

1417971 (Refugee) [2016] AATA 3319 (15 February 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1417971

COUNTRY OF REFERENCE: China

MEMBER: Penelope Hunter

DATE: 15 February 2016

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant and second named applicant satisfy s.36(2)(a) of the Migration Act; and
- (ii) that the other applicant satisfies s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.

Statement made on 15 February 2016 at 4:59pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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 applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants are a husband, wife and male child who claim to be citizens of China. Essentially they claim that they are Christians and members of the Local Church in Harbin, and fear that they will be harmed if they return to China as their religion is considered an evil cult.
3. They applied for the visas [in] March 2014 and the delegate refused to grant the visas [in] October 2014.

RELEVANT LAW

4. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 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).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

MINISTERIAL DIRECTION

8. 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 – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes. In particular DFAT Country Report: People's Republic of China – 3 March 2015 and DFAT Thematic report: Unregistered religious organisations and other groups in the People's Republic of China – 3 March 2015, to the extent that they are relevant to the decision under consideration.

CLAIMS AND EVIDENCE

9. The applicant husband is the primary applicant. In his application for a Protection visa he sets out that he was born on [date] in Harbin, Heilongjiang Province. He speaks, reads and writes Mandarin. Is of the Han ethnicity and his religion is Christian (Local Church). He had [number] years of education and worked from September 1999 to February 2013 at [his employer], [Harbin].
10. The applicant husband married the applicant wife [in] November 2002. She was born on [date] in Harbin, China. She speaks, reads and writes Mandarin, is of the Han ethnicity. She also lists her religion as Christian (Local Church). Their son, the applicant child was born on [date].
11. All applicants arrived in Australia [in] March 2013 having been issued with [temporary] visas and travelled on passports issued [in] 2012. Their [visas] expired [in] June 2013, and [in] March 2013 they lodged the application under review. The written claims of the applicant husband are summarised as follows;
 - The applicant husband claimed he was a faithful Christian and belonged to the Local Church (also known as the Shouters or Little Flock). This church was regarded as an evil cult by the Chinese government. He claimed to have played an important role in the Local [Church] and he would be subjected to persecution if he returned to China.
 - The applicant husband was first introduced to the Local Church by his father who was ill and not improving despite treatment. A work colleague of his father evangelised to him and encouraged the applicant husband's father to attend secret meetings of the Local Church. In February 2008 his father was baptised and became a Christian.
 - Influenced by his father, the applicant husband's mother also became a Christian. The applicant husband's parents evangelise to him many times. He witnessed that his parents, particularly his father, had changed significantly since they attended the Local Church. From January 2009 it became difficult for his father to attend secret meetings of the Local Church due to his poor health, however he insisted on doing so. The applicant husband had to escort his father and his mother to the secret meetings held at different church brother and sisters' homes every time, and he attended meetings from then on. The husband applicant also became a Christian of the Local Church and was baptised in secret [in] June 2009. In September 2009, the applicant wife also became a Christian and a member of the Local Church.
 - In the course of his employment the applicant husband would [have contact with] [certain workers]. After he became a Christian the applicant husband tried his best to understand the hardship of the [workers], to help them and establish friendships with them.
 - Around the middle of 2010, [Mr A], a [worker] was subject to financial hardship due to his wife's illness. The applicant husband organised Christians of the Local Church to donate money for him and arranged a church sister to look after his wife. The

applicant husband then evangelise to [Mr A] and his wife. In October 2010 [Mr A] and his wife became Christians.

- With the assistance of [Mr A], the applicant husband developed a close relationship with a lot of [workers]. In January 2011, the applicant and [Mr A] set up secret meetings of the Local Church among the [workers]. When the applicant husband left China the secret group was extended to [number] members in total, including five small meeting groups.
 - The applicant husband claim to play an important role in the Local Church. He had some friends working at the PSB, and he took advantage of this relationship to obtain information so that he could avoid secret church meetings coming to the attention of the PSB.
 - [In] March 2013 the applicants arrived in Australia on a [temporary visa]. On [a later date in] March 2013 the applicant's home in China was raided by the police. His mother was also arrested by the PSB as it was claimed she was involved in an evil cult. The police searched his home and found the Recovery Version of the Bible as well as some promotional material for the Local Church. The applicant husband later learnt that [Mr A] was arrested by the police [two days earlier], as the police found a Recovery Version of the Bible at his [workplace] at a routine check. [Mr A] was secretly sentenced to [number] years imprisonment even though he had confessed everything. Apart from [Mr A], [other] Christians regarded as key members were also arrested and imprisoned by the police.
 - [In] April 2013, the applicant husband's mother was released on bail. As she was not considered a leader, secondly the applicant's sister bribed the police and thirdly the applicant husband's mother was in very poor health. Since she has been released the police have frequently questioned her were taken her to the PSB for interrogation.
 - In Australia the applicant husband, the applicant wife and the applicant child have always attended the Local Church.
12. The applicant husband underwent an interview with a delegate of the Department [in] October 2014. At the hearing the applicant husband provided the delegate with a letter from the Local Church in Sydney, confirming the applicants' had been attending the church since March 2013, a copy of their travel itinerary and photographs purporting to show the applicants in various gatherings for the Local Church in Sydney.
13. The delegate found that the applicant husband was fluent in Local Church theological information but was incorrect in some basic Local Church history and confused some events. The delegate did not accept that the applicant husband was a member of the Local Church in China, and found that the applicants were new members of the Local Church in Sydney. However the delegate considered that the applicant husband had no genuine fear of persecution if he was to return to China.

The Tribunal hearing and further submissions

14. The applicant husband and applicant wife appeared before the Tribunal on 1 February 2016 and again on 8 February 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicants were represented in relation to the review by their registered migration agent.

15. Prior to the hearing the applicants provided the Tribunal with letters of support from [Mr B], a responsible brother of the Local Church [in Australia], [Mr C], a church brother of the Local Church and [Mr D], church brother of the Local Church. The Tribunal also received oral evidence from [Mr C], and [Mr D] on 8 February 2016 and [Mr B] on 10 February 2016. The applicants also provided photographs of them attending various Local Church events in [several Sydney suburbs].

FINDINGS AND ASSESSMENT OF CLAIMS

16. For the following reasons the Tribunal has concluded that the matter should be remitted for reconsideration.

Nationality

17. The applicants travelled to Australia on Chinese passports. They presented their passports to the Department and at the Tribunal hearing. In the absence of evidence to the contrary the Tribunal accepts that they are nationals of China and their claims have been so assessed.
18. The applicants claim that they do not hold the citizenship or right to reside in any other country. There is nothing before the Tribunal to suggest that any of the applicants are precluded from protection by the operation of s.36(3) of the Act.

Applicant Husband

19. Central to the applicant husband's claim for protection is that he is a member of the Local Church or Shouters in Australia and China. On this issue the Tribunal notes that the delegate was satisfied that the applicant husband had a good understanding of Local Church theology. In undertaking the review the Tribunal has also had the advantage of further evidence, including the oral evidence of the applicant wife, [Mr B], [Mr D] and [Mr C], and numerous additional photographs.
20. During the hearing the applicant husband was questioned extensively about his religious observances. The applicant husband was able to explain competently principles and practices of the Local Church. He demonstrated a full understanding of Local Church beliefs, the lack of religious hierarchy, the significance of prayer readings, spiritual exercises such as the breaking of bread, the philosophy of God's Economy and the church views on organised religion. He was able to articulate clearly the path of his introduction to and acceptance of God and becoming a member of the Local Church. He demonstrated a detailed knowledge of the bible. The Tribunal found the evidence of the applicant husband to have a degree of consistency with his written claims, and the information provided to the delegate. The Tribunal considered him to be generally honest and credible in his claims.
21. The Tribunal also found the witnesses of assistance in the assessment of the applicant husband's claims in relation to the Local Church. In particular their evidence demonstrated that the applicant husband had experience with the Local Church on arrival in Australia and that all applicants have been regular and active participants in Local Church activities in Australia since 2013. In particular [Mr B], stated he was of the opinion that the applicant husband had attended the Local Church in China, he recalled that that the applicant husband's understanding was initially very simple and he was very quiet at church services. [Mr B] spoke of how the applicant husband had improved his understanding and he considered him to be a committed member of the Local Church, who regularly attended services including small prayer group, several times per week. The Tribunal discussed with [Mr B] information he was recorded as providing the delegate in October 2014. [Mr B] advised that around that time he had several calls from the Department about different

church members, these calls were at random times without notice, he claimed that often officers did not really identify themselves and there was confusion as to who they were requesting information about. [Mr B] recalled that the applicant husband had been baptised in his house in 2013, and corroborated the evidence provided by the applicant husband about seeking the assistance of a migration agent to apply for the Protection visa.

22. The Tribunal acknowledges the delegate's concern about the applicant husband's credibility and his knowledge of why his bible was called the Recovery version. The Tribunal has reviewed the recording of the interview with the delegate, he claimed that it was recovered by Brother [name] and who provided an explanation. The Tribunal did not consider his explanation that to be lacking. In his interview with the delegate the applicant husband was not able to explain the significance of Easter and did not know that Jesus was born at Christmas. However he did correctly inform the delegate that Jesus was born in a stable and laid in a manger and spoke of the crucifixion and resurrection of Jesus Christ. The applicant husband had stated that in the Local Church they do not observe Easter, this is true to the principles of Local Church beliefs as the view the origins of the festivals of Christmas and Easter as pagan and they are not celebrated. The Tribunal finds the information imparted by the applicant husband to the delegate consistent with [Mr B's] assessment of him as initially having a very simple understanding when he arrived from China that has improved with regular attendance at the Sydney Local Church.
23. Overall, considering all the evidence of the applicant husband and wife, the evidence of their fellow Local Church members, and other material provided, the Tribunal accepts that the applicant husband is committed and an active member of the Local Church. It is accepted that he practiced this religion in China and that since coming to Australia he has continued to engage in church activities in Australia, even expanding his practice of this faith and beliefs by not only attending small group meetings, but also monthly retreats and annual conferences. As the Tribunal accepts that the applicant husband was a member of the Local Church in China, it accepts also that he attended services in Australia as a consequence of his desire to continue the practice of his religion and this conduct was engaged in otherwise than for the purposes strengthening of his claim for protection.
24. The applicant was clearly able to describe his path to becoming a member of the Local Church in China. The Tribunal accepts this as genuine. Although the applicant considered himself an important member of the congregation this arose not from his religious conviction or ability to lead his fellow congregants, reviewing the totality of the evidence, the applicant has not maintained at any time that he was a religious leader. Rather his connections within [his employer]. The Tribunal accepts that this would have been useful to all members of the church.
25. However the Tribunal finds that he has overstated his evangelising activities in China, firstly there is minimal evidence that he has continued to engage in such activity in Australia despite being free to do so. Further, as the applicant was so aware of the dangers as a [occupation] of following his religion, it is unlikely that he would openly evangelise to the [workers] that he [contacted] during the course of his work for [his employer]. While the applicant claimed that he had sympathy for the life of the [worker], country information suggests that members of the Local Church in China are discouraged from engaging in broader social issues.¹ The Tribunal considers that they would be unlikely targets for his evangelism.

¹ Kindopp, J. 2004, *The Politics of Protestantism in Contemporary China: State Control, Civil Society, and Social Movement in a Single Party State*, 16 May, pp.443-447 and Lambert, Tony 2006, 'House-Church Networks: An Overview (Part 1)', *Global Chinese Ministries Newsletter*, March

26. Although the Tribunal some concerns, particularly given the proximity of incident to the arrival of the applicants' in Australia, it is accepted a possible that members of the applicant husband's congregation, including his mother, have come to the attention of the authorities on account of their Local Church beliefs since the applicant husband has left China. The applicant husband and the applicant wife have given consistent evidence about this incident, the Tribunal found them convincing and has given them the benefit of the doubt. The Tribunal also accepts that if arrested on account of Local Church activities it is possible that fellow church members would have been detained and imprisoned for certain periods. The applicant husband and wife also discussed the treatment that their remaining family in China have continued to endure as a consequence of authorities becoming aware that the applicant husband, his mother and the applicant wife were Local Church members. The applicant husband told the Tribunal that in addition to his mother regularly being questioned by the authorities and under intermittent surveillance, pressure was placed on his sister and brother in law to resign from their employment. His sister was also employed in with [his employer]. They are both in their [age range] and now struggling to find employment.
27. In regard to the delay of almost 12 months by the applicants in lodging the claim for protection the Tribunal accepts the evidence of the applicant husband and wife that they were worried about repercussions for family members still in China, afraid and confused about the process.
28. The Tribunal has assessed his claims, and his claims of the treatment of his fellow practitioners against independent country information. The Department of Foreign Affairs and Trade in their thematic report on unregistered religious organisations in China 2015 asserts that 'the government also considers several Christian groups to be "evil cults," including the Shouters'.² Further, The most recent sources available to the Tribunal, such as the US Department of State 2014 Report on International Religious Freedom – China also states that the Shouters are defined by the government as an 'evil cult' and are banned by law:

Certain religious or spiritual groups are banned by law. The criminal law defines banned groups as "evil cults," and those belonging to them can be sentenced to prison. A judicial explanation states this term refers to: "those illegal groups that have been found using religions, qigong [a traditional Chinese exercise discipline], or other things as a camouflage, deifying their leading members, recruiting and controlling their members, and deceiving people by molding and spreading superstitious ideas, and endangering society." There are no published criteria for determining, or procedures for challenging, such a designation. The government maintains a ban on the Guanyin Method Sect (Guanyin Famen or the Way of the Goddess of Mercy), Zhong Gong (a qigong exercise discipline), and Falun Gong. The government also considers several Christian groups to be "evil cults," including the Shouters, Eastern Lightning, Society of Disciples (Mentu Hui), Full Scope Church, Spirit Sect, New Testament Church, Three Grades of Servants (or San Ban Pu Ren), Association of Disciples, Lord God Sect, Established King Church, Unification Church, Family of Love, and South China Church.³

29. According to the United States Commission on International Religious Freedom (USCIRF), on 3 June 2014 the Chinese government published a list of 20 'cults' and began 'a sweeping

² Department of Foreign Affairs and Trade 2015, *DFAT Thematic Report: Unregistered religious organisation and other groups in the People's Republic of China*, 3 March, at 3.21

³ US Department of State 2015, *2014 Report on International Religious Freedom – China*, 14 October, p.4

crackdown' against them.⁴ As part of the 'anti-cult' campaign, the government 'issued a directive to "eradicate" unregistered churches over the course of the next decade'.⁵

30. A *Foreign Policy* 6 June 2014 report on the May 2014 killing of a woman in a McDonald's restaurant in Shandong province by six members of The Church of the Almighty God, indicates that the State utilised State media to announce a campaign against illegal religious sects:

Chinese state media has responded to the violent murder and subsequent outcry with a steady drumbeat of articles calling for a crackdown on religious sects. On June 3, state news agency Xinhua ran a front-page piece providing the names, descriptions, and "social harms" of 14 officially identified "evil religions," or cults. In addition to the Shouter's Cult, affiliated with the Church of Almighty God, other cults include the Apprentice Society, founded in the central province of Shaanxi in 1989 and which the article claims now boasts around 300,000 followers.⁶

31. China Aid Association reported on 8 October 2013 that three inner Mongolians from the Shouters were convicted of 'forming and using a cult organisation to undermine the implementation of the laws of the State:

According to Article 300 of China's Criminal Code, this crime is punishable by a "fixed term of imprisonment of not less than three years but not more than seven years." However, Hu was sentenced to a nine-year prison term and Wen Liu were both sentenced to eight years.

The three Christians are part of a group called the "shouters", a controversial offshoot of the indigenous Chinese church founded by Watchman Nee in the 1920s and 1930s.

Hu, Wen and Liu were taken into police custody on 4 July 2012 for distributing several hundred copies of evangelical literature published by the Shouters and the Local Church.⁷

32. In 2014 seven 'Shouters' were arrested in Henan province and charged with using a 'cult to undermine law enforcement' under 'Clause 1 of Article 300, Clause 1 of Article 25, Article 64 and Article 61 of the "Criminal Law of the people's Republic of China'. Their sentences range from three to seven and a half years in prison.⁸

33. An ABC Radio Australia 27 March 2012 report further indicates that the Chinese authorities are concerned with the distribution of non-sanctioned religious material in China;

'38-year-old Li Guang Qiang belongs to an evangelical group called the Shouters. He's been in detention in southeastern China since May last year after allegedly trying to deliver thousand bibles to Chinese Christians. Mr Li has been charged under China's tough new anti-cult laws, according to human rights groups based in Hong Kong that are trying to raise the case with authorities. An American embassy official in Beijing confirmed the US ambassador to Beijing had met the assistant foreign minister earlier in the week, to register the

⁴ United States Commission on International Religious Freedom (USCIRF) 2015, *USCIRF 2015 Annual Report – China*, 30 April, page 36, paragraph 1 CISEC96CF1685

⁵ United States Commission on International Religious Freedom (USCIRF) 2015, *USCIRF 2015 Annual Report – China*, 30 April, page 36, paragraph 1 < CISEC96CF1685

⁶ Allen-Ebrahimian, B 2014, 'Chinese State Media Warns Against 14 'Evil Cults'', *Foreign Policy*, 6 June CX1B9ECAB11561

⁷ 'Local government denies three Inner Mongolian Christians changed to appeal their heavy sentences for 'cult crimes.' China Aid Association, 8 October 2013 CX28129412798

⁸ 'Seven Christians in Henan Province Convicted of Cult Crimes, Sentenced to Prison Terms three to 7 1/2 years' 2013 China Aid Association 26 April. CX306720

government's strong concern. It's the second time Li has taken large quantities of the New Testament to China at the request of Shouter followers"⁹

34. The *China Aid Association* also reported that more than 20,000 religious practitioners were accused of being heretics and were taken into police custody during the Chinese Communist Party's 'anti-cult' campaign in 2014, with around 1,100 people convicted on criminal charges and sentenced.¹⁰ *China Aid* described the 2014 campaign against 'cults' as 'similar to the crackdown on Falun Gong in 1998'.¹¹ Many 'anti-cult' trials have been conducted in secret, with the accused forced to accept government-appointed lawyers and not allowed to hire their own legal counsel.¹² In addition, the Chinese government 'intimidated and pressured family members of those accused of so-called "cult activities" to not raise their legal cases and incidents of persecution publicly, thus many remain unknown'.¹³
35. Further, China Aid Association statistics indicate an increase in 'religious persecution' during 2014:
- In 2014, China Aid collected information on **572** cases of religious persecution across the country, which increased **300 percent** from 2013. Of the **17,884** people who were persecuted for their religion, more than **1,592** were church leaders, which represents a **140.89 percent** increase over the previous year. The **2,994** people who were detained constituted an increase of **103.67 percent** over the previous year. The CPC sentenced **1,274** people, a **10,516.67 percent** jump over 2013. There were **71** severe abuse cases, including verbal, mental, and physical abuse and torture, an increase of **343.75 percent** over the previous year. In those severe abuse cases, **242** people were abused, which demonstrates a **384 percent** increase compared to 2013.¹⁴
36. As to the future treatment of the applicant husband were he to return to China, the Tribunal is satisfied that the applicant husband has been and continues to be a genuine Local Church practitioner and is also satisfied that the applicant husband would continue to practice and advocate the beliefs of the Local Church were he to return to China now or in the reasonably foreseeable future. It is also accepted that the authorities in Harbin had arrested and detained several other Local Church members of the applicant husband's congregation and continue to question his mother as to his whereabouts. As a former army officer and government employee it is further accepted that the authorities in China may have a special interest in the applicant husband. Further, referring to the independent country information outlined earlier in this decision the Tribunal accepts that those religious groups considered by the Chinese authorities as evil cults, such as the Local Church or Shouters, have been targeted in an effort to eliminate these groups and as a result there has since mid-2014 been an increase in cases of religious persecution. Due to combination of these particular circumstances the Tribunal accepts that the applicant husband would have had a genuine fear of the authorities in China if he were to return. The Tribunal further accepts that Local Church members who come to the attention of the authorities in China are at risk of detention, imprisonment and severe punishment including physical and mental abuse in an effort to have them renounce their beliefs.

Applicant Wife

⁹ O'Byrne, T 2012, 'US protests at detention of Christian in China', ABC Radio Australia, 27 March CX0D38E8E20502

¹⁰ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.6, paragraph 5 CISEC96CF1731

¹¹ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.3, paragraph 2 CISEC96CF1731

¹² China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.7, paragraph 2 CISEC96CF1731

¹³ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.7, paragraph 2 CISEC96CF1731

37. In her evidence to the Tribunal the applicant wife's fears of harm in China arose primarily from the claim that her husband was wanted for questioning by the authorities on account of his role in organising Local Church meetings. She claimed that this may also lead to her arrest and that her family would be broken as neither her, nor the applicant husband, would be able to care for the applicant child.
38. The applicant wife was also able to demonstrate in her evidence to the Tribunal competent knowledge of the principles and practices of the Local Church. Her evidence was consistent and corroborated that of the applicant husband. Her regular attendance at Local Church services, prayer meetings, small group meetings, monthly enhancement meetings and annual conferences was supported by the witnesses [Mr B], [Mr D] and [Mr C] as well as several photographs.
39. The Tribunal is also satisfied that the applicant wife has been and continues to be a genuine Local Church practitioner and is also satisfied that the applicant wife would continue to practice and advocate the beliefs of the Local Church were she to return to China now or in the reasonably foreseeable future.

Conclusion in relation to applicant husband and applicant wife

40. On the basis of the evidence of the applicant husband and wife and the independent country information the Tribunal accepts that Local Church members who come to the attention of the authorities in China are at risk of detention, imprisonment and severe punishment including physical and mental abuse in an effort to have them renounce their beliefs.
41. The Tribunal accepts that the applicant husband has already come to the attention of authorities in China. The Tribunal accepts that if were detained by the authorities in China, the treatment of the applicant wife and the applicant husband would amount to serious harm and the fears of the applicant husband and the applicant wife in this respect are well founded. The Tribunal also considers that the serious harm which the applicant husband and applicant wife face involves systematic and discriminatory conduct as required by s.91R(1)(c) of the Act, in that it is deliberate or intentional and involves selective harassment and that the religion of the applicant husband and the applicant wife is the essential and significant reason for the harm that they fear.
42. As the applicant husband and applicant wife fear of persecution is from the Chinese authorities, the Tribunal finds that they would not be afforded adequate state protection from the harm they fear. Nor does the Tribunal accept that the applicant husband or applicant wife would be able to avoid the harm they fear from the Chinese authorities by relocating elsewhere in China.
43. For the reasons given above, the Tribunal is satisfied that the first named applicant husband and the second named applicant wife are persons in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant husband and applicant wife satisfy the criterion set out in s.36(2)(a).

Applicant Child

44. The applicant child has made no claims independent of his parents. However the Tribunal is satisfied that the applicant child is a member of the same family unit as the applicant husband and the applicant wife for the purposes of s.36(2)(b)(i) of the Act. As such the fate of his application depends on the outcome of his parent's application. It follows that the applicant child will be entitled to a protection visa provided the criterion in s.36(2)(b)(ii) of the Act and the remaining criteria for the visa are met.

DECISION

45. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first named applicant and second named applicant satisfy s.36(2)(a) of the Migration Act; and
 - (ii) that the other applicant satisfies s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first and second named applicants.

Penelope Hunter
Member