

1210350 [2012] RRTA 932 (17 October 2012)

DECISION RECORD

RRT CASE NUMBER: 1210350
DIAC REFERENCE(S): CLF2007/135167 CLF2011/215275
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Ray McNicol
DATE: **17 October 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 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] December 2011.
3. The delegate refused to grant the visa [in] June 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 to 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 to 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 to 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 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.
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 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.

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 to 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.
20. 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.

The Application for Protection lodged with the Department.

21. The application, dated [in] December 2011, was received by the DIAC [in mid] December 2011. The application stated that the applicant (who is also known as [name deleted: s.431(2)]) was born on [date deleted: s.431(2)] in Fujian, China and her preferred language is Mandarin. She stated her religion as Catholic. She said that she was married [in the 1980s] in Fujian Her address before her arrival in Australia was [place name deleted: s.431(2)], Leping, Jiangxi Province, China. She said before her arrival in Australia she had been employed in a [business] operated by her family.
22. She said she was a citizen of China.

23. The applicant said that she came to Australia on a “Guardian visa” issued to her [in] 2011 and that she had arrived in Australia [in] 2008 and travelled here on a genuine PRC passport issued to her by the relevant authorities in China [in] 2007. She said she had departed China from Guangzhou airport [on a certain date in] 2008.

24. At the date of the application, the applicant said she was unemployed.

25. The applicant has [her son] in Australia studying and [her husband] and her [other child] residing in China. She also has [a number of siblings] who reside in China.

Applicant’s statement lodged with the application.

26. The applicant set out bio data that was consistent with that referred to in the application.

27. She said that her family has been persecuted because of their religion and environmental pollution in China and that she fears she will be persecuted if she has to return to her home town. The applicant said that in November 2009 her husband had bought an investment property [in Fujian] and her husband and his parents had moved into the property. In February 2011, the husband’s mother had become ill and he took leave from his job to care for her. At this time he noticed that the river next to the property was polluted and this adversely affected the health of local people as the river was used to irrigate local food crops. According to the applicant, her husband was of the view that the main pollutant of the river was [Company 1].

28. The applicant said the community, and her husband, had sent a letter of complaint about the pollution to the local government authority. They also complained directly to the company said to be causing the pollution. No answers were received or action taken to remedy the problem giving rise to these complaints. However, the applicant said her husband and family were subjected to intimidation and threats from unnamed sources. The applicant said her husband also complained to the Environmental Protection Agency as the local government was also allowing the river to be used as a sewage ditch and this was affecting the value of the property and the health of residents adjacent to it. This complaint had also not been responded to.

29. In mid-June 2011, the applicant alleges that her husband started receiving threatening phone calls. As it was summer the stench from the river was unbearable and the applicant’s husband, and other villagers, attended the EPA and refused to leave. They were forcibly removed by the police.

30. The applicant said that if she is forced to return to China she will be required to live in the intolerable environment, join the protesters to defend her personal interests and be persecuted by the government and the company.

31. The applicant said she was baptised as a Catholic in an underground church in [the 1980s]. She said all of her family are Catholic. She claimed that her family had financially supported the church, lent their house to the church and participated in church activities.

32. The applicant said that [in] 2003, she had participated in a three day retreat during which the police raided the gathering and arrested all of the participants. She said she was detained for three days and that she was questioned about who had organised the retreat, she

was threatened and forced to undergo training from the Three-Self Patriotic Movement committee.

33. The applicant said that in 2009 her husband had been involved in a church building program that was carried out under a private name. When the government discovered the building they damaged it and detained and questioned her husband because he had been supplying cheap building materials. He was released after several hours when he convinced the authorities that he had supplied inferior quality materials. He was at that time employed by [company name deleted: s.431(2)].
34. The applicant said that in 2006 a printing factory used by the church was discovered (presumably by the government) and was destroyed. Her husband had arranged for the relevant printing to be undertaken at the printing business of an acquaintance. The applicant said that she was the contact point between the church and the printing company in arranging for the delivery of samples, picking up completed printing and arranging delivery. She said the police found the printing dockets and receipts, with her name on them, at her house in Fuqing, China in 2011. The police had then asked who she was and where she was.
35. In [mid] 2011, the applicant alleges that the police attended her husband's workplace, but he was not present. A distant cousin, presumably with links to the local government, had told her husband the police wanted to use his religious activities as leverage to stop him campaigning about the polluted river issue, but now they had evidence of illegal printing the matter was much more serious. As a result, the applicant said she cannot return to China because she will be arrested for her involvement in the printing activity, tortured during her interrogation and sent to jail.

The Interview with the delegate.

36. The applicant was interviewed by the delegate in Sydney [in] May 2012. The interview was conducted with the assistance of an interpreter in the Mandarin language.
37. The applicant produced her passport, a copy of her baptism certificate and a letter from [the] Parish Priest at [Church A] in [suburb deleted: s.431(2)].
38. The applicant indicated that she is sometimes known by the name, [name deleted: s.431(2)], and that this name is shown on her baptism certificate.
39. The applicant indicated to the delegate that all of the information contained in her application was true and correct and that she did not wish to add to, or alter, any of that information. She said her son had assisted her in completing the application, as she could not write in English.
40. The delegate asked the applicant about how she had obtained her passport. The applicant said that she had completed the requisite forms and had a friend lodge it in Fujian because she was then living in Jiangxi. The applicant said it was a genuine passport and that she had used it to travel to Australia. She said she came to Australia to care for her son who was in Australia on a student visa. She said she had not been to another country since her arrival here and she had not worked in Australia.
41. The delegate asked why she had not sought protection earlier as she had been in Australia since 2008. The applicant said that she had not sought protection because she had

not known about it until recently and it was only in [mid] 2011 when the Chinese authorities found the invoices and dockets from the printing company, that she felt she needed protection.

42. The applicant was asked if she had any evidence of the purchase of the property in [Fujian]. She said all the evidence was in China. She said she was in Australia when the property was purchased and it was purchased through a “middle man” The delegate asked why it was purchased if it was near a polluted river. The applicant said that at the time of purchase the pollution was not significant and serious, but it had worsened since acquisition. She said it had been purchased in 2009.
43. The delegate pointed out that pollution was not a Convention reason and asked the applicant to state the basis of her claim to protection in this regard. The applicant said her husband had raised concerns about the level of pollution with government agencies in China. The applicant said she did not have any evidence of these complaints as her husband was in China.
44. The delegate put to the applicant that there was a procedure in China whereby complaints can be put to the local government authority for resolution on a “without prejudice” basis, so why would her husband, or the applicant, be persecuted for lodging a complaint. The applicant agreed that this was correct but said he would be persecuted because he had complained.
45. The applicant was asked if she had been harmed because of this issue. She said she had not, because she has been in Australia. She said the government were harming her husband and she would also be harmed if she returned to China. The delegate indicated that she had done no wrong in this regard so what would be the basis for any harm to her. The applicant said that government people had searched her house, found documents relating to printing material for the Catholic Church and were looking for her.
46. The applicant said she was Catholic. She had been baptised after her marriage to her husband and she had not had a religion before that. The delegate asked the applicant to explain baptism. The applicant said that before baptism everyone has original sin and baptism washes this away. She said the priest asked her to hold a candle, she was dressed in white and the priest had put some ashes on her head. The applicant was asked to outline how she practiced her religion. She said that she said the rosary in the morning and evening, prays for the sick, and went to Mass on Sundays and other days if she could. The applicant was asked to name the sacraments in the Catholic Church. She said they included Holy Communion, ordination and the “holy body”. She said being an underground Catholic meant her soul could be saved.
47. The applicant was asked why she could not practice at a public church. The applicant said the public church does not recognise the authority of the Pope, who is the leader of all Catholics.
48. The delegate referred to the letter from [the parish priest in Sydney] and asked the applicant to outline the circumstances under which it had been obtained. The applicant said that she had mentioned to him that she had applied for refugee status and he volunteered to give her the letter. She said she had spoken to him in company with her landlord who could speak English. She said she goes to Mass at [Church A] on a regular basis but the mass is in English and she follows it as best she can. The applicant said she began attending services

there in 2009. She said she goes to the church in [suburb deleted: s.431(2)] to repent because there is a Chinese priest there.

49. The delegate asked the applicant why it had taken her a year to attend the church. The applicant said she had attended other churches because when she first arrived she had lived in [suburb deleted: s.431(2)].
50. The applicant was asked if she read the bible. The applicant indicated that she had never been to school and could not read. She was then asked to state what she understood the Holy Trinity was. The applicant said it was the Father, Son and Holy Spirit.
51. The delegate then raised a number of issues that concerned her about the application. First, was the ability of the applicant to depart legally from China on a genuine passport and that she was not questioned or detained when there was country information that indicated that the Chinese authorities will not issue passports to people who have an adverse record. The applicant said that at the time of the issue of her passport she did not have any issues with the government.
52. Second, the delegate said the applicant had arrived in Australia in 2008 but only applied for protection in 2011. The applicant said that until [mid] 2011 she had every intention of returning to China. It was the detection by the police of the records of the printing that had been undertaken for the church that identified her as being involved, and the fact that the police were seeking her, that was the catalyst for the application. She said that she was afraid that her husband would not be able to return home and the family would not be together because her husband was the leader of the pollution issue and the government were looking for him.
53. The delegate pointed out that in the application the applicant had stated that she had previously been detained for three days. The applicant said that she had been on retreat and on the second day the police raided the premises and arrested some of the participants, including her. She said she had been detained in the police station for three days and that this had occurred in 2003. The delegate asked why it had taken her until 2011 to make a claim for protection on this basis. The applicant said that she had only been detained as an ordinary participant and she was questioned about the names of leaders of the group and then released without harm.
54. The delegate asked the applicant to explain how and why she became involved in the printing activity referred to in the application. The applicant said that in 2006 she was in Jiangxia Province working in a family [business] and that the printing company doing work for the church was also there. She said she was involved in the logistics of liaising with the printing company on behalf of the church on a part time basis.
55. The applicant said that prior to her departure to Australia she had moved her belongings back into the family home. Following her departure, her mother in law was ill and some church members were praying for her. She said the police used the religious affiliations of the family as a pretext to raid the home because they wanted to arrest her husband for his activities surrounding the pollution issues. It was at that time that the police found the invoices and delivery dockets from the printers with her name on them. She said that she had signed for the receipt of the printed material when it was delivered to her. The applicant said she had no evidence to produce in respect of her claim that she was involved in printing material for the Catholic Church.

56. The delegate asked how the applicant knew that the pollution of the river adjacent to their property had been caused by [Company 1]. The applicant said that one could observe the black waste going into the river and the black smoke emanating from their factory. She said her husband had found this out and told her. The delegate advised the applicant that research had indicated that [Company 1] actually uses waste to produce electricity and the company was [recognised] for its contribution to a healthy environment. The applicant said she could not explain this
57. The applicant was asked what she feared would happen if she returned to China. She said she will be arrested and investigated about her involvement in printing material for the Catholic Church because the authorities had found relevant documents with her name on them. She said she would be imprisoned and receive degrading treatment. She said the authorities were searching for her in this regard because they were unaware of the name of the factory that printed the material. She said the authorities would also ask her about the underground church because when they released me last time they told me to attend the patriotic church. She indicated that she would continue to attend the underground church if she were to return to China because it was the true church and saved souls.
58. The applicant pointed out that although the issues surrounding the printing of the relevant material for the Catholic Church had occurred prior to her departure to Australia, her involvement had only been identified by the authorities in [mid] 2011. The delegate asked the applicant why the authorities had not issued a warrant or summons for her arrest. The applicant said that she supposed the issue was not that serious to warrant the issues of a summons. However, she knew that she could not return to China.

The Delegate's Decision.

59. The delegate accepted that the applicant's identity as claimed and set out in the passport issued to her by the People's Republic of China that had been produced at the interview with the delegate and that the PRC was the country of reference.
60. In relation to the claims made in regard to the pollution, and its effects on a property owned jointly with her husband, the delegate found that there was insufficient evidence available to prove ownership of the relevant property; that she was not at risk of any serious harm by reason of her relationship with her husband and that as she had not engaged in any of the activities or protest actions in relation to the alleged pollution or the property she could not be imputed with any related political opinion.
61. Subsequent to the interview, the applicant had lodged a document purporting to be the title deed to the relevant property in China. The delegate gave the document little weight given the applicant's very vague knowledge about the location of the property and the circumstances of its acquisition. Similarly, the applicant lodged photographs said to be of the pollution at, or near, the relevant property taken by her landlord's son on a visit to China. As there was no evidence of where the property was in relation to the sites photographed, no explanation of how or why the landlord's son came to take the photographs or any evidence that the applicant will be adversely affected by any of the actions of her husband in respect of this property, the delegate gave no weight to the photographs.
62. The delegate found that there was no real chance of the applicant suffering any serious harm on the basis of the activities of her husband in relation to pollution and its effects on any property owned by them.

63. The delegate also found that the applicant had failed to substantiate a well-founded fear of persecution on the basis of her religious beliefs. The delegate found the written and oral testimony of the applicant in relation to the practice of her Catholic religion to be contradictory, vague and limited. Accordingly, the delegate did not accept that the applicant was a genuine practitioner of the Catholic faith.
64. In relation to the applicant's attendance and affiliation with the Catholic Church in Australia, the delegate noted that there had been a gap of one year between the applicant's arrival in Australia and her initial attendance at church. In response to questions about the practice of her faith in Australia the applicant provided very general responses not indicative of a person who claimed to practice her religion to the extent claimed. The delegate decided to give little weight to a letter of support from the applicant's parish priest as the applicant did not know the name of the priest, the letter did not set out the date she had commenced attending at the relevant parish and that the letter was dated two months prior to the interview with the delegate. The delegate disregarded the applicant's attendance at Catholic services in Australia, and the letter from the priest, under s.93R(3) on the basis that each was undertaken solely for the purpose of strengthening her claims to protection.
65. Given the delegates expressed doubts about the genuineness of the applicant's Catholic faith, the delegate did not accept that the applicant had been previously detained in China for practicing her Catholic faith, particularly given the contradictory and limited description of the episode of detention. The delegate did not accept the applicant had been involved in the printing of material for the Catholic Church given that there was no substantial information to support this claim.
66. The delegate was of the view that the applicant had travelled to Australia to support her son who was studying here. She had departed on a genuine PRC passport and had not encountered any difficulties in departing China which indicated that she was not a person of interest to the authorities in China. Further, there had been a three year delay in the lodgement of the application for protection from the time of her arrival in Australia. The delegate found that this was indicative that the applicant did not hold any fears of persecution in China or that any such fears were not well-founded.
67. The delegate also relied on country information to the effect that underground Catholics are not subject to persecution in Fujian Province. The relevant country information cited indicated that there was a high degree of religious tolerance in that province and that underground Catholics are not harassed by the authorities and that they, like other Christians, are able to practice their faith according to their conscience without any fear of persecution.

The Tribunal hearing.

68. The applicant appeared before the Tribunal [in] September 2012. The applicant was not represented at the hearing. The hearing was conducted with the assistance of an interpreter in Mandarin and English languages.
69. The applicant confirmed that the information she had provided in her application, and to the delegate, was true and correct and she did not wish to delete or alter any of it.
70. The applicant confirmed her personal details as provided to the delegate. The applicant provided her passport to the Tribunal for inspection, and copies of it were made for the Tribunal's consideration. The applicant provided a statement addressing issues raised by

the delegate in the delegate's decision. She also provided several photos purporting to be of the funeral of the applicant's mother-in-law and of children who had recently been to China and visited the area of the applicant's property alleged to be adversely affected by pollution.

71. The Tribunal advised the applicant, based on the material and evidence provided to the delegate, it accepted that the property said to be affected by pollution in China was owned jointly with her husband.
72. However, the Tribunal pointed out to the applicant that the Convention grounds do not include pollution. As a result, the Tribunal could not make a finding that the applicant was a refugee based on any harm, or potential harm, arising from the polluted river adjacent to the applicant's property in China. The applicant had some difficulty accepting this advice as she maintained that if she were to return to China and reside at the relevant property, her health would be adversely affected. The Tribunal explained a number of times that pollution was not a ground for protection under the Refugees Convention. The Tribunal advised the applicant that any harm, or potential harm, arising out of any real or imputed political opinion (expressed in China or Australia) that might involve the issue of pollution may be an issue for consideration in relation to her application for protection.
73. The applicant advised the Tribunal that her husband had noticed that the river adjacent to their investment property in China was polluted and upon investigation was of the opinion that pollution was caused by [Company 1] in Fujian province. The applicant's husband had written a letter to all households in the village asking them to object to the pollution. The applicant said that some of the villagers had agreed to support him in protesting against the cause of, and the level of, the pollution. She said the residents had appealed to the government in the village, and the municipal government. Both of these authorities indicated that the pollution was not an issue for them to deal with. The applicant said that no one would take responsibility for the pollution and nothing was happening about stopping it.
74. The applicant advised the Tribunal that when the river had become particularly smelly in mid-2011, her husband and others had attended the Environmental Protection Agency (EPA) demanding action in relation to the pollution and they had threatened to remain at the EPA until action was taken. The EPA authorities advised the protesters that their action was futile and that they should disperse. The applicant said that police had intervened and the police had eventually moved her husband and the other protesters away. She said the police had beaten the protesters for not obeying their orders to disperse. The applicant said her husband had been hit by the police. She said her husband had been returned to his place of employment after the protest.
75. The applicant said her husband had approached the management of [Company 1] to complain about the pollution the company was causing. The applicant told the Tribunal that a manager from the company had undertaken to investigate the issue, but there had been no change in the company's practices. When her husband had sought to make further representations to the company, the company security services would not grant him admission to the company premises.
76. The applicant told the Tribunal that her husband is currently in hiding because government authorities are looking for him. She said police had been to his place of work in [mid] 2011. She said that at the time, he wasn't present at his place of employment and his boss had contacted him and told him that the police had been there. She said husband had not

gone back to work. She said that he currently works in a friend's [business] in [another locality]. He also currently resides in [that locality].

77. The applicant advised the Tribunal that her mother-in-law had passed away about one week prior to the hearing. She said her husband had driven back to the village for his mother's funeral, but did not in fact attend the funeral because he had been informed the police would arrest him. The applicant provided photos of her deceased mother-in-law prior to her burial.
78. The Tribunal asked the applicant if there was any evidence, other than her testimony, of police action against her husband. The applicant advised the Tribunal that she was not in possession of any evidence, and did not know of the existence of any such evidence.
79. The applicant told the Tribunal that the investment property said to be adversely affected by the pollution, was presently uninhabited.
80. The Tribunal asked the applicant about the whereabouts of her other son in China. The applicant said that he was in [town deleted: 431(2)] and supported and looked after himself. She said he was not subjected to police harassment as he had never attended or been involved in any activities surrounding the pollution of the property.
81. The applicant argued that she would be arrested and harassed by the police if she were to return to China because she is the wife of her husband and he has been involved in activities giving rise to police harassment. She said that the local government authorities had close links with [Company 1], and the police were using his Catholic faith, and his protest activities, to harass him. She argued that if the local authorities were forced to take action to prevent, or mitigate, the polluting activities of [Company 1], the local authorities would lose a lot of revenue. As a result, the local authorities have not, and will not, take any action in regard to the pollution and are seeking the arrest of her husband to stop or limit the level of protest against the pollution and [Company 1].
82. The Tribunal asked the applicant to explain the relevance of the group photos of children that she had provided. The applicant said they were children of her landlord who had recently returned to China and had taken some photos in front of a river near the house that belongs to her and her husband. She explained that the location shown in the photographs was about 15 minutes away from the relevant property. The Tribunal explained to the applicant that it was unable to accept the photos as evidence in support of any claim in the applicant's application for protection. The Tribunal explained that there was no evidence in the photos of any issue relating to her claim to protection on the basis of a Convention ground. The Tribunal further explained that the photos, in and of themselves, were not reliable evidence of any pollution in relation to the relevant property.
83. The applicant advised the Tribunal that she had been baptised a Catholic in [the 1980s] and had been a practicing Catholic since that time. She told the Tribunal that from [the year of her baptism] until her departure from China, she had only encountered one issue with the Chinese authorities in relation to her religion. The applicant said that she had been arrested in 2003 while attending a retreat and had been detained for 3 days. She said she had been questioned by the authorities and counselled by them not to continue as a member of the underground Catholic Church but to attend a registered church instead. The applicant said she was released after she had signed a promise that she would not attend the underground

Catholic Church again. She said she had not been beaten, mistreated or fined as it was the first occasion she had had any in encounters with the authorities.

84. The applicant told the Tribunal that a publishing factory in Jiangxi (a neighbouring province to Fujian) had printed books and Bibles for her church in Fuqing City. The church then conducted its business and services at a private person's home, and not in a separate church building. She said that a representative from the Church provided her with samples of what was to be printed and relevant order quantities. She would provide these to the factory as she was working in Jiangxi province at the time. When the books and relevant material had been printed the factory would provide the finished goods to the applicant and she would arrange transport of them back to the church Fuqing City. The applicant said the invoices for this work did not disclose the name of the printing factory or the name of the church. She said her signature was on the invoice where she had signed for receipt of the relevant goods.
85. The applicant told the Tribunal that the police had been to her family home in [mid] 2011 in search of her husband and they had searched the family home. She said that the police had found these invoices and as a consequence the police had asked about her whereabouts and were now seeking her to identify the printer of the material referred to in the invoices.
86. The Tribunal advised the applicant that it accepted that she was a member of the underground Catholic Church on the basis of her baptismal certificate provided to the delegate. The Tribunal also accepted that she had continued to practice her religion in Australia and accepted the evidence provided by [the parish priest] of [Church A] in this regard. However, the Tribunal put to the applicant country information indicating that officials in the Fujian province were very tolerant of registered and unregistered churches and that people in Fujian were not subject to systematic harassment by the authorities for attending church. The applicant did not agree with this proposition. She said that the registered church may be treated this way, but that treatment did not apply to, or extend to, the underground Catholic Church.
87. The Tribunal put to the applicant that Pope Benedict XVI had written an open letter to all Catholic clerics and practitioners in 2007 expressing the Pope's hope for reconciliation between the open and the underground factions of the Catholic Church in China. The applicant said she had no knowledge of the letter and that her local priest had discouraged attendance at the registered church. She referred the Tribunal to the photographs she had provided of her deceased mother-in-law and pointed out that the photos were part of her burial service and that the relevant service was not conducted in a "proper" church because the Chinese authorities denied her congregation the right to practice in a church.
88. The Tribunal put to the applicant that country information indicated that 90% of Catholic priests and bishops were ordained with the approval of both the Chinese authorities and the Vatican. The applicant says she was unaware of this and was unable to comment.
89. The applicant advised the Tribunal that if she were to return to China she fears she will be arrested and questioned about the publishing of information for the underground Catholic Church and about the identity of priests and nuns in that church. She said if she did not provide this detail to the authorities she would be detained for a long time. She said she was very scared that she would be tortured in order to disclose the relevant information.

90. The hearing officer advised the applicant that it would take a number of days to provide her with a copy of the recording of the hearing. This appeared to cause the applicant some concerns. The Tribunal advised the applicant that it would not make a decision within the next 14 days to enable her time to provide any additional information or respond to the issues raised by the Tribunal in the hearing.

Post hearing submission.

91. The applicant lodged a statutory declaration with the Tribunal dated [in] October 2012 providing information in relation to country information that the Tribunal had discussed with the applicant at the hearing relating to the tolerant attitude of authorities in Fujian to the underground church in that province and to the ordination of priests in China with the approval of Chinese authorities. Some of this material was in untranslated Chinese and therefore unusable by the Tribunal. Also included was a statutory declaration from [name deleted: s.431(2)] (a co-resident of the applicant) describing incidents of police interference in the activities of the underground church identified while that person was on a holiday in China in April 2011.
92. The statutory declarations and related material are attached to the Tribunal's file.

Country Information.

93. The Chinese government sanctioned Catholic Patriotic Association (CPA), has more than 70 bishops, nearly 3000 priests and nuns, 6000 churches and meeting places and 12 seminaries in China. In addition, there are thought to be approximately 40 bishops operating underground, that is, in churches that are not registered with the CPA, some of whom are in prison or under house arrest. (See US State Department 2011, "Religious Demography", *International Religious Freedom Report 2010 [July – December] – China*, 13 September).
94. Since the founding of the CPA in 1957, there have been 2 Catholic Churches in China: the official or (registered) church and the unofficial (unregistered or underground) church. On doctrinal matters, there appears to be little difference between the two churches and it is difficult to distinguish members of the underground and open churches solely on the basis of their practice and rituals. (Liu, William T. And Leong, Beatrice 2002, "Organisational Revivalism: Explaining Metamorphosis of China's Catholic Church", *Journal for the Scientific Study of Religion* 41:1, p. 125).
95. The difference between the official (registered) and underground (unregistered) Catholic Church in China stems from the government's restriction of legal religious practice to government sanctioned organisations and registered religious groups and places of worship. In the case of Catholicism, the CPA is the state sanctioned Catholic organisation. Religious groups which are registered enjoy legal protections that unregistered religious groups do not receive, and unregistered groups are vulnerable to coercive and punitive state action. The legal protections afforded to registered religious groups relate to, among other things, the possession of property, publication of literature, the training and approval of clergy, and collection of donations. (See US Department of State 2009, "Legal/Policy framework", *International Religious Freedom Report 2009: China*, 26 July).

96. The CPA was established in 1957 by the Chinese government in an effort to remove Catholic faithful from the aegis of the Pope. (Madsen, R. W003, "Catholic Revival During the Reform Era", *The China Quarterly*, Volume 174, PP. 472- 4). In the late 1970s Pope John Paul II declared a state of emergency in China, granting the Chinese Catholic Church special dispensation. Under this special dispensation (under conditions of duress, when there were difficulties in communicating with Rome) the underground church could appoint bishops without consulting the Vatican. ("The Catholic Destiny in China" 2008, *La Stamper*, 31 July). Over the years that position has developed to where most newly appointed bishops of the official Chinese Catholic Church are recognised both by the Vatican and Beijing. (Scott, K. C. 2004, "Two suns in one sky: papal influence and the CCP", *China Brief*, volume 4, Issue 14 [July 8, 2004] The Jamestown Foundation <CX211489>).
97. The differences between the official Catholic Church and the unregistered Catholic Church have become less clear over time. For example, in 2008 and 2009 the US State Department reported that in some official Catholic Churches, clerics led prayers for the Pope, and pictures of the Pope were displayed. (US Department of State 2009, *International Religious Freedom Report 2009: China*, 26 July).
98. Most Catholic commentators agree that the once "sharp physical and spiritual distinctions" between the state sanctioned and underground churches have significantly blurred. (Scott, KC. 2004, "Two suns in one sky: papal influence on the CCP", *China Brief*, volume 4, issue 14 [July 8, 2004], the Jamestown Foundation, <CX211489>).
99. Most sources estimate the number of Catholics in Fujian as around 200,000 (or around .6% of the chance population of 35 million). Fujian is generally regarded as one of the provinces of China said to have applied regulations on religion more liberally than others. (See: "Another underground priest arrested in Fujian" 2010, *Asia News*, 24 March <http://www.asia-news.it/news-en/Another-underground-priest-arrested-in-Fujian-17965.html#>).
100. The CPA does not recognise the authority of the Vatican to appoint bishops; however, it has allowed the Vatican's discrete input in selecting some bishops. An estimated 90% of official Catholic bishops have reconciled with the Vatican. Likewise, the majority of Catholic bishops appointed by the government have received official approval from the Vatican through apostolic mandates. (US Department of State 2011, "Legal/Policy framework", *July- December 2010 International religious Freedom report – China*, 13 September).
101. On 27 May 2007, Pope Benedict XVI issued an open letter addressed to the "bishops, priests, consecrated persons and lay faithful of the Catholic Church in the People's Republic of China". Made publicly available by the Vatican on 30 June 2007, the 28 page letter expresses the Pope's hopes for reconciliation between the open and underground factions of the Catholic Church in China.
102. An RRT research response (CHN 35551) indicated that no recent information on harassment or mistreatment was found in the sources consulted on the underground Catholic Church in Fuqing, Fujian province. However this RRT paper did list incidents of harassment and mistreatment of both clerics and laypersons of the Catholic Church in Fujian in 2007 and earlier years. CHN 35551 indicated that no examples were found of Catholics being arrested or detained for distributing unofficial Bibles or other literature. However, in 2007 the Christian post provided an overview of Bible production in China. It concluded that "access

to religious material remains difficult in China despite the Chinese government's claim that it prints a sufficient number of Bibles", and included examples of two house church leaders being arrested for printing and receiving unauthorised Bibles.

FINDINGS AND REASONS

103. The applicant has claimed that she is a national of China (the PRC). The applicant provided her passport for inspection by the Tribunal. The passport is a genuine passport issued by the PRC [in] 2007. The applicant arrived in Australia [in] 2008 travelling on a student guardian Visa granted [in] 2007. [In] December 2011, the applicant lodged a protection Visa application and was granted a bridging Visa in association with valid protection visa application. On the basis of the information contained in her passport, and the consistent information she has provided in her application, to the delegate and to the Tribunal, the Tribunal accepts that the applicant is a national of China.
104. The Tribunal finds that the applicant has no right to enter and reside in a third country as there is no evidence of such a right existing now or in the reasonably foreseeable future.
105. Having regard to the applicant's application for protection, her interview with the delegate and the hearing with the Tribunal, the applicant's claims to protection can be summarised as follows:
- The applicant was a member of the underground Catholic Church in China and fears she will be arrested and detained by Chinese authorities on the basis of evidence of her involvement in the printing of material for the underground Catholic Church in China.
 - The applicant fears she will be adversely affected by a polluted river adjacent to a residential property owned jointly by her and her husband.
 - The applicant fears she will be arrested and detained on the basis of an imputed political opinion ascribed to her because of the protest activities of her husband against the effects of pollution on a residential property owned jointly by her and her husband.
106. On the basis of information the applicant provided to the delegate, the Tribunal accepts that the residential property said to be adversely affected by pollution is owned jointly by the applicant and her husband.
107. While there is no evidence, other than the applicant's testimony, that the river said to be adjacent to the applicant's residential property in China is polluted, the Tribunal accepts that the river is polluted.
108. The Tribunal notes that pollution is not a ground to protection specifically listed in the refugees Convention. On the basis of the evidence before the Tribunal, the Tribunal is not satisfied that the essential and significant reason for any pollution related harm (such as health, environmental and social concerns for the applicant) is a Convention reason.
109. The applicant told the Tribunal that she feared harm from the Chinese authorities because they would impute a political opinion to her as a consequence of her husband's activities in protesting against and complaining about the level of pollution in the river, and

the cause of pollution. No evidence was provided to the Tribunal that the applicant's husband has suffered any serious harm of the type contemplated by section 91R(1) or (2). The Tribunal notes that there is also no corroborative evidence to that provided by the claimant, that her husband is a person of interest to the Chinese authorities. In this regard the Tribunal accepts the evidence of the applicant that the Chinese authorities have not issued an arrest warrant for the apprehension of the applicant's husband. Even if the Tribunal accepted that the applicant's husband was a personal interest to the Chinese authorities in respect of his protests against pollution in China, the Tribunal finds that this would be insufficient to justify a well-founded fear of serious harm on the part of the applicant on the basis of an imputed political opinion. In this regard, the Tribunal notes the evidence of the applicant that her son (presently residing in Fujian) has not been, nor is likely to be, harassed by the Chinese authorities as he has had no involvement in any of the protest or political activities carried out by her husband. The Tribunal finds that the same outcome would be applicable to the applicant given her lack of involvement in such activities.

110. The Tribunal does not, and cannot, accept the photographic material provided by the applicant of children near a river as evidence to support any of the applicant's claims relating to the likelihood of harm arising out of an imputed political opinion based on her husband's protest against pollution of a river adjacent to their property in China. In this regard, the Tribunal notes the evidence of the applicant that the area in which these photographs were taken is somewhat removed from the area in which the relevant property is situated, and as such, is too remote to be of any relevance to the claims made by the applicant.
111. The Tribunal finds the applicant's evidence in relation to the activities of her husband, and the claimed activities of the Chinese authorities, to be general and vague and incapable of providing a sound basis for any finding that the applicant's husband has been, or will be, persecuted for any activity he has undertaken in relation to the residential property or the polluted river. Accordingly, the Tribunal finds there is insufficient evidence to support the applicant's claim that the Chinese authorities would impute her with any antithetical political opinion should she returned to China.
112. Although not raised by the applicant, a claim to protection as a member of the particular social group of people adversely affected by pollution in China has been considered by the Tribunal. While the Tribunal is prepared to accept that the claimant is a member of the particular social group, the Tribunal is not satisfied that the essential and significant reason for any pollution related harm she might suffer is a Convention related reason.
113. The Tribunal finds that there is no real chance the applicant will face persecution because of any political opinion imputed to her on the basis of any association with her husband, any association with any anti-pollution activities of her husband or because of the existence of the pollution.
114. The applicant also claimed a well-founded fear of persecution on the basis of her Catholic faith if she were to return to China. Based on the evidence provided to the delegate, her baptismal certificate and the evidence of [the parish priest of Church 1], the Tribunal accepts that the applicant is a member of the underground Catholic Church in China and that she was baptised into the church in [the 1980s].
115. The Tribunal also accepts the applicant's evidence to the Tribunal that the only time she encountered any adverse interaction with the Chinese authorities in relation to her

religion was in 2003 when she was detained 3 days for attendance at a retreat. The Tribunal accepts her evidence that while detained she was not mistreated, and finds on the basis of relevant country information of the tolerant attitude of the authorities in Fujian, that she would not be mistreated if she were to be questioned again about her activities..

116. The applicant told the Tribunal that she fears she will be arrested and detained by Chinese authorities if she were to return to China because the police have found documents in her home that she alleges relate to the printing of material for the Catholic Church in Fujian. In this regard, the Tribunal notes the evidence of the applicant that the relevant documents did not disclose any information relating to the identity of the commercial organisation alleged to have printed the documents, nor did the documents identify the person or entity who ordered the relevant printing. The Tribunal accepts this evidence provided by the applicant. Therefore, the only incriminating evidence on the relevant documents seems to be the applicant's signature for accepting delivery of the goods and perhaps a description of the goods delivered.
117. As a result, the Tribunal finds that there is insufficient evidence, on the basis of the applicant's testimony about these documents, to link the applicant to any underground church as no such church is named on the documents. The printing could have undertaken for a commercial entity or a registered church. The applicant's evidence is that the organisation which placed the order for the printed material is not disclosed on the document and accordingly there would be no information upon which the police could link the material or the applicant to the underground church. It is therefore difficult to see how these documents could sustain a well-founded fear of persecution.
118. There is no evidence before the Tribunal that the applicant will be seriously harmed because of any involvement she may have had with the underground Catholic Church. The only evidence available to Tribunal from the applicant is that the police asked once about her whereabouts in mid-2011. The Tribunal has noted, and has had regard to, country information that Bibles and other printed material are available to the registered Catholic Church and the underground Catholic Church in China. The Tribunal finds that the mere existence of delivery dockets for such material signed by the applicant, and disclosing no other information, would not give rise to a well-founded fear of persecution.
119. The Tribunal accepts country information that the Chinese authorities in Fujian are tolerant of both the registered and unregistered Catholic Church. The Tribunal notes the objective country information that 90% of bishops and priests ordained in China, are ordained with the consent of the PRC authorities and the Vatican. The Tribunal also notes the sentiments expressed in the letter of May 2007 by Pope Benedict XVI expressing the Pope's hopes for reconciliation between the open and underground factions of the Catholic Church in China and the generally positive response of the Chinese authorities.
120. The Tribunal has considered the material presented in the post-hearing submission lodged by the applicant. However, the Tribunal prefers the information contained in the country information referred to earlier.
121. In the light of the applicant's evidence that she practised her Catholic faith in an underground church from [the 1980s] until her departure from China in 2008 and was not subject to any serious harm in that time, and for the reasons set out above, the Tribunal finds that there is no real chance that the applicant will face persecution because of the practice of

her Catholic faith in the underground Catholic Church in China in the foreseeable future, or for any other Convention related reason, should she return to China.

122. Having considered the applicant's circumstances and claims singularly and cumulatively, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a convention reason if she were to return to China. The Tribunal finds the applicant is not a person to whom Australia has protection obligations under s.36(2)(a) of the Act

Complementary protection.

123. Having found that there is no evidence to indicate that the applicant will face any serious harm if she were to return to China, the Tribunal is not satisfied Australia has protection obligations to the applicant because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country (in this case China) there is a real risk that she will suffer any significant harm from the authorities in China. The Tribunal finds the applicant is not a person to whom Australia has protection obligations under s.36(2)(aa) of the Act.

CONCLUSIONS

124. The Tribunal **is not** satisfied that the applicant is 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).
125. 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 to whom Australia has protection obligations under s.36(2)(aa).
126. 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

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