

1502620 (Refugee) [2015] AATA 3464 (29 September 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1502620
COUNTRY OF REFERENCE:	China
MEMBER:	Roslyn Smidt
DATE:	29 September 2015
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 29 September 2015 at 4:39pm

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, arrived in Australia [in] December 2013 and applied for the visa [in] March 2014 and the delegate refused to grant the visa [in] January 2015.

RELEVANT LAW

3. 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

4. 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).
5. 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.

6. 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.
7. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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

14. 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').
15. '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.
16. 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

17. 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.

CLAIMS AND EVIDENCE

Application to the Department

18. According to the applicant's protection visa application he is from in [Quzhou], Hebei Province, but has also resided in Beijing and Tangshan while [working]. He earned a monthly income of about 2,000 yuan.
19. In a written statement contained in his protection visa application, the applicant stated that he had left China because his family had breached the one child policy which had resulted in a physical altercation with local officials and he feared that these officials would take revenge against him because of this if he returned to China.
20. The applicant stated that he had married in 2002 and his wife had given birth to two [children], one in 2004 and the other 2007. At the time of the second birth the applicant and his wife were working away from their hometown and therefore did not face immediate problems. However, when they returned home to celebrate Chinese New Year in early 2011 [Chinese New Year fell on 3 Feb 2011], local officials became aware that they had breached the rules and imposed a fine of 15,000 RMB which the applicant could not afford to pay.
21. Following this the applicant travelled to [Country 1] to avoid problems and to earn money to pay the fine. A copy of the applicant's passport which was provided to the Department records that he travelled to [Country 1 and Country 2 in] April 2012. The applicant stated that while he was in [Country 1] he received a call from his mother who told him that the local authorities were demanding immediate payment of his fine and had detained his father as a hostage.
22. The applicant returned home and went to the local birth control office to negotiate with officials. At the office he became involved in an altercation with one of the officials and was injured while attempting to defend himself. The police came and took him to the local police station. They alleged that he had assaulted a police officer. He maintained that he had only been trying to defend himself, but the officials would not listen to him. He was released when his wife borrowed 5000 RMB from a friend and paid the police.
23. Following this, the applicant's father was released from detention. However, the police continued to come to the applicant's home to demand payment of the original fine. As a result the applicant decided to leave China to avoid further problems. Following his departure, the police have continued to visit his home and demand payment from his wife.
24. The applicant was interviewed by a delegate of the Minister [in] July 2014. I have listened to the recording of this interview.

25. When asked why he went to [Country 1], the applicant said he had gone to earn money to solve the problems he faced with family planning committee. He only remained for 7 or 8 days because his father was detained and he was forced to return. He said that he had only been to [Country 1] once.
26. When asked about his travel to [Country 2], the applicant said that he had gone to [Country 2] from Country 1] because the wages in [Country 1] were not very good. The delegate noted that he appeared to have travelled to [Country 1] twice. The applicant said that he had returned to [Country 1 from Country 2] to catch a flight home to China.
27. The applicant said that he had lived in a farming village in [Handan] City, in Hebei Province before coming to Australia. He worked on his farm and during the quieter times he went to work [in] Beijing and Tanshan. He sometimes went for six months and sometimes up to two years.
28. When asked for details of his whereabouts in the years before he came to Australia, the applicant said that he had mostly been at home until the incident, but in the last few years he had been drifting about. When asked for a more detailed account of his movements he said that had been in Beijing from 2008 until 2009. The delegate noted that he had indicated that he had left the village after the incident in 2011. The applicant said that even before the incident he had travelled outside Hebei to work for periods of up to two years and added that his second [child] was born while he and his wife were working away from home.
29. When asked about his work in China the applicant said that he had been at home on the farm unless it was quiet, when he worked elsewhere. When asked about his whereabouts immediately before coming to Australia he said that he had had been at home for one or two months.
30. When asked why he had come to Australia the applicant said that he had spent a lot of money on penalties and the authorities were still pressuring his family to pay more and he wanted protection. When asked why he had not gone back to [Country 2], the applicant said that the work was not very good and did not pay well in [Country 2].
31. When asked about the incident which led to his decision to leave China the applicant said that he had not returned to his village for two years after the birth of his second child. When he returned home with both children the family planning officials found out that he and his wife had breached the rules and came to his home and told him that he must pay a penalty. Despite the fact that both he and his wife both worked they had many expenses and they could not afford to pay the penalty. The applicant asked for 6 months to pay, but the officials would not agree. There was an argument and the applicant had a fight with an official from the family planning committee.
32. The applicant said this fight occurred in 2011, when his younger [child] was [age] years old. The delegate noted that this was at odds with his earlier statement that he had returned home when his second child was [younger]. The applicant said that [age] years was a colloquial expression and could refer to a longer period of time.
33. When asked to confirm that he had not returned home for four years following the birth of his second child, the applicant said that he had returned for short periods to carry out tasks on the farm, but his wife and children had not returned with him.
34. When asked exactly when the problems relating to his breach of family planning rules occurred, the applicant said he had returned home in mid- 2011, but then added it was at the time of the spring festival. When asked if this was the same as Chinese New Year, he said that it was Spring Festival and added that he had returned home [in] December according to

the lunar calendar and remained at home until the middle of the first month. When asked he confirmed that this was in January 2012. He said that this was when the family planning officials came to his home and asked for money.

35. The delegate noted that the applicant had previously stated that the incident occurred in early 2011, at the time of Chinese New Year 2011. The applicant said that the incident occurred in 2011, during Spring Festival, which was in the New Year period, [in] January according to the lunar. Nobody was working at the time. The applicant was asked why he had previously stated that the incident occurred in 2012. The applicant said he had remained at home from 2011 until 2012, then left. When asked where he had gone in 2012, he said that he had travelled to [Country 1 and Country 2] to earn money to pay the penalty.
36. The applicant was asked what happened when the local officials came to his house to ask him to pay the penalty for breaching family planning rules, and in particular what happened after he asked for 6 months to pay the fine. The applicant said that he had not worked during the period in which he was negotiating regarding payment of the fine. He said that the officials had refused his request for 6 months to pay the fine and had asked him to sign a contract. He refused to sign the contract and shortly after that he left for [Country 1] to seek work. He found that the wages in [Country 1] were low, so he went to [Country 2]. Shortly afterwards he learned that his father had been detained, so he returned to China. His father was held for about 7 days. He was released as soon as the applicant returned from overseas. He did not have to pay a fine to secure his father's release.
37. After returning home the applicant went to the family planning office where he had an argument with an official who punched him. The applicant retaliated by punching the official, but only to defend himself. After that the police became involved. Officials and police protect each other so the applicant was arrested. The police went to his family and told them they would have to pay to bail him out. The applicant could not recall the date of his arrest, but said he was detained for 8 days and his wife had to borrow 5,000 yuan to secure his release.
38. When asked why he had not borrowed money to pay for the one child penalty, the applicant said that he did not have any money and had wanted an extension so he could work for six months and pay the fine. He also said that he hoped to avoid paying the fine.
39. The applicant was asked why he had not left China more immediately after his release from detention. He said that he had sustained some injuries and had to stay home to recover and he also had to care of some things at home. The delegate observed that he did not appear to have needed to leave urgently. The applicant said that the police came regularly to his home to ask for the money and sometimes family planning people would also come and look like they wanted to "start something".
40. When asked if he had experienced any problems obtaining a passport, the applicant said that there were many delays and he had to pay 1,000 yuan instead of the usual fee of 300 yuan. He said that he had no difficulty leaving on his trip to [Country 1] or when he returned to China. He said that he believed that this was because his details would not have been held in Beijing.
41. When asked if he could relocate to Beijing, he responded that this would not be possible because it was still in China, adding that while the airport officials would not have his details, other officials in Beijing would.
42. The delegate noted that the applicant had previously lived in Beijing and asked why he could not return. He responded that he believed the Chinese government was "a mess" and he did not want to remain there. He added that any time he had dealings with the government it felt like they were making things difficult for him and that they were repressing him.

43. The applicant was asked if he had any difficulties leaving China for Australia. He said that he had no problems.
44. The applicant was asked about his injuries he had suffered during his fight with family planning officials. He said that he had swelling in his arm and a fracture in his leg. He said that he had received these injuries in between mid and late January 2011. The delegate observed that this was before he went to [Country 1]. The applicant said that he had gone to [Country 1] in 2012. The delegate asked why injuries sustained in 2011 would have had any impact on his ability to leave China for Australia before 2013. The applicant said that there were many things inside the family which needed to be resolved and he still needed time to recover.
45. The delegate observed that the applicant had not previously claimed that he had suffered a fracture and asked why he had not included this in his initial application. He said that he did not realise he need to provide that level of detail.
46. The applicant was asked what he believed would happen to him if he returned to China. The applicant said he believed that he would still face trouble, adding that he had caused injury to the other party and they had not reached an agreement on payment of medical costs, so if he returned he would be targeted. He said that he believed he would be vulnerable because lower class people cannot win against those of higher status. When asked to explain the medical expenses he had been required to pay, he said that they were not exactly medical expenses. The person he injured demanded 20,000 yuan. He offered 15,000, but the other party refused to budge. The delegate asked why he had not mentioned these expenses previously. He responded that he did not think it was an important detail.
47. The applicant was asked what he meant when he said that he feared local authorities would seek revenge if he returned to China. He said that officials continued to visit his home and ask his wife for money to pay the fine which had been imposed on him. The delegate observed that it did not appear to be remarkable that they were asking for payment of a fine. The applicant said his treatment was not normal as officials had first agreed to allow him 6 months to pay the fine, but retracted this agreement the following day and came with other officials demanding payment in two days. He explained that they were worried that he would leave the area and they would never find him again. The delegate observed that this appeared to suggest he could avoid problems by leaving the area. He responded that this would only be a temporary measure.
48. The delegate advised the applicant that the length of time the applicant had remained in China after being fined for breaching family planning rules and the fact that he was able to travel to and from [Country 1] without difficulty appeared to suggest that he was not fleeing persecution and was not in fear of his treatment in China. The applicant responded that he would not have left his family and come to Australia if he had not been frightened.
49. The applicant said that he had paid about 7,000 yuan of the fine. He said that he had borrowed this from a relative and added that he would not have been able to leave if he had not done this. He said that he was working in Australia and sending money home, but his family was still heavily in debt.

Application for review

50. A copy of the delegate's decision record was provided to the Tribunal at the time his application for review was lodged.
51. The applicant attended a hearing of the Tribunal on 16 September 2015. The hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The

applicant was represented in relation to the review by his registered migration agent. The applicant's representative did not attend the hearing.

52. The applicant was asked about the birth and registration of his [children]. He stated that his older [child] was born and registered in [their] home village in Hebei Province. His younger [child] was born in a small hospital in Tangshan. Local officials in the applicant's home village learned of the birth and imposed a fine of 8,000 yuan. Shortly after this the applicant's father was detained to pressure the applicant to pay the fine. He was released when the applicant agreed to pay the fine. The fine was paid within 2 weeks of the birth of the applicant's second child.
53. The applicant returned to his home village about 3 months after the birth of his second [child] to arrange [inclusion] on the family registration documents (hukou). Local officials refused to include the applicant's [child] on the hukou and the applicant became involved in an exchange of insults and abuse with an official. The official pushed the applicant who pushed back, the official then punched and kicked the applicant, who responded by knocking him to the floor and punching him several times. Some people who were nearby intervened. The official was taken to another place and after a couple of minutes the applicant returned to his family home in the local village.
54. When asked if anyone had been injured during the fight the applicant pointed to a small mark on his [arm] which he said was the result of being hit with a heavy ruler. He added that the wound had been dressed at a local clinic, but said that he had not required further treatment. To the best of his knowledge the official was not injured.
55. The applicant said that he remained in his home village following this fight, although he continued to work away from home for varying periods. His wife and children were sometimes with him and sometimes stayed with relatives in the same county.
56. The applicant said that he was eventually able to register the birth of his second in his home village when the child was about [age] years old. He said that he had to talk to the officials many times to achieve this and also stated that he had used contacts to assist him achieve this goal.
57. When asked, the applicant said that he had not experienced problems with family planning officials, police or any other officials in China following his altercation with the family planning official in 2008 following the birth of his second [child]. The applicant was then asked why he had come to Australia. He said that he had experienced problems with local officials every two or three days. The Tribunal observed that this appeared to contradict the evidence he had just given. He responded that the confrontation in 2008 was the only time he had experienced problems of that nature, but said that local officials would not give him entitlements such as a food allowance which was given to others.
58. The applicant was asked to describe the worst problem which he had faced with local officials following the altercation with family planning officials in 2009. He said that others received 80 yuan, but he only received 60 yuan. Later in the interview he added that he had applied twice in 2009 for permission to build a house on his land, but this had been refused. He said that other people who applied for this permission received it a short time.
59. The applicant was asked how he was able to support his family. He said that he made a living by casual work and working on his family land.
60. The applicant was asked if his children attended school. He said that the older child attended a local school, but the younger child did not. When asked why his younger [child] was not at school the applicant said that the case was not over and there were problems with fines and

registration. I advised him that it was my understanding that once the fine was paid and his [child] was registered [the child] should have been able to attend school. The applicant said that this was correct, but there were problems because of the fight. He said that he could register his younger [child] at a school in another area, but not at the local school. When asked, the applicant said he had never attempted to register his younger [child] at the local school.

61. The applicant was asked what he feared would happen to him if he returned to China. He responded that his life would be very difficult, adding that his parents were not getting a pension to which they were entitled because of his involvement in the fight with the local officials. When asked what he feared would happen to him personally, he said that he dared not think.
62. The Tribunal observed that the applicant had remained in China for about five years after the fight with the local officials and that during that time he had been able to work and support his family and had not experienced serious problems with local officials. The applicant said he could barely earn enough to support his family. The Tribunal observed that he appeared to be doing the same work as he was engaged in prior to the problem with the family planning official. The applicant said that this was correct, but he was not able to earn as much before because he was worried about the safety of his family. However, when asked, he said that nobody in his family had experienced any problems during the five years he remained in China.
63. The applicant was asked about his trip to [Country 1] in 2012. He said that he had to leave China because bad things were happening to him because he had breached China's family planning regulations. The Tribunal observed that the applicant had paid the fine for this offense in 2008 and that the evidence he had given earlier in the hearing did not suggest he had experienced continuing problems because of his breach of the family planning rules following payment of the fine. The applicant responded that family planning officials are very unpredictable and added that they had complained that he had not paid the fine on time. The Tribunal noted that the fine had been paid very quickly after the birth of the applicant's second [child] and that the applicant had previously stated that his problems in China were caused by the fight with a family planning official, not his breach of family planning regulations. The applicant responded that it was not possible to be sure what had caused his problems.
64. The Tribunal noted that the evidence which the applicant had given during the hearing differed in significant ways from the evidence he had provided in his written and oral submissions to the Department of Immigration and advised him that this could cast doubt on the credibility of his claims.
65. The Tribunal summarised the claims made by the applicant in his earlier submissions, noting in particular that he had previously stated that he had not taken his younger [child] to his home village until 2011 when he was [age] years old; that it was at that time that he had been fined by family planning officials, that the fine was 15,000 yuan and had never been fully paid; that his father was detained for 8 days in 2012 and only released after a fine was paid; that he had been seriously injured during an altercation with family planning officials in 2011 and that he had been detained following this incident. The Tribunal also noted that the applicant had previously stated that he had been asked to pay 20,000 yuan compensation to someone who he had injured and had offered to pay 15,000 and observed that it was unclear what this payment related to.
66. The applicant was asked if he could explain the discrepancies between the evidence given during the hearing and the evidence provided earlier. The applicant said that the events had happened a long time ago and there are a lot of things he did not want to mention again.

When asked what it was that he was reluctant to mention, the applicant said that he did not have anything more to say. He added that he had been questioned differently during his earlier interview and had answered differently. The Tribunal observed that while small discrepancies could arise when different questions were asked, the applicant had given very different accounts of the events which had led to his departure from China and asked again if he wished to make any comments. The applicant said that he had nothing to add.

ASSESSMENT OF CLAIMS AND EVIDENCE

Country of nationality

67. On the basis of the materials provided to the Department and available to the Tribunal, the Tribunal accepts that the applicant is a citizen of China and that his identity is as he claims it to be. The Tribunal accepts that China is the applicant's country of nationality for convention purposes and the receiving country for complementary protection purposes.

Assessment of refugee claims

68. Having considered all of the evidence the Tribunal finds that the applicant is not a truthful or a credible witness.
69. In his written and oral evidence to the Department the applicant stated that he was not fined for breaching China's family planning regulations until 2011 when he took his second [child] home to his village for the first time; that his father was detained for 8 days in 2012 in relation to non-payment of the fine and only released after payment of bail; that he (the applicant) was involved in a fight with a family planning officials in 2012 which ended with the police being called and the applicant, who sustained significant injuries during the fight being briefly detained. The only continuing problem which the applicant mentioned in his submissions to the Department was his inability to pay the penalty imposed by local authorities and continuing demands to himself and his wife that the penalty be paid.
70. In the evidence provided during the hearing the applicant said that he had been fined for breaching family planning regulations almost immediately after his [child] was born in 2007; that his father was detained for four days following his [child]'s birth and released without bail when the applicant agreed to pay the penalty imposed; that the penalty was paid within 2 weeks of his [child]'s birth; that he (the applicant) was involved in a fight with a family planning official in 2008 when he tried to arrange household registration for his [child] and that he experienced frequent and continuing problems with local officials because of his fight with a family planning official.
71. When asked to comment on the discrepancies during the hearing, the applicant was unable to provide an explanation beyond stating that the events in question had occurred a long time ago. The Tribunal does not accept this application. The events have all occurred in the relatively recent past and the Tribunal does not accept that the applicant would have forgotten or been so confused about such significant events that he would be unable to provide broadly consistent accounts when giving evidence to the Department and the Tribunal.
72. The Tribunal accepts that the applicant was fined for breaching of China's family planning regulations when his wife gave birth to a second child in 2007. This is consistent with evidence before the Tribunal regarding these regulations (see for example Regulations for Family Planning of Hebei Province and US Department of State 2010 Human Rights Report China) and there is no reason to doubt that the applicant was fined when his wife gave birth a second time.

73. The Tribunal accepts that, as stated at the hearing, this penalty was imposed at the time of the birth of his second child and paid in full within two weeks of [the] birth and rejects the claim that it was not imposed until 2012 and never paid in full. If the fine had not been imposed until 2008 and remained unpaid the Tribunal has no doubt that the applicant would have repeated this during the hearing. Tribunal finds the latter claim to be a distortion of the facts, put forward to support the claim that he would continue to face problems in relation to his breach of China's family planning regulations if he returned to China and thus enhance his claim for refugee status.
74. As the Tribunal finds that the applicant paid his fine in full in 2007, it follows that the Tribunal does not accept that local authorities continued to harass him for payment of this fine until his departure from China or that they harassed his wife for payment of the money after he left China.
75. The Tribunal does not accept that the applicant was involved in an altercation with a family planning official in 2008 or 2012 or at any time following the imposition of this fine. He has given contradictory accounts of when this happened and what occurred and was not able to provide a satisfactory explanation for these discrepancies. The Tribunal finds that the applicant concocted these claims in an attempt to enhance his application for refugee status.
76. As the Tribunal does not accept that the applicant was involved in a fight with a family planning official prior to his departure from China, it follows that the claim that he faced continuing harassment and discrimination from local officials because of this fight is also rejected.
77. In assessing the applicant's application the Tribunal has noted the claims that he was denied some entitlements, most seriously by receiving a reduced food allowance, that he was refused permission to build a house on his land in 2009, that his income was significantly reduced after 2008 and that his parents have been denied a pension. The applicant stated that he believed that these problems were caused by his fight with a family planning official. As the Tribunal does not accept the fight occurred, it does not accept this claim.
78. Nonetheless, the Tribunal accepts that the applicant received a reduced food allowance and that he was refused permission to build a house on his land in 2009. However, it finds that these were minor, isolated incidents which occurred in the past for unknown reasons. If they had formed part of a pattern of continuing frequent harassment or discrimination against him by local officials in China, the Tribunal has no doubt that this would have been mentioned in his submissions to the Department.
79. The Tribunal does not accept that the applicant's income declined significantly after 2008. He was not denied the right to work. He continued to work in the same occupations as he had prior to the birth of his second [child]. Furthermore, the claim that his ability to work was restricted because he was fearful of leaving his family is at odds with the Tribunal's finding that he was not being harassed by local officials for any of the reasons claimed in his submissions to the Department and the Tribunal and the applicant's evidence that his family did not experience any problems during the five years he remained in China. This claim was made for the first time at the end of the hearing and the Tribunal finds it to be a fabricated claim made to enhance the applicant's claim for refugee status.
80. The Tribunal accepts that for unknown or unstated reasons the applicant's parents have not been able to obtain a pension to which they are entitled. However, in light of the findings set out above regarding the applicant's alleged problems in China, the Tribunal does not accept that the applicant's parents difficulty obtaining a pension is linked in any way to problems the applicant himself experienced in China or that his parents inability to obtain this entitlement is evidence that the applicant would be denied any rights on return to China.

81. The Tribunal accepts that the applicant was not able to obtain household registration for his [child] until about 2009 when [the child] was [age] years old. However, his [child] is now registered and there is no credible evidence before the Tribunal which suggests that the applicant or his [child] faced continuing problems after this because the child birth contravened China's family planning laws.
82. In reaching this conclusion the Tribunal has noted the applicant's statement at the hearing that his [child] was unable to attend school because of continuing problems relating to the family planning regulations. However, when it was noted that his [child] had household registration, the applicant withdrew this claim and said that his [child] was not barred for attending school, but he and his wife had decided not to send [the child] because they were concerned about possible problems with officials because of the 2008 fight with a family planning official. As noted above, the Tribunal does not accept that the applicant was involved in a fight with an official at any time. The Tribunal does not accept that the applicant's second [child] is unable to attend school in China and finds this to be another fabricated claim put forward to assist the applicant to obtain refugee status.
83. In summary, the Tribunal does not find the applicant to be a credible witness. The Tribunal does not accept that the applicant was involved in a fight with family planning officials at any time prior to leaving China. And, apart from the requirement that he pay a fine and a two year delay in obtaining household registration for his second [child], the Tribunal does not accept that the applicant or his family experienced problems in China because he and his wife breached China's family planning regulations in 2007.
84. After considering all of the evidence, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution in China for any reasons claimed in his application. As the applicant has not made any other claims, the Tribunal is not satisfied that he had a well-founded fear of persecution in China for any of the reasons contained in the Convention.

Complementary protection

85. As set out above, a person is found not to meet the refugee criterion in s.36(2)(a), may nevertheless meet the criteria for the grant of a protection visa they met the criteria in s.36(2)(aa) ('the complementary protection criterion').
86. As discussed above, the Tribunal does not accept that the applicant was involved in a fight with family planning officials and experienced problems because of this or that he experienced any problems related to China's family planning regulations following the inclusion of his [child] on his household registration in 2009. In these circumstances, there is no evidence that suggests he will face a real risk of significant harm as set out in s.36(2)(aa) for these reasons if he returns to China.
87. As noted above, the Tribunal accepts that the applicant was paid a slightly reduced food allowance and denied permission to build a house in 2009. However, these were minor problems which do not constitute significant harm as defined in s.36(2A): s.5(1). Furthermore, the fact that applicant experienced these minor problems in the past does not, in the Tribunal's view, suggest that he is at risk of experiencing more serious harm or discrimination in relation to his entitlements or other dealings with the Chinese authorities if he returns to China now.
88. After considering all of the evidence, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to China, there is a real risk that the applicant will suffer significant harm.

CONCLUSION

89. 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).
90. 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).
91. 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

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

Roslyn Smidt
Member