

**1313896 [2013] RRTA 876 (10 December 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1313896  
**DIBP REFERENCE(S):** CLF2013/51010  
**COUNTRY OF REFERENCE:** China (PRC)  
**TRIBUNAL MEMBER:** Wan Shum  
**DATE:** 10 December 2013  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. The applicant, who claims to be a citizen of the People's Republic of China, applied to the Department of Immigration for a Protection (Class XA) visa [in] February 2013 and a delegate of the Minister for Immigration refused to grant the visa [in] December 2012.
2. The applicant has applied for review of that decision. The issue is whether he meets the criteria for the grant of a protection visa.
3. The applicant appeared before the Tribunal [in] December 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

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.
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. 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').
7. 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 expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

8. The Tribunal has sighted the applicant's passport from the People's Republic of China (China) as he presented it to the Tribunal at the hearing. In the absence of any evidence to the contrary,

the Tribunal finds that the applicant is a national of China and has assessed his claims against China as his country of nationality.

9. The applicant claims that he will be persecuted if he were to return to China because of his religion. He claims to be a Tibetan Buddhist.
10. The applicant claims that he grew up [in] Shaanxi Province, and became interested in Tibetan Buddhism as his mother is a Tibetan Buddhist. He told the delegate at interview that he became Tibetan Buddhist in January 2007, which is prior to his arrival in Australia in March 2009 as the holder of a Student visa. The applicant claims that he returned to China in December 2012 because his maternal grandmother died, although he had difficulty recalling the exact date of her death at the Tribunal hearing. He claims that, as a Tibetan Buddhist, he went to Lhasa in January 2013 to pray for his grandmother. The applicant claims that he is of interest to the Chinese authorities as he forgot to take off a badge with a picture of the Dalai Lama on it when he was leaving the temple in Lhasa. He claims that he was approached by the local police and taken into custody and later to a mental institution because he refused to sign a document denouncing the Dalai Lama. The applicant claims that they tied him down and injected him with drugs and subjected him to electric shocks. He claims he was released on condition that he not leave his hometown and his family were blackmailed by police for CNY 300,000. He claims that he left China illegally through entry into Hong Kong from mainland China [in] January 2013 and then used his Chinese passport to enter Australia [in] January 2013.
11. The Tribunal has considered the applicant's claims and the evidence but is of the view that his claims are lacking in credibility, for the reasons are set out below.
12. The Tribunal considers the applicant's description of how he departed China was confused and notes that it has changed throughout the application process. The applicant claimed that he had to obtain a fake permit to enter Hong Kong as he was not permitted to leave Xian by the local police. At interview, as acknowledged by the applicant in a letter to the department, he told the department officer that he did not know the name on the fake permit. However, in the letter he wrote to the department following the interview, he referred to being very confused about his entry and leaving Hong Kong at the interview and acknowledged that he did not give a clear explanation. He stated that the fake permit was obtained in his own name but he had not said so at interview because he was nervous, and only realised after he went home that he was missing a part between entry and leaving. He stated that he used the fake permit to enter Hong Kong and then used his passport which has a student visa to buy tickets and get a boarding pass "because they need to check a visa when give a boarding pass to passenger". Before the Tribunal he claimed that he had obtained a fake permit because he was afraid to leave mainland China with his own passport because he was not allowed to leave Xian. He was unable to satisfactorily explain why he would obtain a fake permit in his real name if he was concerned about being able to leave China. When put to him that using his own name did not appear to serve the purpose of remaining undetected when he departed China for Australia by leaving from Hong Kong, he claimed that many people in China had his name and that as long as the serial number was not the same he could get through. He could not explain the how the serial number was relevant and was not able to recall whether the permit included other personal details, such as his date of birth. He insisted it was a fake permit because he had not applied for the permit himself, he had only provided a photograph to the person who arranged his entry into Hong Kong, who was a former student of his father's. The Tribunal considers that, if he was genuinely prohibited from leaving Xian such that he had to obtain a fake Exit-Entry Permit for Travelling to and from Hong Kong and

Macao, he, or the person assisting him, would not have obtained a fake document bearing his actual personal details to leave China and enter into Hong Kong.

13. When questioned further about this matter, the applicant then claimed that the permit needed to be in his real name because it had to be consistent with his air ticket, which he needed to show to go through customs. However, his previous submission was that he used his passport to obtain the air ticket and obtain the boarding pass, and not the permit. More significantly, his explanation is not consistent with publicly available information before the Tribunal that a person requires a travel document and boarding pass to be cleared through Hong Kong Airport Security Check and Immigration<sup>1</sup> and that passengers are required to present a passport when checking in for a flight to Australia.<sup>2</sup> The information from the Immigration Department from the Government of Hong Kong Special Administrative Region and Airport Security from Hong Kong International Airport indicates that an Exit-Entry Permit into Hong Kong allows the holder to enter Hong Kong but it has no relevance for onward travel from Hong Kong to a country outside China and its Special Administrative regions. It is not a document for travel and is not a passport. The Tribunal thus does not consider his explanation for the fake permit being in his real name because it needed to be consistent with his air ticket is true.
14. Given his failure to give a plausible explanation as to why he would obtain a fake Exit-Entry Permit in his own name to depart from Hong Kong, and his inability to give a consistent account of what documents he showed on his entry and departure from Hong Kong, the Tribunal does not accept that he did obtain a fake Exit-Entry Permit. Having regard to its other concerns outlined below, it does not consider that he is of any interest to the Chinese authorities.
15. In respect of his claims as to what [occurred], the Tribunal has serious concerns that he even travelled to Lhasa.
16. The only evidence presented that he travelled to Lhasa was a train ticket from Xian to Lhasa dated [in] January 2013, departing at [a certain time on a particular train]. While he was able to tell the Tribunal that the train journey was more than 30 hours, which is consistent with the information before the Tribunal in relation to this journey for [the train] that it takes about 33 hours<sup>3</sup>, he claimed that he arrived in Lhasa [in the morning] on at least three occasions at the hearing, and added that he remembered it was morning when he arrived in Lhasa. However, it is not possible that he arrived [in the morning] on a 33 hour journey when he is claiming to have departed from Xian [in the morning]. If the applicant had travelled to Lhasa, the Tribunal would expect him to be able to accurately recall at what time of day he arrived. And while the applicant explained his failure to recall certain details at the hearing because of the beating he was subjected to in Lhasa, he told the Tribunal that he was able to remember what happened to him before his arrest and at the end when he was sent back to Xian.
17. In addition to the above concern, the applicant's account of what occurred in Lhasa after he left the temple wearing the Dalai Lama badge has changed between the interview and the

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<sup>1</sup> Hong Kong International Airport n.d., *Airport Security* <<http://www.hongkongairport.com/eng/passenger/departure/all/airport-security.html>> Accessed 31 October 2013 and Immigration Department, The Government of the Hong Kong Special Administrative Region n.d., *Arrangement for Entry to Hong Kong from Mainland China* <<http://www.immd.gov.hk/en/services/hk-visas/overseas-chinese-entry-arrangement/mainland-china.html#transit>> Accessed 31 October 2013. [Footnotes deleted].

Tribunal's hearing. Before the Tribunal he claimed that he was not beaten by the police until after he refused to sign the document against the Dalai Lama. He said they were not very tough at the beginning and just asked him to sign the documents. When asked to confirm that he was not beaten in any way before he was interrogated, he then said that they kicked him in the leg on the way to car but that it was not serious in nature. However, at the interview he claimed that after leaving the temple he was approached by 3 policemen who forced him to the ground and kicked in the head before being forced into the vehicle. The Tribunal considers these accounts differ significantly in terms of his claimed mistreatment, and considers being forced to the ground and kicked in the head to be more serious than his description to the Tribunal of being kicked in the leg. The applicant claimed when this was put to him for his comment, that this was his memory and he probably remembered wrong. He suggested that because so many bad things had happened to him in Lhasa he had failed to remember this detail. The Tribunal does not accept his explanation for his failure to consistently recall what had happened when he was first approached by police officers. It considers that the applicant would recall the incident of being forced to the ground and kicked in the head before being forced into a vehicle by police if it had occurred. While the Tribunal has noted above that the applicant told it that he could not remember what happened in Lhasa clearly because he was beaten up during that period; he appeared to rely on this to explain difficulties in recalling details, including the date of his grandmother's death and the date he arrived in Lhasa, which was [in] January 2013. It appears to the Tribunal that he was simply attempting to cover up his failure to present a consistent account of what occurred.

18. Furthermore, in the Tribunal's view the applicant was unable to give a convincing explanation as to why he travelled to Lhasa, on a 30 hour journey (over 60 hours return), to pray for his grandmother who was not a Tibetan Buddhist herself. He suggested that it was preferable to have a live Buddha in the home on such an event but given that this was unrealistic because of the restrictions enforced by the Chinese authorities, he thought it was reasonable for him to pray himself. However, the applicant could not give a satisfactory explanation why he could not have done this at [a particular temple], which is a Tibetan Buddhist temple located in his hometown of Xian city. The applicant acknowledged that there was a Tibetan Buddhist temple in Xian but said that it was important for him to go to Lhasa as a Tibetan Buddhist, because even though there are many Tibetan Buddhist temples throughout mainland China, a Tibetan Buddhist still needed to go to Tibet. However, whilst it may be significant for a Tibetan Buddhist to journey to Tibet at some time in their life, the applicant's claim was that he had gone there for not for the purposes of a pilgrimage but to pray for his dead grandmother. In any case, given its concerns outlined above, the Tribunal does not accept that he did go to Lhasa.
19. It thus does not accept his claims to have been arrested, beaten and detained in relation to his journey to Lhasa; forced to sign a confession; when he refused, taken to a mental hospital or mental ward where he was drugged and subjected to electric shocks; escorted back to Xian where he was detained further and forced to sign a document. The applicant presented an untranslated copy of the said document to the Tribunal which he claims states that he agreed to the charge and the penalty. The Tribunal does not consider the submission of this document overcomes its serious concerns about the applicant's claims, and even if it were to accept the content of the document based on the applicant's oral evidence at hearing, according to various sources, all kinds of fake documents can be obtained in China.<sup>4</sup> The

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<sup>4</sup> US Department of State 2012, *2011 Country Reports on Human Rights Practices – China*, 24 May, Section 4 <[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186268#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186268#wrapper)> Accessed 30 May 2012 <Attachment>; Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1349*

Tribunal does not accept that his family were blackmailed and paid RMB 300,000 for his release or that he was required to obtain a fake Exit-Entry Permit to travel to and enter Hong Kong in order to depart for Australia.

20. The Tribunal has not accepted his claims as to why the Chinese authorities have a particular interest in him. As to whether he would suffer persecution for his religious beliefs as a Tibetan Buddhist, given its concerns about his credibility, the Tribunal has doubts as to whether the applicant is a Tibetan Buddhist at all. However, the Tribunal considers that he was able to respond to some of the delegate's questions at interview regarding Tibetan Buddhism. The applicant told the Tribunal that since arriving in Australia, he has continued to practice his religion by reading the scripture, sometimes going to temple and sometimes meeting with other Tibetan Buddhists. He told the Tribunal that he attended [a temple] once every two to three months, however this is not a Tibetan Buddhist temple. He also stated that he met other Tibetan Buddhists there or in [a particular suburb] where they would carry out fire offerings to a different Buddha every month, although he advised that he did not attend every month, only when he was available. When it was put to him that [the temple] was not a Tibetan Buddhist temple, he agreed but said that they still worship the same Buddhas and there were no Tibetan Buddhist temples here. The Tribunal considers his religious practice to be limited and he did not advise the Tribunal of attendance at any other event relevant to Tibetan Buddhism, although he mentioned to the department officer that he had a ticket to attend the Dalai Lama's talk in June 2013.
21. Even if the Tribunal were to accept that the applicant was a Tibetan Buddhist, it does not accept that the applicant will suffer persecution because of his religion if he were to return to China in the reasonably foreseeable future. This is because he told the Tribunal at hearing that nothing happened to him because of his religious beliefs before he came to Australia and he said that his mother, who he claims is also a Tibetan Buddhist, has never had any problems. The Tribunal considers that he would be able to continue to practice his religion in the way that he did in the past, and notes that his evidence about his current practice in Australia is limited to occasional attendance at a Buddhist temple and at a Tibetan Buddhists' home in [a particular suburb]. Even if the Tribunal accepted that he did attend the Dalai Lama's talk in June this year of which there is no evidence other than his assertion, it does not accept that the applicant would have come to the attention of the Chinese authorities based only on his attendance at that event.
22. The Tribunal considers that the applicant's religion does not give rise to a real chance that the applicant will suffer serious harm if he were to return to China now or in the reasonably foreseeable future. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution because of his religion, real or imputed, or for any other Convention related reason should he return to China now or in the reasonably foreseeable future.
23. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). Given that the Tribunal has found that the Chinese authorities have no interest in the applicant for the reasons outlined

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– *China: RRT Information Request: CHN39550*, 9 December <Attachment>; Li, J 2010, 'Forging a business', *Global Times*, 12 November <<http://business.globaltimes.cn/comment/2010-11/591509.html>> Accessed 22 June 2010 <Attachment>; Immigration and Refugee Board of Canada 2009, *China: The manufacture, procurement, distribution and use of fraudulent documents, including passports, hukou, resident identity cards and summonses in Guangdong and Fujian in particular (2005 – May 2009)*, CHN103134.E, 24 June

above, the Tribunal does not accept that he would be persecuted, detained or killed by the Chinese government because of his religion.

24. On the information before it, the Tribunal finds that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China or another country, there is a real risk that he will suffer significant harm.
25. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a). The Tribunal is also not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
26. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

### **DECISION**

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

Wan Shum  
Member