

1100737 [2011] RRTA 815 (23 September 2011)

DECISION RECORD

RRT CASE NUMBER: 1100737

DIAC REFERENCE(S): CLF2010/158994

COUNTRY OF REFERENCE: Malaysia

TRIBUNAL MEMBER: Alison Murphy

DATE: 23 September 2011

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Malaysia, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2010 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] November 2010. The delegate decided to refuse to grant the visas [in] December 2010 and notified the applicants of the decision and their review rights by letter dated [December] 2010.
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] January 2011 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. 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.
11. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. 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.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. 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.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. 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.
21. The applicants were represented in relation to the review by their registered migration agent.

The primary application

22. The application for a protection visa is made in the names of each of the named applicants, both of whom have submitted their own claims to be a refugee.
23. The applicant husband states in his visa application that he was born on [date deleted: s.431(2)] in [Town 1], [State 2] in Malaysia and that his parents are resident in Malaysia. He states that he has been a citizen of Malaysia since birth, that he speaks and reads English and Chinese and that his religion is Tian Dao. He does not state his ethnicity in his visa application.
24. The applicant husband states that he was married to the applicant wife [in] May 2006 in [location deleted: s.431(2)] and that his profession before travelling to Australia was computer technical support. He states that he travelled to Australia [in] August 2010 on a Malaysian passport issued in June 2010 and valid until December 2016 and that he had never previously travelled outside of Malaysia.
25. He states that he has had 13 years of education between [year deleted: s.431(2)] and [year deleted: s.431(2)] (the Tribunal assumes this was intended to read [year deleted: s.431(2)]) and that he worked as a technical support office and in market sales from June [year deleted: s.431(2)] to August 2010.
26. His refugee claims are contained in a statement submitted with the parties' visa applications. Parts of that document are very confusing and do not make sense, but the

Tribunal understands the essence of the claims contained in that document to be in summary that:

- His wife is the applicant wife and they married in 2006. They have two daughters, [Ms A] born [date deleted: s.431(2)] and [Ms B] born [date deleted: s.431(2)]. Their two daughters live with and are cared for by his mother at [Town 3], [State 4];
 - He originally worked in IT technical support, having graduated from [faculty deleted: s.431(2)] in [year deleted: s.431(2)] and taking computer classes in [faculty deleted: s.431(2)], [Location 2] in [year deleted: s.431(2)] and had [number deleted: s.431(2)] years work experience in that industry in Kuala Lumpur. His wife is a housewife and they were married after living at [address deleted: s.431(2)];
 - [In] October 2009 something changed and he and his wife had been worried from the start about the thing that finally happened. From that day they had no stable abode and could not find a job;
 - When his wife was young, her brother suffered from ill health and her family had to go everywhere to seek medical attention in order to cure her younger brother. In their home near [District 5] was a very well-known Malay shaman who stated that he would cure the applicant wife's brother if his relatives promised certain things. They did so, having too little education to understand and in hope of saving the boy;
 - As a result, after the applicant wife turned [age deleted: s.431(2)], a man suddenly appeared to his wife demanding that she marry him and convert to Islam. His wife did not wish to because she thought she had freedom of marriage and choice of religion and in 1997 had converted to Heaven. He and the applicant wife were in love and so she found an excuse not to marry young and later went quietly to work with him in Kuala Lumpur for a few years. They thought it had all quieted down so they married and had two daughters;
 - A few months ago they came to her door telling her that she had breached her marriage engagements, they beat the applicants. His wife suffered from schizophrenia, headaches, sadness, worry and suffering so he had to borrow money quickly and then took her boy and ran hard to come here;
 - They have been looking for the applicants and they dare not go back. His wife's brother was forced to marry their loved ones and to convert to Islam. He had refused to convert to Islam but he might have married them and his children belong to them. He thought he was a willing sacrifice and they wouldn't miss the applicants but now they wish to punish them and their innocent children and catch them in the Islamic Courts;
 - The applicants have been on the run and they can't imagine how they will be dealt with if they are caught. They chose to escape and are working as a last resort, even though it is against the law. They are missing their family and their children but dare not go back where they must live a life full of flight or else be caught to die. They are still worried that they will find their children.
27. The applicant wife states in her claims to be a refugee that she was born in [Town 3], [State 4] in Malaysia on [date deleted: s.431(2)] and that she speaks, reads and writes

Chinese. She states that her religion is Tian Dao and that she married the applicant husband [in] May 2006. She states that she was a housewife before she came to Australia and that she travelled on a Malaysian passport issued [in] June 2010 and valid until [June] 2015. She states that she attended school between [year deleted: s.431(2)] and [year deleted: s.431(2)] and worked as an accounts clerk between [year deleted: s.431(2)] and 2006. She indicates in her applications that her refugee claims are contained in the written statement submitted with the applicants' claims for a protection visa and detailed in paragraph 26 above.

28. The Departmental file contains copies of the each of the applicant's Malaysian passports which indicate that they both entered Australia on electronically approved visitor visas granted [in] June 2010 and valid for three months.

The departmental interview

29. [In] December 2010 the delegate wrote to the parties inviting them to attend an interview in relation to their application and asking them to contact the Department to arrange that interview before [a certain date in] December 2010. The Department file contains no response from the applicants and the delegate indicates in her decision statement that they did not respond to the letter dated [December] 2010.

The delegate's decision

30. [In] December 2010 the delegate decided to refuse to grant protection visas to each of the named applicants. In her decision statement she noted that they had not availed themselves of the opportunity to attend an interview to discuss their claims and that she could not fully understand the nature of their fears. She stated that in view of their unwillingness to attend an interview with the Department she had considerable doubts about their credibility and that of the claims made in the protection visa applications.

Other information before the Tribunal

31. [In] April 2011, the applicants' representative lodged further documents in support of the applications for review, including amended copies of the applicants' protection visa application, indicating that the applicant wife wishes to submit her own claims to be a refugee and the applicant husband makes his application as a member of her family unit.
32. In the applicant wife's amended application, she states her reasons for claiming protection are as follows:

I left the country because I was systematically persecuted by the Religious Department of [State 4], Malaysia. They wanted me to convert to Islam so as to marry [Mr C], the eldest son of [Mr D] who was a senior officer in the Religious Department of [State 4] ([District 5] Office).

I did not want to convert to Islam nor to marry [Mr C]. And [Mr D] the father kept harassing me and the family; he had instigated the Religious Police from the Religious Department to hound us, and threaten us for denigrating [District 5]- because our family believed in Yi Guan Dao (The Heavenly Way Sect). One of the doctrines of Yi Guan Dao was that Mohamed the Prophet was also the saviour sent to salvage the universe by the Almighty Mother (of the Heaven Way Sect). Because of

this doctrine, we were viewed as blasphemy; and according to Sharia law of Malaysia is heretical, and had to be severely punished.

My mother, to appease [Mr D], agreed that her second son (my younger brother) to marry his daughter [Ms E] who is now my sister in law. (see family pic attached). They were married in October 2005.

Even then the harassment continued, so did the persecution – On [date]/2/2009 [Mr D] (with 3 Malays who claimed to be Religious Police) came to the house desecrated the Almighty Mother (Idol) in our house.

They would come often checking on us, making sure we did not preach anything on the Prophet Mohammed and not to use the word Allah to describe our Divine God. We were especially warned not to proselytise [Ms E] and her children and were Muslim by law living in our house.

Because of the fear of serious harm, my family moved to Kuala Lumpur in March 2009.

I cannot convert to Islam because I feared (which is real) that they would subject me to genital mutilation (see attached news cutting) and that I could not object to my husband's polygamous practice ([Mr C] already had one wife).

I had then married [my husband] on [date] May 2006 – [Mr D] was trying to break up my family on the pretext upholding public means – the Religious Department of [State 4].

When my husband was assaulted (October 2009) we reported to the police but they would not take action to protect us because it involved religious affairs (as this was a state affair they could not interfere) – see pic attached – injuries suffered in the scuffle.)

I was not able to avoid harm even when we moved from [State 4] to Kuala Lumpur, the state was not alert to our need for protection; it indicated that they could not and would not protect us because we belonged to a social group holding a belief (religion). Through the instigation of [Mr D], the official authority persecuted and harass us systematically. The official excuse was the civil administration cannot interfere in the religious affairs under the jurisdiction of the Sultan.

Because of the continuous harassment from the Religious Police, I became unemployable (for a full time job) in particular at restaurants and supermarkets where foods were sold; the employers dismissed me when they found out the Religious Department had a lot of excuses to check on them – to look into Halal foods, to look for Muslim employees who were not appropriately attired and etc.

If I go back to Malaysia, it is very likely they (the Religious Department) would assert pressure, official or otherwise to convert me into Islam and then will marry his son to me.

My husband and I of course will resist any moves to break us up. We will want to keep the faith of Yi Guan Dao; this will not be allowed by Religious Department in [Town 3]. As under the state laws, the Sultan of [State 4] who was the responsible for the protection of Islam can prosecute (through the religious police) any case of blasphemy if the Religious Department deem that any information, scriptures were

published to denigrate Islam. And the High Court of Malaysia cannot interfere with the Sharia court.

My husband [name] were assaulted before (by the thugs associated with the Religious Department) and the worship place inside our house was wrecked by thugs. We could not seek any protection from the police as the incidents were deemed to be sensitive; and had to be played down. Serious harm was inflicted upon us, and our property were damaged. With the threat that we had committed blasphemy against Islam, we risk losing our liberty because they will charge us under the Sharia law, (the civil court will not protect us) and the internal security acts which they could invoke to detain us without charge.

We cannot get out of harm's way even if we were to relocate to other states; for Sharia law though under different state jurisdictions will apply so long as the matters related to Islam.

In short, if and when we return to Malaysia, we lose our freedom of religion; we risk being locked up in by police for blasphemy, we lose our liberty; the real fear is serious harm will be inflicted upon us if we wanted to live our way, keep our faith. They had beaten my husband before and will do it again to achieve their aim!

33. In response to the question “who do you think may harm/mistreat you if you go back?” the applicant wife wrote:

The Religious Department and their Police will carry out their campaign of fear against me, and the family. [Mr D] will instigate the Authority to harass us, carry out systematic persecution to wreck our family because I would not marry his son. [My husband] holds great fear that an accident will happen to him and he ended up seriously injured. Or worst, the Religious Department will act in cohort with Police to throw him inside jail and torture and even maim him.

34. In response to the question “why do you think this will happen to you if you go back?” the applicant wife wrote:

Persecution and systematic harassment inflicted on us evolved from a simple personal affair – that is I refused to marry [Mr C]. His father took it personal and turned it into an issue of religion and ethnicity. [My husband] and I insisted to preserve our faith – in the supremacy of Lao Mu of our Yi Guan Dao. Our Lao Mu is to be superior to all which include Buddha, Christ, Prophet Mohamed, Lao Tse and Confucius. To the Religious Department and [Mr D], I am a deviant, and committed blasphemy against Islam.

The Malay dominated society is not tolerant when their religion was affected, we have become victims of systematic persecution at the hand of over-zealous officials.

35. In response to the question “do you think the authorities of that country can and will protect you if you go back?” the applicant wife wrote:

The Authority cannot and would not protect us because when it involves Islam which is the religion of the Malay majority, the Police is less than efficient and keen to act in protecting citizen's right especially if those citizens are of Chinese ethnicity. The civil courts of Malaysia will not interfere with any Sharia court judgments even if non Muslims were involved. It followed that non Muslims (the group to which [my husband] and I belong) were not protected by laws that applied to us and civil law courts cannot and will not interfere with the Sharia courts.

The state is therefore not alert to our need for protection, and its imminent failure to protect indicates we have legitimate claims as refugees on Convention grounds.

We are being persecuted because of religion, we were systematically harassed because we were Chinese belonging to the Yi Guan Dao sect. Serious harm were inflicted upon us for similar reason.

36. Attached to the applicants amended claim are the following documents:

- A statement of support from the applicant's representative, [name deleted: s.431(2)];
- Copies of the applicant's passports;
- An untranslated copy of a marriage certificate showing the marriage of the applicants to each other [in] May 2006;
- An excerpt from the UNHCR Report on religious freedom in Malaysia;
- A news report from the New Statesman headed "Malaysian church firebombings" dated 10 January 2010;
- A photo of [Ms E] and her daughter [Ms F] at a temple in [State 6];
- Untranslated copies of the birth certificates of [Ms F] and [Mr G];
- Photos of the applicant wife and family members;
- Photos of a praying altar said to be in the applicants' home in [Town 3];
- Translation of the Yi Guan Dao teaching;
- Photos of the applicants with other Yi Guan Dao followers in Melbourne;
- Copy of the applicants' family identity card;
- A translated police report dated [April] 2010.

Country Information

Islamic faith healers

37. Country information suggests that the use of faith healers or bomohs and psychic agents continues to be widespread in Malaysia which has a long history of alternative medicine^{1 & 2} Black magic in Malaysia is said to have originally derived from animist practices which were reinforced by Hindu beliefs in the region but that the arrival of Islam brought the Islamisation of the bomohs and that many witchdoctors have recently begun using Koranic verses to cure people instead of rituals³.

¹ Ahmad, R. & Teo, A. 2010, 'Malaysia to control faith healers as more seek spirit aid', *Reuters News*, 14 October

² Kamali, M.H. 2010, 'Not easy to use laws against black magic', *New Straits Times*, 29 November

³ Bose, R. 2010, 'The new face of Malaysia's Islamic witchdoctors', *Agence France-Presse*, 22 August

38. Concerns about the continued use of faith healers and bomoh have in part led the government to draft a law to regulate the practitioners of traditional and complementary medicine, with some commentators expressing concern that some faith healers claimed to conduct Islamic treatments when they in fact are going against Islam and others citing the need to differentiate between bomohs who use the words of the Koran to try to help heal people using these holy verses and phrases and those who try to seek the help of jinns and ghosts to gain favour, including controlling spouses or cheating others out of their possessions. Although meddling with the occult is banned under Islam, Islamic bomohs are reportedly tolerated⁴.

The legal and political framework in Malaysia

39. The most recent US Department of State report on religious freedom in Malaysia includes the following information on the legal and policy framework in Malaysia in relation to religion:

The government maintains a dual legal system, whereby Shari'a courts rule on religious and family issues involving Muslims and secular courts rule on other issues pertaining to both Muslims and the broader population. Government policies promoted Islam above other religions. Minority religious groups remained generally free to practice their beliefs; however, over the past several years, many have expressed concern that the civil court system has gradually ceded jurisdictional control to Shari'a courts, particularly in areas of family law involving disputes between Muslims and non-Muslims... Religious minorities continued to face limitations on religious expression . . .

...The constitution provides for freedom of religion. Article 11 states that "every person has the right to profess and practice his religion," but also gives state and federal governments the power to "control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." The law allows for citizens and organizations to sue the government for constitutional violations of religious freedom. The constitution provides that federal law has precedence over state law. It also states that issues of Islamic law are state, rather than federal, matters. The constitution establishes the power of the federal judiciary under Section 121(1) by creating two high courts of equal and independent authority -- one in Peninsular Malaysia and one in Eastern Malaysia. However, in June 1988 parliament amended the constitution, adding Section 121(1A) which provides, "the Courts referred to in Clause (1) shall have no jurisdiction in respect to any matter within the jurisdiction of the [Shari'a] courts." This amendment introduced ambiguity about Shari'a versus civil law that has not been resolved clearly. Civil courts generally decided in favor of the government in matters concerning Islam. Article 3 of the constitution states that "Islam is the religion of the Federation" and "Parliament may by law make provisions for regulating Islamic religious affairs." Article 160 of the constitution defines ethnic Malays as Muslim. Civil courts generally ceded authority to Shari'a courts in cases concerning conversion from Islam, and the latter remained reluctant to allow such conversions. The constitution identifies the traditional rulers, also known as sultans, as the "Heads of Islam" within their respective states. Other laws and policies placed some restrictions on religious freedom.

...Authorities at the state level administer Shari'a laws through Islamic courts and have jurisdiction over all Muslims. Shari'a laws and the degree of their enforcement

⁴ Ahmad, R. & Teo, A. 2010, 'Malaysia to control faith healers as more seek spirit aid', *Reuters News*, 14 October

vary by state. State governments impose Islamic law on Muslims in some cultural and social matters but generally do not interfere with the religious practices of non-Muslim communities; however, debates continued regarding incorporating elements of Shari'a law, such as khalwat (restricting close physical proximity with the opposite sex), into civil law...

State Islamic religious enforcement officers have the authority to accompany police on raids of private premises as well as public establishments to enforce Shari'a law, including violations such as indecent dress, alcohol consumption, or Muslims in close proximity to members of the opposite sex. The state Islamic authorities did not provide information on the number of raids religious enforcement officers initiated.⁵

Use of the word "Allah" by non-Muslims in Malaysia

40. Country information before the Tribunal indicates that in 2009 the Malaysian government sought to restrict the use of the word "Allah" in the Catholic Weekly Herald's publication permit, with the Minister reported to have prohibited its usage on the grounds of national security and to avoid misunderstanding and confusion among Muslims. The Roman Catholic Archbishop sought a declaration from the courts that the minister's decision was illegal and that the word "Allah" was not exclusive to Islam.
41. In an oral judgment on 31 December 2009, Justice Lau Bee Lan of the High Court of Kuala Lumpur declared the minister's order to prohibit the Herald from using the word "Allah" as "illegal, null and void," ruling that pursuant to Article 3(1) of the Federal Constitution, the applicant "had the constitutional right to use 'Allah' in Herald in the exercise of his right that religions other than Islam might be practised in peace and harmony in the country." Justice Lau also ruled that the Constitution, under which Islam is the country's religion, did not empower the minister to make the prohibition and that the respondents, being the minister and the Malaysian government, had failed "to prove how the use of the word 'Allah' could threaten national security."⁶
42. The government filed an appeal and sought a stay of the court's decision. The Catholic Herald did not oppose the stay and on 4 January 2010, the trial court issued the requested stay pending review of the decision by the Court of Appeal.⁷ As at 8 May 2011, the government's appeal against the High Court's decision had not yet been heard.⁸

The law of bigamy in Malaysia

43. Article 3 of Malaysia's constitution, "Islam is the religion of the Federation"⁹ Family law in Malaysia was reported in 2009 to comprise "of Islamic law for all Muslims

⁵ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

⁶ Goh, L. 2010, 'Court rules Herald free to use the word "Allah"', The Malaysian Bar website, source: The Star, 1 January
http://www.malaysianbar.org.my/legal/general_news/court_rules_herald_free_to_use_the_word_allah.html - Accessed 12 May 2011

⁷ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Section II

⁸ Hong, C. 2011, 'Another religious row erupts in Malaysia', *Straits Times*, 8 May

⁹ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Section II

contained in state legislation comprising administrative provisions and the substantive law based on the Qur'an and Sunnah (the primary sources) and authoritative interpretations (fiqh) and since 1976, the Law Reform (Marriage and Divorce) Act... for all non-Muslims.”¹⁰ The government in Malaysia “maintains a dual legal system, whereby Shari'a courts rule on religious and family issues involving Muslims and secular courts rule on other issues pertaining to both Muslims and the broader population.”¹¹

44. Shari'a law is reported to be permitted in Islamic marriage in Malaysia which allows polygyny practiced by some Muslim men¹² but Muslim women are reportedly not permitted to practice polyandry¹³. However bigamy in civil marriage is reported to be a crime in Malaysia in respect of non-Muslims^{14&15}. Under Section 494 of Malaysia's penal code, such a marriage is void and is punishable by up to seven years imprisonment and a fine.¹⁶

Forcible conversion to Islam of children and adults

45. Country information before the Tribunal indicates an adult person cannot be forced to convert to Islam in Malaysia, although the situation is significantly less clear for minors¹⁷.
46. Article 11 of the Malaysian Constitution states that “every person has the right to profess and practice his religion,” although Article 3 also states that “Islam is the religion of the Federation”. All reports of forced religious conversion to Islam in Malaysia that the Tribunal was able to locate concerned the conversion of children in circumstances where one parent voluntarily converted to Islam and also converted the children without the consent of the non-converting parent¹⁸. The Tribunal notes that country information provided to the Tribunal by the applicants' representative supports the conclusion that an adult person cannot be compelled to convert to Islam in Malaysia, stating in part:

¹⁰ Kamarudin, Z. 2009 'Conversion And Its Legal Effect On The Family', Institute of Islamic Understanding Malaysia website, 8 September

http://www.ikim.gov.my/v5/index.php?lg=2&opt=com_article&grp=2&sec=&key=1889&cmd=resetall –

¹¹ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction

¹² US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Malaysia*, April, Section 6

¹³ 'What are the types of marriages in Malaysia?' 2008, Lawyerment website, 9 August

<http://www.lawyerment.com/library/kb/Families/Marriage/1019.htm>

¹⁴ 'What is bigamy? Is bigamy punishable by law? What is the punishment for bigamy in Malaysia?' 2008, Lawyerment website, 8 September <http://www.lawyerment.com/library/kb/Families/Marriage/1033.htm> - Accessed 18 May 2011

¹⁵ 'Ten percent of Muslim men in Malaysia have more than one wife, says survey' 2005, *Associated Press Newswires*, 7 August

¹⁶ Federation of Malaysia 1997, 'Penal Code', Act 574, incorporating all amendments up to 1 January 2006, Malaysian Attorney-General's Chambers website, 7 August

<http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20574.pdf>

¹⁷ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

¹⁸ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

There is no compulsion in Islam . . . – no-one is forced to become a Muslim. Apostasy, however, is a different matter¹⁹”.

47. The situation appears to be different with respect to children. The November 2010 US Department of State report on religious freedom in Malaysia indicates that “[t]here were reports of minors converted to Islam in cases where one parent voluntarily converted to Islam and converted the children without the consent of the non-Muslim parent. Shari’a courts usually upheld the conversions of minors despite the opposition of one parent, and the government in most cases did not act to prevent such conversions.”²⁰

Female circumcision and female genital mutilation

48. The most recent US Department of State report on human rights practices in Malaysia refers to female circumcision being “reportedly a routine practice among Muslim Malays. In November 2009 local online news portal Malaysiakini reported that ‘in Malaysia, female circumcision refers to the act of making a small scratch or using a sharp penknife to nick the prepuce of the vagina. It is usually performed on infants within a few months of birth, by medical doctors or midwives.’”²¹
49. Country information provided by the applicants’ representative included an article titled “The Four Types of Female Genital Mutilation” by Cristina Olivera which appeared to be printed out from the internet. That article stated in part:

Female Genital Mutilation is often called Female Circumcision. This implies that it is similar to male circumcision, but the degree of cutting is much more extensive and it often impairs a women’s sexual and reproductive functions . . .

Female Genital Mutilation is practiced in at least 26 of the 43 African countries . . . it is also found in parts of India, Indonesia and Malaysia. . .

The applicants representative provided the Tribunal with further partial copies of articles about female genital mutilation which did not refer specifically to the practice in Malaysia.

Yin Guan Dao faith

50. Country information before the Tribunal indicates that the Tian Dao or Yiguan Dao sect (roughly translated as “unity way”) was founded in Shandong province in the 1920’s and that it claims to unite ‘the world’s five great religions’: Buddhism, Taoism, Confucianism, Islam, and Christianity²². Its structure has been described as follows:

Tiandao is fundamentally syncretist, which means that it views all religions as being part of its own lineage. Thus, it traces its own founding to include the major figures of world religions, including the Buddha, Confucius, Mohammed and Jesus Christ. Each of these was said to have revealed part of a larger truth in a preordained plan for

¹⁹ New Statesman article titled “Malaysian Church Firebombings” posted on the internet by Sholto Byrnes on 10 January 2010, lodged with the Tribunal by the applicants’ representative on 19 April 2011

²⁰ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Section II

²¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Malaysia*, April, Section 6

²² Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, M.A. 1994, *The Other Taiwan: 1945 to the Present*, East Gate, New York, Ch.16, pp. 423-444, at p.424

universal salvation. This process would eventually lead up to the revelation of Tiandao, alternately known as Yiguandao (the Way of Penetrating Unity), the latter name emphasizing the idea that the teaching already existed in the guise of other religions before it was formally revealed to the world.²³

51. Key teachings of the sect include belief in an imminent apocalypse and the advent of a saviour who would open a path of salvation during this period. It was believed that Zhang Tianran was an incarnation of the Living Buddha Jigong, who had been sent by the Eternal Mother Wuji Laomu to transmit the Dao to humans, who were her lost and confused children. Those who received the Dao in the initiation ritual would be among the saved and be assured to return to the Mother's paradise.²⁴ Members of Yiguan Dao worship all gods, a syncretism that is typical of Chinese religion. Yiguan Dao is different to popular religion primarily through "its focus on the Maitreya Buddha and in its belief in the Venerable Heavenly Mother."²⁵
52. Yiguan Dao is reported to operate secretly, with its members discreet in seeking converts, its temples in ordinary homes and only initiated members attending ceremonies. Initiation into the sect involves receiving the secret three treasures. After initiation, new members are taught the three treasures meaning, which is the core secret of the sect.²⁶
53. The first Unity Sect Fotang (Buddha hall) in Peninsular Malaysia was set up by Lu Wende in Kuala Lumpur in 1948 but the sect made little progress in Malaysia until the 1970s when the spread of the Unity Sect caused tensions with existing Chinese religious bodies. The initial stage of the Unity Sect's development in Peninsular Malaysia usually began with a family shrine set up in a member's house and with the growth in membership, public halls were developed as bigger congregational sites and the number of family shrines also grew.²⁷

Malaysians of Chinese ethnicity

54. Country information before the Tribunal indicates that ethnic Chinese people form a significant minority of Malaysia's population and that Malaysia's Chinese population are overwhelmingly urban, with the largest concentrations of numbers centred along peninsula Malaysia's western half. In central western states such as Perak, ethnic Chinese constitute over 30 percent of the population of the population and in major urban centres such as Kuala Lumpur and Georgetown ([State 6]), they are recorded as constituting a slight majority.²⁸

²³ Immigration and Refugee Board of Canada 2003, CHN41903.E – *China: Whether Tian Dao incorporates Christian elements into its beliefs and practices and, if so, the description of these Christian elements*, 18 September

²⁴ Clart, P. 2005, 'Yiguan Dao', in *Encyclopedia of Contemporary Chinese Culture* ed E.L. Davis, Routledge, London, pp. 699-700, at p. 699

²⁵ Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, M.A. 1994, *The Other Taiwan: 1945 to the Present*, East Gate, New York, Ch.16, pp. 423-444, at p.433

²⁶ Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, M.A. 1994, *The Other Taiwan: 1945 to the Present*, East Gate, New York, Ch.16, pp. 423-444, at p.424

²⁷ Soo, K.W. 1997, *A Study of the Yiguan Dao (Unity Sect) and its development in peninsular Malaysia*, PhD thesis, University of British Columbia, pp. 7, 149-169, 172-173, 190-191, 241 & 250-251

²⁸ 'Chinese Malaysian: Demographics' 2010, Serving History.com

http://www.servinghistory.com/topics/Chinese_Malaysian::sub::Demographics

55. In 1971 the Malaysian government introduced its New Economic Policy (NEP), which included the now infamous Bumiputra regulations. Bumiputra regulations include affirmative action rules that some observers interpret as ethnic discrimination of Chinese and Indians. Of significance are rules that favour ethnic Malays for employment in the public service. Amnesty International argues that “in some cases [these laws] resulted in the complete exclusion of other groups.”²⁹ Ethnic Chinese are, therefore, less likely to find employment in the Malaysian public service or in state-owned enterprises.

The Tribunal hearings

56. [In] March 2011 the Tribunal wrote to the applicants inviting them to appear before the Tribunal [in] April 2011 to give evidence and present arguments relating to their case. [In] March 2011 the applicants’ representative sent a facsimile to the Tribunal requesting a postponement of the hearing for three weeks to allow them further time to have the Yi Quan Dao scripture translated. The Tribunal consented to the adjournment request and [in] March 2011 wrote to the applicants advising them that the hearing had been rescheduled for [May] 2011. In all, the applicants appeared before the Tribunal on three occasions, being [on two dates in] May 2011, and [one in] August 2011.

Issues with interpreting during the Tribunal hearings

57. At the end of the time allotted for the first hearing, the hearing was not completed and the interpreter booked by the Tribunal was unable to stay for longer. The applicant wife indicated that she preferred to continue the hearing with a new interpreter and the Tribunal adjourned for an hour to try and arrange another interpreter. Another Mandarin interpreter was arranged, but when the hearing resumed it became apparent that the new interpreter had little knowledge of local Malaysian issues. At the agent’s request, the Tribunal adjourned the hearing to a date to be fixed to allow the Tribunal to attempt to obtain the services of a specialised Malaysian Mandarin interpreter.
58. The hearing was rescheduled for [a later date in] May 2011. The Tribunal was unable to obtain the services of a specialised Malaysian Mandarin interpreter for that date, nor any confident prediction from its usual suppliers of interpreters that such an interpreter could be arranged for a different date in the near future. The Tribunal booked the services of a NAATI Level 5 (Senior Conference) Chinese Mandarin interpreter and provided hearing topic details suggested by the applicants’ representative to that interpreter prior to the hearing. The NAATI Level 5 (Senior Conference) Chinese Mandarin interpreter assisted the Tribunal at the hearing on [that later date in] May 2011.
59. The Tribunal observed that the applicants did not appear to have difficulty understanding and communicating with the interpreter at the rescheduled hearing [in] May 2011. No issues were raised by the applicants with the interpretation during the course of the hearing until towards the end of the hearing when the applicant wife was asked to comment on inconsistencies between her oral evidence at the hearing and that of the applicant husband. At that point the applicant wife indicated that the applicant husband may not have understood the interpreter.

²⁹ Amnesty International 2009, *Amnesty International Report 2009: The State of the World’s Human Rights – Malaysia* <http://www.amnesty.org/en/region/malaysia/report-2009>

60. For example this occurred when the Tribunal invited the applicant wife to comment on the evidence given by her husband that their car had been vandalised in [State 6] and that he felt he was being followed, when she had given evidence that [Mr D] did not find them in [State 6]. The applicant wife responded that today was the first time she had heard those things and that perhaps the applicant husband didn't want to worry her or perhaps he had misunderstood the interpreter. The Tribunal does not accept that the applicant husband did not understand the interpreter, noting that his response was relevant to the Tribunal's question as to whether he had experienced any problems in [State 6] and that in her response to the Tribunal's letter dated [August] 2011 the applicant wife stated that her husband did not tell her about the car being sabotaged in [State 6] because he did not want to worry her.
61. This issue was further raised in the applicant wife's response [also] dated [August] 2011 to the Tribunal's letter dated [in] August 2011, in which the applicant wife stated that the applicant husband misunderstood the interpreter in relation to the Tribunal's questions at the second hearing about which set of grandparents was caring for their children. The Tribunal does not accept that the applicant husband misunderstood the Tribunal's questions on this point. The Tribunal asked the applicant husband at the second hearing whether his daughters were currently living with his parents. The applicant husband responded that his daughters were not currently under his parent's care, but that they sometimes visited his parents, stating that his wife's mother took care of the children and sometimes his parents took turns. The applicant wife's own written response dated [August] 2011 acknowledges that the children were the care of her mother at least part of the time, stating that the children were in the early days switched around the paternal and maternal grandparents. The Tribunal considers the applicant husband's answer to the Tribunal's question was properly responsive to the question asked and does not accept that he misunderstood the interpreter.
62. At the third hearing [in] August 2011, the Tribunal again booked the services of the same NAATI Level 5 (Senior Conference) Chinese Mandarin interpreter that had assisted the Tribunal at the hearing on 19 May 2011. The Tribunal observed that the applicants did not appear to have difficulty understanding and communicating with that interpreter during the third hearing on 10 August 2011.
63. The Tribunal is satisfied that the applicant husband and the applicant wife understood the proceedings at each of the three hearings.

The first Tribunal hearing – [May] 2011

64. The applicants appeared before the Tribunal [in] May 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
65. At the commencement of the hearing, the applicants' representative advised the Tribunal that the parties had been unrepresented before the Department and had relied upon information from friends in making their application, but that when he became involved he formed the view that it was the applicant wife who had her own refugee claims, while the applicant husband was her family member. The applicants' migration agent advised the Tribunal that the applicants wished the Tribunal to treat the amended Form 886 (Parts B, C and D) lodged with the Tribunal [in] April 2011 as the record of their claims.

66. The applicants' representative handed up the following documents at the hearing:

- Photograph of the applicant and her sister in law;
- Three photographs of the applicant husband with what appears to be an injured eye;
- Birth certificates for each of the applicants' daughters, [Ms B] born [date deleted: s.431(2)] and [Ms A] born [date deleted: s.431(2)]
- Country information relating to female genital mutilation.

Evidence of the applicant wife at hearing [in] May 2011

67. The applicant wife gave evidence that she was born and grew up in [Town 3], Malaysia and that she had practised Yi Guan Dao all her life, stating that she was first taken by her mother to the temple when she was about eight years old. She told the Tribunal that her parents, younger brother and elder brother also practised Yi Guan Dao.
68. The applicant wife stated that she completed six years each of primary and secondary school and one year of tertiary education, where she studied computer programming and that after finishing her education she worked as a clerk.
69. She stated that she first met her husband in 1998 through friends in [Town 3] and that at the time she met him he was a Buddhist. She stated that she introduced to him to Yi Guan Dao and that he had practised that religion since about 2002. She stated that prior to coming to Australia, she had never travelled outside Malaysia.
70. The applicant wife stated that she moved to Kuala Lumpur with her family in March 2009 where they stayed until October or November 2009. When her husband was harassed in Kuala Lumpur, she and her husband moved to [State 6] where they stayed by themselves at a place belonging to her cousin for about three months before coming to Australia. They didn't dare take the children to [State 6], leaving them with her husband's mother in [Town 3].
71. The applicant wife told the Tribunal that the difficulties she faced in Malaysia were because of her religion. She stated that when she was about [ages deleted: s.431(2)], her younger brother who was aged about [age deleted: s.431(2)] was very sick and that her parents were introduced to a faith healer in [District 5] called [Mr D], who was also a senior religious elder in the Muslim faith. Her parents asked [Mr D] to heal her brother and he did so. They paid him money in a red envelope and he also told them that when the applicant's brother was cured, he would like to become in-laws to their family by having one of his daughters marry the applicant wife's brother and one of his sons marry the applicant. The applicant wife told the Tribunal that her parents were uneducated and agreed, also they thought he wasn't serious.
72. The applicant wife stated that she did not see [Mr D] again until about [year deleted: s.431(2)] when he came to her parents' home and asked to be made in-law to her family. She was living with her parents at that time and her parents told him she was still studying and too young. At that time she had already met her future husband so the family said something nice to him to get him to leave. He also wanted her younger

brother to marry his daughter. Her parents were scared and had no choice and the marriage took place in 2005. Her younger brother refused to convert to Islam and did not change his name.

73. The Tribunal asked the applicant wife why her mother had no choice but to accept the marriage of her younger son to [Mr D]'s daughter. The applicant wife stated that her parents were not educated and didn't know who to handle it and were afraid because [Mr D] was forceful. The Tribunal asked how [Mr D] could force her to marry his son. The applicant wife stated that [Mr D] was causing lots of trouble and wanted to force her family to convert to Islam. When asked what sort of trouble [Mr D] caused, the applicant wife stated that he kept coming to her family's home and arguing and that he also went to her workplace to harass her. The applicant wife stated that she was working in a supermarket in about 2007 or 2008 when [Mr D] and other men came in and started complaining, saying that there was a problem and she had misled them. They did this over several days and her boss was very unhappy and said he did not want to offend Muslims and that she couldn't work there anymore.
74. The Tribunal asked how long she had worked at that supermarket and the applicant wife stated that it was only a few weeks but that they had come to several of her previous workplaces and harassed her, stating that she had worked at a relative's shop selling [goods deleted: s.431(2)] but when they came and harassed her she felt very sorry for her relatives and had to give up. The applicant wife stated that because of the harassment she had given up working and started her own business selling [products deleted: s.431(2)] but they still came to harass her.
75. The Tribunal asked when this harassment started and the applicant wife stated that it was in about 2007, after they discovered she had married her husband. She stated that [Mr D] didn't contact her family between [year deleted: s.431(2)] and about 2004 or 2005 and so they thought nothing would happen. In 2005 her younger brother started going out with [Mr D]'s daughter, [Ms E]. The applicant wife stated that she was supposed to marry [Mr C], [Mr D]'s eldest son whom she had previously heard called [Mr C]. [Mr D] is not employed but has a religious position high in the Islamic hierarchy.
76. The applicant wife stated that she and her husband and their children moved to Kuala Lumpur in March 2009 because [Mr D] kept coming and causing trouble in their temple, stating that he pushed their figure of god down and then apologised, stating that he was not careful. She stated that since her brother married [Mr D]'s daughter her parents were not allowed to display their statue of god at home because her brother and his wife lived with them and she is a Muslim. Her parents dared not offend her and [Mr D] did not allow them to display their religious book.
77. The Tribunal asked what power [Mr D] had over her parents and the applicant wife responded that they did not want trouble, were not educated and were scared. She stated that as Chinese in Malaysia they felt powerless and did not want trouble. When asked what her parents feared would happen if they didn't comply with [Mr D]'s wishes, the applicant wife stated that they didn't know what might happen as they had never offended him and didn't know what he might do. The Tribunal put to the applicant that it was having difficulty understanding what harm [Mr D] could do to her family to which the applicant responded that he didn't say he would harm them, rather that he kept harassing them, pushing over their idol and did not allow them to worship.

78. The Tribunal asked the applicant wife whether her brother willingly married [Mr D]'s daughter in 2005 to which the applicant responded that he married her so that they would not come over and harass the family. The applicant stated that even though her brother married [Mr D]'s daughter, [Mr D] continued to visit as he wanted the applicant to marry his son. The applicant stated that [Mr D]'s other purpose was to convert them to Islam, but that she had had her religious beliefs since childhood and it was impossible for her to change. She stated that if she were to convert to Islam, she would have to change her name and that both her young son and daughter would be circumcised.
79. When asked how [Mr D] could force her to convert to Islam, the applicant wife stated that he kept causing trouble and would not allow her to display her idol. She stated that she and her husband would have religious friends come over and worship at her home and he would send people to cause trouble. After he came and destroyed the idol at her mother's place, her parents would come and worship at her place and [Mr D] sent people to her home many times which is why they moved to Kuala Lumpur. She stated that sometimes three people came to her home and sometimes four or five people came and that they were Muslims. She stated that [Mr D] didn't come himself but sent his son [Mr C] whom she has met many times. She stated that he appeared to be between [ages deleted: s.431(2)] years old and that her younger brother's wife told her he has been married for many years.
80. The applicant wife stated that she was not able to work because each time she did [Mr D] came over and made trouble. She stated that the same thing happened to her husband where they went to his workplace at [Organisation 7] and complained. She stated that her husband was working fixing computers and they came and said they wanted her husband to fix a computer and then pointed out that this and that was wrong. Her husband's boss realised it was because of her husband and fired him. The applicant stated that this was probably in 2007 or 2008 and that her husband had by this stage already changed his work a few times because he was facing these problems all the time. She stated that one time when their car was parked someone smashed its mirror and that these kinds of things happened all the time.
81. When asked if she had reported any of these incidents to the police, the applicant wife stated that they did go to the police station but that the police wouldn't take their report. She stated that her husband went to the police station in Kuala Lumpur with a colleague. When asked if she had reported any of the incidents that she had described as taking place in [Town 3], the applicant stated that they went to the police station but that the police said they had no crime. When the car mirror was broken, the police said they needed evidence which they could not provide.
82. When asked if she herself had gone to the police on any occasion, the applicant wife stated that she went to the police when her husband disappeared [in] April 2010, before they moved to [State 6], stating that at that time they were living at her mother-in-law's place in [Town 3]. She stated that when he disappeared, he went out to a job interview leaving home about 10am. When he had not returned that night, she tried to contact him on his mobile but could not get through. She was concerned and reported it to police. She stated that her husband came home on the night of the following day, [April] 2010, telling her that he had been followed by someone and hid at a friend's place as he dared not come home. She stated that her husband knew it was people associated with [Mr D] and was hiding to avoid them.

83. The Tribunal asked what happened [in] February 2009 and the applicant wife stated that on that date they came over to their home and assaulted them, pushing her husband and their other religious friends and breaking their idol. She had [incident deleted: s.431(2)] and did not make a police report because they would say that they didn't do it deliberately so it was hard for them to get any evidence to support a police report. The applicant wife stated that was why she and her husband moved to Kuala Lumpur once [incident deleted: s.431(2)].
84. The applicant wife stated that once they got to Kuala Lumpur nothing happened for a few months and they thought things had settled down. Then [in] 14 October 2009 when her husband was at work people surrounded him and hit his face and he recognised two of them as being [Mr D]'s acquaintances from [Town 3]. The applicant wife stated that her husband was with colleagues who went with him to report it to the police but that they were unable to find the police report after they moved back to her mother-in-law's place.
85. The applicant wife stated that after they moved back to [Town 3] they were not able to work and then in April 2010 her husband had a job interview and was followed by those men again. That was when they decided they could not stay in Malaysia and they came to Australia because there was a promotion of flight tickets to Perth.
86. The Tribunal asked if the only time they saw [Mr D]'s men in Kuala Lumpur was when her husband was assaulted in October 2009 and the applicant wife stated that she saw them after that downstairs from where they lived. She stated that she quickly ran away back home and did not meet them face to face on that occasion.

The second Tribunal hearing – [May] 2011

Evidence of applicant wife at hearing [in] May 2011

87. The applicant wife told the Tribunal that her younger brother was [Mr H] born [date deleted: s.431(2)] and that his religion was Yi Guan Dao like her. She stated that he had married [Mr D]'s daughter, [Ms E], in 2005 because their mother had previously promised that he would. She stated that he didn't want any more hassles so he just married her. When the Tribunal stated that it found this hard to accept, the applicant wife stated that at the time her brother was single and he thought that by marrying her he would put an end to the family's problems but that was not the case. She stated that her brother did not convert to Islam. When asked if her brother married voluntarily, the applicant wife stated that he had, if you could call that voluntary.
88. The Tribunal asked why an Islamic elder would wish his daughter to marry a non-Muslim man who refused to convert to Islam. The applicant wife stated that she hadn't said her brother had refused to convert, but that he tried to delay the process. She stated that the couple already had children and her brother found that he could get along well with [Mr D]'s daughter. She stated that because he had not converted, his name is not on his children's birth certificates and also that her brother did not want to change his name.
89. The Tribunal discussed with the applicant wife the birth certificates of her brother's children, [Mr G] born [date deleted: s.431(2)] and [Ms F], born [date deleted: s.431(2)], copies of which were before the Tribunal. The applicant wife stated that the words

“Maklumat Tidak Diperolehi” that appear in the father’s details section of those birth certificates means “Information not available” and stated that there was no information relating to her brother on those birth certificates.

90. The applicant wife stated that the children were Muslim and had been since birth. She stated that her brother cannot object to this, as he has no choice and that her sister-in-law believes he will convert to Islam in the future. She stated that her sister-in-law also accompanied them to Yi Guan Dao temples and ceremonies without her father’s knowledge, for example she involved herself in the Yi Guan Dao procedures when the applicant wife’s grandmother died, as that grandmother had been very nice to her sister-in-law. The Tribunal asked how the applicant wife’s relationship with her sister-in-law was and the applicant wife stated that it was OK.
91. The applicant wife stated that her brother and sister-in-law lived with her parents after they married on the condition that her parents would not worship Buddha and would not have it at home. When asked why her parents would agree to that condition, the applicant wife stated because otherwise her sister-in-law’s family would come and hassle them. When asked if that had actually happened, the applicant wife stated that it happened in 2005 before the wedding at a time when she was still living with her parents when her sister-in-law’s family came and told her mother that her son was about to marry their daughter which meant that he was already half Muslim and they couldn’t worship Buddha. When asked why her parents wouldn’t ask the couple to live somewhere else, the applicant wife stated that her brother couldn’t afford to buy a house by himself.
92. It was put to the applicant wife that the photo she had lodged with the Tribunal showed her sister-in-law and her child standing in front of a Buddha. The applicant wife stated that this wasn’t at home, but was at a temple in [State 6] in 2008 where they went during New Year’s Celebrations and that her sister-in-law just took her child there because she likes the Chinese Buddha. She stated that her sister-in-law has no choice about her religion, she is not allowed to convert and she thought [Mr D] would be very angry if he knew his daughter had been there as he had always told the applicant wife and her family not to brainwash her sister-in-law.
93. The Tribunal asked how [Mr D] discovered she had married the applicant husband. The applicant wife stated that he did not know until he came to her place and saw she had her first child. She stated that he was very angry and tried to use excuses to show his anger, like picking on books about Buddhism because they mentioned the Koran.
94. The applicant wife confirmed that she had married in May 2006 and [Mr D] had destroyed her household idol in February 2009 during the Lantern Festival. When asked what had happened between 2006 and February 2009, the applicant wife stated that [Mr D] came to her place on several occasions to make things difficult for them when they wanted to worship with others who came over. She stated that [Mr D] came to the place that he shared with her husband and made problems, using the excuse that he wouldn’t allow them to worship Buddha. She stated that there were other incidents before February 2009, but on that occasion he destroyed their idol. When asked about the previous incidents, the applicant wife stated that when they were worshipping Buddha he would come over and pinpoint the book and a painting of Allah and say that showed they were doing things against Allah. When asked if the first serious incident occurred in February 2009, the applicant wife agreed.

95. The applicant wife stated that following this incident in February 2009, she and the applicant husband decided to leave [Town 3] and move to Kuala Lumpur in March 2009. She stated that in October 2009, her husband was assaulted at work when several Malay men came over and punched and kicked him. They said to him “don’t just imagine that because you are here, everything will be ok”. Up until that time they used to attend the temple in Kuala Lumpur but after that they were too scared to go because they didn’t want anything to happen to the family.
96. The Tribunal asked the applicant wife if that was the only incident that took place in Kuala Lumpur and the applicant wife stated that it was. She stated that after that, they moved back to [Town 3] to her mother-in-law’s place but they couldn’t work anymore. When asked why they couldn’t work, the applicant wife stated that they were always harassed at work and were also concerned that they might be found again so they went into hiding at her mother-in-law’s place. She stated that her parents and brother knew where they were, but that her sister-in-law wouldn’t tell her father because she was on their side.
97. The applicant wife stated that they stayed at her mother-in-law’s place until April 2010 when they went to [State 6], leaving the children at her mother-in-law’s place. Her husband saw a job advertised and wanted to try and do it, but he was followed on the way to the interview.
98. The Tribunal asked the applicant wife why she feared being forced to marry [Mr D]’s son when he was already married to someone else. The applicant wife stated that [Mr D] tried to make the excuse that they should all convert to Islam and that their Yi Guan Dao books were against Islam, also requesting that her daughters convert to Islam.
99. It was put to the applicant wife that country information suggested that a person couldn’t be forced to convert to Islam. The applicant wife stated that she knew he couldn’t force them but that he tried all means to make it impossible for them to worship Buddha and she couldn’t go to the temple before she came to Australia.
100. The Tribunal asked the applicant wife if she was afraid she would be forced to convert to Islam if she returned to Malaysia and the applicant wife stated that she was. The Tribunal asked why, when country information indicated that she could not be forced to convert to Islam. She stated that she did not know why, but that she felt [Mr D] was abusing his power to force them.
101. The Tribunal put to the applicant wife that country information indicated that bigamy was illegal in Malaysia and she could not be forced to marry [Mr D]’s son given that she was legally married to someone else. The applicant wife stated that [Mr D] didn’t force her to marry other men, just to convert to Islam. The Tribunal put to the applicant that she had stated in her claims that she feared being forced to marry [Mr D]’s son. The applicant wife stated that was before, and that when [Mr D] learned that she was already married he just tried to force her to convert to Islam saying that if they converted to Islam he would let them go. When asked if she was still afraid that he would force her to marry his son, the applicant wife stated that she was not concerned about that anymore, rather she was concerned that he would force her and her daughters to convert to Islam and that her daughters would be forced to undergo female genital mutilation.

102. The Tribunal put to the applicant wife that country information indicated that female circumcision was practised by Malay Muslims and that it was generally performed on infants by doctors or midwives within a few months of birth and consisted of making a small scratch or cut with a sharp knife. The applicant wife stated that her understanding was that it would happen when the children were three or four years old and she understood it to be very painful. When asked if it had happened to her brother's daughter, she stated that he had tried to delay the procedure but that pressure was put on them to complete that procedure when his daughter was about [age deleted: s.431(2)] years old.
103. The Tribunal asked the applicant wife to talk in her own words about her religious beliefs and what the practise of Yi Guan Dao meant to her. She stated that she worshipped Yi Guan Dao to find her own soul a path to heaven. She stated that Yi Guan Dao accepted the scriptures of Buddhism, Christianity, Islam and Hinduism and would respect their religion and would also worship Allah and Jesus. When asked what relationship Yi Guan Dao had to those religions was, she stated that she wouldn't say they were related but that Yi Guan Dao believed that everyone of us is from one mother so people in other religions are our brothers and sisters. When asked who the mother is in Yi Guan Dao, the applicant wife stated that it was Laomu. When asked if there were three treasures in Yi Guan Dao she stated there were, and when asked to name them she stated that couldn't because they were secret and her beliefs prevented her from doing so.
104. The applicant wife stated that she first visited the temple at about age [age deleted: s.431(2)] but that in [year deleted: s.431(2)] she wanted to worship and got the three treasures, which is like an initiation. She stated that she took her husband to do that in 2002 and her two daughters as soon as they were born.
105. When asked if she had any difficulty practising Yi Guan Dao in Malaysia apart from her difficulties with [Mr D], the applicant wife stated that before [Mr D] started to harass them, she would worship on the 1st and 15th of every month at the big temple. She stated that the only difficulties she had practising her religion came from [Mr D] and that he said that Yi Guan Dao shows disrespect of Islam.
106. When asked what she feared would happen if she returned to Malaysia, the applicant wife stated that her concern was that she wouldn't be able to worship Yi Guan Dao and she was concerned that her husband might be taken away and that they would be harassed, intimidated and threatened.
107. When asked why she couldn't move to another part of Malaysia where [Mr D] couldn't find her or had no influence, the applicant wife stated that they had tried that but he found them in Kuala Lumpur. When it was put to the applicant wife that he didn't seem to have found them in [State 6], the applicant wife stated that this was because they didn't work, attend temples or leave the house except to go grocery shopping. When asked how she thought [Mr D] would find her in other parts of Malaysia, the applicant wife stated that Muslims had vast networks and they would be found unless they stayed home.

Evidence of applicant husband at hearing [in] May 2011

108. The applicant husband gave evidence that he was born in [Location 1], Malaysia and that his religion was Yi Guan Dao. He stated that his parents were followers of all Buddha religions but that his wife formally introduced him to Yi Guan Dao.
109. He stated that he was an IT professional by occupation and that he met his wife after being introduced by friends when they were at secondary school. He stated that he has an elder sister and a brother and that his parents were alive and living in [Town 3]. When asked if his daughters were currently living with his parents, the applicant husband stated that his daughters were not under his parents' care, but that they sometimes visited his parents. When asked whose care his daughters were under, the applicant husband stated that sometimes his wife's mother took care of the children and that sometimes his parents did as they took turns.
110. When asked why he was afraid to return to Malaysia, the applicant husband stated that it would be very difficult for them to work there because they would always be harassed. He stated that without work, it would be very difficult for them to live in Malaysia.
111. When asked to describe his past experience of being harassed at work, the applicant husband stated that the few incidents concerned their car being sabotaged. He stated that at first he thought it was a coincidence, but then he was also harassed at work where he was an IT professional. The applicant husband stated that their car window was broken and also the mirrors and the tyres were flat. He stated that these things cost money to fix and occurred on one occasion in Kuala Lumpur and on one occasions in [Town 3]. He stated that he reported the incidents to the police so that he could claim insurance but they never found anyone responsible because they could not find the proof they needed.
112. When asked to describe the harassment he experienced at work, the applicant husband stated that he worked at [Organisation 7] for 3-4 years in the IT area, and that the company would sell new computers and also maintain old computers. He stated that several people came into buy brand new computers and then came back with complaints about parts that didn't work which made his boss upset with him. When asked why he thought those complaints had anything to do with him, the applicant husband stated that at first he didn't realise that they were targeting him but that when it happened two times per day or three times per week, he thought again about it and about the incidents with his car. He stated that his boss asked him to leave in 2009 after [incident deleted: s.431(2)] and just before they moved to Kuala Lumpur.
113. When asked how many people worked at [Organisation 7], the applicant husband stated that there were two technical people and one boss. When asked why his boss thought they were targeting him personally, he stated that when they first came in, he served them and that after that they always requested to be served by him. He stated that they were always the same group of Malay people.
114. When asked if he had ever met [Mr D], the applicant husband stated that he had seen him and he knew who he was, saying that he saw [Mr D] once at the shop and once at the applicant husband's home during the Lantern Festival. When asked when [Mr D] came to the shop at [Organisation 7], the applicant husband stated that it was at the end of 2005 and that the harassment went on for 2-3 years. He stated that since [Mr D] made things so difficult for him, he decided to move to Kuala Lumpur. When asked

why his boss didn't ask him to leave earlier if the harassment in his workplace went on for 2-3 years, the applicant husband stated that his boss liked him but it was really affecting his business which embarrassed the applicant husband too.

115. When asked if he had ever seen [Mr D] other than at his workplace at [Organisation 7], the applicant husband stated that the only other occasion was when [Mr D] came to their home during the Lantern Festival in 2009. When asked if that was the only occasion on which [Mr D] came to his house, he stated that it was.
116. When asked what he understood [Mr D]'s interest in his wife (the applicant wife) to be, the applicant husband stated that [Mr D]'s son had an interest in his wife but that he had ignored that. He stated that later on [Mr D] harassed them because of that and that on numerous times the same group of Malay people came to their house and he thought they were sent by Muslims but that he couldn't ask them who they were. When the Tribunal stated that it had difficulty understanding why he couldn't ask a group of men entering his house who they were, the applicant husband stated that they said they were religious people who wanted to come in and have a look and that if he didn't let them in they would make a lot of noise. When the Tribunal stated that it had difficulty understanding why he would let a group of men into his home whom he believed would make trouble, the applicant husband stated that there was a temple in his home and they couldn't just close the doors as others would come to worship there and they wouldn't usually stop them unless they were harassing or destroying things.
117. When asked why he didn't stop the group of Malay men on the occasions that he claimed they were harassing and destroying things, the applicant husband stated that he couldn't really do anything as there were many of them, seven or eight, and that they watched them pull down the stuff they had in the temple. He stated that on other occasions there were only 3-4 of them but that they harassed them by making noise outside the house and throwing rotten eggs. When asked if they had reported these incidents to police, the applicant husband stated that they had and that the police stated that they would step up patrols in the area but that it hadn't really helped.
118. The applicant husband stated that his wife's brother was [Mr H], that he knew his wife's brother's sister as [Ms E] and that he understood [Ms E] was [Mr D]'s daughter. He stated that he very rarely spoke to his wife's brother and his wife and that he had never asked [Ms E] her religion, although he had seen her eating pork and worshipping Buddha. When asked what he understood [Mr D]'s religious beliefs to be, he stated that he believed he was Muslim and that they had been coming to their house all the time to harass them and make things difficult and to stop them from practising their religious beliefs.
119. When it was pointed out to the applicant husband that he had earlier given evidence that he had seen [Mr D] only once at his home, the applicant husband stated that at first he didn't realise that the Malay men coming around were associated with [Mr D], but that he had asked his wife who had told him about the problems of her mother's family with [Mr D]. The applicant husband stated that during the incident in February 2009 where [Mr D] and others ripped down their idol, nobody was injured although he was pushed.
120. The applicant husband stated that after the Lantern Festival, he felt that things were so difficult that he wanted to move to a big city so they decided to go to Kuala Lumpur. He stated that he worked in Kuala Lumpur as an IT professional and at first everything

was OK, but that after a while things began to become different. He stated that a group of Malay Muslims came to him at work on several occasions and that on one of those occasions he was attacked. He stated that [Mr D] was not among the group. When asked when this harassment began, the applicant husband stated that it was in October 2009 when they first came to his work wanting to buy computers. He found out that was not their real intention as they came on several occasions but did not buy computers. [In] October 2009 they attacked him and told him he must convert to Islam. When asked why they would want him to convert to Islam, the applicant husband stated that he didn't understand at first, but that he then thought it was because of his wife. He stated that he was only assaulted once, but that on other occasions the men came to harass him and would sometimes steal things. He recognised two of the men but he thought they must be connected because they asked him to convert to Muslim out of the blue.

121. When asked if he experienced any other difficulties in Kuala Lumpur, the applicant husband stated that the harassment at his workplace made it difficult to work there but that everything was fine until that incident. He stated that the family left Kuala Lumpur in November 2009 and stayed at his mother's place in [Town 3] for about six months. When asked if he experienced any problems during the period in [Town 3], he stated that when he was trying to find a job he was followed by 3-4 men on motorcycles so he tried to drive to a remote area and went into hiding at a friend's place. His wife reported his missing to the police on [date deleted: s.431(2)].
122. The Tribunal showed the applicant husband a photo of him with what appeared to be a black eye. The applicant husband stated that he had taken that photo himself after being attacked in Kuala Lumpur in October 2009. He stated that four of his colleagues were present when he was attacked and that they stopped the men attacking him so that he could run away. He stated that he got into his car and drove, ending up at a police station where he made a report. He stated that he was driving by himself and that none of his colleague attended the police station with him, nor did the police send an officer to take statements from his colleagues.
123. The applicant husband stated that he and his wife then moved to [State 6] where he was working casually. When asked if they experienced any difficulties in [State 6], the applicant husband stated that their car was sabotaged again and he felt he was being followed. After all the incidents, he chose to stay home. When asked if he made any police reports, the applicant husband stated that they didn't as they didn't believe it would help.
124. The applicant husband stated their two daughters didn't go with them to [State 6] because they couldn't be assured of their safety so they left them with their parents. When asked why they hadn't brought their daughters to Australia, the applicant husband stated that the future for them wasn't certain and they were not sure whether these people would follow them. He stated that their daughters were very happy with their parents. When asked if they had experienced any problems in Australia, the applicant husband stated that they had not.
125. When asked to describe his religious beliefs, the applicant husband stated that he didn't know much about religion but that he was just following his wife. He stated that he had chosen to be honest and to be sincere, but that his understanding of Yi Guan Dao was much less than his wife's understanding. He wishes to worship and to do readings but

the most important thing to him is the belief that it will bring them safety and smoothness in their lives and that it will bring them home. When asked if he had been initiated into the Yi Guan Dao faith, the applicant husband stated that his wife took him to the temple and he started to understand what Dao means.

126. When asked about the identity card submitted by his agent, the applicant husband stated that it was his membership card to Yi Guan Dao and showed that he had been initiated to Yi Guan Dao in 2002, but that he became a true believer in 2006 when he married and they established a temple at home. When asked if he had practised Yi Guan Dao in Australia, the applicant husband stated that he had and that he followed his wife. He stated that the photos contained in the Tribunal file were taken in [town deleted: s.431(2)] at a temple at a big event. He stated that in Australia they attended temple every Saturday night for a small gathering when they were not busy with work.
127. When asked if there was any reason they couldn't relocate to another part of Malaysia where [Mr D] could not find them or had no influence, the applicant husband stated from their past experiences he believed [Mr D] could find them. When asked why he thought his daughters were safe in Malaysia if he and his wife were not safe, the applicant husband stated that they were directing he and his wife and not their children, and also that their children were at home and not working. When it was put to him that their daughters could be easily found by [Mr D] if they were living with his wife's parents and with his parents, the applicant husband stated that they were concerned that it would be easy for [Mr D] to find their daughters but that it had not happened yet.

Matters arising out of applicant husband's evidence put to the applicant wife at hearing [in] May 2011

128. It was put to the applicant wife at the conclusion of the applicant husband's oral evidence that some aspects of the applicant husband's oral evidence contradicted her own oral evidence.
129. The Tribunal invited the applicant wife to comment on the evidence given by her husband that their car had been vandalised in [State 6] and that he felt he was being followed, when she had given evidence that [Mr D] did not find them in [State 6]. The applicant wife stated that today was the first time she had heard those things and that perhaps the applicant husband didn't want to worry her or perhaps he had misunderstood the interpreter.
130. The Tribunal invited the applicant wife to comment on the evidence given by her husband that a group of Malay men had come to his workplace and harassed him on a number of occasions in Kuala Lumpur when her own evidence was that the only difficulty they had in Kuala Lumpur was the assault on her husband in October 2009. The applicant wife stated that she was only aware of the incident in which he was assaulted.
131. The Tribunal invited the applicant wife to comment on the evidence given by her husband that he had only seen [Mr D] at their home in [Town 3] once while her own evidence was that he came and caused trouble on numerous occasions. The applicant wife stated that [Mr D] did come to their home on other occasions but that it was during the [dates deleted: s.431(2)] days of the Chinese Lunar calendar when her husband was

at work, so he didn't see him. She also stated that her husband's Mandarin was not good enough and he might have misunderstood the interpreter.

132. The Tribunal asked the applicant wife why she believed her children were safe in Malaysia when they were living in part with her mother and could easily be found by [Mr D]. The applicant wife stated that they wouldn't target the children and that they were at her mother-in-law's place where her own mother would sometime visit. The Tribunal asked the applicant wife why she would say that they wouldn't target her children when her earlier evidence was that she feared they would be forcibly converted to Islam. The applicant wife stated that if she and her husband were not there, the children could not be forcibly converted to Islam as they would need their consent. The Tribunal asked why then the children were at risk of conversion if she and her husband returned to Malaysia given that they could refuse to consent. The applicant wife stated that it was because [Mr D] would force her to convert to Islam and would harass her when she refused. She stated that if she herself was to convert to Islam, the children would automatically be converted to Islam.
133. The applicant wife stated that their fears for their children prevented them from sending them to school. It was put to her by the Tribunal that her eldest daughter was [age deleted: s.431(2)] and therefore not of school age. The applicant wife agreed but stated that children would normally attend pre-school or kindergarten for two years before starting school and that other children [age deleted: s.431(2)] started kindergarten six months ago.
134. At the conclusion of the second hearing, the Tribunal noted that the applicants' agent had been absent for parts of the hearing because of illness and granted him 14 days to make further written submissions after listening to the hearing record.

Section 424A material – letter dated [June] 2011

135. [In] June 2011, the Tribunal wrote separately to each of the first and applicant wife pursuant to section 424A of the Act, inviting their comments on information which the Tribunal considered would, subject to their comments and response, be the reason, or part of the reason, for affirming the decisions under review. The particulars of the information were identified as follows (in summary):

That the applicant husband stated in his evidence to the Tribunal that his car was vandalised in [State 6] and that he felt he was being followed. However the applicant wife gave evidence to the Tribunal that [Mr D] did not find them or harass them when they moved in [State 6].

That the applicant husband stated in his evidence to the Tribunal that a group of Malay men had come to his workplace in Kuala Lumpur and harassed him on a number of occasions. However the applicant wife gave evidence that the only difficulty they had had in Kuala Lumpur was the assault on the applicant husband in October 2009.

That the applicant husband stated in his evidence to the Tribunal that he had only seen [Mr D] at their home in [Town 3] on one occasion. The applicant wife stated in her evidence to the Tribunal that [Mr D] came to their home in [Town 3] and caused trouble on numerous occasions.

That the applicant husband stated in his evidence to the Tribunal that four of his colleagues were present when he was attacked at work in Kuala Lumpur and that he got into his car and drove by himself to a police station where he made a report. He stated that none of his colleagues attended the police station with him, nor did the police send an officer to take statements from his colleagues. The applicant wife gave evidence that the applicant husband was with colleagues when he was assaulted at work in Kuala Lumpur and that those colleagues went with him to report the assault to the police.

136. The letters to each of the applicants required them to provide their written comments or response by [a certain date in] June 2011, or seek further time by that date. [In] June 2011, the applicant's representative lodged the following further documents with the Tribunal but did not respond to the substance of the Tribunal's letter dated [June] 2011:
- A birth certificate and photograph of the applicant wife's brother, [Mr G];
 - The applicant husband's Malaysian identity card;
 - A translated police report made at [Town 8] Station on 15 October 2009;
 - Photos of the applicant wife and her daughters, her sister in law [Ms E] and her daughter, the applicant wife's mother with her grandchildren, the applicant wife at [name deleted: s.431(2)] Chapel in February 2011 and several photos of a Guan Dao gathering at [name deleted: s.431(2)] Chapel [in] May 2011;
 - A further submission by the applicant's representative.
137. [In] July 2011 the Tribunal wrote to the applicants inviting them to appear before the Tribunal at a further hearing [in] August 2011.

The third Tribunal hearing – [August] 2011

138. At the commencement of the third hearing, the applicants' representative advised that he was only able to stay for 15 minutes and that he had been advised that the applicant wife's sister-in-law had left home since the last hearing leaving the children with the applicant wife's mother although he had not been given the reason as to why. He handed up further photographs of the applicants continuing to enjoy their religious freedom and submitted that Malaysia had two legal systems and that the one that governed religious affairs was a state law while Muslims were governed by federal law. He submitted that when the applicant wife was being persecuted they went to the police but that the law could not protect them because the administration could not interfere with religious laws and the persecution was being conducted by staff from the Religious Affairs Bureau. He submitted that in theory and in practice, the applicants were unable to get protection anywhere in Malaysia. The Tribunal indicated that it would give him 14 days to provide further written submissions following the hearing as he would not present during the hearing.
139. The Tribunal advised the applicants that it had asked them both to a further hearing because after considering the evidence that they each gave in the earlier Tribunal hearings, the Tribunal wished to raise with them a number of further issues:

- Firstly, the Tribunal wished to raise with both of them country information that is before the Tribunal and that the Tribunal considers to be relevant to their applications for review;
- Secondly, the Tribunal wished to raise with each of them the issue of their credibility which arise because of inconsistencies between the oral evidence of each of them and their written statements contained in the material before the Tribunal, as well as inconsistencies between the oral evidence given by each of them;
- Thirdly, the Tribunal took evidence from [the wife] on the last occasion while [the husband] was out of the room. Having reflected on that evidence, the Tribunal wished to put the substance of that evidence to [the husband] and give him an opportunity to make any comment he may wish to on that evidence;
- Fourthly, the Tribunal wished to put to each of them information before the Tribunal that would be the reason, or part of the reason for affirming the decision under review.

140. The Tribunal advised the parties that it was not going to ask either of them to leave the room during this hearing and that some of the matters that it wished to raise it would put to them both together while other matters would be directed to one or other of the applicants. The Tribunal advised the parties that even where it was required to direct matters to one or the other of them, it was happy for the other to respond to or comment on that matter after the person to whom it is directed has done so.

Country information put to both of the applicants

141. The Tribunal advised that it was firstly going to put to both of them the substance of country information before the Tribunal that was relevant to their claims, much of which it had already discussed at some length with the applicant wife. The Tribunal advised that it was going to ask each of the applicants in turn if they would like to make any comment on the country information that it was about to discuss with them.

142. The Tribunal put to the applicants that country information before the Tribunal indicates that Yi Guan Dao (also known as the Unity Sect) has been practised by ethnic Chinese in Malaysia since 1947 and that its membership grew rapidly in the 1970s and 1980s. Country information also suggests that since the 1990s, the Unity Sect is reported to have been actively involved in organising various cultural and social activities. The Tribunal advised that it had been unable to locate any recent reports of practitioners of Yi Guan Dao facing serious harm as a result of their religious beliefs in Malaysia and asked if the applicants wished to comment.

143. The applicant wife stated that the persecution and harm she had experienced was done to her personally because they accused her of not respecting Allah in their books and attacked them at the Lantern Festival, destroying their idol. When asked if she was referring to the attack in 2009, the applicant wife said she was but that they also came on other occasions during the [dates deleted: s.431(2)] lunar calendar when he wanted to disturb them. The applicant husband told the Tribunal he had nothing further to add to his wife's comments.

144. The Tribunal then put to the applicants that country information indicated that ethnic Chinese people form a significant minority of Malaysia's population and that in central western states such as Perak, ethnic Chinese constitute over 30 percent of the population and in major urban centres such as Kuala Lumpur and Georgetown, Penang, they are recorded as constituting a slight majority. The applicant wife responded that in their area, ethnic Chinese constitutes only a very small minority. The applicant husband stated that in their region or area, they are more Malay people than ethnic Chinese people. The applicant wife stated that if they were to go further up there would be even more ethnic Malay people and that in their region, the day off is Friday because it is a day for prayer for Muslims, while in Kuala Lumpur and other big cities, they have Saturday and Sunday off.
145. The Tribunal then put to the applicant husband that at the last hearing, it had put to his wife that independent country information before it suggested that as she was legally married to him, she could not be forced to marry anybody else as the laws of bigamy in Malaysia prevent that. The applicant husband responded that that was correct and that when his wife married him, she became his wife however Malay people always tried to disrupt them which made their lives very difficult.
146. The Tribunal then put to the applicant husband that at the last hearing, it had put to his wife that independent country information before it indicated that the Malaysian government maintains a dual legal system, whereby Shari'a courts rule on religious and family issues involving Muslims and secular courts rule on other issues relating to both Muslims and non-Muslims and that the Malaysian Constitution states that "every person has the right to profess and practice his religion", although it also states that Islam is the religion of the Federation. The Tribunal stated that independent country information before it suggested that under Shari'a law, no person can be forced to convert to Islam. The applicant husband responded that although general laws stated that no-one could be forced to convert to Islam, they had been threatened and intimidated which made them afraid and that although they reported it to the police, they just tried to put them down. The applicant husband stated that their persecutors are in a dark area and can do whatever they want and that he and his family could be seen by them, but could not see them. The applicant wife stated that she understood that these things had happened and that from a general perspective there were two legal systems and people could have different religious beliefs but in reality all those things were done to them. She stated that his friend called the police and told them about the car radio but the police refused to take action. She stated that they also reported this matter but the police refused to take any action which meant they couldn't get protection. The applicant husband stated that in Malaysia the police did not want to provide protection to them and were biased against them, refusing to protect them. She stated if they reported anything missing to the police, they wouldn't take action against Malay people and for them there was no justice.
147. The Tribunal then put to the applicant husband that at the last hearing, it had put to his wife that independent country information before it suggested that under Shari'a law, the children cannot be converted to Islam without the consent of one or both parents. The applicant husband stated that was correct and that children could not be forced to convert but that his children were very young and he was concerned that what happened to him might happen to them. He stated that in Malaysia children start school at age 6 and his children were [ages deleted: s.431(2)]. The applicant wife stated that if

she and her husband had to give in, their children will have no choice but to follow them. When asked what she meant by “give in”, the applicant wife stated that she meant to surrender to their harassment and disruption which will give them no choice but to accommodate them, which they currently did not want to do.

Evidence of the applicant wife put to the applicant husband

148. The Tribunal advised the applicant husband that at the last hearing, it had taken evidence from his wife while he were out of the room and wished to put to him some aspects of his wife’s evidence that is relevant to her claims for protection in order to provide him with an opportunity to comment or give any additional evidence that he would like to about those matters.
149. The Tribunal indicated to the applicant husband that it had noted that the oral evidence of himself and his wife contained some inconsistencies and that it had previously given his wife an opportunity to comment on those inconsistencies and now wished to give him that opportunity. The Tribunal indicated that it also wished to raise with him the issue of his credibility which arises for the Tribunal as a result of these inconsistencies.
150. The Tribunal advised the applicant husband that his wife had given evidence that she is a follower of Yi Guan Dao and that the Tribunal accepted that to be the case. The Tribunal indicated that it also accepted that he was initiated into Yi Guan Dao in 2002 and that their two children are members of that faith. The Tribunal advised the applicant husband that his wife had given evidence that during her childhood her parents sought the assistance of an Islamic faith healer named [Mr D] in relation to the illness of her younger brother [Mr G] and the Tribunal accepted that to be the case.
151. The Tribunal advised the applicant husband that his wife had given evidence that in exchange for [Mr D] healing her brother, his wife’s parents agreed that she and her brother would marry the son and daughter of [Mr D] when they grew up and asked him if he wished to comment on that. The applicant husband stated that he understood that during his wife’s childhood these things happened and that there were promises made, stating that it was reasonable for parents to make promises when their children were ill.
152. The Tribunal advised the applicant husband that his wife had given evidence that her brother, [Mr G], married [Mr D]’s daughter [Ms E] in 2005 against his will and asked if he wished to comment on that. The applicant husband stated that he was only aware that they were together and that he didn’t wish to comment on other people’s feelings.
153. The Tribunal advised the applicant husband that his wife had given evidence that [Mr D] wished her to marry his son [Mr C] and was very angry when he discovered that she had married the applicant husband instead. The Tribunal advised the applicant husband that his wife had stated in her written claims that she is afraid that if she returns to Malaysia, she will be forced to marry [Mr D]’s son [Mr C] and asked if he wished to comment on those matters. The applicant husband stated that although he was aware that [Mr D] wanted his wife to marry his son, there was nothing in writing. He stated that he understood that his wife’s brother had married [Mr D]’s daughter because of his illness, but that he had no concerns in marrying his wife and he didn’t think that the promises were anything he should worry about.

154. The Tribunal advised the applicant husband that his wife had claimed that if she returns to Malaysia, she fears being forced to convert to Islam and that she stated that [Mr D] couldn't force their family to convert to Islam but that he had tried all means possible to make it impossible to continue to worship Buddha and that she was afraid that she would be forced to convert to Islam because she felt that [Mr D] was using his power to force them. The Tribunal advised the applicant husband that his wife also gave evidence that her brother has not yet converted to Islam despite marrying [Mr D]'s daughter in 2005. The applicant husband stated that his wife's brother had not converted to Islam because if he does he will need to change his name but that names are very important to Chinese people and his wife's parents are still alive.
155. The Tribunal advised the applicant husband that his wife had claimed that if she returns to Malaysia, she fears that her children will also be forced to convert to Islam and that they would suffer female genital mutilation as a result of that conversion and asked if he wished to comment. The applicant husband stated that he had no comment on that matter.

The applicant husband's employment history

156. The Tribunal noted that the applicant husband had stated in his application for a protection visa that he worked as a technical support officer for a company called [Organisation 9] and asked where that company was located. The applicant stated that it was located inside a shopping centre in Kuala Lumpur. The Tribunal asked him how long he worked there and he stated that he worked there for [number deleted: s.431(2)] months until October 2009. The Tribunal put to the applicant husband that in his application for a protection visa, he stated that he worked for that company for [number deleted: s.431(2)] years between [year deleted: s.431(2)] and 2009. The applicant husband stated that the information in his written application was wrong because when they first arrived, they had the help of a friend who told them to just write down whatever so that information was not correct.
157. The Tribunal asked the applicant husband about his employment with [Organisation 10] and the applicant husband stated that it was also located in Kuala Lumpur and he obtained a subcontracting job with that company through the help of a friend. He stated that he did not have a fixed term of employment but was working as a subcontractor trying to earn extra money. The Tribunal put to the applicant husband that in his application for a protection visa he had stated that he had worked there between October 2009 and December 2009. The applicant husband stated that the information in the application was not correct because he didn't know what to write and his friend just told him to write whatever.
158. The Tribunal put to the applicant husband that he had stated in his original protection visa application that he had [number deleted: s.431(2)] years work experience in IT technical support in Kuala Lumpur and asked whether this was correct. The applicant husband stated that he did have [number deleted: s.431(2)] years work experience in IT but that it was not all based in Kuala Lumpur.
159. The Tribunal put to the applicant husband that the information given in his written claims and statements would appear to be inconsistent with his claim during his oral evidence that he was working at [Organisation 7] in [Town 3] for 3-4 years between 2005 and 2009 and asked if he wished to comment on that. The applicant husband

stated that because he only specialised in IT, when he was working in [Town 3] he was working as an IT person. He stated that the discrepancies between his written application for a protection visa and his oral evidence could be explained by the fact that when they were filling in the visa application, it was very close to the deadline and they were doing it in a rush without understanding what they had to do. He stated that when they were invited to give oral evidence, they knew they had to tell the truth and whatever he said in his oral evidence was true.

Adverse material raised with the applicant husband

160. The Tribunal indicated to the applicant husband that it wished to discuss with him information that would be a reason, or part of a reason for affirming the decision to refuse a protection visa. It indicated that it was going to explain why that information was relevant and ask him if he wished to comment on or respond to this information. It explained that he should tell the Tribunal if he didn't understand the information or why it was relevant and that he should inform the Tribunal if he wanted more time to respond to that information.
161. It became apparent to the Tribunal while going through the procedures set out in section 424AA that the applicant husband was having difficulty understanding the relevance of the information being put to him and the consequences of the Tribunal relying on that information. The Tribunal noted that the applicants' representative was not present at the hearing and decided to discuss the substance of the matters with the applicant without attempting to invoke the procedures of section 424AA. The Tribunal advised the applicant husband that it would discuss the matters with him in a less formal way and write to him after the hearing pursuant to section 424A inviting his further written comments on that information if he wished to make any.
162. The Tribunal put to the applicant husband that he had stated in his evidence to the Tribunal that while living in [State 6], he was working casually and that his car was sabotaged and he felt he was being followed. The Tribunal stated that the oral evidence of his wife was that [Mr D] did not find them when they moved to [State 6] and this was because the two of them didn't work or leave the house except to go grocery shopping. The Tribunal noted that she later gave evidence that the applicant husband hadn't told her about the car being sabotaged in [State 6] or his feeling that he were being followed. The applicant husband told the Tribunal that he didn't tell his wife about what had happened because being a man he didn't want to rely on his parents for a living and he didn't want his wife to worry anymore given what had happened in Kuala Lumpur.
163. The Tribunal put to the applicant husband that he had stated in his evidence to the Tribunal that a group of Malay Muslims came to his workplace in Kuala Lumpur on several occasions and harassed him and sometimes stole things. The Tribunal noted the evidence of his wife at the last Tribunal hearing in which she stated that that the only incident that took place during the time they were in Kuala Lumpur was the assault on him by several Malay men while he was at work in October 2009. The applicant husband stated that he didn't think it was an option for them to return to Malaysia as the police would not provide protection and that if he had options, he would not have been separated from his daughters for so long.

164. The Tribunal put to the applicant husband that he had stated in his evidence to the Tribunal that he had only met [Mr D] on two occasions and that he had only seen him at their home in [Town 3] on one occasion, being during the Lantern Festival in February 2009 when [Mr D] tore down their idol. The Tribunal noted the oral evidence of the applicant wife in which she stated that as well as destroying the idol at their home in February 2009, [Mr D] came to their home in [Town 3] on several occasions between 2006 and February 2009 to make things difficult for their family when they wanted to worship with others who came over to their house. The Tribunal noted that she stated that [Mr D] came to the house she shared with him and caused problems, using the excuse that he wouldn't allow their family to worship Buddha.
165. The applicant husband stated that he did see [Mr D] on two occasions, the first being when he came to their temple and destroyed their idol and the second occasion being when he was in Kuala Lumpur and [Mr D] came to his workplace and assaulted him. The Tribunal put to the applicant husband that was quite different from his earlier evidence to the Tribunal in which he stated that he first saw [Mr D] at [Organisation 7] and then at his home in [Town 3] and that he had previously stated that [Mr D] did not come to Kuala Lumpur but had sent other men. The applicant husband stated that when he saw [Mr D] at [Organisation 7] he was far away from him and he didn't approach him and ask if he was [Mr D]. He stated that he saw him in Kuala Lumpur and that he was very sensitive to his face.
166. The Tribunal put to the applicant husband that he had stated in his evidence to the Tribunal that four of his colleagues were present when he was attacked at work in Kuala Lumpur in October 2009 and that he got into his car and drove by himself to a police station where he made a report. He stated that none of his colleagues attended the police station with him, nor did the police send an officer to take statements from his colleagues. The Tribunal noted the oral evidence of the applicant wife in which she stated that he was with colleagues when he was assaulted at work in Kuala Lumpur and that those colleagues went with him to report the assault to the police. The Tribunal put to the applicant husband that the discrepancies between their evidence made the Tribunal wonder whether either of those versions were true. The applicant husband stated that he was assaulted at his workplace and he did go to the police to report that. The applicant wife stated that she took it for granted that because his colleagues were with him, they must also have accompanied him to the police station and given evidence to the police.
167. The Tribunal put to the applicant husband that his wife had given evidence that her brother has not converted to Islam despite being married to [Mr D]'s daughter [Ms E] since 2005 and that she was no longer worried about being forced to marry [Mr D]'s son, [Mr C]. The applicant husband stated that he knew it was impossible to force his wife to marry [Mr C] but there are still concerns over the children. He stated that they could not return to Malaysia because they were Yi Guan Dao followers and that if they returned they would be forced to convert to Islam.
168. The Tribunal put to the applicant husband that his wife had given evidence that they could not work in [Town 3] after they returned from Kuala Lumpur because they were concerned that they might be found again, however she also gave evidence that her parents and brother knew that the family was in [Town 3] and she stated that her sister-in-law, [Ms E], wouldn't tell [Mr D] where they were because she was on the side of yourself and your wife. The Tribunal asked the applicant husband if he would like to

comment on those matters and the applicant husband indicated that he had no further comment.

Further evidence of the applicant wife

169. The Tribunal indicated to the applicant wife that it had some further questions for her and that it also wished to raise with her the issue of her credibility which had arisen because of inconsistencies between the evidence she had given to the Tribunal, statements she had made in her protection visa application and inconsistencies between her oral evidence to the Tribunal and that of her husband.
170. The Tribunal put to the applicant wife that in her application for a protection visa, she stated that she had worked as a clerk for [Organisation 11] between March 2001 and March 2002 and then as an accounts clerk at [Organisation 12] between August 2002 and May 2005. The applicant indicated that this was correct and that [Organisation 11] was engaged in selling [products deleted: s.431(2)] while [Organisation 12] is engaged in [services deleted: s.4231(2)].
171. The Tribunal asked the applicant wife if she had any other paid employment in Malaysia after 2005 and the applicant wife stated that when she returned to [Town 3] she got married and only did some casual work in supermarkets before stopping because of the harassment. The applicant wife stated that she worked in the [name deleted: s.431(2)] Supermarket in [Town 3] but that she was not sure of the dates because she was working in different stores and also had a [shop] at the end of 2008 before she [incident deleted: s.431(2)]. When asked about her work in her relative's [shop], the applicant stated that she would just pop in from time to time during 2007 and 2008 to work on the accounts. She stated that she just went to the shop and took the book-keeping and accounts back home and did her work there, sometimes spending a day in one of the different outlets. The Tribunal asked the applicant wife why she didn't include that employment in the work history contained in her application for a protection visa recently lodged with the Tribunal and the applicant stated that her agent had told her she didn't have to include part time jobs.
172. The Tribunal put to the applicant wife that there were discrepancies between her evidence and that of her husband about who was caring for their children. The applicant wife told the Tribunal that her parents and her husband's parents took turns caring for their children and at a later stage her mother in law provided the majority of care for her children because her own mother had two other children to look after, being her brother's children and when the four of them were together they would fight. The applicant wife stated that they were also worried about further harassment.
173. The Tribunal asked the applicant wife about her agent's statement that her sister-in-law had recently left home. The applicant wife told the Tribunal that occurred one month ago because there was harassment all of the time and they always came to enquire about their whereabouts and intimidated her brother, wanting him to convert to Islam so they left home. She stated that her mother was not staying at home at the moment and that her brother's children were at an aunt's house but that her brother and his wife were not living there with them. She stated that they just wanted to be away from all the disruptions and did not tell them where they were going. The Tribunal asked why her brother and his wife had left their children behind and the applicant wife stated that they were like the applicant wife and her husband, not sure whether they could survive.

The Tribunal asked whether this left the children at risk and the applicant wife stated that her brother's children had connections to Malay people so could be protected. The Tribunal put to the applicant wife that if her brother and his wife left home because of fear of persecution, it would seem that their children would also be at risk. The applicant wife stated that they left home because her brother was being pushed to convert to Islam and he wanted to delay the process while his parents were alive. She stated that they went to other places to work and be away from all of their problems and the two children were already Muslim and they can't do anything about it.

174. The applicant wife stated that for ordinary citizens of Malaysia there was no channel for complaints and no protection, that these things had really happened to them and that cases like theirs were not reported in the media.

Further section 424A material – letter dated [August] 2011

175. [In] August 2011, the Tribunal wrote separately to each of the first and applicant wife pursuant to section 424A of the Act, inviting their comments on information which the Tribunal considered would, subject to their comments and response, be the reason, or part of the reason, for affirming the decisions under review. The particulars of the information were set out as follows with respect to the applicant husband:

- You stated in your evidence to the Tribunal that while living in [State 6], you were working casually and that your car was sabotaged and you felt you were being followed.

The Tribunal has before it information being the oral evidence of your wife at the last Tribunal hearing in which she stated that [Mr D] did not find you or your wife when you moved in [State 6] and this was because the two of you didn't work or leave the house except to go grocery shopping. She later gave evidence that you hadn't told her about the car being sabotaged in [State 6] or your feeling that you were being followed.

- You stated in your evidence to the Tribunal that a group of Malay Muslims came to your workplace in Kuala Lumpur on several occasions and harassed you and sometimes stole things. The Tribunal has before it information being the oral evidence of your wife at the last Tribunal hearing in which she stated that that the only incident that took place during the time you were in Kuala Lumpur was the assault on you by several Malay men while you were at work in October 2009.
- You stated in your evidence to the Tribunal that you have only met [Mr D] on two occasions and that you have only seen him at your home in [Town 3] on one occasion, being during the Lantern Festival in February 2009 when he tore down your idol.

The Tribunal has before it information being the oral evidence of your wife at the last Tribunal hearing in which she stated that as well as destroying the idol at your home in February 2009, [Mr D] came to your home in [Town 3] on several occasions between 2006 and February 2009 to make things difficult for your family when you wanted to worship with others who came over to your house. She stated that [Mr D] came to the house she shared with you and caused problems, using the excuse that he wouldn't allow your family to worship Buddha.

- You stated in your evidence to the Tribunal that four of your colleagues were present when you were attacked at work in Kuala Lumpur in October 2009 and that you got into your car and drove by yourself to a police station where you made a report. You stated that none of your colleagues attended the police station with you, nor did the police send an officer to take statements from your colleagues.

The Tribunal has before it information being the oral evidence of your wife at the last Tribunal hearing in which she stated that you were with colleagues when you were assaulted at work in Kuala Lumpur and that those colleagues went with you to report the assault to the police.

- The Tribunal has before it information being the oral evidence of your wife at the earlier Tribunal hearings that she was no longer worried about being forced to marry [Mr D]'s son, [Mr C].
- The Tribunal has before it information being the oral evidence of your wife at the earlier Tribunal hearings that [Mr D] couldn't force your family to convert to Islam but that he had tried all means possible to make it impossible to convert to worship Buddha and that she was afraid that she would be forced to convert to Islam because she felt that [Mr D] was using his power to force them. Your wife also gave evidence that her brother has not converted to Islam despite being married to [Mr D]'s daughter [Ms E] since 2005 and that your daughters cannot be converted to Islam while you and your wife are in Australia as this would require the consent of yourself or your wife.
- The Tribunal has before it information being the oral evidence of your wife at the earlier Tribunal hearings in which she stated that that you and she could not work in [Town 3] after you returned from Kuala Lumpur because you were concerned that you might be found again. However she also gave evidence that her parents and brother knew that your family was in [Town 3]. She stated that her sister-in-law, [Ms E], wouldn't tell [Mr D] where they were because she was on the side of yourself and your wife.

176. The particulars of the information were set out as follows with respect to the applicant wife:

- The Tribunal has before it information being the oral evidence of your husband at the last Tribunal hearing that while living in [State 6], he was working casually and that his car was sabotaged and he felt he was being followed.

You stated in your evidence to the Tribunal that [Mr D] did not find you or your husband when you moved in [State 6] and this was because the two of you didn't work or leave the house except to go grocery shopping. You later gave evidence that your husband hadn't told you about the car being sabotaged in [State 6] or his feeling that he was being followed.

- The Tribunal has before it information being the oral evidence of your husband that a group of Malay Muslims came to his workplace in Kuala Lumpur on several occasions and harassed him and sometimes stole things. You stated in your evidence to the Tribunal that the only incident that took place during the time you were in Kuala Lumpur was the assault on your husband by several Malay men while he was at work in October 2009.

- The Tribunal has before it information being the oral evidence of your husband that he has only met [Mr D] on two occasions and that he only saw him at your home in [Town 3] on one occasion, being during the Lantern Festival in February 2009 when he tore down your idol. You stated in your evidence to the Tribunal that as well as destroying the idol at your home in February 2009, [Mr D] came to your home in [Town 3] on several occasions between 2006 and February 2009 to make things difficult for your family when you wanted to worship with others who came over to your house. You stated that [Mr D] came to the house you shared with your husband and caused problems, using the excuse that he wouldn't allow your family to worship Buddha.
- You stated in your evidence to the Tribunal that your husband was with colleagues when he was assaulted at work in Kuala Lumpur and that those colleagues went with him to report the assault to the police. The Tribunal has before it information being the oral evidence of your husband that four of his colleagues were present when he was attacked at work in Kuala Lumpur in October 2009 and that he got into his car and drove by himself to a police station where he made a report. He stated that none of his colleagues attended the police station with him, nor did the police send an officer to take statements from his colleagues.
- You stated in your oral evidence at an earlier Tribunal hearing that you and your husband went to [State 6] in April 2010, leaving your children with your mother-in-law. The Tribunal has before it information being the oral evidence of your husband at the last Tribunal hearing in which he stated that your daughters were not under his parents' care, but that the children sometimes visited his parents. When asked whose care his daughters were under, your husband stated that sometimes your mother took care of the children and that sometimes his parents did.

177. In respect of each of the above particulars, the Tribunal explained in its letter why the information was relevant and the consequences of the Tribunal relying on that information.

178. [In] August 2011, the applicant wife provided a response to the Tribunal's letter dated [August] 2011, stating in summary that:

- Her husband was working casually from home doing computer repairs but that they were on the whole still very housebound in [State 6] where they felt safer because it is a city with a Chinese majority;
- Her husband did not tell her the car had been sabotaged nor of his concern about being followed because he did not want to worry her;
- During that time she was still being harassed because [Mr D] regularly asked about her through his daughter [Ms E] and she received occasional messages that she should contact him;
- Her husband worked in a shop in [area deleted: s.431(2)] in KL, this area was notorious for politico-religious activities by the Religious Affairs Department, [Mr D] worked in the [State 4] Office of the Religious Affairs Department and was well connected in the Wilayah (Federal Territory of Kuala Lumpur);

- There were quite a few occasions of harassment and stalking against them, the most serious in October 2009 when [the husband] was assaulted by a group of Muslims and among the group, he noticed [Mr D];
- The applicant husband made the police report as a formality as Malaysians of all ethnicities know that the Religious Affairs Department is quite above the law and that they are under the jurisdiction of the state and police being under the civil jurisdiction are quite incapable of intervening or protecting its citizens;
- The assault on the applicant husband is contained in the police report dated [October] 2009 and the applicant wife was not there when the report was made and there is no credibility issue there;
- [Mr D] did come to the house during the Lantern Festival in 2009 with officials from [Town 3] Local Council to remove and pull down the Guan Yi Statues and Maitreya/ bohisdattva. It was an act of the Council invoking the local council by-laws and they were warned that their prayer house did not meet the requirement of the local council by-laws;
- They did not make a police report but all understood they were persecuted by the officials with the pretext of enforcing the law and were targeted by [Mr D] who had instigated the Local Council to act against them;
- The children in the early days were switched around the paternal and maternal grand-parents and when [Mr D] came visiting, the children would be sent to the paternal grand-parents' home. [Mr D] had two grandhchildren at the maternal grand-parent's house therefore very often the children were looked after by the paternal grandmother. The applicant husband misunderstood the Tribunal's questions on this point as he could not fully understand the interpreter;
- [Mr D] and his son on occasion visited the applicant wife's mother's house to ask about the applicant wife, where she was and whether she had converted to Islam. The applicant wife regarded it as a threat to her safety when he and his mates destroyed the prayer altar at their home.

179. As at the date of decision, the applicant husband had not responded to the Tribunal's letter dated [August] 2011.

FINDINGS AND REASONS

180. In order to satisfy the Convention definition of a refugee, the applicants must have a well-founded fear of persecution. They must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicants will be persecuted for a Convention reason if they return to Malaysia. The Tribunal accepts that the applicants do not want to return to their own country. The question for the Tribunal is whether the applicants' fear of persecution is objectively well-founded within the criteria of the Refugees Convention.

181. It is important to adopt a reasonable approach when making findings of credibility. In *Minister for Immigration and Ethnic Affairs and McIllhatton v Guo Wei Rong and Pan*

Run Juan (1996) 40 ALD 445 the Full Federal Court, Foster J sounded a cautionary note at 482:

. . . care must be taken than an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

182. The High Court in *Minister for Immigration and Ethnic Affairs v Wu Shan Lian & Ors* (1996) 185 CLR 259 stated as follows (Kirby J at 39):

First, it is no erroneous for a decision-maker, presented with a large amount of material, to reason conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of the administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of which is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the “real chance” of persecution required by *Chan*.

183. With these matters in mind, the Tribunal now turns to the applicant’s claims.

Country of Nationality

184. The applicants both travelled to Australia on passports issued by Malaysia [in] June 2010. They state that they are nationals of that country and the Tribunal accepts this to be the case, having viewed copies of their passports and the Department’s movement records. The Tribunal has assessed the applicants’ claims against Malaysia as their country of nationality.

Well Founded Fear of Persecution

185. At the outset the Tribunal records that during the hearing it found aspects of the each of the applicants’ evidence to be unreliable and lacking credibility and as a consequence the Tribunal has formed the view that certain aspects of their evidence should not be accepted. In particular the Tribunal had concerns about inconsistencies in the evidence of the applicant wife and the applicant husband, as well as inconsistencies between their evidence and earlier written statements provided to the Department and/ or Tribunal. The applicant wife was invited to comment on some of the inconsistencies in the parties’ oral evidence during the second hearing [in] May 2011 as set out in paragraphs 129 – 132 above and at the third hearing as set out in paragraph 173 above. The applicant husband was invited to comment on those and other inconsistencies during the third hearing [in] August 2011 (paragraphs 163-169). Further matters were put to the parties pursuant to section 424A by notice dated [June] 2011 (paragraph 136) and [August] 2011 (paragraph 176). Having considered the parties’ responses to these matters, the Tribunal is of the view that certain aspects of their evidence should not be accepted.
186. In essence the applicant wife has claimed that she fears persecution from religious authorities in Malaysia, as well as from an Islamic elder, [Mr D] and groups of men associated with [Mr D] on the basis of her religion. However, the mere fact that a person claims fear of persecution for a particular reason does not establish either the

genuineness of the asserted fear or that it is “well-founded” or that it is for the reason claimed. A fear of persecution is not “well-founded” if it is merely assumed or if it is mere speculation.

The applicants’ religious beliefs

187. The Tribunal accepts the applicant wife’s claims to be a follower of Yi Guan Dao. In making that assessment, the Tribunal notes that country information indicates that Yi Guan Dao has been practised by ethnic Chinese in Malaysia since the first Unity Sect Fotang (Buddha Hall) was set up in Peninsular Malaysia in 1948. The Tribunal considers that the evidence given by the applicant wife about her practise and beliefs was broadly consistent with that contained in country information, in particular the applicant wife’s evidence that Yi Guan Dao was her path to heaven, that initiation involved introduction to three secret treasures which she could not disclose and that every person came from one mother, Laomu. The Tribunal considered also that the applicant wife’s evidence as to her practise of Yi Guan Dao at family shrines in firstly her parents’ home and later her own home and on special occasions at a big temple is consistent with country information which indicates that the initial stage of the Unity Sect’s development in Peninsular Malaysia usually began with a family shrine set up in a member’s house with public halls being developed as bigger congregational sites³⁰
188. The Tribunal notes that the applicants at times referred to Yi Guan Dao as a “Buddha religion” and that on their marriage certificate, the religion of each is described as “Buddha”. In photographs produced by the parties to the Tribunal, a Buddha is clearly visible in the family shrine. The Tribunal formed the view that this is not inconsistent with the applicants’ claimed practice of Yi Guan Dao, noting that country information indicates that it was believed that the founder of Yi Guan Dao, Zhang Tianran, was an incarnation of the Living Buddha Jigong who had been sent by the Eternal Mother Wuji Laomu to transmit the Dao to humans³¹ and further that Yi Guan Dao is different to popular religion primarily through “its focus on the Maitreya Buddha and in its belief in the Venerable Heavenly Mother.”³²
189. The Tribunal further accepts the applicant husband’s oral evidence that his parents followed all Buddha religions and that he was introduced to Yi Guan Dao by the applicant wife in 2002. In making this assessment, the Tribunal notes that the applicants’ produced to the Tribunal copies of four cards which were claimed to be membership identification cards for Yi Guan Dao. The Tribunal accepts that those cards were issued in respect of each of the applicants and their two children and that consistently with the parties’ oral evidence, the applicant husband was initiated into Yi Guan Dao in 2002 and the applicant wife in 1997.

The applicant wife’s claim regarding Islamic faith healers

190. The Tribunal accepts that the applicant wife’s parents sought the assistance of an Islamic faith healer named [Mr D] in the 1990s in relation to the illness of her younger

³⁰ Soo, K.W. 1997, *A Study of the Yiguan Dao (Unity Sect) and its development in peninsular Malaysia*, PhD thesis, University of British Columbia, pp. 7, 149-169, 172-173, 190-191, 241 & 250-251

³¹ Clart, P. 2005, ‘Yiguan Dao’, in *Encyclopedia of Contemporary Chinese Culture* ed E.L. Davis, Routledge, London, pp. 699-700, at p. 699

³² Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, M.A. 1994, *The Other Taiwan: 1945 to the Present*, East Gate, New York, Ch.16, pp. 423-444, at p.433

brother [Mr G] born [date deleted: s.431(2)]. In making this assessment, the Tribunal notes that country information before it indicates that the use of faith healers (or “bomohs”) continues to be widespread in Malaysia³³ & ³⁴ and that the arrival of Islam brought the Islamisation of the bomohs, with many using Koranic verses to cure people instead of more traditional animist practices³⁵. The Tribunal notes that although meddling with the occult is banned under Islam, Islamic bomohs are reportedly tolerated³⁶. The Tribunal accepts the applicant wife’s oral evidence that [Mr D] has a religious position high in the Islamic hierarchy and that he works for the Religious Affairs Department in [State 4].

The involvement of [Mr D] with the applicant wife’s family

191. The Tribunal accepts the applicant wife’s oral evidence to the effect that in exchange for healing her brother, her parents agreed that the applicant wife and/or her brother would marry [Mr D]’s children when they had grown up. The Tribunal accepts that [Mr D] approached the applicant wife’s family again in about [year deleted: s.431(2)], demanding that the applicant wife marry his son, [Mr C]. The Tribunal accepts that at this time, the applicant wife had already formed a relationship with the applicant husband and was resistant to the proposed marriage.
192. The Tribunal accepts the applicant wife’s evidence that her parents told [Mr D] when he first approached them in [year deleted: s.431(2)] that she was still studying and too young to marry. The Tribunal accepts the applicant wife’s oral evidence that [Mr D] didn’t contact her family between [year deleted: s.431(2)] and about 2004 or 2005 and that as a result they thought that nothing further would happen. The Tribunal accepts the applicant wife’s oral evidence that she married the applicant husband in 2006, noting that the marriage certificate before the Tribunal indicates that their marriage took place [in] May 2006.

The marriage of the applicant wife’s brother

193. The Tribunal accepts that the applicant wife’s brother [Mr G] married [Mr D]’s daughter, [Ms E], in 2005. In making this assessment, the Tribunal notes that the applicant wife has produced photos of [Ms E] with the applicant wife and other members of her family of as well as birth certificates of [Ms E]’s two children, [Ms F] born [date deleted: s.431(2)] and [Mr G], born [date deleted: s.431(2)].
194. However while the Tribunal accepts that the marriage was arranged, the Tribunal finds that [Mr H] married [Ms E] willingly and was not forced to do so. In making this assessment, the Tribunal notes the applicant wife’s oral evidence that at the time her brother was single and he found that he could get along well with [Mr D]’s daughter. The photos produced to the Tribunal show [Ms E] with the applicant wife and other family members on several occasions, one of which the applicant wife stated took place at a Yi Guan Dao temple. The applicant wife stated variously during the hearing that her relationship with [Ms E] was OK, and also that [Ms E] was “on our side” when

³³ Ahmad, R. & Teo, A. 2010, ‘Malaysia to control faith healers as more seek spirit aid’, *Reuters News*, 14 October

³⁴ Kamali, M.H. 2010, ‘Not easy to use laws against black magic’, *New Straits Times*, 29 November

³⁵ Bose, R. 2010, ‘The new face of Malaysia’s Islamic witchdoctors’, *Agence France-Presse*, 22 August

³⁶ Ahmad, R. & Teo, A. 2010, ‘Malaysia to control faith healers as more seek spirit aid’, *Reuters News*, 14 October

asked why [Ms E] would not disclose the whereabouts of the applicants' two daughters to her father. The applicant wife also gave evidence that [Ms E] involved herself in Yi Guan Dao religious rituals following the death of the applicant wife's grandmother, because that grandmother had been kind to [Ms E]. The Tribunal also notes the applicant wife's oral evidence that [Mr H] and [Ms E] lived with the applicant wife's parents after their marriage in 2005. On the evidence before it, the Tribunal finds that [Mr H] married [Ms E] willingly and that [Ms E] was accepted into the applicant wife's family.

The applicant wife's fear of being forced to marry [Mr D]'s son, [Mr C]

195. The Tribunal accepts that when [Mr D] was angry when he discovered in about 2007 that the applicant wife had married the applicant husband. However the Tribunal finds that the applicant wife does not have a fear that if she returns to Malaysia she will be forced to marry the [Mr D]'s son, [Mr C]. In making this assessment, the Tribunal notes that the Tribunal discussed with the applicant wife at length how [Mr D] could force her to marry his son, given that she has been married to the applicant husband since 2006. The applicant wife stated that she was not concerned about that anymore, rather she was concerned that he would force her and her daughters to convert to Islam and that her daughters would be forced to undergo female genital mutilation.
196. The Tribunal discussed with both applicants country information that suggested that as the applicant wife was legally married to the applicant husband, she could not be forced to marry anybody else as the laws of bigamy in Malaysia prevent that. The applicant husband responded that that was correct and that when his wife married him, she became his wife however Malay people always tried to disrupt them which made their lives very difficult. As noted above, the applicant wife stated that she was not concerned about being forced to marry [Mr C] anymore.
197. The Tribunal does not accept that the applicant wife has a subjective fear that she will be forced to marry [Mr D]'s son if she returns to Malaysia. The Tribunal notes that even if did accept that the applicant wife held such a subjective fear, it would not accept that such a fear could be well-founded given that country information indicates that bigamy in civil marriage in respect of non-Muslims is a crime in Malaysia^{37&38}, punishable by up to seven years imprisonment and a fine.³⁹

Forced Conversion to Islam

198. The applicant wife has claimed that if she returns to Malaysia, she and her family will be forced to convert to Islam and her daughters will be forced to undergo female genital mutilation as a result of that conversion.

³⁷ 'What is bigamy? Is bigamy punishable by law? What is the punishment for bigamy in Malaysia?' 2008, Lawyerment website, 8 September <http://www.lawyerment.com/library/kb/Families/Marriage/1033.htm> - Accessed 18 May 2011

³⁸ 'Ten percent of Muslim men in Malaysia have more than one wife, says survey' 2005, *Associated Press Newswires*, 7 August

³⁹ Federation of Malaysia 1997, 'Penal Code', Act 574, incorporating all amendments up to 1 January 2006, Malaysian Attorney-General's Chambers website, 7 August <http://www.agc.gov.my/agc/Akta/Vol.%2012/Act%20574.pdf>

199. Country information before the Tribunal indicates that the Malaysian government maintains a dual legal system, whereby Shari'a courts rule on religious and family issues involving Muslims and secular courts rule on other issues pertaining to both Muslims and the broader population. The most recent US Department of State report on religious freedom in Malaysia states and the Tribunal accepts that "many have expressed concern that the civil court system has gradually ceded jurisdictional control to Shari'a courts, particularly in areas of family law involving disputes between Muslims and non-Muslims . . .⁴⁰" However the weight of country information before the Tribunal indicates that an adult person cannot be forced to convert to Islam in Malaysia, although the situation is significantly less clear for minors⁴¹
200. Article 11 of the Malaysian Constitution states that "every person has the right to profess and practice his religion," although Article 3 also states that "Islam is the religion of the Federation". All reports of forced religious conversion to Islam in Malaysia that the Tribunal was able to locate concerned the conversion of children in circumstances where one parent voluntarily converted to Islam and also converted the children without the consent of the non-converting parent⁴² The Tribunal notes that country information provided to the Tribunal by the applicants' representative supports the conclusion that an adult person cannot be compelled to convert to Islam in Malaysia, stating in part:
- There is no compulsion in Islam . . . – no-one is forced to become a Muslim. Apostasy, however, is a different matter⁴³."
201. The Tribunal discussed at length with the applicant wife the issue of how [Mr D] could force her to convert to Islam, putting to her that country information before the Tribunal suggested that a person couldn't be forced to convert to Islam. The applicant wife stated that she knew [Mr D] couldn't force her family's conversion but that he tried all means to make it impossible for them to worship Buddha and she couldn't go to the temple before she came to Australia. The Tribunal asked the applicant wife if she was afraid she would be forced to convert to Islam if she returned to Malaysia and the applicant wife stated that she was. The Tribunal asked why, when country information indicated that she could not be forced to convert to Islam. She stated that she did not know why, but that she felt [Mr D] was abusing his power to force them. The Tribunal discussed with the applicant husband country information that suggested that a person couldn't be forced to convert to Islam. The applicant husband responded that although general laws stated that no-one could be forced to convert to Islam, they had been threatened and intimidated which made them afraid and that although they reported it to the police, they just tried to put them down.
202. The Tribunal notes the evidence of the applicant wife to the effect that her brother has not converted to Islam, despite being married to [Mr D]'s daughter for six years. The Tribunal finds that neither of the applicants can be compelled to convert to Islam should they return to Malaysia.

⁴⁰ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

⁴¹ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

⁴² US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

⁴³ New Statesman article titled "Malaysian Church Firebombings" posted on the internet by Sholto Byrnes on 10 January 2010, lodged with the Tribunal by the applicants' representative on 19 April 2011

203. The Tribunal has also considered whether the children of the applicant who remain in Malaysia can be forced to convert to Islam. The applicant wife told the Tribunal at the second hearing that if she herself was to convert to Islam, the children would automatically be converted to Islam. The Tribunal asked the applicant why she had left her daughters in Malaysia if she felt she and husband were not safe there and the applicant wife stated that they wouldn't target the children who were at her mother-in-law's place where her own mother would sometime visit. The Tribunal asked the applicant wife why she would say that they wouldn't target her children when her earlier evidence was that she feared her children would be forcibly converted to Islam. The applicant wife stated that if she and her husband were not there, the children could not be forcibly converted to Islam as they would need their consent. The Tribunal asked why then the children were at risk of conversion if she and her husband returned to Malaysia given that they could refuse to consent. The applicant wife stated that it was because [Mr D] would force her to convert to Islam and would harass her when she refused.
204. At the third hearing the Tribunal discussed with the applicant wife and applicant husband country information that suggested that children cannot be converted to Islam without the consent of one or both parents. The applicant husband stated that was correct and that children could not be forced to convert but that the children were very young and he was concerned that what happened to him might happen to them.
205. Given that the Tribunal has found that the neither the applicant husband nor applicant wife can be compelled to convert to Islam if they return to Malaysia, the applicants have given evidence that they will neither convert themselves nor consent to the conversion of their children and country information suggests that children can be converted to Islam only by or with the consent of their parents⁴⁴, the Tribunal finds that there is not a real chance that their two daughters will be forcibly converted to Islam if their parents return to Malaysia.
206. The Tribunal has also considered the applicant wife's claims that her daughters face female genital mutilation if the applicants return to Malaysia. The Tribunal accepts the country information which indicates that female circumcision and/ or female genital mutilation is routinely practised by Malay Muslims⁴⁵. However given the Tribunal's findings that the applicants and their children will not be compelled to convert to Islam, the Tribunal does not accept that there is a real chance that their daughters will face female circumcision and/ or female genital mutilation as a result of that conversion.

Other claims of persecution

207. The applicants have made a number of further claims of persecution by [Mr D] and persons associated with him, namely the Religious Police in Malaysia and gangs associated with [Mr D].
208. The applicant husband gave evidence that on several occasions their car was damaged, including an occasion on which their car window was broken and other occasions on

⁴⁴ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Section II

⁴⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Malaysia*, April, Section 6

which the mirrors were broken and/or the tyres were flat. He stated that these things occurred on one occasion in Kuala Lumpur and on one occasion in [Town 3]. He stated that he reported the incidents to the police so that he could claim insurance but they never found anyone responsible because they could not find the proof they needed.

209. The Tribunal accepts that these events may have occurred, but does not accept that they were related to [Mr D] or his associates or that the applicants' car was targeted for any Convention reason. In making this assessment, the Tribunal notes that the applicant husband told the Tribunal that at first he thought these incidents were a coincidence but later attributed them to [Mr D]. The Tribunal considers this to be merely speculative and not supported by the evidence before the Tribunal, hence the Tribunal does not accept that [Mr D] or his associates were responsible for these incidents.
210. The applicant wife stated at the first hearing that [Mr D] was causing lots of trouble and wanted to force her family to convert to Islam, including that he kept coming to her family's home and arguing and that he also went to her workplace to harass her. She stated that the harassment started in about 2007, after [Mr D] discovered she had married her husband. The Tribunal has considered the applicants' claims that they have been subjected to mistreatment in the workplace and mistreatment in their own home separately.

Harm and/ or mistreatment in the applicant wife's workplaces

211. The applicant wife stated that she was working in a supermarket in about 2007 or 2008 when [Mr D] and other men came in and started complaining, saying that there was a problem and she had misled them. They did this over several days and her boss was very unhappy and said he did not want to offend Muslims and that she couldn't work there anymore. The Tribunal asked how long she had worked at that supermarket and the applicant wife stated that it was only a few weeks but that they had come to several of her previous workplaces and harassed her, stating that she had worked at a relative's shop selling [products deleted: s.431(2)] but when they came and harassed her she felt very sorry for her relatives and had to give up. The applicant stated that because of the harassment she had given up working and started her own business selling [products deleted: s.431(2)] but that they still came to harass her.
212. The Tribunal considered the applicant wife's oral evidence of [Mr D]'s harassment at her workplace against the details of her work history provided in her first visa application lodged [November] 2010 and amended visa application lodged with the Tribunal [in] April 2011 and notes that she did not give details of her employment at a supermarket, a relative's [store] or her self-employment selling [products deleted: s.431(2)] in the employment histories contained in either of the Form Ds before the Tribunal. In the first Form D submitted [November] 2010, the applicant states that she worked as an accounts clerk for [Organisation 12] between 2002 and 2006 and that her occupation before coming to Australia was "housewife". In the second Form D submitted [in] April 2011, she states that she worked as a clerk for [Organisation 11] between March 2001 and March 2002 and then as an accounts clerk at [Organisation 12] between August 2002 and May 2005. She provides no details of her employment history after May 2005, although she states that before coming to Australia her occupation is "housewife/ casual worker in a supermarket".

213. At the third Tribunal hearing, the applicant wife stated that when she returned to [Town 3] she got married and only did some casual work in supermarkets before stopping because of the harassment. She stated that she worked in the [name deleted: s.431(2)] Supermarket in [Town 3] but that she was not sure of the dates because she was working in different stores and also had a [shop] at the end of 2008 before she gave birth. When asked about her work in her relative's [shop], the applicant stated that she would just pop in from time to time during 2007 and 2008 to work on the accounts. She stated that she just went to the shop and took the book-keeping and accounts back home and did her work there, sometimes spending a day in one of the different outlets. The Tribunal asked the applicant wife why she didn't include that employment in the work history contained in her application for a protection visa recently lodged with the Tribunal and the applicant wife stated that her agent had told her she didn't have to include part time jobs.
214. The Tribunal has considered that explanation, however given the discrepancies between the applicant wife's oral evidence and her written claims combined with the general credibility concerns the Tribunal holds about aspects of the evidence she has provided, the Tribunal does not accept her oral evidence. While the Tribunal accepts that the applicant wife may have worked casually in a supermarket at some point before coming to Australia, on the evidence before it the Tribunal does not accept that [Mr D] or his associates harassed the applicant wife at her workplace at a supermarket in [Town 3] or any other workplace or that this was the cause of her employment ending.

Harm and/ or mistreatment in the applicant husband's workplaces

215. The applicant husband gave evidence at the second Tribunal hearing that he worked at [Organisation 7] for 3-4 years in the IT area, and that the company would sell new computers and also maintain old computers. He stated that a group of Malay people came into buy brand new computers and then came back with complaints about parts that didn't work which made his boss upset with him. He stated that [Mr D] came into the shop once at the end of 2005 and that after that the same group of Malay men came back two times per day or three times per week over a period of 2-3 years, before his boss asked him to leave in 2009 just before the family moved to Kuala Lumpur.
216. In his application for a protection visa lodged [November] 2010, the applicant husband provides a detailed description of his past employment arrangements between 2002 and 2010 as required by question 39 of that form. In that description, he states that he worked for [Organisation 9] as a technical support officer between June 2002 and October 2009 and then as a technical support officer for [Organisation 10] between October 2009 and December 2009. Nowhere in his description of his past employment does he name any of his previous employers as [Organisation 7]. The more recent application for a protection visa provided to the Tribunal by the applicants [in] April 2011 notes that the applicant husband works in IT technical support, but does not give any further details of his employment history.
217. At the third hearing the applicant husband told the Tribunal that [Organisation 9] and [Organisation 10] were both located in Kuala Lumpur and that he had worked for [Organisation 9] for six months until October 2009. The Tribunal put to the applicant husband that in his application he stated that he worked for [Organisation 9] for seven years between 2002 and 2009. The applicant husband stated that the information in his

written application was wrong because when they first arrived, they had the help of a friend who told them to just write down whatever so that information was not correct.

218. At the third hearing the applicant husband also stated that he had worked for [Organisation 10] as a subcontractor and that he did not have a fixed term of employment. The Tribunal put to the applicant husband that in his application for a protection visa, he stated that he worked for [Organisation 10] between October 2009 to December 2009. The applicant husband stated that the information in the application was not correct because he didn't know what to write and his friend just told him to write whatever.
219. The Tribunal put to the applicant husband that he had stated in his original protection visa application that he had [number deleted: s.431(2)] years work experience in IT technical support in Kuala Lumpur and asked whether this was correct. The applicant husband stated that he did have [number deleted: s.431(2)] years work experience in IT but that it was not all based in Kuala Lumpur.
220. The Tribunal put to the applicant husband that the information given in his written claims and statements would appear to be inconsistent with his claim during his oral evidence that he was working at [Organisation 7] in [Town 3] for 3-4 years between 2005 and 2009 and asked if he wished to comment on that. The applicant husband stated that the discrepancies between his written application for a protection visa and his oral evidence could be explained by the fact that when they were filling in the visa application, it was very close to the deadline and they were doing it in a rush without understanding what they had to do. He stated that when they were invited to give oral evidence, they knew they had to tell the truth and whatever he said in his oral evidence was true.
221. The Tribunal has considered the applicant husband's explanations for the inconsistencies between his written statements and his oral evidence but does not accept them. In particular, the Tribunal does not accept as credible that a lack of professional advice would cause the applicant husband to make detailed written statements about his employment history in his protection claims that he now claims to be incorrect and which differ from his oral evidence in such significant respects, particularly in circumstances where he claims to have suffered serious harm at his places of employment.
222. On the evidence before it, the Tribunal does not accept that applicant husband worked at [Organisation 7] in [Town 3] between 2005 and 2009. Nor does the Tribunal accept that the events he described as occurring during his employment at [Organisation 7] occurred. Therefore the Tribunal does not accept that the applicant husband ever suffered harm or mistreatment at his workplace in [Town 3] as a result of the actions of [Mr D] or his associates or any other person.

Harm and/ or mistreatment in the home of the applicant wife's parents

223. The applicant wife claimed that the idol in her parents' home was destroyed by [Mr D]. The Tribunal has accepted that the applicant wife is a follower of Yi Guan Dao and further accepts that her parents are also followers of that faith. The Tribunal has also accepted that the applicant wife has practised Yi Guan Dao at a family shrine in her parents' home. The Tribunal has accepted that [Mr D] has a religious position in the

Islamic hierarchy and that his daughter married the applicant wife's brother [Mr H] in 2005. The Tribunal has accepted that the applicant wife's brother and her husband lived in the home applicant wife's parents following their marriage.

224. The Tribunal accepts that [Ms E]'s family's Islamic beliefs were in conflict with the applicant wife's family's own religious beliefs, being the practise of Yi Guan Dao, and that this may have caused tension between the manner in which the applicant wife's family practised their own religious beliefs given that [Ms E] was living in their household. On this basis the Tribunal accepts that [Mr D] destroyed the idol in the applicant wife's parent's home and has considered whether [Mr D]'s behaviour towards the applicant wife's parents could constitute a threat to the applicant wife in the immediate or foreseeable future.
225. However given that the applicant wife and her husband established their own household separately of the applicant wife's parents in 2006, the Tribunal does not consider that any ongoing tensions or difficulties in her parent's household constitute a threat to the applicant wife or applicant husband now or in the reasonably foreseeable future.

Harm and/ or mistreatment in the applicants' home

226. The Tribunal has also considered the applicant wife's claims that [Mr D] would send people to cause trouble at her own home on occasions when she and her husband would have religious friends come over and worship. The applicant wife stated that after the idol in her parents' home was destroyed by [Mr D], her parents would come and worship at her place and that [Mr D] sent between 3 and 5 Muslim men to her home many times.
227. At the first Tribunal hearing the applicant wife stated that [Mr D] did not come himself to her house but that he sent his son [Mr C]. At the second Tribunal hearing the applicant wife stated that [Mr D] came to her place on several occasions to make things difficult for them when they wanted to worship with others who came over. She stated that [Mr d] came to the place that he shared with her husband and made problems, using the excuse that he wouldn't allow them to worship Buddha. She stated that there were other incidents before February 2009, but on that occasion he destroyed their idol. When asked if the first serious incident occurred in February 2009, the applicant wife agreed. When asked if they reported the matter to the police, the applicant wife stated that they did not make a police report because they would say that they didn't do it deliberately and it was hard for them to get any evidence to support a police report.
228. The applicant husband stated that he had only seen [Mr D] at their home on one occasion which was during the Lantern Festival in 2009. He also gave evidence that on numerous times the same group of Malay people came to their house and he thought they were sent by Muslims. When the Tribunal stated that it had difficulty understanding why he couldn't ask a group of men entering his house who they were, the applicant husband stated that they said they were religious people who wanted to come in and have a look and that if he didn't let them in they would make a lot of noise. When the Tribunal stated that it had difficulty understanding why he would let a group of men into his home whom he believed would make trouble, the applicant husband stated that there was a temple in his home and they couldn't just close the doors as others would come to worship there and they wouldn't usually stop them unless they were harassing or destroying things.

229. When asked why he didn't stop the group of Malay men on the occasions that he claimed they were harassing and destroying things, the applicant husband stated that he couldn't really do anything as there were many of them, seven or eight, and that they watched them pull down the stuff they had in the temple. He stated that on other occasions there were only 3-4 of them but that they harassed them by making noise outside the house and throwing rotten eggs. When asked if they had reported these incidents to police, the applicant husband stated that they had and that the police stated that they would step up patrols in the area but that it hadn't really helped.
230. The applicant husband gave evidence at the second hearing that he had only seen [Mr D] on two occasions, once at [Organisation 7] at the end of 2005 and the second time at the home he shared with the first applicant at the Lantern Festival in February 2009. When asked if February 2009 was the only occasion on which [Mr D] came to his house, he stated that it was. Later in the second hearing the Tribunal invited the applicant wife to comment on the evidence given by applicant husband that he had only seen [Mr D] at their home in [Town 3] once while her own evidence was that he came and caused trouble on numerous occasions. The applicant wife stated that [Mr D] did come to their home on other occasions but that it was during the [dates deleted: s.431(2)] days of the Chinese Lunar calendar when her husband was at work, so he didn't see him. She also stated that her husband's Mandarin was not good enough and he might have misunderstood the interpreter.
231. The inconsistencies in the evidence of the applicants on this point were also put to them pursuant to section 424A of the Act by letter dated [June] 2011. As noted above, a written submission was received by the Tribunal [in] June 2011, but it was not responsive to the issues raised in the Tribunal's letter dated [June] 2011. In her written response to the Tribunal's further letter dated [August] 2011, the applicant wife stated that [Mr D] came to the house during Lantern Festival in February 2009 with officials from the [Town 3] Local Council to remove the statues and that they were warned that their prayer house did not meet the requirements of local council by-laws and they did not make a police report but understood they were being persecuted by the officials under the pretext of enforcing the law. She did not otherwise offer further comment on the inconsistencies identified by the Tribunal.
232. The Tribunal has considered the various explanations given for these inconsistencies by each of the applicants but does not accept that applicant husband misunderstood the question, considering that the applicant husband's response to the Tribunal's question was relevant and indicated that he understood that question. Nor does the Tribunal accept that [Mr D] came on many occasions to the home of the applicants and caused trouble but that the applicant husband didn't see him except on one occasion, considering that the applicant husband would be expected to know of any other visits even if he wasn't present and that he would have mentioned them in his evidence. Furthermore the Tribunal considers it implausible that the applicants would allow unknown men whom they believed to be making trouble to enter their home on numerous occasions as they described, even taking into account their claim that it was a place of worship which attracted visitors.
233. The Tribunal has also considered the photographs submitted to the Tribunal which it is claimed show the worship altar at the home of the applicants as restored after being destroyed by [Mr D] and his associates in January 2009. The Tribunal accepts that the photographs show a worship altar and accepts that altar was located at the applicant's

home in [Town 3]. However the Tribunal considers that the photographs are not indicative of that altar being destroyed by [Mr D] or his associates in January 2009 or any time and for that reason has afforded them little weight.

234. On the evidence before it, the Tribunal does not accept that [Mr D] or his associates ever visited the home of the applicants, nor that he or his companions destroyed the applicants' idol or were otherwise involved in an altercation with the applicants.

Events in Kuala Lumpur

235. The applicant wife gave evidence that the family moved to Kuala Lumpur when their youngest child was one month old following the incident in their home in [Town 3] [in] February 2009. She stated that once they got to Kuala Lumpur nothing happened for a few months and they thought things had settled down until the applicant husband was assaulted at work [in] October 2009. However, the applicant husband gave evidence that a group of Malay men had come to his workplace in Kuala Lumpur and harassed him on a number of occasions. When the inconsistency was put to the applicant wife at the hearing, she stated that she was only aware of the incident in which her husband was assaulted. The inconsistencies in the evidence of the applicant wife and applicant husband on this point were put to them pursuant to section 424A of the Act by letter dated [June] 2011 but as noted above, neither of the applicants addressed the contents of the Tribunal's letter in their response dated [June] 2011.
236. Further inconsistencies emerged between the evidence of the applicants in respect of the claimed assault on the applicant husband [in] October 2009. The applicant husband stated in his evidence to the Tribunal that four of his colleagues were present when he was attacked at work in Kuala Lumpur and that he got into his car and drove by himself to a police station where he made a report. He stated that none of his colleagues attended the police station with him, nor did the police send an officer to take statements from his colleagues. The applicant wife gave evidence that the applicant husband was with colleagues when he was assaulted at work in Kuala Lumpur and that those colleagues went with him to report the assault to the police. These inconsistencies were put to the applicants separately in the letters sent to them pursuant to section 424A of the Act dated [June] 2010, but neither applicant responded to the substance of those letters. The applicant wife responded to the Tribunal's further letter dated [August] 2011, stating that the assault on her husband was contained in the police report dated [October] 2009, that she was not with him when he made the report and that there is no credibility issue.
237. The Tribunal has also considered four photographs produced by the applicants to the Tribunal at the hearing [in] May 2011 which appear to show injuries on the face of the applicant husband. A notation hand written on those photos states that "these were the pictures taken by phone camera; but the related police report hasn't been found" The Tribunal accepts that the photographs show the applicant husband with an injured face, but considers that the photographs are not indicative of a particular event, date or location and for that reason has afforded them little weight. [In] June 2011, a translated copy of a document purporting to be a police report from [Town 8] Police station dated [October] 2009 was provided to the Tribunal by the applicants. Under the heading "Narratives" that report states in part:

About 2pm afternoon [date]/10/09, I was working at [organisation] at [town]; a group of people came to the shop, they were from the Religious Department and said that they wanted to arrest me. I didn't believe them. All these men were dressed in religious garbs with head gears in green colour. When I did not follow them one tried to catch me while others assaulted me. I was lucky my boss and other colleague were on the scene to help me. These people then continued to hit me while I ran away from the shop. My Boss prevented them from arresting me. At about 3:30pm I arrived at the [Town 8] Police Station to make the report.

238. The Tribunal notes that the police report does not indicate that the applicant husband mentioned to the police relevant matters that were the subject of his oral evidence to this Tribunal, namely that these men had visited him at his workplace on several occasions previously and harassed him and would sometimes steal things or that he believed they were sent by [Mr D]. The Tribunal also has concerns about the provenance of the report, given that it was produced for the first time [in] June 2011, after the Tribunal had held two hearings and some seven months after the lodging of the application for protection. For these reasons, the Tribunal has accorded the police report little weight.
239. Given the inconsistencies contained in the evidence of the parties, together with the overall concerns that the Tribunal has about the credibility of the applicants, the Tribunal does not accept that the applicant husband ever experienced difficulties in his workplace in Kuala Lumpur, nor that he was harassed and or harmed by the Religious Police, [Mr D] or his associates or any other person.

Further events in [Town 3]

240. The parties gave evidence that after leaving Kuala Lumpur they returned to [Town 3] where they stayed with the applicant husband's mother.
241. The applicant wife gave evidence that they couldn't work anymore because they were always harassed at work and they were also concerned that they might be found again so they went into hiding at her mother-in-law's place.
242. The Tribunal has considered the applicant wife's claim that the applicants could not work in [Town 3] because they were always harassed at work. As set out elsewhere in these reasons, the Tribunal does not accept that either the applicant wife or the applicant husband was harassed by [Mr D] and/or his associates at any of their various places of employment in [Town 3] and Kuala Lumpur. As a result the Tribunal does not accept that the parties could not work in [Town 3] when they returned from Kuala Lumpur because of that fear of harassment.
243. The Tribunal has also considered the applicant wife's claim that the applicants could not work in [Town 3] because they were concerned that they might be found again. The Tribunal does not accept this to be the case, noting that the applicant wife also gave evidence that her parents and brother knew where they were at this time. When this was raised with the applicant wife at the hearing, she responded that her sister-in-law wouldn't tell [Mr D] where they were because she was on their side. The Tribunal does not accept this explanation, considering that if the parties had a real fear of ongoing serious harm or harassment by [Mr D], they wouldn't have disclosed their whereabouts to the applicant wife's brother who was married to [Mr D]'s daughter.

244. The applicant wife stated that they stayed at her mother-in-law's place until April 2010 when they went to [State 6], leaving the children at her mother-in-law's place. She stated that her husband saw a job advertised and wanted to try and do it, but he was followed on the way to the interview. She stated that when he had not returned that night, she tried to contact him on his mobile but could not get through and she was concerned and reported it to police. She stated that her husband came home on the night of the following day, [April] 2010, telling her that he had been followed by someone and hid at a friend's place as he dared not come home. She stated that her husband knew it was people associated with [Mr D] and was hiding to avoid them.
245. The applicant husband gave evidence that when he was trying to find a job he was followed by 3-4 men on motorcycles so he tried to drive to a remote area and went into hiding at a friend's place and his wife reported him missing to the police. A police report dated [April] 2010 was provided to the Tribunal [in] April 2011. That report states in part that:
- On [date]/4/2010 about 10:30am I was home at [address] [State 4] and my husband had left home for a job interview. When he did not return home, I contacted him on this no [number], [number]); he told me he would be home soon but he had not returned even at the time I made this report.
246. The Tribunal has had regard to the police report and the oral evidence of the applicants. Even taken together, the Tribunal does not consider that the evidence establishes that the applicant husband was followed by persons associated with [Mr D] or the Religious Police. Rather the applicant husband's evidence establishes no more than the applicant husband believes he was followed and went into hiding while the police report establishes that the applicant wife reported that her husband had left home for a job interview, had not returned and could not be contacted by phone. While the Tribunal accepts that the applicant husband believes he was being followed, it does not accept on the evidence before it that he was being followed by [Mr D] or his associates or that the applicant husband was targeted because of his religion or his relationship with the applicant wife, considering that this is merely speculative.

Events in [State 6]

247. The applicants each gave evidence that they moved to [State 6] to escape [Mr D] and his associates in 2010, leaving their children with the applicant husband's parents, who were visited by the applicant wife's mother. The applicant husband stated in his evidence to the Tribunal that their car was vandalised in [State 6] and that he felt he was being followed. However the applicant wife gave evidence to the Tribunal that [Mr D] did not find or harass them when they moved in [State 6]. When invited to comment on the inconsistency at the conclusion of the applicant husband's oral evidence, the applicant wife stated that was the first time she had heard those things and that perhaps the applicant husband didn't want to worry her or perhaps he had misunderstood the interpreter. In her written response to the Tribunal's section 424A letter dated [August]2011, the applicant states again that her husband did not tell her of these things because he did not want her to worry.
248. The Tribunal has considered those explanations but does not accept them, considering that the applicant husband's response to the Tribunal's question indicated that he did understand the question and that had the applicant husband believed that [Mr D] or his associates had followed the applicants to [State 6], he would have told the applicant

wife. On the evidence before it, the Tribunal does not accept that the events described by the applicant husband in his oral evidence to the Tribunal did in fact occur. The Tribunal does not accept that the applicant husband was followed, harmed or harassed by [Mr D], the Religious Authorities or any other person while living in [State 6] nor that his car was vandalised in [State 6].

The applicants' religion

249. The Tribunal has considered the applicants' claims that they face persecution as a result of their Yi Guan Dao religion. In particular the applicants have claimed that as practitioners of Yi Guan Dao faith, they face persecution and systematic harassment from the Religious Department and [Mr D], who consider them to be deviant and to have committed blasphemy against Islam. The applicants claim that they cannot and will not be protected by the authorities because Islam is the religion of the Malay majority and the police are less than efficient in protecting citizen's rights, especially if those citizens are of Chinese ethnicity. They claim that non-Muslims are not protected and the civil law courts cannot and will not interfere with the Shari'a courts. The applicant wife told the Tribunal at the second hearing that she feared that if she returned to Malaysia, she would not be able to practise her religion, that her husband will be taken away and that they would be harassed, threatened and intimidated.
250. For reasons set out elsewhere, the Tribunal has found that both the applicants are practitioners of the Yi Gaun Dao faith. The Tribunal further accepts their oral evidence that they are of Chinese ethnicity.
251. Country information indicates that the Malaysian government maintains a dual legal system, whereby Shari'a courts rule on religious and family issues involving Muslims and secular courts rule on other issues pertaining to both Muslims and the broader population. The Tribunal accepts the information contained in the US Department of State's 2010 report, *International Religious Freedom Report for 2010* which indicates that government policies promote Islam above other religions although minority religious groups remained generally free to practice their beliefs. The Tribunal further accepts that in recent years many have expressed concern that the civil court system has gradually ceded jurisdictional control to Shari'a courts, particularly in areas of family law involving disputes between Muslims and non-Muslims and that religious minorities continued to face limitations on religious expression⁴⁶
252. One such limitation is the Malaysian government's recent restriction of the use of the word "Allah" by non-Muslims. Independent country information indicates and the Tribunal finds that in 2009 the Malaysian government sought to restrict the use of the word "Allah" in the Catholic Weekly Herald's publication permit and that the Roman Catholic Archbishop sought a declaration from the courts that the minister's decision was illegal and that the word "Allah" was not exclusive to Islam. The Tribunal further finds that on 31 December 2009, the High Court of Kuala Lumpur declared the minister's order to prohibit the Herald from using the word "Allah" as "illegal, null and void," ruling that pursuant to Article 3(1) of the Federal Constitution, the applicant

⁴⁶ US Department of State 2010, *International Religious Freedom Report for 2010 – Malaysia*, November, Introduction & Section II

“had the constitutional right to use ‘Allah’ in Herald in the exercise of his right that religions other than Islam might be practised in peace and harmony in the country.”⁴⁷

253. The Tribunal accepts that the government has filed an appeal with the Court of Appeal against the High Court’s decision and a stay of the High Court’s decision has been issued. Country information available to the Tribunal indicates that as at 8 May 2011, the government’s appeal against the High Court’s decision had not yet been heard and the Tribunal finds that the final outcome of these proceedings is as yet unknown⁴⁸
254. In relation to the Yi Guan Dao faith, country information before the Tribunal indicates that Yi Guan Dao (Unity Sect) has been practised by ethnic Chinese in Malaysia since 1947 and its membership grew rapidly over the 1970s and 1980s with many public halls covering a wide geographic area. Since the early 1990’s, the Unity Sect is reported to have been actively involved in organising various social-cultural activities, including public talks by guest speakers, music nights, charitable medical services, blood donations, and visits to old people’s homes and orphanages⁴⁹
255. The Tribunal does not accept that either of the applicant wife or husband face a real chance of persecution if they return to Malaysia on the basis of their Yi Guan Dao religious beliefs, now or in the reasonably foreseeable future. In making this assessment the Tribunal notes that the applicant wife gave evidence that prior to the troubles with [Mr D] which began in about 2006, she never had any difficulty practising her Yi Guan Dao faith. The applicants have made various claims of harm inflicted on them by [Mr D] and his associates because of their religion, but the Tribunal has not accepted any of these claims. Neither applicant has claimed that they have ever had any involvement with or interference from the authorities as a result of practising their Yi Guan Dao beliefs outside of the harm they have claimed has been perpetuated on them by [Mr D] and his associates. The country information indicates that Yi Guan Dao is widely practised by ethnic Chinese in Malaysia and the Tribunal has been unable to locate any recent reports of practitioners facing serious harm as a result of their religious beliefs.

The applicants’ ethnicity

256. The Tribunal has considered the applicants’ claims that they face persecution as a result of their Chinese ethnicity. In particular the applicants have claimed that they cannot and will not be protected by the authorities because Islam is the religion of the Malay majority and the police are less than efficient in protecting citizen’s rights, especially if those citizens are of Chinese ethnicity.
257. Country information before the Tribunal indicates that ethnic Chinese people form a significant minority of Malaysia’s population and that in central western states such as Perak, ethnic Chinese constitute over 30 percent of the population and

⁴⁷ Goh, L. 2010, ‘Court rules Herald free to use the word “Allah”’, The Malaysian Bar website, source: The Star, 1 January

http://www.malaysianbar.org.my/legal/general_news/court_rules_herald_free_to_use_the_word_allah_.html

⁴⁸ Hong, C. 2011, ‘Another religious row erupts in Malaysia’, *Straits Times*, 8 May

⁴⁹ Soo, K.W. 2001, ‘Recent Development of the Yiguan Dao Fayi Chongde sub-branch in Singapore, Malaysia and Thailand’, *Paper presented at the Conference in Honour of Prof. Daniel L. Overmyer on His Retirement on Religious Thought and Lived Religion In China*, University of British Columbia, Vancouver, 15-16 September – Attachment 15

in major urban centres such as Kuala Lumpur and Georgetown (Penang), they are recorded as constituting a slight majority.⁵⁰ The Tribunal accepts the evidence of the applicants at the third hearing that in [Town 3], ethnic Chinese are in the minority.

258. On the evidence before it the Tribunal accepts that the applicants may face some level of discrimination in the workplace on the basis of their Chinese ethnicity, noting that country information indicates that Malaysia's Bumiputra regulations include affirmative action rules that some observers interpret as discriminating against Chinese and Indians and in particular that they favour ethnic Malays for employment in the public service, resulting in the exclusion of other groups⁵¹
259. The question for the Tribunal is whether this discrimination constitutes "persecution" for the purposes of the Act. Under s.91R(1)(b) of the Act, persecution must involve serious harm to the person. It provides:

For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:

...

(b) the persecution involves serious harm to the person ...

...

260. Subsection (2) sets out a non-exhaustive list of the type and level of harm that will meet the serious harm test. It lists the following as instances of "serious harm":

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

261. These examples all involve physical harm or economic hardship. However the Revised Explanatory Memorandum (EM) to the legislation which introduced s.91R⁵² emphasises that the list is not exhaustive and explains that this definition of "persecution":

... reflects the fundamental intention of the Convention to identify for protection by member states only those people who, for Convention grounds, have a well founded fear of harm which is so serious that they cannot return to their country of nationality, or if stateless, to their country of habitual residence. These changes make it clear that it is insufficient ... that the person would suffer discrimination or disadvantage in their home country, or in comparison to the opportunities or treatment which they could expect in Australia.⁵³

⁵⁰ 'Chinese Malaysian: Demographics' 2010, Serving History.com

http://www.servinghistory.com/topics/Chinese_Malaysian::sub::Demographics

⁵¹ Amnesty International 2009, *Amnesty International Report 2009: The State of the World's Human Rights – Malaysia* <http://www.amnesty.org/en/region/malaysia/report-2009>

⁵² *Migration Legislation Amendment Act (No. 6) 2001*

⁵³ Revised Explanatory Memorandum to *Migration Legislation Amendment Bill (No.6) 2001*, at [25].

262. On the evidence before it, the Tribunal does not accept that the applicants have in the past experienced a threat to their life or liberty, nor significant harassment or ill-treatment. Nor does the Tribunal accept that the applicants have faced in the past significant economic hardship or a denial of basic services or the capacity to earn a livelihood of any kind that threatens their capacity to subsist, noting that they have each given evidence that they have obtained employment in Malaysia in the past. The evidence before the Tribunal does not suggest that the applicants have suffered any other form of serious harm for the purposes of section 91R(1)(b) and the Tribunal finds accordingly.
263. The Tribunal does not accept that there is a real chance that the applicants will experience serious harm and discrimination in the future if they return on the basis of their Chinese ethnicity. In making this assessment the Tribunal notes that they are young, they have each given evidence as to their employment in a number of parts of Malaysia in the past and they would appear to have reasonable employment prospects in the future. Rather the Tribunal accepts that while they may face discrimination or disadvantage in their home country, particularly in comparison to the opportunities they may expect in Australia, they will not experience “serious harm” for the purposes of s.91R(1)(b) of the Act.

The applicants’ children

264. The applicant wife claimed at the second hearing that their fears for their children prevented them from sending them to school. It was put to her by the Tribunal that her eldest daughter was [age deleted: s.431(2)] and therefore not of school age. The applicant wife agreed but stated that children would normally attend pre-school or kindergarten for two years before starting school and that other children [age deleted: s.431(2)] started kindergarten six months ago.
265. On the basis of the information contained in the applicant wife’s Form B, the Tribunal finds that the applicants’ daughters were born on [dates deleted: s.431(2)] and [dates deleted: s.431(2)] and are aged [ages deleted: s.431(2)] respectively. The applicant wife agreed at the hearing that the children are not yet of school age and the Tribunal finds accordingly. While the Tribunal accepts that other children aged [number deleted: s.431(2)] may have started kindergarten this year, for the reasons set out earlier the Tribunal does not accept that the applicants’ fears for their children have prevented them from doing so.
266. Further, the Tribunal notes the applicant husband’s evidence that his parents and the applicant wife’s parents take it in turns to care for their children. The applicant husband’s evidence was put to the applicant wife for comment at the third Tribunal hearing. The applicant wife responded that her parents and her husband’s parents took turns caring for their children and at a later stage her mother in law provided the majority of care for her children because her own mother had two other children to look after, being her brother’s children and when the four of them were together they would fight. The applicant wife stated that they were also worried about further harassment. In her response to the Tribunal’s section 424A letter dated [August] 2011, she stated that the children in the early days were switched around the paternal and maternal grand-parents and when [Mr D] came visiting, the children would be sent to the paternal grand-parents’ home. She stated that [Mr D] had two grandchildren at the maternal grand-parent’s house therefore very often the children were looked after by

the paternal grandmother. She stated that the applicant husband misunderstood the Tribunal's questions on this point as he could not fully understand the interpreter. For reasons set out earlier in this decision, the Tribunal does not accept that the applicant husband misunderstood the interpreter, considering that he responded appropriately to a question from the Tribunal as to whether the children were currently living with his parents by stating that the children were not under his parent's care, but that they sometimes visited his parents.

267. The Tribunal finds that the applicants' children have been looked after in part by the applicant wife's parents and that they could be found by [Mr D] should he wish to do so through his association with the applicant wife's family and therefore does not accept that the applicants fear for the safety of the children because of the actions of [Mr D] or his associates.

Further claims made by the applicants at the third hearing

268. The applicant wife gave evidence at the third Tribunal hearing that her brother and sister-in-law had left home one month earlier because they were being harassed, people were asking about the applicants' whereabouts and her brother was being pressured to convert to Islam. She stated that her brother and sister-in-law's children were staying at an aunt's house and that her brother and sister-in-law were not staying there, but wanted to be away from all the disruptions and did not tell them where they were going. In response to the Tribunal's question as to whether this left her brother's children at risk, the applicant wife stated that the children had connections to Malay people so could be protected. She stated that her brother and his wife went to other places to work and to be away from all of their problems and that their two children were already Muslim.
269. While it is plausible that the applicant wife's brother and sister-in-law may have left the home of the applicant wife's parents and gone elsewhere, the Tribunal does not accept that this has anything to do with the applicants. In making this assessment the Tribunal notes that it has not accepted that the applicants in this case have suffered any past harm from [Mr D] or his associates at work or at home in any of [Town 3], Kuala Lumpur or [State 6].

Further claims made by the applicant wife in her written response to the Tribunal dated [August] 2011.

270. The applicant wife stated in her written response to the Tribunal dated [August] 2011 that [Mr D] regularly asks about the applicant wife through his daughter and she has received messages to contact him and that he and his son visited the applicant wife's mother home to ask about her and whether she had converted to Islam.
271. The Tribunal has accepted that [Mr D]'s daughter has married the applicant wife's brother and has lived in the home of the applicant wife's parents. While the Tribunal accepts that [Mr D] may make enquiries about the applicant wife, it does not accept that those enquiries are evidence that he intends harm to the applicant wife or her family. In making this assessment the Tribunal again notes that it has not accepted that the applicants in this case have suffered any past harm from [Mr D] or his associates at work or at home in any of [Town 3], Kuala Lumpur or [State 6].

272. The applicant wife also claims in her written response that [Mr D] came to her home during the Lantern Festival in 2009 with officials from the [Town 3] Local Council to remove religious statues and icons after invoking council by-laws. For the reasons set out above, the Tribunal has not accepted that [Mr D] or his associates visited the home of the applicants during Lantern Festival in 2009, nor that he or his companions destroyed the applicants' idol or were otherwise involved in an altercation with the applicants. It follows that the Tribunal does not accept that officials from the [Town 3] Local Council were involved in removing religious statues and icons after invoking council by-laws on that occasion.

Future Harm

273. For the above reasons the Tribunal has not accepted that there is a real chance that the applicant wife will be forced to marry [Mr D]'s son, nor that she or any other member of her family will be forced to convert to Islam, nor that her daughters face female genital mutilation if their parents are forced to return to Malaysia. Nor does the Tribunal accept that either of the applicants face a real chance of being harassed, harmed or threatened by [Mr D], the Religious Authorities or his associates if they return in Malaysia, now or in the reasonably foreseeable future. Further, the Tribunal has not accepted that there is a real chance that the applicants will face serious harm on the basis of their religion or their ethnicity. In light of the Tribunal's findings on each of these matters, and combined with the Tribunal's overall concerns about the credibility of the applicants and the inconsistencies in their evidence, the Tribunal does not accept that there is a real chance that either the applicant wife or the applicant husband will be subjected to serious harm from [Mr D], his associates or any other person now or in the reasonably foreseeable future, for any Convention reason.

274. Having considered the claims of each of the applicants both individually and cumulatively, the Tribunal does not accept that there is a real chance that either of the applicants would face serious harm if they return to Malaysia for reason of their religion or any other Convention reason, now or in the reasonably foreseeable future. The Tribunal therefore finds that neither of the applicants holds a well-founded fear of persecution if returned to Malaysia, now or in the reasonably foreseeable future.

CONCLUSIONS

275. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

276. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.