

DECISION RECORD

RRT CASE NUMBER: 1218579
DIAC REFERENCE(S): CLF2012/161127
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Andrew Mullin
DATE: 10 October 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 the People's Republic of China, applied to the Department of Immigration for the visa [in] August 2012 and the delegate refused to grant the visa [in] October 2012. The Applicant applied to the Tribunal for review of the delegate's decision [in] November 2012.

RELEVANT LAW

3. 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.
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. 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’).
6. 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

7. The Tribunal has before it the Departmental and Tribunal files relating to the Applicant. The Tribunal also has had regard to the material referred to in the delegate’s decision record and other material available to it from a range of sources.
8. In his protection visa application the Applicant claims, in summary, that:
 - He was born in Hebei, China, in [a certain year] and lived at an address in [Gucheng County], Hebei Province from 2002 to [2011]. He is a Christian. He received twelve years of formal education in Hebei, [final year given], and was self-employed as a [business] owner from [that time] to [Year 1]. He was married in 1994 and his parents, wife and two [children] live in China.
 - He and his wife were in trouble with the authorities in [Year 1] because they had a second child, outside the provisions of China’s One Child Policy, despite his having undergone a forced ‘tubal ligation’ (sic) The local Family Planning Bureau fined them Rmb 50,000 and demanded forfeiture of his[business].

- He appealed the forfeiture to the town government but was unsuccessful. He appealed many times to the Shijiazhuang government, submitting petitions to them. He was caught every time and sent back to the Town Public Security Bureau (PSB) Each time he was detained for several days or a week until he paid a fine.
- His father was unwilling to accept this situation and went to the Shijiazhuang court to seek compensation from the government. The court refused to accept the case and sued his father for disrupting official business. His father was detained and he had to pay Rmb 10,000 for his release.
- From 2008 his father continually appealed to the city government but they only wanted money. His father was detained many times.
- He was eventually fined for the breach of the One Child Policy and his [business] was forfeited. He was impoverished and unable to raise his children.
- A Christian 'sister' named [Ms A] offered him food and took him to her family church, where the brothers and sisters sympathized and prayed for him. They also donated money to him. He felt the warmth of Christianity and through the church gatherings he began to believe in Jesus. He knew that if he believed in Jesus he would live forever. He ceased to suffer despair and the anger in his heart disappeared. 'I believe that there is heaven, hell and purgatory to reward the good and punish the wicked.'
- From 2010 the family church where he and the brothers and sisters worshipped was regarded as a cult (Shouters) by the local government and police. They were no longer permitted to hold gatherings. The police often searched his home and those of the other brothers and sisters to check whether gatherings were being held. They wanted to catch people, fine them and send them to the detention centre. Some of the brothers and sisters died in PSB custody after they were caught.
- He had to leave his home town and find a new place to live. He did not believe the government and feared he would be persecuted once more for participating in the family church. He was very fearful because he knew he would die if caught again.
- In another city he saw an advertisement for Australian visas. He borrowed a large sum of money from his relatives for the visa and, with God's blessing, arrived in Australia at the end of 2011. He can attend church freely here.
- After arriving in Australia he telephoned his father and was told that police from the town police station often enquire as to his whereabouts and ask whether he is a traitor.
- He will die if he returns to China. The police will say that he is bringing superstition from overseas to disrupt social stability. He will definitely be imprisoned, rather than being placed in detention.

9. The Departmental file indicates that the Applicant was invited to discuss his claims at an interview on 29 October 2012. He did not attend the interview and did not provide any reason for his non-attendance.

Tribunal hearing

10. The Applicant appeared before the Tribunal on 22 August and 8 October 2013 to give evidence and present arguments. The hearings were conducted with the assistance of interpreters in the Mandarin and English languages.
11. At the first hearing:
- Asked what he feared would happen to him if he returned to China he said he would be persecuted by the government and his safety would be at risk because of the One Child Policy. Asked if there was any other reason he said there was not – it was just because of the One Child Policy that he had been persecuted. If he returned to China he would be jailed or fined. He would be jailed if he could not afford to pay the fine.
 - Asked about the circumstances in which he had breached the One Child Policy he said his wife fell pregnant accidentally. Asked when this occurred he said it was in 1995. Asked if he meant it was seventeen or eighteen years ago he then said it was in [Year 2], agreeing he meant it was [a certain number of] years ago. She was told to have an abortion but ran away to another place to give birth. Asked where this was he said it was her [relative]'s home in Shijiazhuang City.
 - Asked the name of this second child he gave it as [name & gender given]. Asked the birth date he gave it as [Year 2] in the lunar calendar. He confirmed he was sure she had given birth in [Year 2]. I put to him that this was inconsistent with his protection visa application in which he claimed the child was born [in Year 1]. He said he did have a second child. I put to him that it did not sound very likely that he would be so uncertain of the date. He said he had many mental pressures in China, leading him to run away to Australia. This was why he had trouble remembering birthdates. I put to him that I found it difficult to believe he we believe his [second child] to have been born in [Year 2] if he was born in [Year 1]. He said he knew his second [child] was [a certain age] and his first [child] was [a certain age].
 - He had to pay a fine of Rmb 50,000 in instalments. His [business] was confiscated. Asked why there would still be any outstanding amount he said that because his [business] was confiscated he could not survive. Asked again he said the fine was too large to pay at one time. I recalled his evidence that he had paid it in instalments. He said that according to them he had not paid it all. Asked when the [business] was confiscated he said it was after his wife gave birth to their second child. Asked a number of times for a more precise timing he eventually said it was in [Year 3].
 - He had no source of income between the loss of his [business] in [Year 3] and his departure for Australia in [2011]. Asked how he had survived he said he did some casual work and also borrowed from his relatives. Asked how much

he had borrowed he said he could not remember. In such a situation relatives were not willing to lend him any money. Asked again he said it was a lot, including the money for him to come to Australia. Asked how much 'a lot' was he said it was more than Rmb100,000. Asked again he said it was nearly Rmb 150,000 to 160,000.

- I asked the Applicant why he would not have used this money to pay the fine and avoid being arrested. He said he had already been attacked and he would not want to continue living in China. I recalled his claim that he came to Australia because he feared being arrested. He agreed this was so. I put to him again that he could have avoided arrest by using the money to pay the fine. He said that as a farmer he would not be able to repay his relatives. Asked if he meant he wanted to come to Australia to work so that he could repay his relatives he said he wanted to stay here. Asked if it was preferable to be in debt to his relatives than to go to jail because he could not pay the fine he said a third choice was to go to Australia.
- Asked again if he had feared harm in China for any other reason he said he did not.
- Asked where he was living just before leaving China to come to Australia he said he was not at home – he was staying with relatives or in rented rooms because of his fear. His home in Shijiazhuang City was vacant and his wife and children were living elsewhere with a relative in the City. His first [child] had dropped out of school and his second [child] was studying in a private [school]. He could not attend a public school because the authorities would investigate his household registration. His wife was working to pay for his tuition.
- Asked if the authorities were pursuing his wife he said she had already escaped to another place. I asked if he meant that, although she was working, they could not track her down. He said she was working for a private company. I suggested this would not prevent them from finding her. He said she had not committed any offence but could not stand the pressure and had moved. I noted that under China's family planning laws both parents are held guilty of a breach. He said they did focus on her but as she was breast feeding at the time they were unable to take her away. Asked why they would not have done so after she stopped breast feeding he said it was because she went away. I put to him that it seemed difficult to believe they would be unable to find her in the circumstances he had described. He said he could not care for them very well as he was in Australia – this was why he had applied for a protection visa.
- Asked if there was an arrest warrant current for him he said there was not. Asked why he would be arrested he said officers from the local family planning bureau wanted to get money from him.
- Asked about the visa for Malaysia in his passport he said it happened a long time ago – he had wanted to take a trip to Malaysia before his second child was born and when his financial situation was good. I put to him that this was

not true as the visa was issued [in] May 2008. He said he obtained the visa in order to come to Australia. Noting again that it was issued in 2008 I asked what it had to do with coming to Australia. He said he gave his passport to an agent who helped him obtain the Malaysia visa. I observed that he had given two completely different stories about the visa and that this could cast doubt on the credibility of his claims. He said to obtain an Australian visa it is necessary to get another visa from a small country – this is what local agents do. Asked if he meant it was a way of deceiving the Australian government he said it was not trickery – it was all done by local agents. He had simply wanted to come to Australia, no matter what method the agent employed.

- Noting, from visa stamps in his passport, that he had not left China for more than two weeks after his Australian student visa was granted [in 2011], I asked why he would have delayed in this way if he genuinely feared harm. He said he had to farewell his family and friends.
- I put to him that his delay of eight months in seeking protection after arriving in Australia, only a few days before his visa was due to expire could cast doubt on the truth of his claim to fear harm in China. He said he had a student visa and he was legally in Australia. Asked if he had studied at all with this student visa he said he had not as he could not pay the tuition fee. He could survive only by working. He agreed he known, from the time he entered Australia, that he could not renew his student visa because he was not studying. Asked again why he would not have applied for protection straight away he said that when he arrived he did not know much about protection visas and it was only later, when he consulted a lawyer, that he lodged the application. I put to him that he would have known about the possibility if he had come to Australia to find protection. He agreed this was so.
- He agreed that, in applying for his student visa, he had submitted documents showing that he had access to a large sum sufficient to cover his tuition and living costs. I asked how, if he had been living in poverty in China, he had been able to find this money. He said he borrowed it from his friends and relatives. Recalling his evidence that had already been borrowing from them for five years I asked if they had been prepared to advance him this further large sum. He said he was under a lot of pressure and his life would be threatened if they did not give it to him. I put to him that these must have been very good friends and relatives, and that if they were so willing to keep advancing him money it was difficult to understand why he would have had any problems. He said he had no education and it was difficult for him to manage in China. Asked if this was the reason he had come to Australia he said he just wanted to be here and did not want to return.
- Asked if there was anything he wished to add he said there was not.

12. At the second hearing:

- Asked if he feared harm in China for any reason other than his problems with local officials over his breach of family planning regulations he said he had suffered [an injury] in an [accident] in China which prevented him from undertaking any heavy labour. Asked what he was doing in Australia he said

he was working doing odd jobs. Asked the nature of these jobs he said he was working as a [occupation deleted]. He was not earning enough to send money back to China and his family was surviving on casual work obtained by his wife.

- Asked again if he feared harm in China for any other reason he said he did not. Noting that in his protection visa application he claimed to have been involved with members of a Christian church in China I asked why he would have made no mention of this at the hearing. He said I had not asked him anything about his involvement in a Christian church, so he did not talk about it. I noted that he had been given a number of clear opportunities to explain the reasons why he feared harm in China, at both hearings, and that he had stated just as clearly that he did not fear harm for reasons other than those he had already mentioned. He said he was converted to Christianity in 2010, mainly because he was fined for breaching the One Child Policy.
- Asked if he did, in fact, fear harm in China because of this involvement he said the authorities think Christianity is an evil cult and they do not permit people to believe in it.
- Asked again why he had not mentioned this previously he said that, no matter the reasons, he could not stay in China as an ‘average person.’ Noting that there are many million people living in China who might be described as ‘average persons’ I asked why he could not stay there. He said the officials continued to fine him over his breach of the One Child Policy. Chinese officials are corrupt. He had converted to Christianity.
- Asked what Christian denomination he had been involved with he said it was ‘just Christianity.’ Asked if he knew anything more about it he said he prayed every day. Asked again he said he had not had time to attend a church because of the hours he worked, and there was no church near his home. Instead he read the New Testament at home. Asked if he had ever attended a church service in China he said there were only small family gatherings, every one or two weeks on Sundays. He attended these from 2010 –sometimes they were every three weeks. Asked what happened in these gatherings he said they just prayed and sang hymns. He himself was unable to sing any of them. He was not baptised as he was not ‘qualified.’
- Asked who had founded this church he said he knew only that it was organized by ‘big sister’ [Ms A], the person who had introduced him to it. He did not know anyone else who had founded it before her. Asked if other people had a name for it he said no individual is allowed to believe in Christianity in China. Asked if people outside the church called it anything he said they did not. Asked what he knew about the life of Jesus Christ he said He ascended into heaven forty days after the crucifixion. Asked if he could tell me anything else about Jesus he said he had read many books but could not put it in a clear way. Asked if he could tell me any of the Parables he said one can only get eternity by believing in Jesus Christ. Asked again he said he had no idea. Asked how long ago, roughly, Jesus Christ lived he said he could

not remember. Asked if he could say anything else about Jesus he said he only knew the ten 'rules' and he prayed every day.

- He had not had time to attend a church in Australia and there was no church nearby. Recalling his claim that he was employed only doing odd jobs in Australia I asked why this would not allow him sufficient time for church. He said his [job] coincidentally required him to work on Sundays.
- I put to him that, based on the evidence he had provided, I had strong doubts as to the truth of his claim to have had any contact with Christianity, either in China or in Australia. He said that in Australia he only read the New Testament, in private. I noted that in his protection visa application he claimed to have been involved with members of the Shouters church (Hu Han Pai) in China but that his responses at the hearing indicated he had no idea about such a church. He said he had nothing else to say. He had a simple belief in Christianity and did not think about it very much.
- I explained to him that if I came to believe he had not, in fact, had anything to do with Christianity this would lead to a conclusion that he would not involve himself with it if he returned to China and would not suffer harm for such a reason. He said he did not want to go to China. Even if Christianity were not a factor, he had had to pay a fine there and the government was corrupt.
- Asked if there was anything he wished to add he said he liked Australia and did not want to return to China. He was stressed psychologically and physically by the authorities in China. He did not want to lie and he hoped the Australian government would allow him to remain.

CONSIDERATION OF CLAIMS AND EVIDENCE

13. On the basis of his passport which he submitted at the Tribunal hearings I accept that the Applicant is a citizen of the People's Republic of China and that his identity is as he claims it to be.
14. The Applicant claims to fear harm in China because of his religion, as a member of the Shouters church. He also claims he will be harmed because he has been unable to pay a fine, or fines, imposed on him and his wife for breaching China's family planning regulations by having a second child. He does not identify a Convention nexus for this harm but I accept that an imputed political opinion adverse to the government may be inferred as the reason for it.

Political opinion

15. I have strong doubts as to the credibility of the Applicant's unsubstantiated claim to fear harm in China for breaching family planning regulations.
16. The Applicant's account at the hearing of the reason for his alleged difficulties with the authorities over the regulations was notably vague, confused and inconsistent. His claim that his second child was born in [Year 2] is inconsistent with the [Year 1] date given in the protection visa application and I am not satisfied that he offered any convincing explanation for it. His evidence concerning the payments he had allegedly made toward settling a fine

imposed on him for this reason cast no light on why it was that any of it would remain outstanding. He provided no clear information as to how much of it remained to be paid. He appeared to have little or no idea as to when it was that his [business] was allegedly confiscated. His claim that he was living in poverty after losing his [business] appears inconsistent with his evidence that he had relatives and friends who were willing and able to continue to support him to meet his day-to-day living costs, to the amount of Rmb 150,000 to 160,000, and also to provide him with the large sum required to obtain a student visa and travel to Australia. These are not minor or marginal matters but instead lie at the heart of his claim to fear harm in China for breaching the One Child Policy. I am not satisfied that his evidence at the hearing reflected any genuine, authentic experience of such circumstances and I find that this casts doubt on the credibility of his claims.

17. The Applicant's evidence at the hearing that his friends and relatives in China were able to provide him with these large sums appears inconsistent with the claim that he face harm because he was unable to pay a fine which amounted to no more than Rmb 50,000. Had such a fine ever been imposed on him I am not satisfied he could not have paid it promptly if he had had the means to raise the much larger sums he mentioned. When this was put to him at the hearing he suggested that even if he had paid the initial fine, corrupt officials would continue to fine him. He offered no explanation as to why he would be targeted for extortion in this way and I am not satisfied that this claim, which was raised for the first time at the hearing, was more than an improvisation.
18. Taking these matters together I am not satisfied as to the credibility of the Applicant's claim that he was punished by the authorities for a breach of the family planning regulations with a fine and the confiscation of his [business]. Nor am I satisfied that he is at any risk of harm on return to China for such a reason or because he faces other fines imposed on him by corrupt officials.

Religion

19. When he was asked at the Tribunal hearings why it was that he feared harm in China the Applicant raised the matter of his alleged unpaid fine for breaching the family planning regulations and, later, [an injury] which he said prevented him from engaging in heavy labour. He was asked a number of times, at both hearings, if he feared harm for any other reason and his clear response was that he did not. He did not volunteer at any point that he had been involved with the Shouter church in China, that he and his father had suffered harm there as a consequence, that he had been forced to live in hiding and had later had to flee to Australia or that he feared arrest and imprisonment on return for such a reason. It was only when he was asked, toward the end of the second hearing, why he had not mentioned his religious involvement that he confirmed that he had been involved with a church. He attributed his failure to mention it to the fact that he was not asked about it. Having considered this response, however, I am not satisfied it explains why he would not have volunteered details of a faith which is said in his protection visa application to have been highly important for him and which caused him to suffer serious harm over an extended period. I find that this casts strong doubt on the credibility of his claims of religious involvement and suffering in China.
20. The Applicant does not claim to have attended religious gatherings of any kind in Australia, although he said at the hearing that he reads the New Testament in private. His account of his alleged involvement with the Shouters sect in China was, like his account of his alleged problems with local officials, vague and largely devoid of circumstantial detail despite the

importance this activity is said in his protection visa application to have had for him. Having considered these responses carefully I am unable to be satisfied that he was ever involved with a branch of the Shouters, or with any other Christian denomination, while he was in China, or that he embraced Christianity there. This being the case, I do not accept that he or his father were subjected to the various forms of harm he claims they suffered as a result of such an involvement, or that these forced him to flee to Australia.

21. I am reinforced in this conclusion by the Applicant's two-week delay in leaving China after his student visa was granted. I am not satisfied that such a delay is consistent with his claimed fear of imminent harm at the hands of the authorities. I have considered his response when this matter was put to him at the hearing – to the effect that he had wanted to farewell his family and friends - but I am not satisfied that it resolves my concerns about the delay.
22. Finally, I am not satisfied that the Applicant's delay of some eight months in applying for protection in Australia is consistent with his claimed fear of harm in China. At the hearing he claimed he did not need to apply for protection as his student visa was still valid. However, he acknowledged that he had not studied at all in Australia, and that he had known it would not be possible to renew his student visa. I do not accept that he can have been ignorant of the possibility of claiming protection until he had been in Australia for some time if, as he claims, his reason in coming to Australia was to seek protection.

Summary – refugee claims

23. In the light of all the information before the Tribunal I am not satisfied that the Applicant was a member of the Shouters sect or any other Christian church in China, or that he was ever harmed for such a reason. Nor am I satisfied that he was ever harmed for a breach of the One Child Policy, that he has an unpaid fine in China or that an adverse political opinion was imputed to him in such circumstances. I am not satisfied there is a real chance that he would suffer serious harm for these reasons if he were to return to China. He does not claim to fear harm there for any other Convention-related reason and no other reason is apparent on the face of the information before the Tribunal.
24. I am not satisfied that the Applicant has a well-founded fear of persecution because of his religion, his political opinion or any other Convention reason should he return to China, now or in the reasonably foreseeable future, and I am not satisfied that he is a refugee.

Complementary protection

25. 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).)
26. I have also considered the alternative criterion in s.36(2)(aa) of the Act. However, having considered the Applicant's claims individually and cumulatively, and having found that he does not face harm of any kind for the reasons he has claimed, I am not satisfied there are substantial grounds to believe that as a necessary and foreseeable consequence of his being removed from Australia to China, there would be a real risk that he would suffer harm which would amount to significant harm in terms of s.36(2)(aa). For the sake of completeness I note in this context his claim at the hearing to have suffered an [injury] which would prevent him from engaging in heavy labour. However, as this injury has clearly not prevented him

from working as a [occupation deleted] I am not satisfied that it would, in fact, have any impact on his ability to subsist in China.

27. 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

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

Andrew Mullin
Member