. In this consideration, the Tribunal has had regard to the non-exhaustive examples of serious harm in s.91R of the Act, and the definition of significant harm in ss.5 and 36(2) of the Act. While the applicant may find it uncomfortable if her child grows up with different beliefs to her own, the Tribunal finds that this does not constitute either serious harm or significant harm to the applicant.
64. Considering the country information as a whole and the applicant's individual circumstances, the Tribunal does not accept there is a real chance that the applicant would be seriously harmed by the Chinese authorities for reasons of her Local Church religion if she returns to China, now or in the foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason.
65. Considering the country information as a whole and the applicant's individual circumstances, the Tribunal finds that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to China that there is a real risk that she will suffer significant harm.

CONCLUSION

66. 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).
67. 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).
68. 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

69. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Amanda Paxton
Member