

1215311 [2013] RRTA 866 (10 December 2013)

DECISION RECORD

RRT CASE NUMBER: 1215311
DIAC REFERENCE(S): CLF2012/102915
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Ruth Cheetham
DATE: 10 December 2013
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. 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China, applied to the Department of Immigration for the visa on 21 May 2012 and the delegate refused to grant the visa on 10 September 2012.
3. The applicant appeared before the Tribunal on 5 June 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant had been represented by a migration agent at the time his review application was lodged, but that agent has been de-registered and the applicant was unrepresented at the time of the hearing.

THE APPLICANT'S CLAIMS

4. The applicant says that he is at risk of harm by the Chinese government because he is a Christian.
5. The applicant's claims have been advanced in his protection visa application, a unsworn written statement in English dated 20 May 2012, and a photocopy of his passport which accompanied it. His then migration agent sent a letter to the delegate prior to the interview stating that the applicant attends, in Australia, a Jehovah's Witness Church in [suburb]. The applicant attended an interview with the delegate. He gave evidence in the hearing before me. Nothing further has been provided.
6. In his written statement, the applicant claims that he went to Guangzhou in January 1991 to work and he met a Christian there, Sister [name deleted], who invited him to attend her "house church" gatherings, which he did often. [In] May 1995 Sister [name] baptised him at her home. In April 1996 the house church members were at a gathering at Brother [name]'s home when the police found them. All seven attendees were taken to the local police station where their details were recorded. The applicant was detained for a day then released. The police told his employer that he had attended a "cult" activity, and he was sacked.
7. The applicant returned home in August 1996, where he talked about God to his parents and three friends, all of whom became believers. The applicant held house church gatherings at his and the friends' homes but the gatherings had to be secret because they were not permitted by the local government.
8. [In] January 2002, when ten brothers and sisters (of the church, not siblings) were gathered at his home, the police came. The applicant admitted he was the organiser. He was detained for 10 days and fined RMB3,000. While detained, the police beat him and accused him of disordering the safety of society.
9. After his release, the police often came to his home to check on him, and he also had to report to the police. His [child] was bullied at school and his wife asked him to give up his belief but, when he refused, they divorced. The applicant then lived with his parents, and they were

monitored by the police, which made his parents afraid. The police kept coming to the house so the applicant decided to go overseas.

10. The applicant's passport was issued [in] November 2011. His Australia visa, a business (short stay) visa class 456, was granted [in] February 2012. The applicant arrived in Australia [in] February 2012. His business visa was to expire [in] May 2012 but he lodged his protection visa application [in] May 2012 and was granted a bridging visa in connection with that application.
11. At the hearing, the applicant said that in China he was a Christian but in Australia he attends a Jehovah's Witness church. At first he could not remember the name of his church and called it the "kingdom gathering" then said it was Jehovah's Witness. He said he attends the gathering every Sunday at 2pm and every Saturday they have a gathering too, that his "teacher" takes him in his car and it is in [suburb]. He said he started attending in June 2011 (which should be 2012 because he did not arrive in Australia until February 2012). He said he had been looking for a church since he arrived in Australia and this is the one he found. I asked if he attended Jehovah's Witness churches in China before he came and he said in China he was a Christian and he attended family gatherings which were "under the table" because of the persecution. I asked which denomination of Christian he was in China and he said it was just family gatherings. I suggested that most family churches in China are Protestant and asked if his was Protestant, and he agreed.
12. I asked the applicant why, if he had been a Protestant in China, he had joined a Jehovah's Witness congregation in Australia. The applicant said it was the church he found, and he was not familiar with Australia when he arrived. I asked if he had been baptised into his Jehovah's Witness church and he said he has not because he has only been attending a short while and he is not good enough yet.
13. I asked the applicant to explain the differences between Jehovah's Witness beliefs and the Protestantism he practised in China. The applicant said that overall they are the same, there is not much difference. I noted that he had claimed to have been a Christian in China since 1995, which was 18 years, and as an organiser and proselytiser, to which the applicant agreed. I suggested that this would lead me to expect him to have a wide knowledge of Christian belief. The applicant responded that in China it is all in secret and that at most there were 10 people at gatherings. I asked the applicant whether he could identify some Christian sacraments other than baptism, to which he responded that he said he has not been baptised. I asked whether he knew what sacraments there are in Christian belief and he said they were to believe in God, in God's Son, and in the Holy Spirit. I explained what the term means, and the applicant said that he listens to his Bible teacher.
14. I repeated that he claimed to have been a practising Christian since 1995 in China, and asked whether he knew the difference between the Old and New Testaments. The applicant responded that the New Testament is closer to our lives and the Old is the Bible knowledge from before. He said he has a Bible and he reads it. I asked him to nominate his favourite Bible story and he said the four Gospels. I asked again, indicating that I was referring to parables. The applicant responded that St John said at 6:36 "I am the bread of life, come to me and you will not be hungry or thirsty". I asked if he had a favourite miracle from the Bible and he said it is that we have to serve God, God's Son and the Holy Spirit. When I asked where in the Bible that appeared he said it was in the Gospel by Matthew, that there are Gospels by Matthew, John, Luke and Mark. He said, in response to my further questions, that

there were 12 disciples, “Peter, John, Judas, Simon, Matthew, et cetera” but could not name the others.

15. I asked the applicant why he attended a Jehovah's Witness church in Australia and he said it was because he believes in God. I noted that every Christian believes in God and asked why he attended a Jehovah's Witness church in Australia if in China he had been a Protestant. The applicant said that in Australia he had no friends, that when he first came he tried to find a church and this is the one he found. I noted that he said the Jehovah's Witness gatherings he attends are a 20 minute drive by his teacher from his house, and asked why he did not find a church closer to where he lived. The applicant said that a friend had introduced him to the Jehovah's Witness church, that he could not find one because he does not speak English. When I noted that there are Chinese language churches in [Australia], and Chinese language services in other churches in [Australia], the applicant responded that he had already found the Jehovah's Witness church through his friend.
16. I suggested to the applicant that because the Jehovah's Witness church was not his church in China, and he did not try to find a Protestant church in Australia, it would be open to me to conclude that he was not in fact a Protestant in China before coming to Australia. The applicant responded that in China there are not many people who believe, and that in his area it is “very very rare”.
17. I asked the applicant whether he had any documentation or other material which might support his claim to have been detained on three occasions in China. the applicant said he has documents in China about his arrests, being “scolded” and being beaten. I asked why he had not obtained them and he said he did not bring them with him to Australia, that he did not know he had to. I pointed out that in the forms he completed for his protection visa application, there are several places where applicants are directed to provide any supporting documentation or material they may have, and the passport responded that he did not think if was that important so he did not place much emphasis on it. I asked whether the delegate had asked, during the interview, whether he had supporting material and he said at that time he told the delegated that he did not bring the documents from China. I asked what else he had told the delegate and he replied “nothing”. I told the applicant that that interview had been recorded and that a copy of the recording was available to me, and asked again what he had told the delegate about documents to support his claim or being detained on three occasions. the applicant then said he could not remember.
18. I put to the applicant pursuant to s.424AA that there was information he had provided orally to the delegate which would be the reason or part of the reason for me affirming the delegate’s decision. I explained why this information was relevant to my assessment of his credibility and that therefore it was relevant to whether I believed that his claims to have been detained in China as a Christian on three occasions, and the other instances of harm he claimed, were true or whether he was making them up. The applicant indicated that he understood. I also informed him that he could ask for time to consider his response, but the applicant responded immediately.
19. The information I put to the applicant for response was that at the interview with the delegate he said that he would get his parents to send the documents he had which corroborated his claims to have been detained three times, but that today he told me that he had not said this to the delegate. The applicant said that he did not know documents were important. I noted that although his agent provided information about the actual Jehovah's Witness church he said he was attending, but the name of which he could not recall in the interview, he had not

provided the documents about his detentions. I noted that ten months had elapsed since his interview with the delegate but he had not obtained those documents. I put to the applicant that it was open to me, in the context, to conclude that there were in fact no such documents because although he knew at the interview that such documents were significant to his claims, he had told me that he did not know they were important. The applicant responded that if I wanted those document he could get them. He said that he did not know that this particular hearing would want to have those documents from China.

20. I then put to the applicant that I had some other concerns about whether he was telling the truth about his experiences in China. I noted that he had not left China until almost 20 months after his last claimed detention, which did not appear to be consistent with a fear of persecution. The applicant said he did not have a passport or visa. I asked why he had not taken steps earlier to obtain a passport and visa and he responded that at the time he did not know.
21. I put to the applicant that once he had arrived in Australia, he had waited almost three months, or three days less than the total validity period of his Australia visa, before seeking protection and that this also did not appear to be consistent with a fear of return to China. The applicant said that he did not know English, that it was through friends, and that he saw in a Chinese newspaper that he could use a migration agent to make a protection visa application for him.
22. I put to the applicant that his Australia visa had been granted to him [in] February 2012 but that he did not depart China until [February] 2012 and asked why he had not left immediately. The applicant said he still had to buy his ticket and make arrangements.
23. I put to the applicant that the manner of his departure from China, and the delay in lodging his protection visa application, did not suggest there was any urgency in his attempts to seek protection, that it appeared to have been planned and orderly, and that this was in the context of his claim to have been under constant police monitoring. The applicant said that in China you have to wait to get the visa before you can get the airplane ticket, and that the police did not know when he was leaving.
24. I put to the applicant the independent information available to me that persons of adverse interest to the police in China would have difficulties obtaining a passport¹. The applicant

¹ Being able to depart China on travel documents in one's own name, passing through the security checks at the airport, indicates that the person is not of adverse interest to the Chinese authorities. The information indicated that it was likely that people who were being investigated but for whom a formal arrest warrant was yet to be issued would be on alert lists which are connected to Chinese identity cards as well as to passports and operated at railway stations as well as airports and border crossings: Immigration and Refugee Board of Canada 2009, *CHN103133.E – China: Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between PSB offices across the country; whether a link to a police computer network is available at international airports in China (2006 - May 2009)*, 2 July; Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1183 – China: RRT Information Request: CHN36990*, 10 August; Immigration and Refugee Board of Canada 2008, *CHN102869.E - China: Exit controls and security measures at airports in China for mainland citizens travelling overseas and to Hong Kong*, 8 July; DIMIA Country Information Service 2006, *Country Information Report No.06/42 – China: Failed asylum seeker return decision*, (sourced from DFAT advice of 7 August 2006), 25 August; DIMIA Country Information Service 2006, *Country Information Report No.06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November.

See also: DIAC Country Information Service, 2006 *Country Information Report N.06/65- China: Passport and exit arrangements* (sourced from DFAT advice 8/11/06), 8 November, which states in part: "Chinese authorities check all outgoing passengers against an 'alert list'; however, DFAT was not aware of how comprehensive the

said that it was quite difficult to get his passport. I asked what problems he experienced and he said he got it through friends, paying money. I noted that in his protection visa application form he said that he left China legally and that he had no difficulty obtaining his passport and there was no mention of this in his written statement. The applicant repeated that he got his passport through friends. I put to the applicant that it was open to me to conclude that he was making up this claim in order to accommodate the independent information I had put to him which was contrary to his claim to have been of adverse interest to, and under constant monitoring by, the police. The applicant denied this.

25. I asked how much he had paid for his passport and he said he had to borrow over RMB100,000 from friends. He said that he has only repaid RMB40,000 of that sum. I asked whether he works in Australia in order to pay off that debt and he said yes. I asked how he supports his [child] in China and he said that his parents are old now so he pays for his [child] to go to school, and he also sends money to his parents to support them if they do not have enough. I put to the applicant that it was open to me to conclude that he came to Australia to earn money for his family and his debts, and not because he was a Christian suffering persecution in China. The applicant denied this.
26. I noted that he had been able to leave China legally on a passport in his own name. The applicant said that he was persecuted but that it was not a big crime. I noted that he claimed to have been detained three times, that he had a significant arrest and detention record. The applicant responded that he had to write a letter of regret, and that they did not allow “us” to learn the Christian religion.
27. I explained to the applicant the effect of s.91R(3) of the Act, that I had to disregard any conduct engaged in by him in Australia, which included his claim to be attending a Jehovah's Witness church, unless he satisfied me that he had engaged in that conduct otherwise than for the purpose of strengthening his protection claims. The applicant responded that I could only ask his Bible study teacher to prove this.
28. I asked what he thought would happen if he returned to China. He said that if he keeps spreading the Gospel he will be arrested again.

THE ISSUES FOR RESOLUTION

29. The issue which is dispositive of this matter is whether the applicant is telling the truth and, therefore, whether his claimed fear of harm is genuine.
30. I am satisfied that the applicant has fabricated his claim to have been a Christian in China and to have experienced harm in China prior to his departure. I am satisfied that the religious activities in which the applicant has engaged since he arrived in China were undertaken solely for the purpose of strengthening his claims to protection and were not engaged in genuinely, and I am satisfied that the applicant does not have a genuine fear of harm (whether

list is. DFAT stated that Chinese citizens subject to arrest warrants would be on the alert lists, and that it was likely that people under investigation (but for whom an arrest warrant is yet to be issued) would also be on the lists. DFAT advised that alert lists are connected to Chinese identity cards as well as passports”.

In addition, sources indicate that there exists a *zhongdian renkou*, a register of people who have been released from prison, re-education through labour and drug detention, and this register is comparable to a “usual suspects” list used to identify people the police should keep tabs on: US Department of State 2011 *2010 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)* 8 April, at 21; Biddulph, S. 2007, ‘State Control in China Seminar’ (presentation to the Refugee Review Tribunal).

Convention-related harm, for the refugee criterion, or “significant harm” for the complementary protection criterion) if he were to return to China.

THE APPLICABLE LAW

31. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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. The last does not arise on the facts of this matter.
32. There are four key elements to the Convention definition of a refugee but central to my decision in this matter is that an applicant must genuinely fear persecution. The mere fact that a person claims fear of persecution for a particular reason does not establish the genuineness of the asserted fear, or that it is “well-founded”, or that it is for the reason claimed. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case must be supplied by the applicant herself or himself, in as much detail as is necessary to enable factual findings to be made. An administrative decision maker is not required to accept uncritically the claims made by an applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).
33. 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’).
34. In accordance with Ministerial Direction No. 56 made under s.499 of the Act, I am required to take into account policy guidelines prepared by the Department, being *PAM3 Refugee and Humanitarian – Complementary Protection Guidelines* and *PAM3 Refugee and Humanitarian – Refugee Law Guidelines*, to the extent that those guidelines are relevant to the decision under consideration.

MY FINDINGS

35. I find that the applicant has fabricated his claims to have been a Christian in China and to have experienced harm in China prior to his departure.
36. As is apparent from the description of the applicant’s evidence at the hearing, he does not demonstrate the level of knowledge and familiarity I would expect of a person who had been an active Christian for 18 years, and who was also a proselytiser and organiser for his church in China. He has not provided any evidence, other than his own claims, to corroborate his involvement in the Christian church in China prior to arriving in Australia.
37. The applicant was able to obtain a passport in his own name and to depart China on that passport, which the independent information available to me indicates he was not of adverse interest to the authorities. This casts doubt on the truthfulness of his claims to have been

detained on three occasions, most recently May 2010, and to have been obliged to report to the police and having been monitored by the police up to the time of his departure. The applicant's claims of arrest, detention and fines paints a picture of a significant and long standing record with the police, yet he was able to obtain the necessary security clearance to obtain a passport and he was able to depart China on that passport, in his own name, without having any difficulty with security.

38. When I put this inconsistency to the applicant, he raised a new claim and a very significant one: That he had been obliged to obtain his passport through friends and by paying RMB100,000 for it. This is ten times the amount of the largest of the two fines he specifically mentions in his written statement that he says he had to pay to be released from detention, and it is the most recent payment he claims to have made, the most proximate to when he drafted his written statement of claims. Not only did the applicant make no mention of paying such a sum for his passport in his written statement but he indicates the opposite in his protection visa application, that he left legally on a passport he had no trouble obtaining.
39. As I put to the applicant at the hearing, his arrangements for departing China have the appearance of an orderly departure planned in advance rather than a departure made at the first opportunity and in a manner consistent with fleeing from a genuine fear of further persecution.
40. The applicant's delay in lodging a protection visa application on arrival in Australia is also not consistent with a genuine fear of return. The delay was not long in absolute terms, but it was for the entirety of the period of validity of his visa less three days. The applicant did not seek protection until three days before his visa was to expire.
41. The applicant gave conflicting evidence about the availability of documentation about his claimed periods of detention, telling the delegate he could obtain it from his parents, and telling me that he did not say that to the delegate. Having been alerted by the delegate to the value of corroborating documents, a matter about which he should in any event have been cognisant, he made no effort in the ensuing 10 months prior to the hearing before me to obtain such documentation. I do not accept his explanation that he did not realise it would be important.
42. In the absence of any such supporting evidence from the applicant, and given the inconsistencies in his evidence, and the conflicts with the independent information, together with the applicant's evident lack of familiarity with basic Christian doctrine, I find that the applicant was not in China a Christian and that he was not, therefore, detained or otherwise harmed by reason of a religious belief or religious activities. I am satisfied that the reason why the applicant was able to depart from China on a passport in his own name is because he was not of any adverse interest to the Chinese authorities at the time that he left or at any time previously. I reject as a late fabrication the applicant's claim to have paid a large sum of money, through friends, to have obtained his passport.
43. I also find that the applicant has fabricated his claims to have become a Jehovah's Witness in Australia and to fear harm in China for this reason if he returns.
44. I am satisfied that, the applicant's involvement in Jehovah's Witness being for migration reasons and not for a genuine religious belief (see my findings below), he will not engage in Jehovah's Witness religious activities on his return to China. Accordingly, I find 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, there is a real risk that he will suffer significant harm.

45. The applicant's evidence at the hearing before me indicated that he has virtually no familiarity with the beliefs in the Jehovah's Witness church. He stated that the Jehovah's Witness faith is overall the same as Protestantism, that there were no differences between the two. This reinforces my finding that he was not a Christian in China (it shows a lack of familiarity equally with the tenets of Protestantism), but it also gives strong support to my finding that he does not have any genuine interest in or belief in or familiarity with the Jehovah's Witness church, which has a number of tenets which are starkly different to other Christian religions, and which considers all present day religions (including Protestantism) to be false².
46. I am not convinced that the applicant has a depth of commitment to engaging in religious practise with the Jehovah's Witness church which I would expect of a person who has in the past been persecuted for religious beliefs and, having fled, is in a country where religious activities are legal and accepted.
47. The applicant did not provide any supporting evidence of his involvement in the Jehovah's Witness church, such as from other congregants or the "teacher" he claims drives him to the gatherings.
48. I note the applicant's evidence too, that he works in Australia in order to support his [child] in China and his parents.
49. Section 91R(3) of the Act provides that, in determining whether a person has a well-founded fear of persecution for a Convention reason, I must "disregard any conduct engaged in by the person in Australia unless (b) the person satisfies [me] that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol".
50. I am satisfied that the sole reason why the applicant has engaged in any form of activity with the Jehovah's Witness church, if in fact he has and that is doubtful, is in order to strengthen his protection claims and thereby to remain in Australia and earn money to remit to his family in China.
51. The applicant has not satisfied me that he engaged in religious conduct in Australia otherwise than for the purpose of strengthening his claim to be a refugee and, thereby, remaining in

² As to the tenets of the Jehovah's Witness faith, see, for example, the Jehovah's Witness website www.watchtower.org

For a useful overview, see Wikipedia 2013 "Jehovah's Witnesses" (accessed 9 December 2013). Wikipedia is a Web-based free-content encyclopaedia which is compiled collaboratively by volunteers. Wikipedia articles can be useful introductory reading for a new topic, and the list of references in Wikipedia articles can provide useful leads to reliable sources.

Many Wikipedia articles can be highly reliable, especially in regards to non-controversial historical or factual matters, and Wikipedia uses preventative measures against vandalism, bias and inaccuracy. However, the collaborative nature of Wikipedia makes it vulnerable to contributors with overt or covert agendas, and Wikipedia articles are thus prone to unacknowledged bias.

For more information, see the recommended background reading available in the Wikipedia Topical Information Package.

Australia. Pursuant to s.91R(3), I disregard this conduct in determining whether the applicant has a well-founded fear of persecution for a Convention reason.

52. I am satisfied, on the basis of the evidence before me, that the applicant has fabricated his claims of harm, and that he does not have a genuine fear of return to China.
53. I have considered the alternative criterion in s.36(2)(aa). Having found that the applicant's fear of harm is neither genuine nor well-founded, I find that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia, there is a real risk that the applicant will suffer significant harm.

CONCLUSIONS

54. For the reasons given above, I am 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). I have considered the alternative criterion in s.36(2)(aa). Having found against the applicant's genuineness about his claim to fear harm in China, and having disregarded his religious activities in Australia since his arrival pursuant to s.91R(3) of the Act, there is nothing which remains which could support a finding that he faces significant harm in China for this or any other reason.

DECISION

55. I affirm the decision not to grant the applicant a Protection (Class XA) visa.

Ruth Cheetham
Member