

**1305188 [2013] RRTA 563 (22 August 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1305188

**DIAC REFERENCE(S):** CLF2012/223606

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Angela Cranston

**DATE:** 22 August 2013

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act). A copy of the law is at attachment 1.
2. The applicant who claims to be stateless because her parents were refugees in Australia, applied to the Department of Immigration for the visa on 7 November 2012 and the delegate refused to grant the visa on 12 March 2013. Her parents had previously arrived in Australia [in] February 2010 and applied for a protection visa on 30 March 2010. The delegate decided to refuse to grant them visas on 26 July 2010 and the Tribunal affirmed that decision on 8 October 2010. A copy of the claims and evidence is at attachment 2.

### CONSIDERATION OF CLAIMS AND EVIDENCE

3. The issues in this case are whether the applicant has a well founded fear of being persecuted in China for one or more of the five reasons set out in the Refugee Convention and, if not, whether there are substantial grounds for believing that as a necessary and foreseeable consequence of her being removed from Australia to China, there is a real risk that she will suffer significant harm.
4. The applicant's mother has stated that she and her husband are from Shenzhen, China and that the applicant cannot return to China because she is Stateless, is the child of a Falun Gong practitioner and will therefore be subjected to persecution. In addition, she has stated if she returns, she will not be registered.
5. For the following reasons, the Tribunal has concluded that the decision under review should be remitted.
6. The Tribunal does not accept that the applicant is stateless. That is because nationality in China is governed by the *Nationality Law of the People's Republic of China 1980* and Article 5 states that any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national can acquire Chinese nationality at birth even if only one of their parents is Chinese. Accordingly, the Tribunal finds that in the absence of any other evidence, the applicant is a Chinese national and her claims will be assessed against China.
7. The applicant's mother has also argued that the applicant will suffer because the applicant's mother is a Falun Gong practitioner, however the former Tribunal who assessed the applicant's mother's claims was not satisfied that she was a Falun Gong practitioner in China or that she was targeted by the PRC authorities or that the applicant's mother had undertaken Falun Gong in Australia because she was genuine.
8. The Tribunal finds that it does not accept that the applicant's mother was a Falun Gong practitioner in China. That is because the Tribunal finds she provided inconsistent evidence in relation to when she distributed pamphlets, she and her husband provided inconsistent evidence in relation to when they saw each other after she was detained, and her husband stated that he commenced arrangements for her to leave the country two weeks after she was released from detention [in a certain month in] 2010 which is inconsistent with the

Department's record of her application for a tourist visa [in the same month] which was less than a week after she allegedly was [released]. In reaching this conclusion, the Tribunal also considers the applicant's mother failed to provide a convincing explanation as to why she was allowed to leave China even though she was allegedly a convicted person undergoing rehabilitation through labor. The Tribunal also finds she did not disclose to the Tribunal that she had only recently unsuccessfully applied for a 457 visa to come to Australia. The Tribunal is also not convinced that she told the truth in relation to her employment when she applied for the tourist visa.

9. Be that as it may, the Tribunal accepts that a number of years have passed since the applicant's mother arrived in Australia, and during that time, the Tribunal accepts she has participated in Falun Gong events, including Falun Gong practice and protest. In reaching this conclusion, the Tribunal has been persuaded by the evidence of [Mr A] both at the Tribunal hearing on 8 October 2010 and in his statutory declaration dated 26 July 2013. The Tribunal accepts that [Mr A] is a reputable Falun Gong practitioner who has previously appeared before the Tribunal. Indeed, given the statutory declaration of [Mr A] on 26 July 2013, the Tribunal accepts that even after the former Tribunal made its decision, the applicant's mother continued her practice. Accordingly, the Tribunal is prepared to give the applicant's mother the benefit of the doubt and accepts she is now a genuine Falun Gong practitioner who has engaged in genuine Falun Gong practice and activity. Given that, the Tribunal must determine what impact if any, those activities in Australia have on the applicant.
10. The Tribunal accepts the DFAT advice that it is likely that activists who have participated in protest activities against the Chinese government, including members of Falun Gong, will be monitored and questioned or detained on their return to China. Accordingly, given the applicant's mother's activities in Australia, the Tribunal accepts that it is likely she is known to the Chinese government as a Falun Gong practitioner or is perceived to be one. The Tribunal is of the view that the current information regarding circumstances in China for family members of known Falun Gong practitioners indicates that they remain of interest to authorities. Whilst the Tribunal does not think that the applicant herself would be detained, if her parents are or if she is denied a residence, she would become parentless or homeless. The Tribunal believes that there is a real chance that these serious harms could flow to the applicant should she return to China. The Tribunal is satisfied that should these harms eventuate, it would be directed at her by reason of the applicant's membership of her family and her mother's Falun Gong activities in Australia in particular which are Convention related and not subject to section 91S. The Tribunal considers that her mother's Falun Gong activities are the essential and significant reason for the persecution which the applicant fears, as required by paragraph 91R(1)(a) of the Act. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason, namely her mother's religion. The Tribunal is also satisfied that the applicant could not avail herself of any State protection as it is clear that the State is the source of potential harm. The threat, in the Tribunal's view, extends throughout the country.
11. In the Tribunal's view therefore, the applicant holds a well-founded fear of being persecuted for reasons of the applicant's membership of her mother's family and that the reason for that harm is her mother's Falun Gong activities in Australia and religion which are Convention related and not subject to section 91S. In the Tribunal's view, therefore, the applicant holds a

well founded fear of being persecuted for Convention reasons if she travels to China. On this basis, she is owed protection obligations by Australia and satisfies the provisions of s.36(2)(a) of the Act.

### **CONCLUSIONS**

12. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.
13. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.
14. The Tribunal remits the matter for reconsideration with the direction that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

### **DECISION**

15. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Angela Cranston  
Member

## **RELEVANT LAW**

16. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

### **Refugee criterion**

17. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
18. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
  - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
19. 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.
20. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
21. 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)). Examples of 'serious harm' are set out in 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.
22. 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.

23. 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.
24. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A '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.
25. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
26. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

27. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s36(2)(aa) ('the complementary protection criterion').
28. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
29. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer

significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

**Section 499 Ministerial Direction**

30. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

## ATTACHMENT 2 - CLAIMS AND EVIDENCE

31. At Departmental interview on 20 July, the following conversation occurred between the applicant's mother and the department:

Had you previously helped your uncle with these flyers?

Yes I did

When?

Usually 1-2 times in a week I went over Tuesday and Thursdays

How many times prior had you helped your uncle with these flyers?

2 or 3 times and 3 times altogether

Were they the same pamphlets on previous occasions?

Yes, more or less

So you helped him on 3 or 4 occasions?

Yes...

How did you distribute them?

At night, when we saw that people had gone to bed we went out and put the pamphlets at the door of those people

How often did you do this?

It varied, it was not fixed...

How often did you distribute them?

..Many times, I don't recall...

When did your husband first visit you?

After I was arrested no one was allowed to visit me

When did you first see your husband after you were arrested?

In a week's time, after one week in the detention centre...

Were your travel documents checked before you went to Hong Kong?

Yes

Were there any problems

No problem



32. The following conversation is recorded at hearing between the Tribunal and applicant's mother on 8 October 2010:

You told the delegate at one point that you helped distribute the flyers at 2-3 times in total, and then later you said you did it all the time...

No, I said I helped distribute the flyers 3 times, however I was always involved in arranging the flyers.

33. The following conversation is recorded at hearing between the Tribunal and applicant's father (the applicant's mother's husband) on 8 October 2010:

How long after she was arrested did you get to see her or have contact with her

I think it was a month....

How long after she was released did you decide that you had to leave the country

About two weeks after that.

34. Also on the Department's data base is a file note stating that the applicant's mother's employer was contacted on 12 May 2010 and they stated that the applicant's mother was not an employee of the declared company.

35. In her application, the applicant stated as follows:

We (the parents of [the applicant]) left China because of the fear of persecution, and have been living in Australia since March 2010. [The applicant] was born here in Australia.

[The applicant] will be considered as an illegal person as she is our second child. She will not be registered in the Chinese household register and will be denied or basic rights that are given to other children. She will not be able to study, enrol in any school or get medical care. On top of that we will also be persecuted as we have gone against the official one child policy of the Chinese government by having a second child that too illegally while we were in Australia seeking protection.

The Chinese government because of the well-known one child policy and their active persecution of Falun Gong practitioners and their families.

Because by having [the applicant] we have gone against the official Chinese one child policy and also because of our belief in Falun Gong.

Because the authorities officially persecute Falun Gong practitioners and their families and does not recognise second or subsequent children and they are denied all basic human rights.

36. As the applicant is a baby, the applicant's mother appeared before the Tribunal on 1 August 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Cantonese and English languages.

37. The applicant was represented in relation to the review by her registered migration agent.

38. The applicant's mother confirmed that the applicant was born on [date], that the applicant's mother arrived in Australia [in] February 2010, and that she had lived in Shenzhen for 20 years before coming to Australia. She stated all her family were in Shenzhen, that is her parents and brother and her husband had [two siblings].
39. The applicant's mother stated she remarried her husband in 2008. The Tribunal asked what their plans were after they remarried. She stated after they married they had no plans, they just wanted to have a complete family.
40. The applicant's mother stated she was released from [detention in] 2010. She stated that about one month passed between her release from [detention] and her applying to come to Australia. The Tribunal put to her that her husband had told the Department that it was about two weeks after she was released from [detention] that he decided she had to leave. She stated she thought the Tribunal meant when she got the approval. She did know when her husband had applied. The Tribunal put to her that her husband told the department that two weeks after she was released he decided she had to leave but according to departmental records she applied for a tourist visa to come to Australia [in a certain month in] 2010 which was less than a week after she said she had been released from [detention]. She stated her husband had arranged it. The Tribunal also put to her that she and her husband applied for a 457 visa to come to Australia which was rejected in 2009. She stated it might be so but she was not happy to come to Australia because in Shenzhen they had an apartment, a car and job. The Tribunal put to her they had applied to come to Australia 2 months after they had allegedly got back together but she had not mentioned that when the Tribunal had asked about her plans after they got back together. She stated they weren't planning on coming to Australia after they got back together. She stated there were no opportunities where her husband was but she was not eager to come to Australia. She stated if the visa was granted she would have come to Australia, but she did not want to come. She stated they got back together not because they wanted to come to Australia and that if the application was not successful then it didn't matter.
41. The Tribunal put to her the department had said that all of her employment documents in relation to her tourist visa application were fraudulent. She stated because of her association with Falun Gong, then people (including her employers) would not want to be associated with her.
42. The applicant's mother stated she had lived in [a certain suburb] for almost a year with her husband and children and another woman. She paid \$500 per fortnight on rent, and weekly she spent \$50/60 on food and \$25 on telephone. She stated she and her husband were not well and did not work. She stated she received \$150 per fortnight from the Red Cross and the Refugee Relief Centre provided nappies, clothes and food and sometimes irregular payments (during the last year they gave \$1000, \$900, \$400 and \$1800). She stated she and her husband did odd jobs and her son sometimes picked up odd jobs. She did not get money from anywhere else.
43. The Tribunal put to the applicant's mother that on the basis of what she had said she could not make ends meet, that is her expenses were \$325 per fortnight and her income was \$75 a fortnight. She stated before her husband had the [an] operation [last year] he could work but after that he could not work and they had also some money they had brought from China. Before the operation he had irregular work. She stated she regularly worked on weekends and earned \$80 a week for two days work. She stated her son also worked as a waiter and

usually brought about \$100 every week. The Tribunal put to her that she still would not be making ends meet.

44. The adviser then left the room. When the adviser returned, the applicant's mother stated they just made ends meet. The Tribunal put to her that on the basis of her and her son's income they would be short about \$70 per week. She stated her husband made about \$2-\$300 a week. The Tribunal put to her she had said that he did not work. She stated he did not work full time.
45. The applicant's mother stated the applicant could not go back to China because she was not able to survive because she needed medical care and schooling and did not have the Hukou. She would also suffer prejudice. The applicant's mother did not know how much it would cost for her daughter to get the Hukou. She also stated she was Falun Gong and had been apprehended and if she was taken into custody the applicant did not have any chance of surviving.
46. The Tribunal put to her it needed to think about whether it accepted that she was a Falun Gong practitioner in China and/or Australia and whether any of that affected the applicant because the applicant's mother's case had already been assessed and she had been found not to be a refugee. The Tribunal put to the applicant's mother that the previous Tribunal had stated she had not given consistent information about the pamphlets, she and her husband had given inconsistent information in relation to when her husband had seen her after she was detained, at the Departmental interview she seemed to lack any interest in what had happened to her uncle and it was difficult to understand how it was that she left China when she was subject to rehabilitation by labour. The Tribunal put to her it may find the same conclusions. The Tribunal also put to her that her husband had stated two weeks after she was released he decided she should leave China, but Departmental records indicated she had applied for a tourist Visa [in a certain month in] 2010 which was less than one week after she allegedly left detention. The Tribunal also put to her she and her husband had applied to come to Australia on a 457 Visa which had been rejected. The Tribunal put to her it may have formed the view she was not a Falun Gong practitioner in China. The Tribunal said that if it formed that view it still had to think about what she had done in Australia and how that affected the applicant.
47. The applicant's mother stated if the Tribunal only believed her when she was dead then there was nothing she could do. She stated she gave documents about her arrest. The Tribunal did put to her that country information before the Tribunal suggested fraudulent documents came out of China and if the Tribunal did not accept she had practiced in China it may not place any weight on the documents. She stated she did not need to lie because Shenzhen was a special economic zone and the living standards were not worse than in Australia. She stated there was no need to come to Australia because the land was strange, she did not know people and they had spent all their savings and now they had to see psychiatrists and psychologists.
48. The Tribunal put to her that if it did not believe her story about China then it had to think about whether she had practised in Australia. The Tribunal put to her she had provided declarations from people who she said were providing assistance in Falun Gong practice and sought permission to talk to Falun Dafa about those two people and their statutory declarations.

49. The Tribunal put to her that if it accepted that she had engaged in Falun Gong activities in Australia then these would be relevant to the extent that it affected the applicant. The applicant's mother stated it would affect the applicant because she would be arrested if she went back and who would look after the applicant. The Tribunal put to her that her husband had not practised Falun Gong. She stated he was in poor health and could not help much as he had [health problems]. She stated the applicant would have nowhere to live, she would be discriminated against because her mother was Falun Gong, no children would play with her and she would be abused as her brother had been.
50. The Tribunal talked about the social compensation fee. The applicant's mother stated she would not know where she would go if she went back to China as they had no house and no money to rent. The Tribunal asked if she would go back to where her family was. She stated the family members had their own family. The Tribunal put to her that in order to work out what social compensation fee was payable then it needed to think about where she would theoretically return to if she returned to China because the Tribunal need to think about how much social compensation fee she would have to pay. The applicant's mother agreed she would go back to Shenzhen. The Tribunal put to her that the social compensation fee was \$40 000.00. She said she would be unable to pay it.
51. The Tribunal put to her that it had to think about whether the applicant would suffer harm if the social compensation fee was not paid and whether it was Convention related. The applicant stated there was no way for her daughter to survive as there was no education, no access to medical services and there may be no way for her to survive. She stated they had no money so how could her daughter survive.
52. The Tribunal put to the adviser that the previous Tribunal found that the applicant's mother was not a Falun Gong practitioner and this Tribunal was also looking at whether she was telling the truth in relation to a previous practice in China. The Tribunal put to her she had previously applied to come to Australia before she put in the application for a tourist visa, her husband may have provided inconsistent information in relation to when they started thinking about leaving China, the Tribunal may find she had given inconsistent information in relation to how often she distributed the pamphlets, that she and husband may have given inconsistent information in relation to when they saw each other after she was detained, that is he said it was a month but she stated it was a week, and it may be that she also lacked interest in what happened to her uncle who introduced her to Falun Gong in the first place. The Tribunal put to her all of that may lead the Tribunal to conclude she was not a genuine Falun Gong practitioner in China. The Tribunal put to her that it still had to consider about when she came to Australia and engaged in Falun Gong what would be the ramifications for the applicant but that there may only be ramifications if the Chinese authorities knew. The Tribunal also indicated that if the applicant's mother went to [detention] then the applicant's father may still be able to look after her.
53. The Tribunal also needed to think about family planning legislation and what harm the applicant would face and whether that would be serious enough to warrant to protection.
54. The adviser stated the applicant was stateless, that the applicant had no registration and was a black child. The Tribunal put to the applicant's mother that the applicant would have the same nationality as her parents. She stated the applicant was a member of the family unit of a Falun Gong practitioner and would be discriminated against and her father would not be able to work and she would lose access to health and education.

55. The applicant's mother stated she had continued to practice Falun Gong in Australia and had been exposed to the Chinese government because they had a lot of spies.
56. The Tribunal looked at the social compensation fee and whether non-payment would result in serious harm. The Tribunal noted that her school fees wouldn't be paid and should be discriminated against and her health fees may not be paid. The Tribunal also put to her that I would need to consider whether it was the law that applied to everyone.
57. Also provided at hearing was the following statutory declaration from [name deleted] dated 29 September 2012:

I am an assistant Falun Gong practice at [location deleted]. I met [the applicant's mother in] March 2010 when she came to our [practising site] and joined the group exercises.

After coming to [the suburb], [the applicant's mother] participated in our group activities in the early morning from Monday to Saturday regularly for almost 2 years until she joined to another new practising site at [another location] started around half a year ago.

She also took part in our group book study sessions on Wednesday night and Sunday night (the Sunday night study session is now suspended due to the availability of venue and will resume later).

[In] March 2010, she took part in an event organised by selling Gong practitioners in Chinatown Sydney to support 70,000,000 Chinese people quitting the Chinese Communist party membership. [In] May 2010, she joined upgrade to celebrate the world Falun Dafa Day in Sydney CBD.

Through our conversation, I learned that [the applicant's mother] started practising Falun Gong in 1998 in China. In 2009, she was detained by the Chinese Communist regime and put in labour camps are brainwashing. From a certificate she showed, I learnt that her [detention] is [a certain number of] years from [dates deleted]. To their health condition, she was bailed out for treatment [in] 2010 and supposed returned labour camp after year later. She escaped from [China].

Above is complete and true account of what I know about [the applicant's mother].

58. Also provided was another statutory declaration from [Mr A] dated 8 October 2012 stating the following:

I have been practising Falun Gong since [year deleted], and I am currently the Coordinator of the group studying group practice of Falun Gong in [a certain] area.

I met [the applicant's mother] in March 2010 in [suburb deleted]. [The applicant's mother] is a very good Falun Gong practitioner. I found her often participating Falun Gong activities actively, such as morning group practice [and weekly group practice] and other Falun Gong activities.

## Country Information

## Relatives of Falun Gong

59. According to the US Department of State's *2008 Human Rights Report: China*, "During the year human rights activists, journalists, unregistered religious figures, and former political prisoners and their family members were among those targeted for arbitrary detention or arrest." The US Department of State continues:

The government continued to use house arrest as a nonjudicial punishment and control measure against dissidents, former political prisoners, family members of political prisoners, petitioners, underground religious figures, and others it deemed politically sensitive. House arrest encompassed varying degrees of stringency but sometimes included complete isolation in one's own home or another location under lock and guard. In some cases house arrest involved constant monitoring, but the target of house arrest was occasionally permitted to leave the home to work or run errands. Sometimes those under house arrest were required to ride in the vehicles of their police monitors when venturing outside. When outside the home, the subject of house arrest was usually, but not always, under surveillance. In some instances security officials assumed invasive positions within the family home, rather than monitoring from the outside.

...Family members of activists and rights defenders, Falun Gong practitioners, journalists, unregistered religious figures, and former political prisoners were targeted for arbitrary arrest, detention, and harassment. Some were required to leave Beijing during the Olympics. Rights activist Zeng Jinyan, the wife of Hu Jia, reportedly was held at a hotel in Dalian during the Olympics. After returning Zeng Jinyan to her Beijing apartment, authorities kept her under close surveillance. Yuan Weijing, the wife of legal advisor Chen Guangcheng, continued to be subjected to ongoing harassment, including strict surveillance, confinement to her home, and denial of prison visits (US Department of State 2009, *2008 Human Rights Report: China*, 25 February, Section 1d & 1f).

60. The Falun Dafa Information Center is based in New York and maintained by Falun Gong. The Falun Dafa Information Center receives reports of human rights abuses, allegedly perpetrated by the Chinese Government against Falun Gong practitioners. According to the Falun Dafa Information Center's *Annual Report on Falun Gong in 2008*, "In some cases, family members or co-workers who do not practice Falun Gong have been taken into custody as well" (Falun Dafa Information Center 2009, *Annual Report on Falun Gong in 2008*, February, p.6).
61. An article dated 30 October 2008 in *The Epoch Times*, which has links with the Falun Gong, reports that "Family members and relatives of Falun Gong practitioners also face the threat of dismissal from work, of having their children expelled from school, and of being evicted from their residences. All these measures serve the same purpose: cutting off all possible sources of income for Falun Gong practitioners in order to force them to give up their belief" ('Nine Commentaries on the Communist Party' 2008, *Epoch Times*, 30 October -).
62. According to the Falun Dafa Information Center, "Spouses, parents, children, and siblings of those who practice Falun Gong have suffered various degrees of persecution, ranging from loss of employment to torture." The Center continues:

When tens of millions of Chinese who practice Falun Gong began being targeted in 1999, even their relatives who did not follow the spiritual discipline were implicated at once. Immediately, the number of people directly hit by the campaign rose into the hundreds of millions.

Relatives were given a painful choice between supporting their loved ones at great risk or following the Party and thus wrecking their families and betraying their kin. The comprehensive campaign left little room for ambiguities.

The Party had three main reasons for targeting the Falun Gong's relatives.

- First, it sought to deter Chinese people from supporting their family members by opposing the campaign; at minimum the Party demanded quiet acquiescence, though it preferred the kind of proactive support described below.
- Second, the Party feared family members would publicly expose the torture and other abuses their loved ones faced.
- Third, police and jail wardens learned that one way of breaking the determination of jailed Falun Gong is by showing them how miserable their children, spouses, or elderly parents are.

Persecution of relatives has taken many forms, including:

- Spouses are pressured to divorce and threatened with repercussions such as an end to their careers if they do not.
- Relatives are dismissed from their workplaces after their family members petition the government to end the persecution or distribute informational material.
- Sons and daughters are expelled from schools if one of their parents remains an active Falun Gong practitioner.
- Young children have become orphaned or parentless because their mother and father have been killed, arrested, or forced to run from place to place to avoid arrest and torture...Some children live with their grandparents or other relatives, while others have been left to fend for themselves ('Family and Loved Ones' 2008, Falun Dafa Information Center website, 17 May <http://www.faluninfo.net/topic/34/> – Accessed 21 August 2009).

63. A report by the Falun Dafa Information Center dated 20 May 2009 provides information on the death in custody of a Falun Gong practitioner in Fujian whose parents were reportedly arrested in his hometown in Hubei:

Security forces in Fujian and Hubei province are seeking to cover-up the death of a Falun Gong practitioner who was killed in custody last month two days after being detained while on a field trip with his workplace. They have reportedly arrested his family members, whose whereabouts are currently unknown.

Mr. Fu Ziming (付自明) died in custody on April 19, two days after being detained by police in the vicinity of Wuyi Mountain Scenic Area of Fujian Province, a popular tourist destination in southeast China and a UNESCO World Heritage Site. Fu had traveled to the area as part of a group from the post office where he worked in his hometown of Jianli County in Hubei Province.

On April 17, while visiting the Mt. Wuyi area, Fu wrote in crayon on a rock "Falun Dafa is good; Truthfulness-Compassion-Forbearance is good." With Falun Gong being a permanent taboo in China's tightly controlled media environment, it is a common phenomenon for

adherents to counter dehumanizing party propaganda by writing such expressions on a wall, banner, or homemade poster.

Fu's actions were apparently recorded by a nearby surveillance camera and that evening, he was taken from his hotel by agents from the management department of the local police station operating under Wuyi Police Department. Two days later, he had died, reportedly from torture.

...In a further effort to limit publicity, authorities in Jianli county also recently arrested his father and other family members. Fu's father was reportedly taken into custody on April 23 and the remainder of his family the following day. They have since lost contact with the outside world and their exact whereabouts remain unknown ('Police Covering Up Falun Gong Death in Custody at Top Tourist Attraction' 2009, Falun Dafa Information Center website, 20 May <http://www.faluninfo.net/article/883/?cid=84> – Accessed 21 August 2009).

### Social Compensation Fee for Shenzhen

64. If a child is born outside family planning quotas, however, the parents may be required to pay a family planning fee before authorities will register a hukou for the child.<sup>1</sup>
65. According to a 25 March 2013 All China Women's Federation article, the Population and Family Planning Regulation of the Shenzhen Special Economic Zone stipulates that urban residents who have one more child must pay a minimum social compensation fee of three times the average annual per capita disposable personal income of urban residents in the year prior to the birth.<sup>2</sup> Both the mother and the father of the child are required to pay the social compensation fee and so the minimum fine for a couple would be 219,030 yuan (approximately AUD39,379) for a child born in 2012.<sup>3</sup>

### Departure from China

66. In relation to whether people who have been charged with, or convicted of, criminal offences would be able to leave the country, Article 13 of the *Passport Law of the People's Republic of China 2006*, which came into effect on 1 January 2007, indicates that a person who is defending a criminal case or is a criminal suspect, or is serving a criminal sentence shall be refused a passport. The provision does not specifically refer to whether a person with a previous criminal conviction would be refused a passport although a passport can be refused to a person who it is believed will undermine national security or cause major losses to the State's interests. Article 8 of the *Law of the People's Republic of China on the Control of the Exit and Entry of Citizens* also indicates that defendants in criminal cases or criminal suspects, convicted persons serving sentences, persons undergoing rehabilitation through labour, and persons whose departure in the opinion of the relevant authority would be harmful to state security or cause a major loss to national interests are in the categories of persons who shall not be granted approval to leave the country. DFAT has previously

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<sup>1</sup> Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1261 – China: RRT Information Request: CHN38360*, 30 March <[Attachment](#)>; 'The Brutal Truth' 2012, *The Economist*, 23 June <<http://www.economist.com/node/21557369/print>> Accessed 20 August 2012

<sup>2</sup> All China Women's Federation 2013, *Shenzhen Issues New Family Planning Regulation*, 25 March <<http://www.womenofchina.cn/html/womenofchina/report/150898-1.htm>> Accessed 29 July 2013

<sup>3</sup> All China Women's Federation 2013, *Shenzhen Issues New Family Planning Regulation*, 25 March <<http://www.womenofchina.cn/html/womenofchina/report/150898-1.htm>> Accessed 29 July 2013



advised of reports of Chinese citizens with legally-obtained passports being prevented from leaving China because they were believed to be involved in a sensitive case or would undermine national security, and of cases where dissidents who had received criminal punishment including imprisonment had subsequently been able to obtain passports and leave the country.

#### Chinese law relating to a child born in Australia to Chinese nationals

67. Nationality in China is governed by the *Nationality Law of the People's Republic of China 1980*. According to this legislation, nationality is acquired primarily through one's parents, and a child can acquire Chinese nationality at birth even if only one of its parents is Chinese.<sup>4</sup> Article 5 states:

Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.<sup>5</sup>

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<sup>4</sup> The Embassy of the People's Republic of China, *Note to Department of Foreign Affairs and Trade 2004 Note No. 088/2004*, 21 September – Community Legal Information Centre (undated), *Chinese Nationality* [http://www.hkcliv.org/en/topics/immigration/chinese\\_nationality/index.shtml](http://www.hkcliv.org/en/topics/immigration/chinese_nationality/index.shtml) - Accessed 5 August 2011 –

<sup>5</sup> *Nationality Law of the People's Republic of China 1980*, China.org website, 10 September <http://www.china.org.cn/english/livinginchina/184710.htm#> – Accessed 3 April 2007