

1106474 [2012] RRTA 132 (5 March 2012)

DECISION RECORD

RRT CASE NUMBER: 1106474

DIAC REFERENCE(S): CLF2011/51572

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Paul Millar

DATE: 5 March 2012

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 and Citizenship 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 (PRC), arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] December 2010 and applied to the Department of Immigration and Citizenship for the visa [in] March 2011. The delegate decided to refuse to grant the visa [in] June 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] June 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: 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.
14. 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.
15. 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.
16. 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 persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. 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.
17. 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.

18. Whether an applicant is a person to 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.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Primary application

20. The applicant made the following claims in the primary application documents.
21. The applicant was born on [date deleted: s.431(2)] in Fuqing, China. The applicant departed China [in] November 2006 and arrived in Australia on the same date. He holds a Chinese passport issued to him [in] October 2010 and valid for 10 years. He lodged copies of pages from that passport with his application.
22. Where required to give his reasons for claiming protection, the applicant made the following claims:
 - He came from a peasant family in a village in China and to fulfil his life he asked his parents (and they agreed) to send him to Australia to study. His parents spent their life savings to support his study and the applicant studied hard after he came to Australia.
 - [In] February 2009 the applicant was injured in a traffic accident in Sydney and his memory was affected; his brain damaged and he suffered other physical injuries for which he had surgery. His parents came to Australia to care for him and they said that he "looked like a retard" back then.
 - From the accident, the applicant suffered side-effects (headaches, dizziness, backpain, loss of hearing in his right ear and eye sight in his right eye; he limps on his right side and his memory was poor). On his doctor's advice, in October 2010 the applicant returned to China.
 - In China, his friends and relatives looked at him in a different way; they believed he was totally disabled because he had lost his memory and looked different. They made insulting comments, laughed at him and his friends would not go out with him because they thought he was a "retard" even though he was in great need of help.
 - For that reason he returned to Australia where he felt he could obtain the care he needed and had friends who would not abandon him. Chinese authorities will not protect him because he has spent so long in Australia and received education and medical treatment here.

- He said that he is partially disabled but believes the Chinese government and people in China discriminate against disabled people; he will be laughed at; he will lose his self-esteem and be denied basic medical treatment; his life will have no meaning or value; and so he will not be able to survive there.

Medical reports provided by the applicant to the department

23. The applicant provided various reports regarding his medical condition. In this respect, in a report dated [February] 2009 Dr [name deleted: s.431(2)] ICU Registrar [Hospital 1] confirmed that the applicant was in the intensive care department in a critical condition (folio 69).
24. In a report dated [April] 2009 Dr [name deleted: s.431(2)] Brain Injury Rehabilitation Registrar, [Hospital 1], (folios 67-68) stated that the applicant was currently receiving treatment in that unit under that doctor's team having been in the intensive care unit for one month. The doctor described the applicant's condition as medically stable with [details of medical condition deleted: s.431(2)]. The doctor stated the applicant would need to have rehabilitation treatment for at least another six months and so the doctor supported the applicant's parents being granted a medical treatment visa for that period.
25. The applicant provided a discharge summary dated [June] 2009 (folios 62-66) regarding the applicant's treatment at [Hospital 1] describing his ability to function at the time he was discharged from hospital, stating that he made good neurological and functional improvement and that there were no complications or medical issues during his stay in the brain injury rehabilitation unit.
26. In a report dated [September] 2009 (folios 60-61) Dr [name deleted: s.431(2)], Brain Injury Unit, [Hospital 1] stated that the applicant sustained severe traumatic brain, spinal and abdominal injuries from the traffic accident in February 2009. The doctor outlined the surgery performed on the applicant noting that his brain injury meant he that he had, at the time, significant neurophysical and cognitive deficits impacting on his ability to function independently. It was for that reason that the applicant was transferred to the Transitional Living Unit of the hospital in June 2009 and remained there until September 2009 when discharged.
27. Dr [name deleted: s.431(2)] further stated that, as at that time in September 2009, the applicant's ability to function in the community had significantly improved but due to residual cognitive deficits he would need attendant care support in the community and would have to continue with a community-based rehabilitation program for at least six months. In addition, the applicant was to be referred to [a] Brain Injury Rehabilitation Service for six months for an ongoing multi-disciplinary programme. The doctor thought that it would assist the applicant if he was able to visit his family in China for a few weeks and recommended the applicant's medical visa be extended for him to continue to receive treatment in Australia.
28. The applicant provided a report dated 2 December 2009 (folios 58 – 59) by [Ms A] Senior Social Worker, [Brain Injury Community Rehabilitation Team], who made the following comments:
 - The applicant's parents had been assisting him during his period of rehabilitation and provided him with a stable and loving environment. They had been encouraging him to make all efforts to achieve his goals in therapy and for his future.

- The applicant's parents were in Australia as the holders of visas which did not allow for travel while those visas were valid. She stated that the applicant's father previously had a visa that allowed him to travel back and forth from China to Australia and, at the time of the report, he needed to again return to China to attend to his business before returning to Australia to continue to have input into the rehabilitation of the applicant.
 - The applicant's mother had been extremely distressed by the applicant's injuries and when his father returned to China for business she stayed to help the applicant with emotional support and encouragement. However, her own health had suffered in that process and she did not have support networks or English-language skills and so she needed to return to China to undergo treatment for that.
 - The applicant's parents had to leave Australia immediately for those reasons but also needed to be able to return to Australia to continue to be with the applicant and help him in whatever way they could. For that reason, their visas needed to be varied to allow multiple travel to leave Australia for short periods but to return to ensure the rehabilitation program for the applicant could be maintained and continued.
29. In a report dated [March] 2010, [Dr B] Rehabilitation Medicine Specialist of the [Royal Rehabilitation Centre], (folio 73) confirmed the applicant was undergoing a multidisciplinary rehabilitation program and was receiving two hours of paid carer support per day. The doctor stated that there were difficulties with the applicant's motivation and he had been prescribed antidepressant medication. The doctor recorded some loss of vision in the applicant's right eye, impairments in his balance, sleeping difficulties and low motivation. The applicant was prescribed antidepressant medication and was to be reviewed in future.
 30. In a further report dated [May] 2010 [Dr B] (folio 72) stated that he had again reviewed the applicant and confirmed he was still undergoing treatment at the centre. The doctor again noted difficulties with the applicant's motivation and he was again to be given a trial of antidepressant medication.
 31. In another report dated [June] 2010, [Dr B] (folio 71) said that the applicant had improved his level of independence since being discharged from hospital but had ongoing problems with new memory and learning and motivation. The applicant needed support from his rehabilitation team and attendant carers. Further medication to improve his concentration and memory would be trialled. [Dr B] then stated that support from the applicant's parents would be beneficial.
 32. In his final report of [September] 2010 [Dr B] (folio 70) stated that he had reviewed the applicant again noting that with medication, the applicant's concentration was better and that he should continue to be reviewed.
 33. On the department file is a Form 26 "Medical examination for an Australian visa" performed in May 2011 (folios 101 – 111) recording that the applicant had, at that time, memory impairment, right-sided weakness, decreasing vision in the right eye and back pain during exertion. He was working two days per week [completing manual work] with limited fatigue.

The decision of the delegate

34. [In] May 2011, the applicant was interviewed by the delegate with the assistance of a Mandarin speaking interpreter. The Tribunal has listened to an audio recording of the

interview. The applicant discussed with the delegate his fear of returning to China on the grounds put forward in his protection visa application as summarised above.

35. At his interview, the applicant added that when he returned to China he found it difficult to answer people's questions because it would take him time to think before he answered and people attacked him for that. He claimed that he was assaulted and had rocks thrown at him because he was disabled and, for the same reason, his parents no longer cared for him.
36. In a decision made [in] June 2011, the delegate refused the application finding not credible the applicant's claims of being assaulted in China and being rejected by his parents. The delegate found that the applicant, in his condition at that time, was able to work, country information indicated the Chinese government was assisting people with disabilities who were able to find employment and so, the applicant's fear of persecution on the grounds of his disability was not well founded.

Review application

37. The applicant nominated [name deleted: s.431(2)] Lawyer as his registered migration agent, authorised representative and recipient.

Prehearing submissions from the representative

38. By letter dated [October] 2011 the representative made submissions on behalf of the applicant. The representative provided an account of the occasion on which the applicant claimed he was assaulted when he returned to China. The incident occurred in November 2010 at a train station where the applicant was waiting for his father and when a group of youths began to abuse and then beat him. It was submitted that the applicant's father did not take the incident seriously and this upset the applicant.
39. The representative submitted that on another occasion, the applicant was walking on the road in his local area when those nearby shouted abuse at him for being disabled and threw stones at him. It was submitted that the applicant approached the head of the village who did not assist him and also made fun of his condition.
40. As regards the applicant's relationship with his parents, the representative submitted that although his parents did come to Australia to see him after the accident, when the doctors told them that the applicant could be disabled permanently his parents lost interest in him and returned to China. It was submitted that while the applicant remained in hospital he did not hear from his family and when he called them they hung up the phone. In October 2010 an uncle took the applicant back to China but his family were not supportive and friends and relatives did not come to see him.
41. It was submitted that, when he was in China, his parents said he could not work in the family business and there was another disabled person in his village who also had been rejected by family and society. While in China, the applicant overheard his father telling guests that the applicant would be a burden on the family and they were concerned about that. After returning to Australia, the applicant asked his family for money but they said they would not give him any and told him to stay in Australia. The applicant did not contact his family again.

42. The representative submitted that available country information showed disabled people in China had difficulties and conditions for them would be much worse in rural areas such as the applicant's native area. To support the submissions, the representative submitted two articles from the BBC News website released in September 2008 and January 2001. In these articles, it is claimed that people with disabilities in China faced discrimination and prejudice. Although the Chinese government had ratified international law on the rights of people with disabilities those rights were not enjoyed by the disabled in China including limited employment and education opportunities.

Tribunal hearing

43. The applicant appeared before the Tribunal [in] October 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The representative did not attend.
44. The following is a recitation of claims made by the applicant at the hearing. An assessment of the credibility of the applicant's claims and evidence appears further below in this decision.
45. The applicant comes from [Village 1], which is a two hour journey from Fuqing city, Fujian province. The applicant said it would best be described as a rural area. His parents live in that village and his father owns a [factory]. The factory employs over 20 people and is a good business. The applicant's father was operating this business when the applicant came to Australia in 2006.
46. His mother does not work. The applicant has an older brother and after the applicant came to Australia, he went to [country deleted: s.431(2)] and he operates a business there. He has a younger sister who is married and lives with her husband in another town in China which is approximately one hour's drive from the applicant's village.
47. The applicant came to Australia in 2006 to study. His father believed the applicant should have a Western education and then eventually return to China to assist in his father's business. After he arrived in Australia, the applicant undertook English-language studies, attended [high school] and then commenced a [course] which was to take one year. He undertook this course with an education provider in [City 3].

The applicant's accident and rehabilitation

48. The applicant did not complete this course as, [in] February 2009, while driving from his work to his home in [Suburb 4] he had an accident. The applicant remembers nothing of the event but was later told that he had been trying to overtake another vehicle, lost control of the car, was hit from behind by another vehicle and collided with a telephone pole.
49. The Tribunal advised the applicant that it had considered the various medical reports referred to earlier in this decision and he confirmed the injuries he sustained as described in those reports. As at the time of the accident, the applicant had been dependent on his parents to pay for the expenses of his study and life in Australia. The applicant recalled being in an intensive care unit at [Hospital. 1] where he had been taken from the scene of the accident. He said he was in that unit before being transferred to a rehabilitation centre also in that hospital.

50. The applicant stated that altogether he was at that hospital for seven months. He said that at that time he could not walk or eat properly; had memory loss and could not balance himself. After he was discharged from hospital in September 2009 he returned to his home in [Suburb 4] where he lived alone. For the next six months, a carer came to his home five days each week for two hours a day to assist and observe him in his daily life. When asked why this person stopped coming to his home after six months the applicant said that the Australian government had a two year programme and when that period was almost expiring, the government would not send anyone.
51. In the rehabilitation section of the hospital the applicant was trained to be able to bathe himself, operate a bank account, purchase food and pay for it. He was given help in daily life activities. For that reason, after he was discharged, he was able to operate a bank account, purchase food and pay for it by himself.
52. After he was discharged from hospital, the applicant attended another rehabilitation centre in [Suburb 5] where he obtained treatment for his physical condition as well as psychological help. Initially he attended two or three times each week but then later once every two or three weeks.
53. The last time the applicant saw a doctor was in April 2010 at this rehabilitation centre. He has not seen a doctor since then. When asked why that was, he first said that he did not have money to pay for a consultation and then said that he felt he was also independent.
54. When asked how he would describe his health at present, the applicant said that he still has problems with his memory capacity and with his balance. He said that psychologically he had difficulties because his parents did not pay attention to him and he feels that he is just by himself and that he has no family in China. He said that he felt he still had some "psychological barriers" and when asked what they related to, the applicant said he did not receive any family care.
55. When asked if he sought counselling or assistance for that psychological difficulty, the applicant said he had not because he did not have money to pay for it. When asked if he went back to the rehabilitation centre in [Suburb 5] to enquire as to how he could obtain this sort of help at an expense he could afford, the applicant said no.
56. When asked if he had approached a doctor to find some way of seeking assistance for this matter the applicant again said no. The Tribunal asked the applicant why he had not taken these steps if he said he was having emotional difficulties. In response, the applicant said that he did not feel that he needed that assistance and could not afford to pay for such assistance at the present time.
57. The Tribunal asked the applicant if he could not have used Medicare to access these services. The applicant said that his Medicare card had expired and he did not renew it. When asked why he did not renew his Medicare card, the applicant said he did not know. He said that even though he had a Medicare card in the past he did not go and see a doctor as he thought he was healthy and he did not need any treatment.
58. The applicant said that he has short-term memory problems. When asked to describe what they were, he said he could not recall what he did yesterday or what he did last week. He had been given medication for this problem but sometimes he could not remember if he had taken medication or not. As regards his balance, the applicant said that the whole right side of his

body is weak, in particular, his right arm and right foot. He said it did not prevent him from doing things as such; only that if he walked quickly he would lose balance and he could not run.

59. For the last six months, the applicant has been working two or three days each [week]. He cannot work longer hours as he becomes tired and that is because of his current condition. He moved from his home in [Suburb 4] to live in [suburb deleted: s.431(2)] as it was closer to [to his work]. He also lives alone at that address.

The applicant's evidence about contact with his parents in Australia after the accident

60. The applicant said that before the accident occurred his parents were in Australia. He recalled that both his parents were in Australia while he was in hospital. He thought that his father did not remain in Australia due to the commitments of his business in China and he returned to China without telling the applicant.
61. He said that his mother stayed in Australia to look after him and she wanted to see how he recovered. However, because his condition did not change much she also left Australia without any notice. She later told him that she left to also look after his father's business but perhaps that was just an excuse. Before she left Australia she left him with a large sum of money in a bank account which he said was enough to support him for the next one to two years.
62. The applicant said that at the time she left Australia, the applicant was in the rehabilitation centre in [Hospital 1] still receiving treatment and he had not made much progress. When asked how long his mother had been in Australia at that time, the applicant said that he could not remember when she left and he did not know the reason she left.
63. The Tribunal reminded the applicant that according to the decision of the delegate (a copy of which the applicant submitted with his review application form) the applicant's father was in Australia in 2009 on two occasions staying for three months each time. Further, the delegate stated that the applicant's mother was in Australia from February to December 2009.
64. The applicant said he agreed that his father did come to Australia in 2009 on two occasions; he was there to check on the applicant's status but returned to China to look after his business. He thought his father did not remain in Australia for as long as three months on either occasion. He agreed that his mother did remain in Australia from February to December 2009. He stated that when she departed from Australia, at that time she left a large sum of money in a bank account to support the applicant as stated above.
65. When asked to describe her feelings at the time she left Australia, having left a large amount of money in a bank account for the applicant to support himself, he said that he did not see her laughing in that period. The Tribunal asked whether she was concerned about him and he said that was correct; at least she was concerned about him then.
66. When asked how often he remained in contact with his parents from December 2009, when his mother returned to China, the applicant said that at first he telephoned them every week and then later fortnightly or even once each month. He said that it was always him who telephoned them. They never called him and he did not know why that was. When asked if he discussed this with his parents, he said he did not. He could not say why he did not

discuss it; he thought that, at the time, he did not realise it was always him who was making telephone calls.

67. The Tribunal asked the applicant what his parents were like on these occasions when he spoke to them. The applicant said they briefly asked him how he was and about his health. Then they would hang up.
68. When asked if his parents made any attempt to return to Australia the applicant said no. When asked why that was, he said he did not know. The Tribunal asked the applicant if he asked his parents to come back to Australia and see him. In response, the applicant said that he did not ask them to do that and they did not mention it. The Tribunal put to the applicant that his mother had stayed in Australia in 2009 for a lengthy period and, according to him, his father made trips to Australia in 2009 to check on his status. The Tribunal asked the applicant why his parents had not since returned. The applicant said that at the time he did not think about it that much.
69. The Tribunal put to the applicant that he, at least, would have wanted them to return to Australia and see him while he continued to recover from the accident. In response, the applicant said that at that time he did not care; he behaved like he did not care. When asked why that was, the applicant said that he did not know the situation then.
70. The Tribunal reminded the applicant of the statements made by the senior social worker [Ms A] in her report dated 2 December 2009 to the effect that his parents had been assisting him during his period of rehabilitation and provided him with a stable and loving environment. [Ms A] stated that his parents needed to return to China, noting his father's business commitments there; that the applicant's mother had been extremely distressed by the injuries with which the applicant had to contend and she requested, on their behalf, that the department vary the conditions of their visas to enable them to make multiple trips to Australia.
71. The Tribunal put to the applicant that this report suggested that, at that time, this social worker thought that his parents had been playing an important role in his rehabilitation. In response, the applicant said that was correct for at least the time during which he was being treated in Australia.

The applicant returns to China in October 2010

72. The applicant said that he returned to China in October 2010. He took this step at the suggestion of his doctor who said that possibly a trip to his native village could help his recovery, in particular, regarding his memory, as well as seeing the people there. When asked how he felt about returning to China to see his parents, the applicant said he felt delightful about that.
73. When asked how his parents reacted when he told them he was coming back to China, the applicant said that, at the time, he could not deal with daily life because of his condition but his parents told him they could not return to Australia because of business commitments. They were however supportive of the applicant returning to China as they also thought that it would help his memory recovery. They did not say anything to the effect that they did not want him to come back. When asked if they suggested that it would be better that the applicant return to China permanently where they could care for him, he said that nothing was said about that.

74. The Tribunal asked the applicant why he did not return to China permanently where his parents could care for him. In response, the applicant said that because something happened in China; because of an experience he had there.
75. The applicant said that he remained in China for approximately one month and stayed with his parents for the entire period. When asked what he did during that period of time, the applicant said that he had no idea. To clarify his evidence, the Tribunal asked the applicant whether he stayed at home all day. In response, the applicant said that was correct; none of his classmates or friends came to visit him. Everyone in the village knew what had happened to him in Australia and there were bad gossips about him saying that he was disabled. There was another person in the village who had become disabled from a car accident; that person could not look after herself and had to be cared for by her parents. The applicant said that he just stayed at home because none of his classmates or friends came to visit him.
76. When asked what other difficulties he encountered on this trip, the applicant described an incident where he had gone out for a walk and saw the child of a neighbour picking up a wallet that had been lost on the road. The applicant walked towards the child and said it should be given to the owner. The neighbour then laughed at the applicant and impersonated the way the applicant was walking at that time due to his injury. This person then said to others that because of the car accident in Australia the applicant had brain damage. At that point the neighbour and others began to throw rocks at the applicant and he could feel them land on his head and feet. He managed to get away from that area.
77. The applicant said there were no police in the village and so he went to the village leader to complain about this incident. The village head spoke to the applicant in a derogatory way saying that the applicant had a brain injury and was thinking too much. He insinuated that the applicant was making up a story about being assaulted. When asked if he told his parents about this incident, the applicant said that his father was not at home at the time and he did not tell his mother about it; he just took it in by himself, he just felt so upset about it.
78. The applicant said that there was another incident which he did tell his parents about. When asked what that incident was, the applicant said that one day when he was walking in the village there were many people gossiping about his disabilities. Another person again mimicked the way the applicant was walking at that time and a “peddler”, an “uncle”, in his forties, was laughing out loud. The applicant was angry and felt humiliated. He went home and told his mother who said that he should not blame others; he was different; he had it coming to him and because of something he did he had to accept this consequence.
79. The applicant related another occasion when he went to the train station to meet his father. Some youths were walking behind him, complaining that he was too slow and that he should get out of their way. At that time the applicant could not control his balance very well and accidentally the applicant bumped one of these people. They said the applicant collided with them on purpose and they began to kick and punch him. They said he was a useless cripple and that he had gotten in their way.
80. The attack lasted for approximately five minutes but before the youths walked away, one of them told the applicant not to tell the police or they would hit him every time they saw him and make him permanently disabled. Many people stood by and watched but did nothing. The applicant was very upset and when asked if he sustained injuries from the attack, he said that he had bruising all over his body.

81. After the youths had left him the applicant saw his father standing in front of him. The applicant said that he was injured badly and his clothes were in a mess. His father saw him there and asked the applicant what had happened. The applicant told his father about the attack. The Tribunal asked the applicant what his father thought about that. In response, the applicant said that his father thought that his injuries were not severe and told him to forget about it. His father said they should not go to the police or a doctor. He acted in a cold way. This hurt the applicant's feelings and he felt very badly about his father's attitude.
82. He could not understand why his father had that attitude. His father's attitude was a reason why he now hated his father. The Tribunal asked the applicant if he asked his father about this and complained about his father's attitude. The applicant said that although he felt badly, he said nothing about this to his father.

The applicant leaves China and returns to Australia – evidence as to discussions about whether or not the applicant would live in China and, if not, whether or not his parents would continue to support him in Australia

83. The applicant said he left China after approximately one month because he felt he could not be accepted in his native village. He said that his parents rarely paid attention to him. The Tribunal asked the applicant what his parents said to him before leaving China. In response, the applicant said his parents told him to have a good life in Australia and look after himself; they said nothing to make him stay with them in China.
84. The Tribunal asked the applicant whether therefore there was no discussion between them about when he would return to China and live with them. In response, the applicant said that it was clear from their response to the occasions on which he was attacked that his parents did not care about him. Further there was gossip about his disability in his native village and he did not know how to deal with those things.
85. When again asked what discussions he had with his parents, at the time he left China, about him returning there to stay with them or him just staying in Australia, the applicant said that while he was at his parents' home, he heard conversations between them and the neighbours. He heard his father saying that he was under a lot of pressure as he had no idea when the applicant would recover.
86. When asked if he discussed with his parents the possibility of him working in his father's business, the applicant said that he raised that matter with his parents telling them that if he could find work in China, including in the family business, then he would not have to leave. However, his father said that the applicant needed his parents to care for him because of his condition; he asked the applicant how the applicant could find work in China and that he was not to even think about working in his father's business.
87. The Tribunal asked the applicant, when he left China, what he and his parents decided about the future (in terms of whether the applicant would return and live with them or stay in Australia). In response, the applicant said that his parents did not say much; they said if he wanted to go back to Australia then he should go back and they hoped he had a good life there. The applicant said they did not care about him and they were indifferent to his life. In addition, they did not say much; their conversations were very simple.
88. The Tribunal asked the applicant what discussions they had about how the applicant would support himself in Australia. In response, the applicant said that he thought he was a normal

person and had nothing wrong with him; he complained about why his parents treated him that way, why he was discriminated against by the people in the native village and why they gossiped about him.

89. The Tribunal asked the applicant whether his parents said they would continue to provide him with money and whether they discussed how he would survive in Australia. In response, the applicant said that when he returned to Australia he still had friends here who did not discriminate against him and one of them introduced him to his [work]. In addition, at the time he was in China he still had some of the money his mother initially left him when she returned to China in December 2009.
90. The Tribunal again asked the applicant whether he and his parents discussed giving him more money for him to continue his life in Australia. In response, the applicant said that at that time his parents “said things like that”; he did not think there was a possibility that they would give him any more money. When again asked if he and his parents discussed this matter when he left China, the applicant said there were no discussions about that.
91. The Tribunal asked the applicant whether therefore his parents were not concerned as to whether or not he would have enough money on which to live in Australia. In response, the applicant said that was correct; even when he was staying with them they were indifferent to him so there was no reason their attitude would change because he was in Australia.
92. When asked if he had contact with his parents after he returned to Australia, the applicant said that he called them only once. At that time, he had run out of money and called his parents to ask them to provide him with more funds. His parents said that it was not that they did not wish to give him money but their lives were difficult; they had to support his brother and sister and also needed money for the father's business.
93. Further, they said they would not give him money and that he should just survive by himself. They told him to be good in Australia and consider himself as having no family in China. Further, they said they had no extra money to give him and the applicant has not since spoken to his parents.

Evidence as to his parents' attitude toward him from his return to China in 2010

94. The Tribunal put to the applicant that, on the one hand, he was conveying the impression that his parents were indifferent to him and did not care about him but, on the other hand, they had sent him to Australia to study, they had come to see the applicant in hospital after his accident and then he stayed with them when he returned to China in October 2010. The Tribunal asked the applicant why, in the light of those matters, his parents would appear to suddenly disown him (as his evidence about their attitude toward him from the time he was in China in 2010 appeared to indicate).
95. In response, the applicant said that there were gossips against him in the village. The Tribunal asked the applicant why gossip in the village would cause them to change their attitude toward him. In response, the applicant said that they felt he had not got better; the things he did, the things he said, he could not recall; he could not work properly due to his balance problem; they felt that he would be as disabled as he was in the future.
96. The Tribunal put to the applicant that it still had difficulty accepting, notwithstanding those matters, that his parents would still nevertheless disown him particularly when they had come

to Australia when he was in hospital out of concern for him. In response, the applicant said that probably there was a very big comparison between his “previous image” and his image at that time (after the accident); they still had the old image about him when they visited him in hospital and the contrast was so great that they could not accept it. In addition, they felt they had spent a lot of money to send the applicant to Australia to study and because he had turned out the way he had, it was a huge humiliation for them.

97. The Tribunal asked the applicant why, if that was the case, they would agree for him to return to China to stay with them. In response, the applicant said that the doctor had a discussion with his father and told him that if the applicant returned to China he could get better and it would help his recovery of his memory and other things as a whole. Perhaps, their expectation was too high and what the applicant had experienced in China disappointed them.

Evidence as to why the applicant’s protection visa application made no mention of the attacks on him when he returned to China and made no mention of his parents’ indifferent and negative attitude toward him

98. The Tribunal put to the applicant that in his protection visa application he referred to his return to China and stated how he was looked at in a different way by friends and relatives and that his friends would not go out with him. The Tribunal put to the applicant that he made no mention of being attacked in China by youths at the railway station nor people throwing rocks at him (as he had described to the Tribunal) nor the significant matter of his own parents’ indifferent and negative attitude toward him. The applicant was asked to explain the omission of these important matters from his protection visa application form.
99. In response, the applicant said that he did not know what he told the delegate but what he was telling the Tribunal was true. The Tribunal reminded the applicant that he was not being asked about what he said to the delegate but, rather, about why these important matters were not mentioned in his protection visa application form. He then said that at that time he could not remember when was his application; he decided to apply because of his experience in China and if he were to return there.
100. The Tribunal again asked the applicant to explain why the significant matters in question were omitted from his application. In response, the applicant said that the application was prepared by his migration agent who did not ask him such detailed questions. The Tribunal reminded the applicant that his migration agent had been able to state in the application that when the applicant returned to China his friends had been unkind to him. The Tribunal asked the applicant why therefore, the application contained no mention of the applicant's parents disowning him and the attacks he experienced when he returned to China. In response, the applicant said that he does not know what his migration agent did for him or said; even now he does not know what his migration agent prepared for his application.
101. The Tribunal asked the applicant if he told his migration agent about his experiences in China. In response, the applicant said that those detailed questions were not asked and the migration agent was only preparing the application. The Tribunal asked the applicant if the reference in the application to his friends being unkind to him when he returned to China was something he told his migration agent. The applicant said his agent did not ask him. When asked where this information in the application came from, the applicant said "when it was about to begin, they tried to know better about [him]"; they were waiting as they knew that they would wait a while for the interview date to be arranged; they had his details “very handy just next to his or her hands”.

Country information

102. Under Chinese legislation a disabled person is defined as:

A disabled person refers to one who suffers from abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal.

The term “disabled persons” refers to those with visual, hearing, speech or physical disabilities, mental retardation, mental disorder (sic), multiple disabilities and/or other disabilities.

The criteria for classification of disabilities shall be established by the State Council.¹

103. There are estimated to be 83 million people with disabilities living in China and the proportion of people with disabilities living in rural areas is greater (75% or 62 million) than the proportion living in urban areas (25% or 21 million).²

104. The Chinese government has adopted and implemented a number of laws to protect the rights of persons with disabilities and prohibit discrimination against them as well as policies and standards and initiatives regarding people with disabilities including the right to productive and decent work. These include the Chinese Constitution providing a general protection to people with disabilities; the Law on the Protection of Disabled Persons addressing issues such as employment, welfare and access to services; the implementation of a quota scheme regarding the employment of people with disabilities; employment laws prohibiting discrimination against people with disabilities being the Employment Regulation and the Education Regulation for people with disabilities and the Employment Promotion Law 2007; the 11th Five Year National Program on Disability (2006-2010) and the Poverty Alleviation Program for Persons with Disabilities Living in Rural Areas (2001-2010).³

105. The China Disabled Persons' Federation is an organisation established in 1988 to take responsibility for issues related to disability and is a nationwide umbrella network reaching every part of the country to represent the interests of people with disabilities, protect their rights, provide comprehensive services to them and supervise affairs that relate to them.⁴ There are nearly 100,000 organisations in China, mostly in urban areas, set up to serve those with disabilities and protect their rights.⁵

¹ (*Law of the People's Republic of China on the Protection of Disabled Persons*, Adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress of the People's Republic of China on 28 December 1990 and implemented 15 May 1991, China Disabled Persons' Federation website, Article 2 http://www.cdpcf.org.cn/english/info_01.htm – Accessed 25 September 2006 – Attachment 21).

² International Labour Organization and Irish Aid 2009, *Inclusion of People with disabilities in China*, August 5 http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_112380.pdf - Accessed 24 October 2010.

[\\NTSSYD\REFER\Research\2011\Web\CHN_ILO_Disability_China.pdf](http://ntssyd/refer/Research/2011/Web/CHN_ILO_Disability_China.pdf)

³ International Labour Organization and Irish Aid 2009, *Inclusion of People with disabilities in China*, August 5; See also United States Department of State *Country Reports on Human Rights Practices for 2005 - China*, 8 March, www.state.gov.

⁴ International Labour Organization and Irish Aid 2009, *Inclusion of People with disabilities in China*, August 5

⁵ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April

<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154382.htm>
[\\ntssyd\refer\Research\2011\USDOS\HRP\154382.htm](http://ntssyd/refer/Research/2011/USDOS\HRP\154382.htm)

106. The government at times in conjunction with non-government organisations sponsored programs to integrate persons with disabilities into society.⁶ This includes programs aimed at rehabilitation services examples of which have been described in one source as follows:

The government has developed and supported rehabilitation programs that aim to mainstream and facilitate the participation of people with disabilities in society. These programs include sight-restoring cataract surgery, low-vision training, speech training for hearing-impaired children, corrective surgery for people with physical disabilities, and provision and installation of assistive devices. Services were delivered through key rehabilitation centers as well as Community Based Rehabilitation (CBR) initiatives. CBR aims to improve the physical functioning and independent living skills of people with disabilities in order to facilitate their participation in social life and their communities and is an important and foundational part of rehabilitation efforts in China.....

In response to the many people with disabilities, especially in poverty-stricken rural regions, who could not afford rehabilitation services, the government and NGOs collaborated on the projects “Rehabilitation for All among Leprosy-disabled Persons” and “Helping the Hearing-Impaired by Donating Hearing-Aids,” which have helped over one million people. With support from commercial banks, the government also established a project called “Rehabilitation for Poverty Reduction among Persons with Disabilities.”⁷

107. While these laws exist and initiatives have been taken, according to government statistics, almost one quarter of people with disabilities in China live in extreme poverty.⁸ In terms of education, 85% of poor disabled people do not advance beyond middle school and 36% of people with disabilities aged 15 years and over are illiterate.⁹ Unemployment among adults with disabilities remains a serious problem.¹⁰ One recent source provides that more than 4.5 million people with disabilities were employed in cities and towns and approximately 17 million were employed in rural areas.¹¹ While the overall social status of people with disabilities and their living conditions has improved remarkably over previous decades, there remains much to be done for people with disabilities to achieve full realisation of their right to equality and under the laws enacted to assist them.¹²
108. The Tribunal discussed this information with the applicant and put to him that while this information indicated that people with disabilities did suffer discrimination from those in Chinese society with a negative attitude towards them, there were also programs, initiatives and laws in place to assist people with disabilities and, on balance, there appeared not to be a real chance that he would suffer serious harm in China for the essential and significant reason that he was disabled (or belonged to a particular social group of people with disabilities in China).

⁶ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April;

⁷ (Center for International Rehabilitation (CIR) and Disabled Peoples’ International (DPI) 2005, *International Disability Rights Monitor: Regional Report of Asia*, July, p.32

http://www.ideanet.org/uploads/file/CIR_IDRM_Asia_05.pdf – Accessed 25 September 2006

⁸ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April

⁹ International Labour Organization and Irish Aid 2009, *Inclusion of People with disabilities in China*, August 5

¹⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April

¹¹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April

¹² (Center for International Rehabilitation (CIR) and Disabled Peoples’ International (DPI) 2005, *International Disability Rights Monitor: Regional Report of Asia*, July

109. In response, the applicant said that these various initiatives or laws were only accessible by those in large cities and were not available in his small rural village. Further, these various initiatives and laws were nothing more than a disguise by the Chinese government and did not actually exist.
110. In his final comments, the applicant said he was telling the truth and the Tribunal could conduct an investigation if it did not believe him.

FINDINGS AND REASONS

111. The Tribunal finds that the applicant is a national of China (see the copies of pages from his Chinese passport on the department file).
112. The Tribunal has the following concerns about the applicant's credibility.

Omission of important information from protection visa application

113. The applicant made his protection visa application after he returned from a visit he made to China in late 2010. As stated earlier in this decision, in his protection visa application, the applicant claimed that he could not return to China in view of his experiences when he was there in late 2010; experiences he described as being looked at in a different way; being laughed at by relatives and friends who made insulting comments and who would not go out with him.
114. The Tribunal is concerned that the applicant omitted from his protection visa application the far more serious incidents he claims took place when he returned to China which were being assaulted by a group of youths at a railway station; having rocks thrown at him when he went out for a walk and the negative attitude of his parents who, in effect, according to his claims to the Tribunal, did not care about him.
115. While the applicant, in his protection visa application, generally referred to relatives having a negative attitude toward him, the Tribunal would expect the applicant to have also specifically mentioned the negative attitude of his parents toward him as he described it to the Tribunal if that account was true. Further, if the applicant had been assaulted and had rocks thrown at him as he claimed, the Tribunal would also expect the applicant to have specifically mentioned those incidents in his application.
116. The Tribunal considers that the attitude of his parents as he described it and the two incidents in question are so serious in nature that it is inconceivable the applicant would not have specifically mentioned them in his application where asked to give reasons for claiming protection.
117. When this was put to the applicant, he gave varying responses first saying he decided to apply for protection because of his experience when he returned to China in late 2010. He then said that these important matters were not mentioned because his migration agent who assisted him with the application did not question him in detail. The Tribunal rejects that explanation as the matters in question are significant and serious. The applicant would not have to have been questioned in detail, for such serious matters to be mentioned in the application form.
118. That is especially so, when the applicant has given evidence in the application about his experiences in China and clearly discussed with his migration agent who assisted him to

complete the form what those experiences were and why they were reasons he was seeking protection in Australia.

119. In addition, the applicant then claimed that his agent did not ask him about his experiences in China. However, when asked where the information appearing in the application came from, the applicant gave a vague response implying in an unclear and indirect fashion that the agent somehow had this information. The Tribunal finds his response unsatisfactory and, overall, finds not credible the omission of this significant information from his protection visa application (that is being assaulted by a gang of youths, having rocks thrown at him when walking on the street and his parents' negative attitude toward him).

The applicant's evidence about his parents' attitude toward him

120. The applicant claims that his parents have abandoned him. When he last asked them for money they would not give him any and when he was in China in late 2010 they were uncaring about what he claims happened to him there and indifferent about him returning to Australia and how he would support himself here.
121. The Tribunal has difficulty accepting those claims when, following his accident, his parents, on his own evidence, came to Australia to see him, his mother remaining here from February until December 2009. He has produced a report from a social worker from the hospital where he was being treated who said, when the report was written in December 2009, that his parents had been supportive and had provided a loving and stable environment for him.
122. When that was put to him, the applicant said that his parents came because of their image of him as he used to be but they could not accept him as he was after the accident. However, if that were true, his mother would never have stayed here for the period she did and his father would not have returned to Australia to check on him (as he had claimed).
123. In addition, he said that the impression conveyed by the social worker's report about his parents' attitude was true while he was being treated in Australia. However, the Tribunal can see no reason why his parents' attitude should be positive only while he was receiving treatment. Further, when questioned about his contact with his parents after December 2009, the applicant indicated that they were uninterested in him (the applicant claiming it was always him who was contacting them and that when they spoke they did not say much). This was occurring even though the applicant was still receiving treatment in Australia in 2010 according to the medical reports he produced.
124. In this period, he claims not to have discussed with his parents whether and when they were coming back to Australia to see him. When asked why that was, he claimed he did not care and did not think about it much. While the Tribunal notes that in the medical reports issued in 2010 the applicant is referred to as having low motivation, the Tribunal still has difficulty accepting that, at that time, the applicant did not care whether his parents would come back and see him.
125. Notwithstanding his claim that his parents were distanced from him in this period of time, and that he did not care whether they came to see him, the doctor treating him was of the view that the applicant returning to China to see them would be beneficial. Further, he said he was delighted to be going to China to see them. However, while he made that statement, he also said, at that time, there were no discussions between them as to whether he would stay with them in China permanently or remain in Australia, a claim the Tribunal finds

difficult to accept given the applicant did not have the right to remain in Australia permanently and had no other immediate family here.

126. The applicant's account of his parents, on his own evidence, being willing for him to come back to China and stay with them, but, while he was there, being uncaring, also struck the Tribunal as incongruous. In the light of the positive role they were seen to be playing in his recovery when they did come to Australia, the Tribunal also had difficulty accepting his account that at the time he left China very little was said about him remaining in Australia and, in particular, how he would survive.
127. Their subsequent claimed refusal to provide any financial support to him when he had run out of money also struck the Tribunal as difficult to believe given their previous conduct in coming to visit him in Australia, their presence being assessed by a professional as being supportive, stable and loving.
128. As the Tribunal understands it, the applicant's explanation for this change of attitude on the part of his parents is due to their disappointment at the fact that he has some form of disability and at the way he was treated when he was in China as he claimed. He asserts that they felt humiliated by his condition because they had spent money for him to come to Australia and study. He claimed that possibly earlier on, while he was in hospital, his parents had some hope that he would completely recover and when he returned to China they saw he still had some form of disability and so were disappointed and did not want to care for him.
129. Even if his parents were disappointed as he claimed, both at his state and at what he claims happened to him when he was in China, the Tribunal does not accept that they would be so uncaring as to have had no discussions with him as to how their own son was going to survive in Australia, how long he would remain there and that they would even deny him any financial support when he told them he had no money. That is particularly so when they had come to Australia to see him after his accident and were supportive for his recovery.
130. Overall, the Tribunal finds that the applicant's account of his parents' negative attitude toward him does not bear the ring of truth and is not credible.

Conclusions on credibility

131. The applicant has omitted significant and important information from his protection visa application and has not provided a satisfactory explanation for that. The omission of this important information reflects poorly on the applicant's credibility. In addition, part of that information omitted from the application comprises the claim that his parents have abandoned him. As stated above, the Tribunal finds his evidence about that does not bear the ring of truth and considering this information was also omitted from the protection visa application, the Tribunal finds that this claim about his parents attitude is false.
132. These concerns expressed by the Tribunal about the applicant's credibility, considered cumulatively, lead the Tribunal to conclude that the applicant is not a witness of truth. Accordingly, the Tribunal finds the applicant's claims put forward in his primary application, to the delegate and to the Tribunal about the attitude of persons in China toward him when he was there and the attitude of his parents toward him because of his disability is fabricated and not credible.

133. The Tribunal has also taken into consideration the fact that the applicant has had difficulties with his memory since his motor vehicle accident in early 2009. However, the Tribunal does not believe that those difficulties can explain the omission of significant information from his protection visa application. The applicant was able to relate this information in detail to the Tribunal and he did relate in his protection visa application claims about his experiences in China that led to him applying for protection.
134. Accordingly, the Tribunal is satisfied that the omission of this important information from his application form is not due to any lapse in his memory. Instead, the Tribunal finds that information has been omitted because it is not true.
135. In addition, notwithstanding the applicant's difficulties with his memory and the other aspects of his condition, the Tribunal is satisfied that the applicant was able to understand the nature of proceedings and was in a position to give evidence. He appeared to be able to understand the Tribunal's questions and the various inferences that were put to him about his evidence. He was well able to articulate his responses.
136. In his final comments, the applicant said that if the Tribunal did not believe him, it could do an investigation. The Tribunal does not need to undertake any further enquiries to satisfy itself as to the credibility of the claims made by the applicant. For the reasons given above, the Tribunal is satisfied that he is not a witness of truth and the claims he has made are false.
137. The Tribunal therefore disbelieves the applicant's claims that his parents have abandoned him or do not care about him; that they have denied financial support to him; that they do not want to care for him and do not want him in China; that they were uncaring or uninterested toward him when he was in China; that after they left Australia and returned to China they lost interest in him (as claimed by his representative in submissions of [October] 2011); that, when he returned to China, the applicant was laughed at, the subject of insulting remarks, the victim of derogatory behaviour by others, the victim of an assault and that rocks were thrown at him; that the village head or any Chinese authority made fun of his disability and refused to assist him; that people in his village gossiped about him; that people were disrespectful or attacked him because he took time to think and could not answer questions straight away (as he had claimed to the delegate); that friends and relatives shunned him; that his parents talked in a negative way about him to others, including that they did not want to care for him and that they told him he could not work in his father's business; that there is another disabled person in the applicant's native area who is also maltreated by others as he claimed to the Tribunal; that the applicant has no contact with his parents as he told the Tribunal and as claimed in his representative's submissions of [October] 2011.
138. The Tribunal finds that there is no credible evidence that the applicant was mistreated by his parents or anyone else when he returned to China in late 2010 and no credible evidence that his parents have adopted an uncaring or indifferent attitude toward him.
139. The Tribunal accepts no more than that the applicant comes from a village near the city of Fuqing in Fujian province. The Tribunal accepts that the applicant's parents live in that village and his father is the owner of a [business] there. The Tribunal accepts that the applicant was in a car accident in February 2009 and his parents came to Australia to see him.
140. The Tribunal accepts that their presence with him after the accident was supportive and their attitude toward him has not changed. The Tribunal accepts that the applicant returned to China in late 2010 and stayed with his parents for that period. As stated, the Tribunal finds

that their attitude toward the applicant was and remains supportive there being no credible evidence to the contrary.

141. In terms of his level of disability, the Tribunal accepts, as claimed to the Tribunal, that the applicant has some short-term memory problems; that, as noted in the medical certificate of May 2011, he has impaired vision in his right eye; that there is a weakness in the right side of his body such that he is unable to run and, if he walks quickly, he loses his balance. The Tribunal also accepts as claimed in the medical certificate of May 2011 that he suffers back pain during physical exertion and his claim that he is unable to perform his [work] more than two days per week because he gets tired.
142. The Tribunal accepts the applicant's evidence that he has lived independently since he was discharged from hospital in September 2009 (beyond an initial period of six months when care attendants came to his home). The Tribunal accepts his account that since April 2010 he has not seen a doctor. While he claimed that he did not have any money to consult a doctor, the Tribunal also notes his evidence that he felt there was no need for him to do so as he thought he was healthy and did not need any treatment. As stated above, the applicant is well enough to have been able to undertake part-time [employment].
143. The applicant also referred to having psychological difficulties but he said that this was because of the claimed negative attitude held by his parents toward him. For the reasons given above, the Tribunal does not accept the applicant's claim about his parents' attitude and, while the applicant may still be coming to terms with what has happened to him in terms of the car accident and the injuries he has sustained, there is no evidence before the Tribunal that the applicant's psychological functioning is restricted or diminished in any way that he is unable to function in daily life.
144. In his reports of 2010 [Dr B] referred to the applicant having difficulties with concentration and motivation for his recovery. While that may have been the case then, the applicant displayed no difficulty concentrating at the Tribunal hearing when giving his evidence. In terms of motivation for his recovery, the Tribunal notes that, on his own evidence, since September 2009, now over two years ago, the applicant has lived independently apart from an initial period of six months when he said that care attendants came to his home. In that time he has been able to travel back to China and, since then, obtain part-time employment.
145. In terms of assessing his level of disability, the Tribunal does not consider that the applicant has any problems with concentration or motivation that would impact on his ability to resume his daily living in China and his ability to subsist there. As stated above, the applicant will receive care and assistance from his parents to ensure his ability to subsist in China (there being no credible evidence to the contrary).

Assessment of the well foundedness of the applicant's fear of persecution based on the evidence the Tribunal accepts as credible

146. The applicant fears that if he returns to China he will suffer serious harm because he is disabled. In his protection visa application, he claims that he will suffer discrimination, be laughed at, have no self-esteem, there will be no meaning to his life or value and he will not be able to survive. In submissions of [October] 2011, the representative stated that being from a rural area, the applicant will suffer more as a disabled person, conditions being worse for disabled people from rural areas.

147. The Tribunal is willing to acknowledge that disabled people in China could be a particular social group. The Tribunal also acknowledges the country information to the effect that people with disabilities in China do suffer discrimination in Chinese society and, as asserted by the applicant's representative, that this could be worse in rural areas. The Tribunal acknowledges that while there are laws and programs in place to assist disabled people in China including laws that prohibit discrimination against them, nevertheless, it is estimated that a quarter of disabled people in China live in poverty and unemployment and access to education remains a serious problem.
148. In terms of access to education, while he made no express claim to wish to undertake tertiary education in China, even if he wanted to and institutions there denied admission to him because he is disabled, the Tribunal is not satisfied that this would lead to consequences for the applicant amounting to serious harm. The applicant is relatively well educated already, having been able to undertake high school studies in Australia [and commence a business course] which he had to cease as a result of the accident. Given his level of education, if anything, the applicant should be relatively well-placed to seek employment in China.
149. On that matter, the Tribunal acknowledges that he may encounter discrimination in seeking employment. However, country information does not state that disabled people are outright denied employment because they are disabled. While large numbers do not have employment, the country information indicates that there are disabled people who do have employment both in rural and urban areas. The Tribunal would not describe the applicant's level of disability as severe and, as stated above, he should be better placed than other disabled people in China in seeking employment given the level of education he has received.
150. In addition, when he returns to China, the applicant can live with his parents and will have their support to enable him to subsist there. On his evidence, his parents appear to be relatively well off as he said his father owned a business which employed a number of people. While he claimed in his protection visa application that his parents used their life savings to send him to Australia, since then, they have been able to afford to travel to Australia themselves to care for him after his accident and, he told the Tribunal, that when he returned to China, he understood his father was still running his business.
151. The Tribunal has considered his claims made in his protection visa application that he would be laughed at and his claim about how he would feel about himself (low self-esteem, life having no meaning or value). There is no credible evidence before the Tribunal that the applicant was laughed at when he returned to China and he will have the support and assistance from his parents to help him deal with any ostracism or like treatment he might encounter from those in his native area. The Tribunal can understand the applicant may have low feelings about himself because of the traffic accident and the injuries he sustained but, notwithstanding those feelings, the applicant has been able to conduct his life in Australia since being discharged from hospital in September 2009.
152. The Tribunal considers that, in addition to support he can receive from his parents, the applicant will be able to conduct his life in China and any low feelings he may have about himself will not lead to him suffering serious harm in China. Further, the Tribunal must also consider the various government initiatives that have been put in place to assist disabled people as discussed above including laws that prohibit discrimination against them. As a relatively well educated person from a relatively well-off family, the applicant will be better placed than other disabled people to access those laws and initiatives to realise his rights.

153. The applicant claimed that any initiatives, programs or laws in place in China to assist disabled people would not be available to someone from a small village; they are only available to those who live in large cities. The country information cited above does not state that these various programs and laws are not in operation in rural areas; only that there were more organisations in urban areas set up to serve those with disabilities and protect their rights. While the applicant said his village was so small it did not have a police presence, he also said that it was only a two hour journey from Fuqing city.
154. The Tribunal is not satisfied that his native area is so isolated and remote that he would be unable to access protection from Chinese authorities for harm he fears as a disabled person and unable to access the benefits of the laws, programs and initiatives in place for disabled people in China. In making that statement, the Tribunal also repeats its assessment that this applicant is relatively well educated, his family are relatively well off and are capable of asserting the applicant's rights under these programs and laws.
155. The applicant claimed that the various programs and laws discussed above to assist disabled people did not actually exist and were just a "disguise" put on by the Chinese government. While the applicant makes that assertion, the information in question comes from independent and reliable sources including the United States Department of State among others. The Tribunal is satisfied that the various laws programs and initiatives discussed above do actually exist.
156. The Tribunal has considered the country information provided by the representative in submissions of [October] 2011, that information being two articles from a news media site. The information submitted is consistent with the information discussed above in this decision, namely that people with disabilities in China do face discrimination and prejudice from society and that much needs to be done to ensure that disabled people are able to enjoy their human rights. However, as stated above, there is no country information that disabled people are denied employment outright because they are disabled. Country information indicates that there are disabled people in China who have obtained employment and that is in urban areas and rural areas.
157. While there may be negative attitudes towards disabled people by some sectors of Chinese society, as stated above, the Tribunal considers that this applicant is relatively well educated, his family relatively well off and, therefore, in a position to access the benefit of the programs, initiatives and laws in place in China to assist disabled people including to protect them from discrimination or any other harm. In addition, the applicant will have the support of his parents to ensure that he is able to subsist in China.
158. In his protection visa application, the applicant claimed that Chinese authorities would not protect him because he had been in Australia some years receiving education and medical treatment here. The country information consulted by the Tribunal and cited above makes no mention of the various laws, programs and initiatives set in place by the Chinese government being denied to any disabled person because they had received education, medical treatment abroad or spent time abroad as the applicant has done. Accordingly, the Tribunal finds that Chinese authorities will not deny protection to him simply because he has spent time in Australia and received an education and medical treatment here.
159. In his protection visa application, the applicant claimed that he would be denied basic medical treatment. In examining this claim, the Tribunal notes that the applicant has actually not needed to see a doctor, on his account, since April 2010. While he initially claimed that

was because he did not have the money to consult a doctor, he later twice said that in fact he felt healthy and that he did not need to see a doctor. While the applicant has the disabilities described above, the evidence before the Tribunal indicates that he is not in need of regular medical treatment.

160. Further, there are no doubt many competing demands on the Chinese government in terms of providing services to its citizens and enacting laws and allocating resources with respect to that. The country information cited above makes no mention of any disabled person being denied medical treatment for the essential and significant reason that they belong to a particular social group of disabled people or for any other convention ground. While the country information indicates that still much needs to be done for disabled people in China to realise their legal entitlements including access to appropriate medical treatment, there is no assertion in the country information that this state of affairs is for the essential and significant reason of any convention ground.
161. In summary, the Tribunal finds there is no credible evidence that the applicant's parents have abandoned him or have a negative attitude toward him. There is no credible evidence that when he returned to China the applicant suffered any form of maltreatment, ostracism or any other type of harm because of his disability. Based on the country information discussed above and the evidence of the applicant the Tribunal accepts as credible, the Tribunal finds that the applicant's fear of persecution based on his membership of a particular social group of disabled people is not well founded.
162. The Tribunal finds that, on the evidence it accepts as credible, the applicant does not have a well founded fear of persecution based on any convention ground.

CONCLUSIONS

163. The Tribunal is satisfied that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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