

1500501 (Refugee) [2016] AATA 3925 (1 June 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1500501
COUNTRY OF REFERENCE:	China
MEMBER:	David McCulloch
DATE:	1 June 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 01 June 2016 at 8:45am

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] April 2014 and the delegate refused to grant the visa [in] December 2014.
3. The applicant appeared before the Tribunal on 9 April 2016 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 his registered migration agent, who did not attend the hearing.

CONSIDERATION OF CLAIMS AND EVIDENCE

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.
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. 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').
9. 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. The Tribunal has before it DFAT Country Report – China, 3 March 2015 and DFAT Thematic Report – unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015. Copies of these reports were provided to the applicant in the hearing.

10. The issue in this case is the credibility of the applicant and whether, on his accepted claims, the criteria for protection are fulfilled. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Background and complementary protection criterion only

11. The applicant arrived in Australia [in] February 2008. He arrived on a [temporary] visa [which] had been granted [in] January 2008. That visa was cancelled [in] July 2009 due to the applicant breaching work requirements. The application for a Protection visa was lodged [in] July 2010 while the applicant was in Immigration detention. The application was refused by the delegate of the Minister [in] November 2009. That decision was affirmed by the Refugee Review Tribunal in decision dated 5 May 2010.
12. The current application for a Protection visa was made [in] April 2014.
13. The current application is allowed as a result of the Federal Court decision of *SZGIZ v MIAC* (2013) 212 FCR 235, dated 3 July 2013. This allows a further protection visa application to be made before 28 May 2014 under the complementary protection criterion in a situation whereby the person's prior protection visa application was made and refused prior to the commencement of the complementary protection criterion on 24 March 2012. This means that the Refugee Convention aspect of the applicant's claims has been determined and the matter before the Tribunal relates only to complementary protection criterion (section 36(2)(aa) of the Act).

Claims

14. The application forms for the current Protection visa application indicated that the applicant fears being unable to claim compensation from the authorities after his house was forcibly demolished for the construction of a public road. The applicant also fears for the safety of his life if he continues to protest against the authorities. He indicated that he has been intimidated by the authorities and bashed up by police. The applicant also refers to persecution when he was practising his religious faith. The applicant indicated that if he returns to China he will continue to pursue his right to fair compensation and to pursue his religious beliefs, as a result of which he will be persecuted.
15. In the interview with the delegate of the Minister with respect to the current application, the applicant expands on these claims.
16. The applicant indicated that the home of his parents was compulsorily resumed [in] June 1996. He indicated that his mother was offered RMB [amount] per square metre in compensation but this did not cover the greater cost of building a new property. Initially in the interview, the applicant indicated that his mother accepted this compensation, but later indicated that the amount was not accepted, and then qualified this comment by saying that he disagreed with his mother accepting the offer. The applicant also made reference to farming land being compulsorily resumed. The applicant referred to an incident in which he suffered [a specified injury] from the authorities and [another injury] in relation to the resumption. The applicant indicated that his family have been appealing the decision since the applicant has been in Australia but these appeals have been ignored.

17. In relation to his religious beliefs and practices, in the interview, the applicant indicated that he became a Catholic in China in 1990. He indicated that whilst in Australia he had been a few times to a Catholic church in [Suburb 1]. When asked when he last attended, he indicated that he had not been there recently because he had been sick. The applicant was not able to name the priest at the [Suburb 1] church. The applicant said that he was not in a position to provide supporting letters from the priest or other practitioners because he just sits and listens to the service and donates (implying that he does not interact with others).
18. The written claims in respect of the original Protection visa application indicated that the applicant could not return to China because he was bankrupt and owed money to the supplier of a [business] he owned. He indicated in the interview with the delegate with respect to that application that the [business] was closed in 2008. He claimed that he was a Catholic and had attended an underground house church in his village since 1990. At the Tribunal hearing with respect to that application, the applicant indicated that he was not a Catholic in China and had never attended any Catholic gathering in China. He indicated, however, that his [business] was used as a venue for Catholics to have gatherings, and he was wanted by the Chinese authorities because he had allowed these Catholic gatherings.
19. No written claims or oral claims were made in either the interview or in the Tribunal hearing with respect to the first Protection visa application that the applicant feared harm based on land compensation issues.

Hearing, credibility, findings and assessment

20. In considering overall the credibility of the applicant the Tribunal is cognizant of the words of Beaumont J in *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 in which he stated that 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for...[but this should not lead to]...an uncritical acceptance of any and all allegations made by supplicants'. The Tribunal notes also the remarks of Gummow and Hayne JJ in *Abebe v Commonwealth of Australia* (1999) 197 CLR 510 at 191 where it was said that 'the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising'. The Tribunal has sought to adopt the liberal approach outlined in these cases.
21. The Tribunal satisfied that the applicant is a citizen of China, and accordingly his claims will be assessed against China.
22. The Tribunal has overall credibility concerns with the applicant's claims, considering the history of his claims over time, inconsistencies, failure to include key claims made now as part of his first Protection visa application, and the delay of 16 months from his arrival in Australia in making the application for Protection.
23. Exploration of issues in the hearing, concerns put to the applicant, and the Tribunal's assessment follow.
24. The various pieces of information that were put to the applicant in the hearing pursuant to s.424AA of the Act were done so in accordance with the procedural requirements of that section, and in particular noting that the information would be the reason, or part of the reason, to affirm the decision under review.

Delay in seeking protection

25. The Tribunal put to the applicant in the hearing that it did not seem consistent with his claimed fears that he waited 16 months after arriving in Australia to claim protection, including a year following the cancellation of his [temporary] visa.

26. In response, the applicant said he thought he was safe when he was first here, and did not realise that he could apply.
27. The Tribunal acknowledges the difficulties and uncertainties of being in a new country, and that this could explain some degree of delay in exploring options for a Protection visa. However, if the applicant truly feared significant harm in returning to China for the reasons claimed, it considers that he would have made investigations at an earlier opportunity than he did. Certainly, at the point that the applicant's [temporary] visa was cancelled, he would have had a very strong incentive to seek a Protection visa.
28. The Tribunal considers that the delay is not supportive of the applicant fearing a real risk of significant harm in returning to China for the reasons claimed.

Land compensation issue, and [business]

29. In the Tribunal hearing, the applicant said that his mother did not agree to the compensation figure offered for the land in 1996. He said that contradictory evidence on this issue earlier could be an interpretation issue.
30. The applicant indicated that there was altercation when authorities came to demolish the property and resume the land in which the applicant was injured. He had [specified injuries].
31. The applicant indicated that if he returns to China he will seek to take action for appropriate compensation.
32. The Tribunal asked the applicant a number of times in the hearing what happened after the resumption, including any appeals or petitioning activities he undertook in the 12 years from the demolition until he left for Australia in 2008. It was difficult getting a clear answer from the applicant on this issue. The applicant indicated that his [family member] had undertaken some appeals to the local authorities since the applicant came to Australia, but he has been told simply to wait. The applicant indicated that the legal process in China is not fair in relation to seeking compensation.
33. The Tribunal put to the applicant that it had some concerns as to whether a compulsory land acquisition that occurred 20 years ago would create a real risk of significant harm to the applicant on returning to China today. It indicated that even if the Tribunal were to accept that the applicant intended to take action with respect to the acquisition, the fact of him doing so, even if the process was unfair, would not seem to fall within any definition of significant harm for the purpose of the complementary protection criterion.
34. Towards the end of the hearing, when the Tribunal was exploring with the applicant his claims, as part of his first Protection visa application, relating to owning a [business] and owing money to creditors, the applicant said that this [business] was owned by him and his [family member], and was closed down by the authorities shortly after the compulsory resumption of the property in 1996 as a means of the authorities getting back at the applicant due to the altercation that happened as part of the resumption.
35. At this point in the hearing, the applicant indicated that after the demolition incident he was effectively in hiding and police were looking to put him in jail, and he is at such a risk if he were to return to China today.
36. The Tribunal put to the applicant pursuant to the procedural requirements of s.424AA of the Act certain information. This was information as part of the applicant's first Protection visa application, in terms of his written claims, the interview with the delegate and the prior Tribunal hearing in which the applicant made no claims of harm based on land

compensation issues. It indicated that this was relevant because if the applicant truly feared harm on this basis it might have been thought he would have made reference to those difficulties. It noted that the consequence of relying on this information could be to question whether the applicant faces a real risk of significant harm based on land compensation issues that occurred in 1996.

37. In response, the applicant said that he would respond later in writing. No response was provide in the time frame provided by the Tribunal.
38. The applicant indicated in the hearing that he made no mention of the [business] being closed down due to land compensation issues as part of the first application because he did not think the Australian government would understand this, and he now has the confidence to mention this.
39. Early in the hearing, the Tribunal asked the applicant what he did for work in China. The applicant indicated that he worked [selling] and did some other casual work, including [Occupation 1]. Later in the hearing, the Tribunal indicated to the applicant that as part of his first Protection visa application he said he had been the owner of a [business] in China. The applicant said that he did not refer to this earlier as he thought the Tribunal was asking what he did when he was young. The Tribunal had not qualified the question in this respect.
40. The applicant said that he opened the [business] in 1993 or 1994 with his [family member]. The applicant said that he became a bankrupt after the demolition incident because his money was appropriated by the government.
41. The Tribunal put to the applicant pursuant to the procedural requirements of s.424AA of the Act information contained in the interview with the delegate of the Minister with respect to the current application in which the applicant indicated that he worked in [another industry] when he was in China. The Tribunal indicated that the information was relevant because the applicant made no mention of being the owner of a [business]. The consequence of relying on this information could be to question the applicant's credibility about owning a [business], his credibility as to what he did for work in China, and his credibility generally.
42. In response, the applicant said that it was when he was young he was working buying and [selling] and was [an Occupation 1], and it was in 1993 or 1994 that he opened the [business] with his [family member], and that after the demolition incident the authorities were looking for the applicant and as a result they closed the [business].
43. The Tribunal also noted to the applicant that earlier in the hearing he had made reference to his [family member] owning a [similar business], but never mentioned that he was an owner with him.
44. The Tribunal asked the applicant what he fears now based on the [business]. He indicated that he opposed the demolition and the authorities want to arrest him. The applicant indicated the authorities closed the [business] because they wanted to get at the applicant.
45. The Tribunal asked the applicant if there was any other issue of concern in relation to the [business], and he said no. The Tribunal noted that the applicant had previously indicated that he had allowed the [business] to be used as a gathering for Catholics. The applicant had claimed that the authorities had an adverse interest in him as a result. The applicant said that Catholic gatherings had happened and were disbanded after the [business] was closed. The applicant confirmed that the [business] closed in 1996.
46. The Tribunal assesses the evidence and makes findings on these issues.

47. The Tribunal is prepared to accept that the applicant's parents' land was compulsorily resumed, and that the applicant objected to this happening, and was injured by authorities as part of the resumption of the land in 1996. The Tribunal does not accept, however, that this was an ongoing issue of significant concern, or that the applicant fears returning to China as a result of this incident, or as a result of his intent to seek to challenge the compensation decision.
48. The Tribunal considers, given the evidence in the hearing, that the applicant took no action to appeal or petition the decision in the 12 years from 1996 until he came to Australia. The Tribunal does not accept that the applicant's [family member] or family have been taking action whilst the applicant has been in Australia.
49. If the land compensation were a matter of significant concern, the Tribunal considers that it would have been raised at some point as part of the first Protection visa application.
50. The Tribunal acknowledges that a reason that this would not have been included is because it may not have satisfied the Refugees Convention criterion because there would be no Convention nexus. However, considering the applicant's evidence on other issues, it considers that were this issue of significant ongoing concern, it would have been referred to, either in the written claims or in the interview with the delegate and the Tribunal hearing. The applicant referred to other instances of harm which were not Convention related, most particularly harm from owing money to creditors of the [business].
51. Further, the applicant is now claiming that there is a link between the land compensation issues and the [business] (in that it was closed because of the resumption incident in which the applicant was injured). If true, the Tribunal considers the applicant would have mentioned the land compensation issue as part of the first application given that there was questioning of the applicant relating to the [business], including evidence about its closure.
52. The Tribunal does not accept that the applicant failed to mention that the land compensation issue was key to the [business] being closed down as part of his first Protection visa application because he thought the Australian authorities would not understand.
53. The Tribunal does not accept that the land compensation dispute was a cause of a [business] owned by the applicant being closed by the government, or that the government appropriated money from the applicant, as a result of the land compensation dispute, or for any other reason.
54. The Tribunal does not accept that the applicant was being sought by the authorities after the land demolition incident in 1996, was effectively in hiding, and was at risk of being put in jail, or is currently at risk on that basis. This claim was made towards the end of the Tribunal hearing, after there had been questioning of the applicant as to what issues had faced him following the resumption and whether the applicant had undertaken any petitioning or appeals. At that point in the questioning, no mention was made of the applicant being wanted by the authorities and effectively having to go into hiding.
55. The timing and manner with which this claim was later made causes the Tribunal to consider that the applicant had simply constructed or embellished his claims during the course of the hearing. The Tribunal similarly considers that the applicant, when reminded of his claim as part of his first application relating to a [business], simply constructed a link between it and the land compensation issue.
56. The Tribunal notes the inconsistent evidence given by the applicant as to his employment in China. The Tribunal does not accept that the applicant failed to mention that he was the

owner of a [business] to both the delegate and the Tribunal with respect to the current application because he thought he was asked what he did early in his working life.

57. The Tribunal is not satisfied that the applicant was the owner of a [business]. The Tribunal is not satisfied that the applicant owed money to creditors of a [business]. The Tribunal is not satisfied that the applicant facilitated meetings of Catholics at the [business] which came to the adverse attention of the authorities.
58. The credibility problems in relation to the applicant's evidence on these issues are buttressed by the delay in the applicant applying for the Protection visa, and the credibility difficulties identified by the Tribunal with respect to the applicant's claims as to being a practising Catholic.
59. As a consequence of these findings, the Tribunal makes the following assessment in relation to the complementary protection criterion.
60. The Tribunal is not satisfied that the applicant has any intention to undertake petitions or appeals in relation to the land resumption that occurred in 1996, should he return to China, and therefore is not satisfied that there is a real risk of significant harm to the applicant on this basis. The Tribunal is therefore not satisfied that there is a real risk of significant harm to the applicant based on undertaking petitions or appeals in relation to the land resumption issue that occurred in 1996.
61. The Tribunal does not accept that a [business] that was owned by the applicant was shut down by the government, or money appropriated from the applicant by the government, as a consequence of a land compensation dispute involving the applicant, such as to lead to a real risk of significant harm to the applicant should he return to China.
62. The Tribunal does not accept that an incident in which the applicant was injured following an attempt to resume his parents' property resulted in any ongoing adverse attention by the authorities with respect to the applicant, including searching for him, and intending to put him in jail, such as to create a real risk of significant harm to the applicant should he return to China.
63. The Tribunal is also not satisfied that there is a real risk of the applicant facing significant harm as a result of the applicant owing money to creditors of a [business] that he owned, or adverse attention from the authorities in the applicant allowing Catholics to meet at the applicant's [business].

Harm based on being a practising Catholic

64. In the hearing, the applicant confirmed that he feared harm based on practising as a Catholic. He said that he started practising as a Catholic in China in 1997 or 1998. The Tribunal asked the applicant if he had been practising in Australia and he said he had been to a church in [Suburb 1]. When asked how often he attended, the applicant said that he went there every week a few years ago. The applicant said that because he has [a medical condition] he does not go to church now.
65. The Tribunal explored why [this medical condition] would prevent the applicant from attending church. The applicant had indicated in the hearing that he spent a lot of time [undertaking a leisure activity] in Australia. The Tribunal asked the applicant why, if he could [do that leisure activity], he could not go to church. The applicant referred to his health difficulties.

66. The Tribunal put to the applicant information pursuant to the procedural requirements of s.424AA. That information included information in the written application as part of the first protection visa application in which the applicant said that he had attended an underground house church in his village since 1990. That information included information in the interview with the delegate of the Minister with respect to the first application in which the applicant said that he had become a Catholic in China in 1990 and had been baptised in China. That information included information in the hearing of the Tribunal with respect to the first Protection visa application, as recorded in the decision of the Tribunal, in which the applicant claimed that he was not a Catholic in China, had never attended any Catholic gathering in China and had not been baptised in China. That information included information in the interview with the delegate of the Minister with respect to the current application in which the applicant said that he had been a Catholic in China since 1990.
67. The Tribunal indicated to the applicant that this information was relevant because he had provided inconsistent information as to whether he had been a practising Catholic in China, and had been baptised in China. The Tribunal noted that the consequence of relying on this information could be to question the applicant's credibility concerning claims of being a practising Catholic in China, and to question his credibility more generally.
68. In response, the applicant said that he told the Departmental officer that he did not practice in China because he was unhappy with the officer who had disbelieved his claims about land compensation issues. He deliberately said, as a result, that he was not a practitioner in China. The Tribunal noted that, in fact, he had made that claim in the Tribunal hearing with respect to the first application. In response, the applicant said that because there is a restriction on practising in China he did not say he was baptised. He said it was secret and that the government monitors it and it is not allowed by the Chinese government.
69. The Tribunal put to the applicant certain information pursuant to the procedural requirements of s.424AA of the Act. That information included information in the first written Protection visa application in which he claimed that he went to the [Suburb 1] Church the week before he was detained (the applicant was detained in July 2009). It included information in the interview with the delegate with respect to the first application [in] October 2009 in which he indicated that he had been attending the church at [Suburb 1] for three weeks. It included information in the hearing of the Tribunal with respect to the first application, as recorded in the decision of the Tribunal, in which the applicant indicated that he started attending the church after he was released from detention in July 2009.
70. The Tribunal noted to the applicant that this information was relevant because it indicated at least three inconsistencies in his evidence over time as to the timing of his Catholic Church attendance in Australia. It noted that the consequence of relying on this information could be to question the applicant's credibility about church attendance in Australia and to question his credibility more generally.
71. In response, the applicant said that this was when he first arrived in Australia and he did not know the directions. He did not know anyone to provide introductions. The Tribunal clarified that it was seeking a response as to inconsistencies as to when the applicant was attending church. The applicant said that it has been many years ago. He can only say that he went to the [Suburb 1] church but cannot remember times.
72. The Tribunal put to the applicant pursuant to the procedural requirements of s.424AA information from the interview with the delegate of the Minister with the respect to the current application, in which the was not able to name the priest at [Suburb 1] Church. He indicated that there would be no one at the church including the priest who was in a position to provide a supporting letter indicating the applicant's attendance as he just sat and listened. The Tribunal also put information from the hearing of the Tribunal with respect to the first

application, as recorded in the Tribunal decision, which records that the applicant had no knowledge of what sacraments were, or how many there were, and claimed that the head of the Catholic Church on earth was called Maria. This was in the context of the applicant claiming that he had been attending preparation classes. It was noted that this information was relevant because it does not seem consistent with the applicant's claims to have been a practising Catholic since 1990 and to have been frequently attending church in Australia, and attending preparation classes. It noted that the consequence of relying on this information could be question the applicant's credibility about his being a committed member of the Catholic church both in Australia and in China.

73. In response, the applicant said that there were many people at the church and no one introduced him, and they were speaking in English, and therefore no one would get to know him.
74. The Tribunal noted that the applicant had claimed to have attended preparation classes which would presumably have been in his own language and he would have got to have known people through them. The applicant said that after the introduction they stopped contacting him. (The Tribunal's assumption was based on the fact that, if he could not speak English, it is not plausible that he would be attending preparation classes in a language that he did not understand).
75. The Tribunal asked the applicant why he did not know what the sacraments were or who the Pope was if he had been a practising Catholic since 1990. The applicant indicated that he did not listen carefully to the questions that were asked.
76. When asked if the applicant would practice as a Catholic in China on his return, he said that it is in his heart. The Tribunal noted that the applicant had not been practising the last few years because of his [health] issues and asked what would change now. The applicant said a reason he did not attend was because the Department did not believe him and he lost his confidence. The Tribunal put to the applicant that it did not see why, if he were a committed Catholic, that view by the Department would stop him practising.
77. The Tribunal noted to the applicant that this fact might suggest that he had had some limited involvement in the Church in Australia as a ground to claim protection not because he had a belief in the church. The applicant responded by saying that he was reading the Bible.
78. The Tribunal assesses the evidence and makes findings on these issues.
79. The Tribunal does not consider that the applicant has been a credible witness in relation to claims of being a practising Catholic. He has given inconsistent evidence as to whether he was a practising Catholic in China or whether he was baptised in China or not. The Tribunal does not accept that the applicant would deliberately falsely state that he had not been a Catholic in China, thus undermining his claims, because he was unhappy with the questioner. The Tribunal does not accept that the applicant would not be truthful about his practice in China because the practice was banned by the Chinese authorities and the Chinese authorities monitor the situation. The whole point of the Protection visa process is to identify claims of harm. The Tribunal does not think the applicant would make statements that are directly contradictory of his key claims, if they were true.
80. The applicant has given three different accounts as to when he attended the church in [Suburb 1]. Whilst the Tribunal accepts that the applicant may have difficulty now remembering when he attended, he has previously given inconsistent evidence, and the Tribunal considers that is undermining as to the fact of, and frequency of, his attendance at the church in [Suburb 1].

81. In terms of the applicant not having supporting statements from individuals at his church verifying the applicant's attendance, the Tribunal accepts that in the early stages of attendance there may be difficulties in making connections, including as a result of language difficulties. However, the Tribunal is of the view that if the applicant had been a regular attendee he would have built up a network of other Chinese worshippers, and the priest, who would be able to verify the applicant's attendance.
82. The applicant's earlier claims that he was attending preparation classes would suggest a reasonable degree of involvement and connection with other individuals in the church. The Tribunal considers that the applicant in the hearing sought to distance himself from such an earlier claim by stating that he was introduced to the course but never continued due to not being contacted.
83. The applicant's inability in previous evidence to explain the sacraments or to demonstrate a knowledge of the head of the Catholic Church is not consistent with the applicant having being a long-standing practitioner of the church. The Tribunal is not persuaded that this was because the applicant did not understand the relevant questions. However, the Tribunal does acknowledge that the applicant had previously provided evidence demonstrating some limited knowledge of Catholic beliefs. He knew a little about Jesus and the name of Mother Mary and the significance of Easter and how many gospels there were.
84. The applicant's failure to attend church over the last few years, as indicated in the hearing, is not consistent with the applicant being a genuine practitioner. The Tribunal does not accept that the applicant would be prevented from attending church because he was suffering from [his medical condition]. The applicant indicated in the hearing that he [undertakes a leisure activity] regularly, which would suggest a reasonably robust constitution, and certainly one that would be in a position to attend a church service.
85. The Tribunal does not accept that, if the applicant were a genuine practitioner, a view expressed by a Departmental officer that he was not telling the truth in relation to his claims would dissuade him from attending church. The Tribunal is more inclined to think that the failure to believe the applicant caused him to stop undertaking an activity which he was doing to provide a foundation for his claim for protection, rather than as a result of being an adherent to the Catholic faith. In the hearing, the applicant said that, if given the chance, he will attend church regularly.
86. Considering all of the evidence, the Tribunal does not accept that the applicant was a practising Catholic in China or that he attended an underground church or any other Catholic, or other, church. The Tribunal does not accept that the applicant is a committed adherent of the Catholic faith or regular church attendee. The Tribunal considers that the applicant has attended some church gatherings, at [Suburb 1] in Sydney. The Tribunal considers that the applicant's involvement in the Catholic Church in Australia has been done as a means of furthering his application for protection, not as a result of a genuine belief.
87. The Tribunal is not satisfied that the applicant would be a practitioner of the Catholic Church, in either a registered or underground church in China, should he return to China.
88. As indicated in the previous section of this decision, the Tribunal does not accept that the applicant was of adverse interest from authorities in China due to meetings of the Catholic Church occurring at a [business] that the applicant owned.
89. The adverse credibility findings in relation to this issue are buttressed by the delay in the applicant in seeking protection and the adverse credibility findings in relation to the land compensation and [business] issues.

90. The Tribunal is not satisfied that there is a real risk of the applicant facing significant harm on return to China due to any past practice of the Catholic faith either in China or Australia, or on the basis of any future practice of the Catholic faith in China (on the basis that the applicant would not so practice).

Conclusions

91. In summary, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk of him suffering significant harm for any of the reasons claimed, or for any other reasons.
92. 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 complementary protection criterion. Therefore, the applicant does not satisfy the criterion set out in s.36(2)(aa).
93. 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

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

David McCulloch
Member