

**1211729 [2012] RRTA 805 (9 October 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1211729
<b>DIAC REFERENCE(S):</b>	CLF2012/40568
<b>COUNTRY OF REFERENCE:</b>	China (PRC)
<b>TRIBUNAL MEMBER:</b>	Gina Towney
<b>DATE:</b>	9 October 2012
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	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 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), applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2012.
3. The delegate refused to grant the visa [in] July 2012, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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. 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 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. 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 Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 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.
14. 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.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

16. 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **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.

#### **Protection Visa Application**

20. In his Protection Visa application the applicant recorded the following: he was born in Fujian Town in China and is a citizen of China; he has no right to enter or reside in any third country; he is of Han ethnicity and Mormon religion; he was married in Fujian in 1989; he entered Australia on a Guardian Visa [in] September 2007 on a passport issued [in] July 2007 and valid until [July] 2016 issued in Fujian; he was granted an Australian visa [in] September 2007 in Shanghai and it was valid until [December] 2008; in China he lived at [address deleted: s.431(2)], Fuqing City, Fujian from 1998 to 2007 (no other address is recorded); he attended eight years of [education in Fujian]; he was employed from 1991 to 2007 as the owner of [a] Store, and his income was 2,000 to 3,00 RMB during 1991 to 1999, and 8,000RMB per month from 1999 to 2007; he departed China legally, but had difficulties obtaining travel documents and paid for it; he has never applied for refugee status in any country apart from Australia or been assessed by the UNHCR; and he has contact with his family in China.

21. The applicant is the only person listed in his Protection Visa application; [family composition, names and dates of birth deleted: s.431(2)].
22. The statement submitted with the applicant's Protection Visa application stated the following (in summary):
  - The applicant is a follower of the Mormon Church and has been persecuted in China. He was involved with the underground church under the influence of the Mormon missionaries and one of his remote cousins was the organiser and priest of the church. The applicant ran a clothing store in China and it was one of the venues to the church gatherings. On Christmas morning 2005 people from the district administration office caught the applicant and the others in the middle of a gathering, and the next day the joint security office came to the applicant's house and asked about the gathering, but due to the lack of evidence they received a warning and were told not to gather without government permission. After that time the gatherings became more careful in the address was frequently changed.
  - [In] February 2007 the applicant was in his business watching Mormon Church CDs and flyers when a small businessman entered to sell samples; the businessman said that he was a believer too, and that he wished to join the church, and the applicant let his guard down; The applicant purchased pants from the businessman, but later realise they were defective product; the applicant saw the businessman the next day and started chasing him, but he ran away, the applicant called security and the man was taken away by the police; Later the same day two undercover policemen came to the applicant's store and asked after him; The applicant's wife was in the store at the time and called his mobile phone but it was turned off, so she took them into the church gathering venue to look for the applicant. The undercover policemen found the applicant in the middle of the gathering with his brothers and sisters. The applicant was accused of involvement with the cult activity and brought the police station and held for two days. During his detention he was tortured. The applicant was not released until he signed a letter of promise.
  - After he was released the applicant tried to move the Mormon Church material that was hidden in his shop, however when he was transporting the Gospels on his motorbike he was found by police. He was injured in a car accident and his family was implicated, his children were warned and discriminated against at school.
  - The applicant was deprived of his freedom in China and there are immense dangers due to his involvement with the church. He had heard that Australia was a country of religious freedom and he paid through personal connections to get documents to travel abroad. The applicant had initially planned to stay in Australia temporarily and return to China once the religious situation improved, however this has not occurred. The applicant has been warned by his family and church friends not to return because the religious environment has not improved and more and more people are being persecuted. One of the applicant's church friends was arrested before Christmas.
  - When the applicant arrived in Australia he was holding a Guardian Visa, he joined a few local church activities and preaching conferences but did not find the Chinese Mormon Church until July 2011. After that he was baptised he is determined to be a Mormon Church missionary.

Delegate Interview [in] May 2012

23. The applicant said he was able to obtain a passport by paying a lot of money and through the assistance of a family member who was in the PSB. The applicant said that he paid 70,000RMB. When asked if the family Church was different to the Mormon Church, the applicant said the family churches are community churches.
24. The applicant said he decided come to Australia soon after February 2007, as at that stage he was arrested for attending a home church meeting was beaten and detained. The applicant confirmed that he arrived in Australia in September 2007 on a Student Guardian Visa. During his time in Australia the applicant had worked [in a variety of jobs]. His son remained with him for approximately one year after he came to Australia and he then moved to [another state]; the applicant said he now sometimes has contact with his son.
25. When asked about what happened at the church meeting the applicant said that they would study the Mormon teachings, and that there was no fixed address because they are worried about being apprehended by the authorities. When asked for any further information about meetings, the applicant said that was all they did. When asked by the delegate about his distant cousin, the applicant said that his relative was a missionary. When asked again if he had a specific title, the applicant said he was called Elder [name deleted: s.431(2)] because his surname was [name deleted: s.431(2)]. The applicant said at most 30 to 40 people attended the meetings.
26. When asked why he would be of interest to the Chinese authorities, the applicant referred to the events in 2005 and 2007 detailed in his statement (and outlined above). In response the delegate raised that in his written statement the applicant had said that his wife brought the two plainclothes policemen to the church meeting to look for him, and the applicant agreed with this. The delegate questioned whether or not she would bring unknown people to the Church meeting, and the applicant said that they sometimes brought unknown people to the church meetings, and also agreed that it was dangerous.
27. When asked what happened when he was apprehended the applicant said he was beaten, suffered sleep deprivation and electric shocks. When asked to describe the letter of promised, the applicant said that the basics of the letter said that he was not to take part in any further underground meetings that had not been approved and if he did he would be imprisoned. When asked if there was anything further in the letter the applicant said no.
28. The delegate asked the applicant about his statement that he was apprehended transporting Mormon Gospels on his motorbike. The delegate asked the applicant if a Mormon Gospel was different to other gospels. The applicant explain the difference by saying that in the Mormon church they are taught that Mary and God were married and that Jesus was the result of this marriage, whereas in Christianity they were taught that Mary conceived Jesus through Immaculate Conception. When asked, the applicant also said it was very difficult to obtain Mormon Gospels in China. When asked to describe the Gospels in the Mormon Bible, the applicant said it contained the Mormon teachings and the covenants. When asked if there were specific subsections or books, the applicant said they talk about Jesus and eternal life and things like that. When asked if the book itself has a specific name the applicant said it is not really a book it is a testament. When asked if this was the book that he was transporting on his motorbike, the applicant said he was actually transporting pamphlets.

29. When asked why he was baptised as a Mormon in Australia if he was already baptised as a Mormon in China, the applicant said that he had not been baptised before because he was running a shop and he didn't have much time. When asked how often he attended church in Australia the applicant said he attended at least once a week on Sunday, and that he attended from 10 am to 1 pm, and that the service was in Mandarin.
30. The delegate raised that the applicant had said since his baptism he was determined to be a Mormon missionary. The delegate asked whether or not he considered himself missionary prior to this. The applicant said when he was in China he had to run the shop. The delegate asked the applicant what he was doing with the pamphlets that he was found with on his motorbike. The applicant said he had the pamphlets in his shop, but that he was scared and he wanted to move them to a family member's residence. The applicant said he had the pamphlets on his motorbike to move them and he saw the police, and although the police were not looking for him at this stage, he was afraid and had an accident. Asked if the pamphlets were for his personal use, the applicant said they were for other people as well, and he would take them to church meetings. When asked what he would practice his faith if he was to return to China, the applicant said he was afraid of going back and during Christmas 2011 one of their members was arrested.
31. When asked about Mormonism generally, and more specifically Joseph Smith the applicant said he was the founder of Mormonism. When asked about the standard books of Mormonism, the applicant said the Book of Mormon, Mormon Teachings, The Standard Mormon and The Pearl of Great Price. When asked what name was given to the leader of the Mormon Church worldwide, the applicant said Mawson Thomas. When asked if he had a specific title the applicant said he is called the Prophet and he fills the same role as Joseph Smith. When asked for the title of the leader of the local Mormon Church, the applicant said in the Chinese Mormon church they are called Congregation Leader Len, as their surname is Len, however he is not sure how they are referred to in other Mormon churches. When asked, the applicant said he had not read the Christian Bible very often however he read the Mormon Bible more often. The applicant also said that the Mormon Bible contains the old and new Testaments. When asked who wrote the four books of the New Testament, the applicant said Matthew, Mark, Luke and John. When asked how Jesus Christ died the applicant said he was nailed to a cross.
32. When asked what he feared if he was to return to China the applicant said he was afraid that he would be arrested again when he was with his religious friends. The delegate raised the country of origin information indicated that the Mormon Church in China have had discussions with Chinese officials in 2010 to regularise the status of the Mormon Church, and that as a result the Mormon Church had advised the members in China will be able to live openly and comfortably whilst also being in accordance with the Chinese law. The delegate then asked the applicant whether he had continuing fears based on information provided in the country of origin information. In response the applicant said that the Chinese government would say one thing and do another thing, and that there was a Mormon Church in Shanghai but it is for foreigners and Chinese people can only attend if they have a letter of introduction. The delegate asked the applicant which activities he would be involved in with his church in China that would attracted the attention of the Chinese authorities. The applicant responded by saying it was not any specific activities, but that the government would be concerned because they think that the group were anti-government. When asked if he had ever attended any official churches in China the applicant said no.

33. The delegate raised that the applicant had been in Australia since 2007 and asked why he did not apply for a Protection Visa sooner if he feared persecution. The applicant responded by saying that he didn't know he could apply for Protection Visa and he only found out in 2010. When asked if he believed that the Chinese authorities were actively looking for him the applicant said yes.
34. The delegate raised that the applicant had been able to leave China on a genuine passport in his own name, and that this seemed to contradict his evidence that the government was interested in him. In response the applicant said that the City Government was paying attention to him, not the National Government.
35. When asked, the applicant said that his wife was not a Mormon. When asked if his children were Mormon, the applicant said that they were Christians.

Delegates Written Decision, dated [July] 2012

36. In the written decision the delegate found that she had concerns with the applicant's credibility based on the contradictions between the applicant's claims and the independent country information. The delegate accepted that the applicant was Mormon, but found that country of origin information supported the finding that local authorities in the Fujian province had a more liberal approach to religious practices than in other parts of China; and in addition, that the Chinese National Government appeared to be semi-tolerant of the Mormon church and its followers despite it not being one of the five state sanctioned religions. In addition, she noted discussion between the Mormon Church and senior Chinese that were expected to lead to the regularisation of the activities of the Mormon Church in China. More specifically, in relation to the applicant, the delegate found that the applicant was not arrested in 2007 for attending a Mormon house church and nor did they accept that there was a real chance that the applicant would be arrested upon his return to China. The delegate also found that the delay by the applicant in lodging a Protection Visa application raised serious concerns about the immediacy, gravity and credibility of his claims.
37. The applicant's Departmental file records that [in] March 2012 he applied for a Bridging Visa class WC. In correspondence dated [later in] March 2012 the grant of the Bridging Visa class C with permission to work was sent to the applicant.
- Hearing [in] September 2012
38. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
39. At the commencement of the hearing the applicant said that he had written his own statement and a former neighbour had translated it and had read it back to the applicant; and that there was nothing that he wished to change or amend. The applicant confirmed that in all statements and applications he had made were true. The applicant also confirmed that his involvement with the Mormon Church was the only reason that he feared persecution if he was to return to China, and that he had no other reason to leave China.
40. When asked about members of his family, the applicant said that his wife did not have a religion and that she was not educated; his parents were not Mormons; neither his children nor siblings were Mormons, but they were Christians. The applicant said he had not travelled



outside of China prior to his trip to Australia, and he had a previous passport because he had wanted to travel but he had been unable to due to his business and financial situation.

41. The applicant said he commenced his involvement with the Mormon Church after June in 2005; and at that stage she was aware that the Church was not sanctioned by the State. The applicant said that his wife was aware of his involvement in that the Church and that the Church was not sanctioned by the state.
42. Referring to his statement where he said he wished to become a Mormon missionary, the Tribunal asked the applicant if he had evangelised in Australia. In response the applicant said he did a little bit. When asked where, he said among his Mormon friends at church. When asked if had done any missionary work with the Mormon Church in Australia, the applicant said that missionary work requires time, but that he does not have time. When asked, the applicant said that he used to work one to two days a week, but currently worked for five days a week. When asked if he had made any enquiries to become a missionary during his time in Australia, the applicant said yes. When asked to provide further information, the applicant initially seemed unable to provide further information, but eventually said that he had asked an elder in the [church]. When asked what missionary work in Australia would entail or require, the applicant responded by saying it would require a certificate. When asked what he would actually be required to do if he was to become a missionary, the applicant said he would preach the Gospel to everyone. When asked to provide more specific information, the applicant said he would tell people God's word. When asked to provide further information, as in what he would physically do if he was a missionary, the applicant responded by saying he's not missionary.
43. The Tribunal referred to the applicant's evidence that he was able to leave China on his own passport despite being previously apprehended on two occasions and being of ongoing interest to the Chinese authorities. The Tribunal raised that it seemed unlikely that he would be able to leave China on his own passport if he was ongoing interest to the authorities. The applicant responded by saying that China is seriously corrupt and he was able to spend money to go overseas. The applicant said he paid a person who had connections to the PSP 70,000RMB to 80,000 RMD. When asked whether he was of interest to the local government or the national government, the applicant said he spent money so that he would avoid serious trouble. When asked for further information, the applicant said that local police had given him the warning in 2005 and had apprehended him in 2007. When asked if he could relocate within China to avoid the attention of the local authorities, the applicant said it would be troublesome to relocate and he would have to change his household registration.
44. The Tribunal raised the country of origin information suggested that the Mormon Church teaches its followers to follow the law of the land, and that in relation to China this meant that the Mormon church taught its followers not to evangelise or proselyte. The applicant responded by saying that if one does not evangelised one is not a genuine Christian or Mormon believer.
45. The Tribunal raised that it had several issues in relation to the applicant's matter: the first being that he did not appear to have a commitment to evangelism either in Australia or if he was to return to China; the second is that the Mormon Church teaches its followers to follow the law of the land and that in China this meant that Mormon followers were not to evangelise. In response to the first point, the applicant said that at the moment he is not a missionary. In response to the second point, the applicant said if they are not able to evangelise they're not able to save people in China.

46. The Tribunal referred to factors that may lead to it finding against the application in the matter including: country of origin information regarding Mormons in China, and lack of reports of mistreatment or harassment of Chinese Mormons by the Chinese authorities; the applicant's delay in of approximately four years between arriving in Australia and attending any Mormon church group; the lack of action by the applicant in pursuing any movement towards engaging in missionary work in Australia, despite his statement saying that he wished to be a missionary; and his evidence that his wife escorted two plainclothes policemen to his church group meeting. The Tribunal also noted that the any or a combination of these factors may lead to conclude that the events referred to in 2005 and 2007 by the applicant did not occur.

47. After a break the Tribunal asked the applicant if he had anything that he wished to say before it continued, to which he declined. The Tribunal again raised that it had doubts as to whether or not the applicant had been involved with Mormonism in China, or had a genuine commitment to the Mormon faith in Australia, or if he would continue with the Mormonism if he was to return to China. The Tribunal raised that one the reasons for this was the apparent contradiction in his evidence that he was so motivated to continue with his Mormon faith in China that, despite receiving one warning and being apprehended by the Chinese authorities, he continued to attend Mormon church functions; However, after entering Australia there was a period of almost four years where he did not have contact with the Mormon Church. The Tribunal also reminded the applicant that under section 91R(3) of the *Migration Act* it must disregard all conduct undertaken in Australia found to be for the sole purpose of furthering an applicant's refugee claim. The Tribunal raised that a further reason in support of this finding would be that country of origin information records that there have been no reports of harassment or mistreatment of Chinese Mormons by the Chinese authorities; and in addition, country of origin information sets out that the Mormon Church itself preaches that people are to follow the law of the land, and this means they must not evangelised in China. In response the applicant said that he really trying to find the Mormon Church during the four years in Australia but that he was unable to do so. The Tribunal said it had difficulty accepting that the applicant was unable to find the church during a period of almost four years, especially given his evidence that earlier he was working one to two days week.

48. During the hearing the applicant provided a document to the Tribunal headed 'Church of Jesus Christ of Latter-Day Saints', dated [January] 2012 and addressed to the applicant, (a copy was submitted in Chinese and English). The relevant section of the letter are copied below (in summary):

Welcome to the Church, there is a sensitive situation in China regarding religion, if you plan to return to China in the next two years we ask that you follow the council given below:

- Be the good citizen: obey of a laws of the land;
- You may bring one copy of the scriptures or other personal reading material into China, but do not bring additional copies the distribution, and please, do not send Church material through the mail to relatives or friends in China.
- Please do not attempt to proselyte in China or discuss religion outside your own home.

49. The Tribunal asked the applicant if he had read the letter. The applicant said yes, and indicated that it was a letter of welcome from the Church. The Tribunal read in more detail from the letter, and then raised that the letter itself supported the Tribunal's own suggestions regarding country of origin information as opposed to the applicant's arguments. The applicant responded by saying that he has become used to the religious life and freedom in Australia. When asked if he had anything further to say the applicant said no.

## COUNTRY OF ORIGIN INFORMATION

50. In China only religious groups which are Buddhist, Taoist, Muslim, Catholic or Protestant are allowed to register and hold services.<sup>1</sup>
51. The Church of Jesus Christ of Latter Day Saints, also known as the Latter Day Saints, LDS or Mormons, believe in thirteen Articles of Faith. The twelfth Article reads as follows: 'We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law.' The Chinese government does not allow proselytization in China, and as such, the Mormon Church teaches its members not to evangelise in China.
52. Sources consulted did not provide recent information on the status of the Church of Jesus Christ of Latter Day Saints (also known as LDS and as Mormons) in China that differed from older information. Information located indicates that expatriates may attend Mormon Church services in China, however Chinese nationals who may have converted to Mormonism while overseas are not allowed to attend these same church services, nor are they allowed to hold separate church services. Effectively if a Chinese national is Mormon they may practise their religion only within their own home. The situation is somewhat different in Hong Kong, where Mormons can worship freely.
53. However, in 2010, LDS church officials were holding talks with Chinese officials about 'regularising' the status of the LDS church in China, although LDS church officials were not certain of what that meant.<sup>2</sup> It has been noted that Chinese citizens who became members of the LDS church while outside China may meet together in China, and that some of their family members have been allowed to be baptised into the Mormon faith in China:
- Chinese nationals, who joined the LDS Church elsewhere, have formed branches (smaller versions of Mormon wards) throughout the country. Some of their family members have been allowed to be baptized into the church but none may meet with expatriates.<sup>3</sup>
54. In March 2000 the Research Directorate of the Canadian Immigration and Refugee Board conducted telephone interviews with two professors at Brigham Young University (BYU) who each specialised in China and knew of the activities of the Mormon Church in China. At that time, both professors stated 'that they were unaware of any mistreatment, or harassment, of Chinese LDS members by the Chinese authorities'.

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<sup>1</sup> US State Department 2011, July-December, *2010 International Religious Freedom Report: China (includes Tibet, Hong Kong, Macau)*, 13 September, <[http://www.state.gov/j/drl/rls/irf/2010\\_5/168351.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168351.htm) accessed 10 May 2012>, <Attachment>.

<sup>2</sup> Stack P F 2010, 'Mormons aim to "regularize" their churches in China', *Salt Lake Tribune*, 1 September, CISNET China <CX272085>.

<sup>3</sup> Stack P F 2010, 'Mormons aim to "regularize" their churches in China', *Salt Lake Tribune*, 1 September, CISNET China <CX272085>.

## FINDINGS AND REASONS

55. I find that the applicant is a national of China. This is based on the applicant's evidence, including his passport. The applicant will have his claims for assessed against China.
56. I find that the applicant has been involved with the Mormon Church in Australia from the middle to late 2011 and that he was Baptised and Confirmed into the Mormon faith in late 2011. This finding is based on the applicant's oral evidence, his Baptism and Confirmation Certificate and church pamphlets and letter of introduction presented at the hearing.
57. As to the applicant's involvement with the Mormon Church in China, I have doubts as the applicant's involvement in China prior to his travel to Australia. These doubts are based on the applicant's evidence being in direct contradiction to the country of origin information regarding the behaviour and teachings of the Mormon Church in China, that is, one of the 13 Articles of the Mormon Church is that followers are to follow the law of the land that they are in and applying this in China, the Chinese Mormon Church teaches that its members should not evangelise in China. The applicant seemed unaware of this, and also gave evidence that he held religious information that was to be passed to other people and that he wished to work as a missionary and save Chinese people if he was to return to China. In addition, the applicant's description of his receiving a warning in 2005 and being detained in 2007 due to his involvement with the Mormon Church contradicts country of origin information regarding the treatment of Mormon Church followers by the Chinese authorities. These factors led to the Tribunal finding the applicant's claims in these areas to be untrue. That is, the Tribunal finds that the applicant was not a member of the Mormon Church in China.
58. Considering the above findings, I find that any participation that the applicant has had with the Mormon Church in Australia has been for the sole purpose of furthering his refugee claim. This finding is also based on the time delay between the applicant entering Australia in 2007, and the applicant's first contact with the Mormon Church, which by his own evidence was in mid-2011. I have considered the applicant's reason for the delay, that is, that he was trying to find the Church but could not, but I do not accept this to be true. This is because I find that if the applicant was a committed Mormon as claimed, and had connections with the Mormon Church in China as claimed, he would have been able to locate a Mormon Church in Sydney relatively easily.
59. Therefore, I find that the applicant was not given a warning by the Chinese authorities in 2005 due to his involvement with an underground Mormon Church group; I also find that the applicant was not apprehended by the Chinese authorities in 2007 due to his participation in an underground church group. As noted above, this finding is based on the contradictions between the applicant's submissions in the country of origin information regarding the lack of reports of any harassment or mistreatment of Mormon Church members and the ongoing positive communications between the Mormon Church and the Chinese authorities generally.
60. Overall I find that the applicant was not a member of the Mormon Church in China; I find that he has participated with the Mormon Church in Sydney for the sole purpose of furthering his refugee claim; I also find that the applicant is not a genuine Mormon and he would not participate with the Mormon Church upon his return to China, either as a member or a missionary. I also find that the applicant does not have a well-founded fear of persecution due to his previous, current or foreseeable future involvement with the Mormon

Church in China. As such I find that the applicant does not meet the refugee criteria. Having made this finding I then considered the complimentary protection criteria.

61. I have found that the applicant is a national of China and I accept his evidence that he ran his own business for a period of years before travelling to Australia on a Guardian Student Visa. I have found that the applicant was not a Mormon in China, that any involvement with the Mormon Church in Australia has been for the sole purpose of furthering his refugee claim [NB: I acknowledge that Section 91R3(3) does not apply to Complementary Protection]; and that he would not be involved with the Mormon Church if he was to return to China in the future. I do not accept the applicant's submissions that he was warned by the Chinese authorities in 2005, or that he was apprehended by the Chinese authorities in 2007, due to his participation in the Mormon Church. The applicant has provided evidence to the Tribunal stating that the only reason he feared persecution in China, and the only reason he left China, was due to his involvement with the Mormon Church. Country of origin information does not support a finding that there are substantial grounds for believing that the applicant would suffer significant harm if the Chinese authorities are, or were to become aware of, his involvement with the Mormon Church in Australia. As such, based on the evidence before it, the Tribunal finds that it does not have substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia into China, there is a real risk that he will suffer significant harm.
62. Therefore I have found that the applicant does not meet the refugee criterion (s.36(2)(a)); and that the applicant does not meet the complementary protection criterion (s.36(2)(aa)).

## CONCLUSIONS

63. The Tribunal **is** not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant **does not satisfy** the criterion set out in s.36(2)(a).
64. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
65. 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) for a protection visa.

## DECISION

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