

1201599 [2012] RRTA 1024 (9 November 2012)

DECISION RECORD

RRT CASE NUMBER:	1201599
DIAC REFERENCE(S):	CLF2011/178934
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Tony Caravella
DATE:	9 November 2012
PLACE OF DECISION:	Perth
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of China (PRC), applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2011.
3. The delegate refused to grant the visa [in] January 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

Complementary protection criterion

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

CLAIMS AND EVIDENCE

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

Background and protection claims

20. The applicant has declared in his written application for a protection (Class XA) visa (Form 866C) that he was born in Hebei, China, in [year deleted: s.431(2)] and that he has lived in Hebei until October 2008. He claims his religion to be Christianity. He declares that he arrived in Australia [in] October 2008 and entered this country as the holder of a visitor visa. The applicant declares that he also travelled to Hungary and Austria [in early 2008]. He declares his occupation to be that of a small business owner.
21. In response to the question asked in the application form as to why the applicant left his country the applicant states:

I was born in a Christian family and believed Christianity since I was a child. Nearly all of my relatives are Christian, including my parents and my grandparents. I believed that God could give us peace and guide us to reach the final paradise of heaven.

But in China churches were often under the surveillance of the government. We always suffered oppression from government and our daily life was always interrupted. I was the organiser of our house church on Thursday evening, my family suffered much more harsh oppression than other villagers.

The police came to my house frequently since I began organising house church. Sometimes, they suddenly broke into my house when we were praying or studying the holy Bible. When that happened all church members were asked to show their ID card and were threatened not to take part in such activities. We would then suspend our practice for a period of time and then resumed when all felt safer. Sometimes we would argue with police and even fight with police, and then would be detained for a few hours.

In late 2007, the local government tightened their control on the family churches. In January 2008, the local police broke into my home again when we were praying to God. They searched every corner of my house. I was so angry and argued with them. Several members also followed me. The police arrested us and we were detained for about two weeks with the charge of illegal gathering. I was forced to sign a confession letter and was warned not to organise or attend to family churches. After release, I decided to go overseas. I could not survive in China where people even do not have free religious beliefs. I asked an agent in China to get a visitor visa for me. [In] October 2008 I left China and arrived in Australia [in] October 2008.

After arriving in Australia, I attended church activities regularly. I appreciate that I am safe and can have freedom in religious belief in Australia. I received baptism in the [Church 1] of Perth [in] February 2009, and I felt the peace and happiness deep in my heart. I hope that Australia government could protect me free from prosecutions of Chinese Government and enable me to live in Australia permanently.

The delegate's decision

22. The delegate found that the applicant arrived in Australia [in] October 2008 on a subclass 676 tourist visa allowing him to stay for a period of three months. The delegate found that the Department's records showed the applicant lodged a protection visa application [in] January 2009 which was found to be invalid as the application had no claims. The delegate found the applicant lodged a valid application for a protection visa [in] October 2011.
23. The delegate accepted that the applicant is and has been a practising Christian. The delegate was also ready to accept that the applicant was detained for two weeks following a house break in as country information suggests that authorities do sometimes harass underground churches and detained church members.
24. The delegate found the applicant provided a vague account of the service and was unable to describe the service to an extent that the organiser of a house church would be expected to do. The delegate found the applicant did attend house churches but found it implausible to accept that the applicant was a house leader/house organiser because of his lack of knowledge of the church service and the length of his detention in January 2008 by the authorities.
25. The delegate also considered the applicant's travel to Austria and Hungary after his detention by the authorities in February 2008 and that he re-entered the PRC without any apparent difficulties. The delegate considered that if the applicant feared being

harassed and arrested by Chinese authorities, it would be illogical for the applicant to return to the PRC.

26. The delegate also found that the applicant is not a person of interest to the Chinese authorities and if he was he would have been detected by the PRC authorities at the airport when he exited the PRC to travel to Austria and Hungary and also when he left the PRC to come to Australia.
27. The delegate also found that the applicant waited seven months after he was released from detention to leave the PRC and that during this time the applicant was not detained by the authorities. The delegate put the delay in leaving the PRC to the applicant at the protection interview and the applicant replied that when the authorities came to harass him he would run from the back door and hide. The delegate was not satisfied with the applicant's explanation considering that if he was genuinely persecuted by the PRC authorities those authorities would have detained him in the seven-month period before the applicant left the PRC.
28. The delegate also considered that the applicant's passport expired [in] February 2011 and that the applicant obtained travel document from the Chinese authorities in Australia and that the applicant told the Chinese authorities he would return to the PRC. The delegate found that the claim that the Chinese authorities were willing to cooperate with the applicant contradicts the applicant's claim that he will be harassed and arrested by the PRC authorities upon return.
29. The delegate considered the three-year delay between the applicant arriving in Australia in October 2008 and the lodgement of a protection visa application. The delegate refers to the applicant lodging an invalid protection visa application in January 2009 which indicated that the applicant was aware of protection visas. The delegate writes that the applicant replied that he did not lodge any protection visa application in January 2009 nor received any letter from the Department. The delegate notes that the Department's records showed the applicant did lodge a protection visa application [in] January 2009 and the application was found to be invalid as it had no claims and that a notification letter was sent to the applicant [in] January 2009. The delegate concluded that the applicant could not provide a valid explanation as to why there was a delay in lodgement of a valid protection visa application and that this suggests the applicant's fear of persecution in his home country of the PRC is not genuine.

Application for review by this Tribunal

30. [In] February 2012 the Tribunal received an application for the review of the delegate's decision.

Tribunal hearing

31. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
32. The applicant was represented in relation to the review by his registered migration agent. The representative did not attend the hearing. At the hearing, the applicant told the Tribunal that his representative would be available to speak to the Tribunal via

telephone. The Tribunal called the representative at the start of the hearing and asked him if he wanted to participate by telephone. The representative told the Tribunal that he was too busy because he had four other cases to submit by 4pm that day and added that he would like a copy of the hearing recording and that he would provide written comments within 2 weeks. After the hearing a copy of the hearing recording was despatched to the applicant's representative.

33. The Tribunal opened the hearing by asking the applicant why he feared returning to China. The applicant replied that he believes in God and that he was involved in forming a church group. He said that the police then began bothering him. He said that he would get locked up for one or two hours and once he was locked up for two weeks. He said the police would abuse him and not give him food for a whole day while he was in custody. He said that he has been beaten.
34. The Tribunal asked the applicant to provide more details. He said that in China he was the host for a home church service every Thursday night and that the police had visited them regularly. He said the police work for the government and when they visited they would ask everyone to show their ID. The applicant said that his wife and two sons are both born in [a certain year] making one son [age deleted: s.431(2)] years of age, and the other [age deleted: s.431(2)] years of age. He said they all live in the same house.
35. The Tribunal asked the applicant how he became involved in Christianity. He replied that it was because his parents and grandparents are Christian. The Tribunal asked what denomination of Christianity he follows. The applicant then looked through a copy of the Bible that he had with him but was unable to explain what denomination he followed. He then produced a card saying he is now attending the Baptist Church in Australia.
36. The applicant said that his grandfather believed in God and their whole family is involved in religion. He said his grandfather and his mother passed away due to health problems and that his father is very old and that because of this the applicant became the family Church host. The applicant told the Tribunal that he is the youngest of his siblings. He said his father used to be the Church host before and that it is usually the owner of the house who takes the role of the host. He said that his house is bigger than others and they could cope with up to 20 people or so.
37. The Tribunal asked the applicant whether he holds a formal leadership position within the church; he replied that he does not hold any formal position but he is only a host. He added that he is not a priest.
38. The Tribunal asked the applicant what happens when people come around to attend the meetings on Thursday nights. He replied that they gather together and everyone brings delicious food which they share and they also share evidence and play music and sing to their God. He said it is not like a Sunday service when they go to church. The Tribunal asked the applicant how the meeting on Thursday nights is different from church service on Sundays. The applicant told the Tribunal that at church they sing, drink grape juice and have little cookies. He said that they also make donations and share their experiences. He said the donations are to help run the church and that the pastor is in control of the donations received.

39. The applicant told the Tribunal that the police asked him to fill in a form to declare his religion but he refused to fill in the form.
40. The applicant told the Tribunal that he attends church in Tianjin city on Sundays and described this as being adjacent to Heibei province. He said that they secretly gather at the house church in [District 2] on Sundays because it is bigger than his house.
41. The applicant told the Tribunal that he has experienced the church in Australia and that compared to China the church there is not as well organised as the Australian church. He said that most of those who attend his church in China are farmers and are not educated very well.
42. The Tribunal asked the applicant whether he is a small business owner or a farmer. He replied that in China farmers are allowed to do some small trading. He said his wife once rented their land out and they therefore took to selling [goods] at the local market in rural areas which moves around from village to village according to the Chinese lunar calendar.
43. The Tribunal asked the applicant why he thinks that the authorities would want to harm him if he returns to his home in China. He replied that something happened in the past and that the authorities would search his house and rip up the Bibles. He said that the police only believe in the Communist Party and do not want people to believe otherwise. He said that he has an ongoing argument with the authorities and that he had been held by them for one or two hours but on one occasion he was detained for two weeks.
44. The Tribunal asked the applicant to provide more information on his detention. He said that on the occasion he was held for two weeks he was locked up at the police station which had responsibility for his village. He said that he and two other people were held on that occasion. The Tribunal asked whether he was charged with any offence, to which the applicant replied he had not been charged. The Tribunal asked the applicant why the police detained him; he replied that in January 2008 during the Olympic period, the authorities were very strict and were controlling the community. He said that the authorities came to his house used abusive language, searched the house and tore up their Bible. He said that he was beaten on the face and head and he was beaten because he was arguing with the authorities. He said he used his hand and arm to shield himself but then he was accused of fighting so he and two others were locked up. He provided the names of the two others who were locked up as [names deleted: s.431(2)].
45. The Tribunal asked the applicant what happened during the two weeks he claims he was locked up. He replied that during this time he was asked what his purpose was because the police thought that he wanted to do something harmful for society. He said he told the police they only believe in God and they had no political desires, but one of the police hit the applicant in the face and told him he was lying.
46. The applicant told the Tribunal that while he was in detention at the end of the day when the police locked the door where they were being detained, the police would tell them that as they believed in God then God should provide their meal and so they did not provide them with food. He told the Tribunal that in the room in which he was held there was no bed but only a small sofa so that they had to sleep on the sofa. He said that

sometimes the police did not even provide water. He said that in the room there was a pot in which to pass urine.

47. The Tribunal asked the applicant what he was told when he was released from the two-week detention. He replied that firstly the authorities could not find any evidence that they were a threat to society or to the country. Then they were forced to sign a confession that he would not host future house church meetings in his home. He said that one of the police told them that the next time he is caught he will not be let out so easily and also the family would have to pay 10,000 RMB to bail him out. He said that he was not sure whether this was a genuine threat. He said that as he was scared he started to look at holding house church meetings at other places and they would then change from house to house and that when police came he would usually hear them because they arrived by car and he would leave the meeting before they entered.
48. The Tribunal asked the applicant whether he had made an earlier application for a protection visa in January 2009. He replied that he was asked the same question when he was interviewed by the Department. He said he could remember that he used to live in a rental house and there was a roommate who was not his friend and that the roommate asked him for a tax file number. The applicant said he did not know what a tax file number was at the time but he gave his personal information to the friend and also he showed him his passport. The particular friend then moved out of the house. He said that he now thinks that person might have applied for a tax file number and that it may be linked to an earlier protection visa submitted to the Department. The applicant said that he had not received any correspondence from the Department about this. The Tribunal asked the applicant whether he had a migration agent at the time and whether the agent might have submitted a protection visa on his behalf. He replied that he had no idea that he was able to migrate to Australia at that time and he was only planning to stay away from China for a while. He said he did not know he could apply to stay until someone introduced him to his representative and through him learned about protection visas.
49. The applicant told the Tribunal that when he came to Australia he had been to countries on tourist visas. He told the Tribunal that he entered Australia on a tourist visa and found Australia to be such a great country and found an immigration lawyer who could help him stay. The applicant told the Tribunal that he did not know Australia could provide protection and that he thought that protection may be only for rich people.
50. The Tribunal asked the applicant why he did not stay in Hungary or Austria as he had travelled there previously. He replied that the purpose in his going to Hungary and Austria was only to travel and relax. He said that he was not well emotionally at that time. He said that he had overheard that Austria was a place full of music and he loves music and so that is why he decided to go to Austria. The Tribunal asked the applicant if he was so worried about going back to China then why did he not remain in Austria or Hungary. He replied that the reason he went to Austria and Hungary was purely for a break and that he still had hope that after he returned to China that police would not continue troubling him. He said that he then came to Australia and found it to be a great country and then he started going to church in Australia and made many friends here.
51. The Tribunal referred to delegate's decision record where the delegate found the applicant did not appear to be an organiser in the church. The applicant commented that he provided sufficient reason and evidence to the Department and if they did not

believe him then it is their problem. He said that his house church was built up and there is no way that the government would approve that. The Tribunal asked whether the applicant had any evidence that he hosted and organised church meetings. He replied that all the evidence was taken by the police and also because it was illegal there is no evidence.

52. The Tribunal asked the applicant how those attending his house church knew the house. He replied that it started after he had done preaching on a door-to-door basis. He said he would tell people that the church meeting was held on Thursdays. He said that in China it is different because everyone knows each other in their villages and they had been there for several generations. He added that they are all farmers.
53. The Tribunal asked the applicant to comment on how he was able to leave, return, and leave China again without problem and suggested that this indicates that he is not a person of interest to the Chinese authorities. The Tribunal invited the applicant to comment on this. He replied that he is not the most wanted person in China and he is not registered in the authorities' computer. He told the Tribunal that he believes he was mistreated in the past and asked whether he needs to be made disabled or whether he needs to self-harm. He said that he was locked up for one or two hours and on one occasion for two weeks and that has severely affected his life and he could not freely practice his religion. He said that if he could not get out of his country he could not apply for a protection visa.
54. The applicant told the Tribunal that he has been told that the police visited his house and talked to his wife and asked when the applicant will be returning to China. The applicant added that he reads the newspapers in Australia that people in China who practice Falun Gong are mistreated. He added that he also has heart trouble and that he does not think he can go through the same experience again. At this point the applicant showed the Tribunal a bottle which appeared to be medicine. He said the medicine is called [name deleted: s.431(2)]. He said that this is for his [health] condition. He told the Tribunal that he thinks his life would be ended if he was detained by police again.
55. The Tribunal asked the applicant whether he believes he would be safe by relocating to another part of China. The applicant said that he does not believe that there is anywhere safe in China. He said that the police only beat people in his area and in other places could be worse because they might beat him with batons. He said that in Australia he has heard stories about Falun Gong followers and he has also heard where police force people from their houses because they want to redevelop the land. The applicant said that he is not Falun Gong practitioner although there are some Falun Gong practitioners in his area. He said that his case is not about redevelopment but he was just giving this to illustrate what the government does.
56. The Tribunal asked the applicant why he does not follow one of the religions which are accepted in China. The applicant said that the Christian Church there are government approved and are not genuine and he does not believe in them. He said that there is a saying that those in the registered churches over drink, over eat, gamble, and use prostitutes and use the church to cover up their wrongdoings.
57. The Tribunal asked the applicant whether he works in Australia. He replied that he works in Australia in construction and that he has some friends who have a construction contract and they asked him to assist them. He said he is paid weekly. [Details of work

deleted: s.431(2)]. He said he does not know the deal between the contractor and house owner. He said that if he has something to eat, somewhere to stay, and is free, then that is all he wants.

58. The Tribunal asked the applicant who introduced him to [Church 1] which he claims to attend in Perth. He replied that a friend took him to a church near where he lives once and then another friend took him to [Church 1]. He told the Tribunal that he goes to [Church 1] even though it is spoken in English. He said he goes to this church because he feels comfortable there.
59. The Tribunal asked the applicant to describe what happened at his baptism. He said he was baptised in Australia and that his friend interpreted for him. He said that he believes God led him to this church. The Tribunal asked the applicant whether he had been baptised in China. He replied that in the Bible he could not see anywhere that said that a person cannot be baptised twice. He said that in China baptism was under Yue Han whereas in Australia it is under Jesus. He said that he wanted to be baptised in Australia and he wanted to show that he is a real Christian. He said he goes to church every week unless there is a phone call from his boss to advise him that there is an urgent job to be done, otherwise he is at the church every week even if he is sick. He said that he goes to church [every Sunday]. He said he goes with a friend called [name deleted: s.431(2)].
60. The Tribunal asked the applicant whether his wife is involved in the church. He replied she is involved but she is very quiet and nice and she would not talk when police entered the church house. He said that she stays in a corner and that she has been very lucky not to have been harmed. He told the Tribunal that he speaks to her once or twice a week after work during the evening or at night. He said that she is very busy during the day and that she works for [a certain] company and has a heavy workload and works in [District 2] in Tianjin. The Tribunal asked the applicant why his wife did not come to Australia with him. He replied that she did not come because in the past the police never bothered her. He repeated that he has a [health] condition. He said that last year his wife telephoned him and said she wanted to come to Australia as a tourist but then she got caught up with work. He said he misses her.
61. At the end of the hearing the applicant handed over two newsletters dated April 2012 and July 2012 from [Church 1] in [Western Australia].

Post hearing correspondence

62. [In] May 2012, the Tribunal sent the applicant, through his representative a letter inviting the applicant to provide further information or submissions on any claims the applicant might wish to make on complementary protection. The letter states, in part:

....

The purpose of this letter is to invite you, pursuant to s.424 of the Migration Act 1958 (Cth), to provide any further information or submission in support of the applicant's application for review. Furthermore, the Tribunal invites you to make any relevant submission in respect to the complementary protection provisions of the Migration Act 1958 (Cth) which came into force on 24 March 2012. These provisions provide, at section 36(2), that a protection visa is to be granted not only to non-citizens to whom Australia has protection obligations under the Refugees Convention, but also to non-citizens with respect to whom:

the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm.

Section 36(2A) provides that a non-citizen will suffer ‘significant harm’ if:

- (a) the non-citizen will be arbitrarily deprived of his or her life; or
- (b) the death penalty will be carried out on the non-citizen; or
- (c) the non-citizen will be subjected to torture; or
- (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
- (e) the non-citizen will be subjected to degrading treatment or punishment.

The terms ‘torture’, ‘cruel or inhuman treatment or punishment’, and ‘degrading treatment or punishment’ are defined in section 5(1) of the Migration Act.

Section 36(2B) provides that there is no ‘real risk’ of significant harm if:

- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
- (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
- (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

According to section 36(2C), an individual is ineligible for a visa on complementary protection criteria if:

- (a) the Minister has serious reasons for considering that:
 - (i) the non-citizen has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations; or
 - (ii) the non-citizen committed a serious non-political crime before entering Australia; or
 - (iii) the non-citizen has been guilty of acts contrary to the purposes and principles of the United Nations; or
- (b) the Minister considers, on reasonable grounds, that:
 - (i) the non-citizen is a danger to Australia’s security; or
 - (ii) the non-citizen, having been convicted by a final judgment of a particularly serious crime (including a crime that consists of the commission of a serious Australian offence or serious foreign offence), is a danger to the Australian community.

If you wish to make any written submission in respect to these provisions please do so in writing in accordance with the date set out below.

The information should be received at the Tribunal [by] June 2012. If the information is in a language other than English, it must be accompanied by an English translation from an accredited translator.

If you cannot provide the information [by] June 2012, you may ask the Tribunal for an extension of time in which to provide the information. If you make such a request, it must be received by the Tribunal [before] June 2012 and you must state the reason why the extension of time is required.

63. [In] June 2012, the Tribunal received a letter from the applicant’s representative requesting an extension of time to provide supporting documents from the applicant

from China. The letter states that some of the documents are in Chinese and the representative required extra time to have them translated. The letter states that the representative expected the documents would be provided by [mid] June 2012.

64. [In] June 2012, the Tribunal received a further submission and attachments from the applicant's representative, the attachments comprise:

- A translated person statement (summarised in the following paragraph);
- A letter [dated] May 2012 from [a Pastor] of [Church 1] Perth, which states that the pastor has known the applicant since he joined the church when he was baptised [in] February 2009. It also states that the applicant attends church every week on Sundays, except on a few weekends when he is working. It also states that "He seems sincere in his desire to follow the Christian faith.";
- A newsletter for [Church 1] Perth, [dated] 2010, and a copy of a [magazine] both of which include photographs of church congregations which also depict the applicant in the congregation.

The Tribunal summarises the submission referred to above in the following paragraphs.

65. In respect of the applicant's second baptism, in Australia, the applicant claims that he thought he would wash off his sins. He states he was unlawful at the time without a visa, and thought that might also be a sin. He writes that with the second baptism he thought he could be more absorbed into the Australian church. He claims that he spoke to some church members about the second baptism who told him that a second baptism is not necessary but if he is baptised a second time it is not a big issue.
66. The applicant also writes that he has been unable to provide evidence to prove his church experiences and the experience of being detained by the Chinese government. He refers to the Department's decision where the delegate indicated he believed what the applicant had experienced. He claims he wanted to contact his wife to see if she could provide some further evidence but is worried about her well-being and does not want his wife and his family to be affected.
67. In response to the question about whether he will be persecuted if he returns to China, the applicant states that he cannot say this will happen for sure, but adds that it has happened to him before. He writes that the Chinese government still does not recognise the legitimacy of house churches and the media reports of house churches being persecuted in various areas in China. He states that the Chinese media reports on good things, but they cannot cover up the truth. He refers to the recent media coverage about a blind lawyer Chen Guangcheng being rescued by the US embassy and also the case involving a high ranked official Bo Xilai whose wife murdered a British businessperson.
68. The applicant writes that in Australia he can enjoy democracy and freedom. He writes that he used to be unlawful but he applied for a protection visa and was given work entitlements and Medicare. He refers to how members of the church gave him a lot of help and that if the Chinese government protection of human rights could reach half the Australian level he would return to China without hesitation as his family is in China.

He concludes by stating that for now he could only stay in Australia and he wishes his protection visa could be approved so he can bring his family here.

Independent country information

69. Some house church members in Hebei province currently experience ill-treatment from government officials in the form of administrative detention, arrest, and re-education in labour camps. Missionary activity by independent church members was the target of police action in one location in Hebei (Baoding City) in 2003. While it is unknown whether similar forms of treatment against house church members are common across Hebei, in general, officials in this province are reported to strictly enforce the Communist government's religious policy that the practice of Christianity be limited to officially registered church associations.¹ No specific information was found on the treatment of house church members in the applicant's home town/village.
70. In January 2010, 30 house church leaders in Handan city in southern Hebei (approximately 200 kilometres south of Gaocheng City) were detained during a Bible study meeting. The members were accused of participating in an illegal meeting. Three were sentenced to administrative detention for periods of between 10 and 15 days. The remaining leaders were either released or their treatment by officials is unknown.² The detentions were reported by Reverend Zhang Mingxuan, pastor and president of the Chinese Home Church Alliance (CHCA),³ a body established to defend the specific rights of house church Christians.⁴
71. The China Aid Association reported on the arrest of 43 house church members between January 2007 and December 2009 in three cities (Hengshui, Baoding, Zhouzhou) in Hebei. These individuals were involved in house church meetings, and Bible and marriage classes.⁵ Treatment of these individuals after arrest is not known. Nine Protestant leaders from the province were also detained in July 2007 after conducting a Sunday worship service together at a home. Administrative courts in Enshizhou, in Hebei, found the Christians guilty of "engaging in organizing and making use of [an] evil cult organization to undermine the enforcement of State laws" Those sentenced were later placed in forced labour camps.⁶

¹ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, p.247; Kawn, D. 2003, 'Crackdown ordered on unofficial churches', *South China Morning Post*, 4 February; Johnstone, Patrick *et al* 2001, *Operation World: 21st Century Edition*, WEC International, p.172 .

² China Aid Association 2010, '30 Chinese House Church Alliance Leaders Detained, Facing Administrative Detention', 9 January
http://www.chinaaid.org/qry/page.taf?id=105&_function=detail&sbtblct_uid1=1372&_nc=109f3b061925cc9f78d9c01e7f6f88f8 - Accessed 22 June 2010.

³ Yu, V. 2010, 'Christians' detention sparks concern', *South China Morning Post*, 11 January; 'Fate of Church Members Unknown' 2010, *Radio Free Europe Documents and Publications*, 11 January.

⁴ 'Authorities banish Pastor from Beijing prior to Games', 2008 Compass Direct, 5 August.

⁵ China Aid Association 2010, *Annual Report of Persecution by the Government on Christian House Churches within Mainland China January 2009—December 2009*, 31 January, p.17; China Aid Association 2009, *Annual Report of Persecution by Government on Christian House Churches within Mainland China: January 2008 – December 2008* (The Year of the Beijing Olympic Games, January, pp.7-8; China Aid Association 2008, *Annual Report of Persecution by the Government on Chinese House Churches within Mainland China: January 2007 to December 2007*, February, p.13

⁶ 'Missing since June, nine protestant leaders "re-appear" in labour camps' 2007, *Asia News IT*, 8 October –

72. In addition to targeting house church members, authorities in Hebei also target those undertaking missionary activities. In 2003, an internal document reportedly issued by the Public Security Bureau in Baoding city ordered that police take action to stop illegal Protestant groups in the area, including those working as “independent missionaries” who attempt to evangelise. No reports were found on the results of this police action in Baoding. An article from the *South China Morning Post* reported on these events as follows:

Activists say that police in Hebei were ordered to spy on worshippers and to isolate rogue Christian groups. Police were ordered to isolate unofficial Christian groups in Baoding city, Hebei province, and spy on people worshipping at their churches, a group of religious activists has claimed.

Quoting a classified document issued by the Public Security Bureau in Baoding city in August, the New York-based Committee for Investigation on Persecution of Religion in China said police had been instructed to separate activities by the officially-sanctioned Protestant Church and other groups....

The document – entitled “Work Plan on Terminating Illegal Christian Activities” – recommended all officers in Baoding city to heighten their vigilance against “illegal Christians” between August and October last year.

The crackdown coincided with the lead-up to the 16th Communist Party Congress, a key event in the political calendar. However, in addition to a specific action plan for the three-month period, the document also laid down general guidelines that could signal a hardening of the government’s position towards Protestant groups deemed a threat to the authorities.

During the crackdown, the city’s police chief, Li Yunlong, headed a taskforce in charge of “finding out everything about illegal Christians, bringing organisers of illegal activities and independent missionaries to justice, and shutting down venues used by the illegal Christians”.

The term “independent missionaries” apparently refers to evangelists who work independently from any churches. “(We) must strive to effectively halt the emergence of illegal activities by Protestants in our city,” the document said. Unlike previous government edicts, the latest one singled out Protestant groups as targets for control and demanded police officers include the crackdown on “illegal Christians” as part of their daily work.⁷

73. House churches are broadly defined as small Protestant Christian communities or groups who meet informally in homes without government approval. Often described as evangelical, house church member services are simple and do not adhere to any particular Christian tradition or denomination.⁸ No figures on the numbers of house churches in Hebei were found. Total Protestant numbers (official and unofficial) in the province were estimated to be approximately 400,000 in 2001.⁹

⁷ Kawn, D. 2003, ‘Crackdown ordered on unofficial churches’, *South China Morning Post*, 4 February –.

⁸ Lambert, T. 2006, *China’s Christian Millions*, Monarch Books, Oxford, pp.55–59; DIMA Country Information and Protection Support Section 2006, *House Churches in China*, Issues Brief CHN290306, 29 March, pp.5-6..

⁹ Lambert, T. 2006, *China’s Christian Millions*, Monarch Books, Oxford, p.247

74. The UK Home Office *Country of Origin Information Report – China reports*¹⁰:

PROTESTANTS (INCLUDING ‘HOUSE CHURCHES’)

19.18 The USSD *International Religious Freedom Report 2009* stated:

“Officials from the Three-Self Patriotic Movement/China Christian Council (TSPM/CCC), the state-approved Protestant religious organization, estimated that at least 20 million citizens worship in official churches. Government officials stated there are more than 50,000 registered TSPM churches and 18 TSPM theological schools. The World Christian Database estimates there are more than 300 unofficial house church networks. The Pew Research Center estimates 50 million to 70 million Christians practice without state sanction. One Chinese scholar estimated in a public lecture at Renmin University that the number of Christians in China, including those in TSPM churches and unregistered churches, is near 90 million. By contrast, the Chinese Communist Party is estimated to have 60 million members, 10 million of whom are believed to participate regularly in religious services. Currents of Calvinism or Reformed theology gained influence among house churches and Christian intellectuals. Pentecostal Christianity was also popular among house churches.” [2a] (Section I. Religious Demography)

19.19 An article by *The Economist*, dated 2 October 2008, stated, “Because most Protestant house churches are non-denominational (that is, not affiliated with Lutherans, Methodists and so on), they have no fixed liturgy or tradition. Their services are like Bible-study classes.” [19a] As reported by the USSD *International Religious Freedom Report 2009*:

“The Government repressed Protestant house church networks and cross-congregational affiliations, which it perceived as presenting a potential challenge to the authority of the Government or the Party. For example, on November 28, 2008, the Ministry of Civil Affairs issued a decision abolishing the 250,000-member Chinese House Church Alliance (CHCA), which claims to have members in several provinces, stating that the CHCA was not registered and was engaging in activities in the name of a social organization without authorization... Local regulations, provincial work reports, and other government and party documents continued to exhort officials to enforce government policy regarding unregistered churches and illegal religious activities, although the extent to which officials interfered with the activities of unregistered churches varied and depended largely on local conditions. Urban house churches in some areas limited the size of their meetings to a few dozen individuals. In nonurban areas, some house churches were able to hold meetings that hundreds of individuals attended with which local authorities did not interfere. Some unregistered religious groups had significant membership, properties, financial resources, and networks. House churches faced more risks when their memberships grew, they arranged for regular use of facilities for religious activities, or forged links with other unregistered groups or coreligionists overseas.” [2a] (Section II. Status of Religious Freedom, Restrictions on Religious Freedom)

19.20 The report stated further:

“In some areas, government authorities pressured house churches to affiliate with one of the PRAs and to register with religious affairs authorities by organizing registration campaigns and by detaining and interrogating leaders who refused to register. In other parts of the country unregistered groups grew rapidly and the authorities did not pressure them to register. Although SARA does not officially acknowledge the existence of house churches, its website states that family and friends holding meetings at home (as distinct from formal worship services in public venues) need not register with the Government (the ‘Family and Friend Worship Policy’).

¹⁰ UK Home Office 2010, *Country of Origin Information Report – China*, 15 November, pp.72-77, 88-89. <http://www.unhcr.org/refworld/publisher,UKHO,COUNTRYREP,CHN,4ce6a46e2,0.html>

Police and officials of local RABs in some areas disrupted home worship meetings, claiming that participants disturbed neighbors or social order, or belonged to an 'evil religion.' Police sometimes detained for hours or days worshippers attending such services and prevented further worship activities. Police interrogated church leaders and lay persons about their worship activities at locations including meeting sites, hotel rooms, and detention centers. Non-governmental organizations (NGOs) reported that church leaders faced harsher treatment than members, including greater frequency and length of detention, formal arrest, and reeducation-through-labor or imprisonment. According to NGO and media reports, in some cases local officials also confiscated and destroyed the property of unregistered religious groups." [2a] (Section II. Status of Religious Freedom, Restrictions on Religious Freedom)

19.21 The USCIRF *Annual Report 2010*, published on 29 April 2010, noted:

"The Chinese government continues to control the religious activities of Protestants affiliated with the government-approved religious organizations. It encourages registered Protestant leaders to emphasize 'theological reconstruction,' a doctrine that purges any elements of Christian faith and practice that the Communist Party regards as incompatible with its goals and policies... An estimated 10 million Chinese belong to the two approved Protestant organizations. However, even registered Protestant groups and leaders are not safe from harassment, detentions, and arrest due to the arbitrary nature of Chinese law and policy regarding religion..."

"The government actively harasses, detains, fines, mistreats, and imprisons members and leaders of unregistered Protestant groups, whose membership may be between 40 and 60 million... Though the total number of arrests and imprisonments declined in the past year, government efforts to suppress the growth and activities of 'house church' Protestants continue to be systematic and intense. The State Department estimates that 'thousands' of house church members were detained for short periods in the past several years. Members of unregistered Protestant groups that the government deems 'evil cults' were the most vulnerable to detention... China Aid and other NGOs report a significant rise in incidents of harassment, property confiscation and destruction, and intimidation of Protestants since the 2008 Olympic Games in Beijing." [70a]

FINDINGS AND REASONS

Country of reference

75. The Tribunal finds that the Department's file holds a certified true copy of a passport issued in the applicant's name by the People's Republic of China (PRC). That passport indicates that the applicant is a citizen of the PRC. There is no evidence before the Tribunal to suggest that this document is not genuine. The Tribunal accepts that the applicant is a citizen of the PRC.
76. The applicant declares that he does not have a right to enter or reside in, whether temporarily or permanently, any country(s) other than his country of nationality. He also declared that he does not hold any other citizenship and nor is he a national of any other country. The Tribunal accepts this evidence in the absence of any evidence that contrary, and finds that the applicant does not have a present right to enter or reside in any other country other than the People's Republic of China.

Credibility issues

77. The Tribunal accepts that 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. It remains for the applicant to satisfy the Tribunal that he or she satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the Tribunal to establish the relevant facts. A decision-maker is not required to make the applicant’s case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)

78. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the applicant’s claims. This may involve an assessment of the applicant’s credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
79. The Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant’s country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
80. The Tribunal found some aspects of the applicant’s evidence was given in what appeared to be a somewhat evasive manner. Some aspects of his evidence also appeared to be vague and lacking in the level of detail which the Tribunal expected would be provided by a person in the applicant’s claimed circumstances. For example, the Tribunal found the applicant appeared to be evasive about his work in Australia. In respect of the applicant’s evidence as to his role and activities in the house church which he claims to belong to in China, the Tribunal found he was not able to provide evidence in the level of detail which the Tribunal expected he would know given his claim to be an organiser of house church services in his town. However, the Tribunal accepts the applicant is not highly formally educated and has made allowance for his apparent inability to express himself. Overall, the Tribunal found the applicant to be a credible witness. The Tribunal therefore makes its decision in light of these credibility findings.

Assessment of protection claims

81. The Tribunal accepts the country information cited above indicates that the government in China restricts the right of its citizens to practice religion outside of the registered churches endorsed by the government. The Tribunal finds by reference to the material about the Christian churches and the government of China that there is at least frequent, if sporadic, persecution of the unregistered house churches in China, both catholic and

protestant. The Tribunal also accepts the country information indicates that house church leaders, and ordinary house church followers also, in China may be targeted by authorities for particular attention and may be detained for periods if caught practising or proselytising their religion. In this case, and based on the applicant's credible evidence about what happened at the house church gatherings he attended in China, while not accepting he is necessarily an leading organiser, the Tribunal is nonetheless satisfied that the applicant is a genuine practising Christian who has attended and participated in house churches for a substantial period of time in China.

82. The Tribunal accepts that the applicant may have experienced the past incidents where the authorities disrupted the house church services which he was attending, however, the Tribunal is not satisfied on the evidence provided by the applicant that what he experienced during the house raids amounts to 'serious harm' for the purposes of s.91R(1) of the Act. However, the Tribunal also accepts that in January 2008 the applicant was detained by local police who entered his home, and that what followed by virtue of his detention for two weeks, and the deprivation of liberty and mistreatment during that time, does amount to past 'serious harm' for the purposes of s.91R(1) of the Act. The Tribunal is satisfied that the applicant was detained for the essential and significant reason of his religious belief and for his affiliation with the house church. The Tribunal also accepts that there may have been a secondary reason for his detention, namely for resisting the authorities, however, this does not detract from the essential and significant reason for the detention and mistreatment being his religion.
83. The Tribunal considered the applicant's travels to Hungary and Austria and finds the fact that the applicant did not apply for protection when in these countries is a relevant factor in considering his application for protection. The fact that he did not apply for protection in Hungary and Austria at first blush appears to weaken his claim that he has a genuine fear of serious harm for reasons of his religion should he return to China. The Tribunal notes that this travel to Austria and Hungary occurred after the applicant's claimed detention in 2008. The Tribunal considered the applicant's explanation of why he did not apply for protection in these countries. The Tribunal found the applicant's response to the Tribunal's questions on this particular matter to be direct and sincere. The Tribunal accepts his explanation that he travelled to these countries for a break and because of his love of music and that at the relevant time, he returned to China because he still held hope and optimism that after he returned to his home in China the police would not continue troubling him for reasons of his religion. However, the Tribunal accepts that the applicant returned to China and found that the circumstances had not improved as he had hoped. The Tribunal finds in the circumstances of this case the applicant's action not to seek protection in Hungary and Austria is not inconsistent with his claim that he holds a fear of persecution in China.
84. The Tribunal considered the applicant's circumstances that he was able to freely leave and re-enter China without being questioned or detained by the authorities at the exit and entry points in China. The Tribunal accepts that the applicant is not a person of interest as a leader of an underground or unregistered church group in China, however, by reference to the country information cited above the Tribunal is satisfied that there is still a real chance the applicant may face persecution as an ordinary member of such a church.
85. The Tribunal also considered the delay of almost three years between the applicant arriving in Australia in 2008 and making the protection visa application. In respect of

this, the applicant said at the hearing that he does not recall lodging an earlier protection visa application and that he believes that the application which was received by the Department may have been submitted by a friend who was living in the same house as he was and to who he had shown his passport and to who had given his personal information. The Tribunal does not accept that this is a plausible explanation of the lodgement of the earlier protection visa application, however, the Tribunal does not consider that this is fatal to the applicant's claim for protection in this case. The Tribunal accepts that the applicant may have been speculating or trying to find a way to explain the first application, and the subsequent delay in the lodgement of the second application, in a positive or favourable way. Ultimately, the Tribunal finds that while there has been a significant delay in the submission of the valid application for the protection visa in this case, and that the existence of delay is a relevant consideration, the existence of a delay is not determinative in this case as to whether the applicant faces a real chance of serious harm for a Convention ground should he return to China.

86. On the question of the applicant's participation and attendance at [Church 1] in Australia, the Tribunal accepts the evidence presented to it that he does attend this church when he does not have work commitments. The Tribunal does not consider that this conduct is to be disregarded for the reasons specified in s.91R(3) of the Act as the Tribunal is satisfied that the applicant's conduct in respect of this church is otherwise than for the purpose of strengthening his claims to be a refugee.
87. In relation to the applicant's future conduct, the Tribunal accepts that the applicant's practice in an underground Christian house church on his return to China would continue, even though he may not continue to have a high profile as an organiser he would, in the Tribunal's view, continue following and practising his religious beliefs. The Tribunal finds that the country information set out above indicates that not only are organizers and leaders harassed, detained and mistreated, ordinary members may also be similarly mistreated. The Tribunal therefore accepts the applicant faces a real chance of being arrested, detained, mistreated in a manner which may amount to torture, fined, or otherwise mistreated amounting to 'serious harm' and persecution because of his religion if he returns to China.
88. The Tribunal finds, by reference to the country information cited above regarding the situation in China that the government and authorities of the country do not provide to those perceived as followers of the unregistered churches or religious bodies the level of protection which its citizens are entitled to expect according to international standards. (See *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 at [27]- [29].)
89. The Tribunal finds, by reference to the country information cited above about the situation in China, that the government and authorities of that country will not protect the applicant against the harm which he fears, because those same authorities will be the agents of that harm. Although there is some evidence that some individual officials of China have been disciplined for exceeding the limits of their authority in pursuing or punishing citizens, the Tribunal finds that the persecution of members of the unregistered churches and religious bodies, where and when that persecution occurs, is typically the implementing of the intended policies of the government, and will not be significantly curbed or changed by the authorities of China.

90. The Tribunal concludes that the applicant's unwillingness to rely on the protection from those authorities is therefore justified for the purposes of Article 1A(2) of the Convention.
91. The Tribunal considered the question of possible relocation within China with a view to determining whether the applicant could relocate to a region where objectively there is no appreciable risk of the occurrence of the feared persecution. The Tribunal finds that the applicant would continue to practise his religion, and that he is not expected to modify his conduct or suppress his religious beliefs. Based on the country information available to the Tribunal and cited above, the Tribunal finds that if the applicant were to relocate elsewhere within his province, his previous detention, and his role as a member of his unregistered church, may be known to the authorities and that there is at least a real chance that any future punishment of the applicant for involvement in the unregistered church would be heavier than before.
92. The Tribunal finds that if the applicant relocated to a town or city elsewhere in China and did not practise his faith in the unregistered church this would be because of fear of punishment and harm for the practice of his faith, and this would amount to suffering persecution in the form of deprivation of religious freedom. The Tribunal finds, by reference to all the material before it, that if the applicant were to move to any other part of the China outside Hebei, he would want to continue to practise his faith in the unregistered church. The Tribunal finds that if he did so, there would be a real chance that he would again be detained, and that if he were detained he would suffer treatment amounting to persecution. In the alternate, if he did not practise his faith, the Tribunal is satisfied and finds that this would be because of fear of punishment, which would be a denial through fear of her religious liberty, and therefore persecution as discussed by the High Court in *S395/2002*(cited above)
93. The Tribunal therefore finds that in all the circumstances of the applicant, it would not be reasonable to expect the applicant to move and to resettle in another part of the PRC where objectively there might be no appreciable risk of the occurrence of the feared persecution for reasons of the applicant's religion.
94. For the reasons set out above, the Tribunal finds, by reference to the applicant's evidence and to the material concerning the situation in China, that if the applicant returns to China there is a real chance that he may suffer persecution in the foreseeable future, whether in his home area or wherever else in China he might attempt to resettle, and that this would be for the Convention grounds of religion.
95. Because of the Tribunal's findings above, the Tribunal concludes that the applicant has a well founded fear of persecution in China for reasons of his religion. The Tribunal therefore finds the applicant is a person in respect of whom Australia owes protection obligations within the meaning of section 36(2)(a) of the Act. It is therefore not necessary for the Tribunal to consider or determine whether he may also be a person to whom Australia owes protection obligations within the meaning of section 36(2)(aa) of the Act, and the Tribunal makes no finding on this question.

CONCLUSIONS

96. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

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