

**1002315 [2010] RRTA 667 (6 August 2010)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1002315
<b>DIAC REFERENCE(S):</b>	CLF2009/147403
<b>COUNTRY OF REFERENCE:</b>	China (PRC)
<b>TRIBUNAL MEMBER:</b>	Pamela Summers
<b>DATE:</b>	6 August 2010
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **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 and Citizenship 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), arrived in Australia [in] October 2002 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] March 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

9. 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. 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.

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

### **CLAIMS AND EVIDENCE**

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.

#### **Protection visa claims made to the Department**

20. [The applicant] lodged her Protection Visa application [in] November 2009 giving her name as [name deleted: s.431(2)] born [date deleted: s.431(2)], Chinese Citizen. She also gave an alias, [alias deleted: s.431(2)], born [date deleted: s.431(2)], Korean Citizen. She provided to the Department a Korean passport with which was associated a UD976 Electronic Travel Authority (Visitor) visa on which [the applicant] claimed to have entered Australia [in] October 2002. The Korean passport was retained by the Department and has not been sighted by the Tribunal although a photocopy of the biodata page of the passport is on the Department's file.
21. In her Protection Visa application, [the applicant] claimed to be [age deleted: s.431(2)] and to have been born in Shenyang City, Liaoning Province, China. She is of Korean ethnicity and stated that her religion is Christianity. [The applicant] stated that she had completed 11 years of education in 1990. After this, from January 1991 to September 1993, she was a worker in a [factory]. She married in 1993 and has one child, a daughter born in [year deleted: s.431(2)] and presently residing in China. Her parents also remain in China.
22. The applicant's husband is in Australia. The applicant sought to include him in her Protection Visa application but in February 2010, the Department advised the applicant that her husband was barred under s48A of the Act from making a further application for a Protection Visa as he had been previously refused a Protection Visa in 1999.
23. [The applicant] gave a single residential address in [District A] of Shenyang City from October 1999 to September 2002, when she departed China for Australia.
24. [The applicant] also provided a detailed statement to the Department. In it, [the applicant] stated that she has been persecuted by the Chinese government for her Christian belief. She said that her husband was arrested because he participated in the pro-democracy campaign and he escaped to Australia in 1995. She gave birth to her daughter in [year deleted: s.431(2)] and life was hard for her as she had to look after her child by herself. After her husband's departure, the police often came to her house searching for him. She suffered from depression and her friend [Ms A] often visited her home to help her by telling her stories from the Bible. She began to believe in Christianity and accepted the Lord. She attended family church gatherings held in the brothers and sisters' homes. Quite a few brothers and sisters were imprisoned or intimidated or forced to write guarantee letters giving up their religion. To avoid arrest, they organised their gatherings cautiously and changed the location often.

25. She wrote that [in] December 2001 she attended a gathering at [Ms A]'s home where more than twenty brothers and sisters were present along with two evangelists from Korea. When the evangelists were reading the Bible, the police burst into the room. They alleged that the gathering was illegal and searched the room. Their Bibles and Bible learning notes were confiscated, and they were taken to [District A] police station. They were separated into groups of 6 and each person was interrogated by two policemen. The applicant told them that their gathering should not be illegal as they did not harm the interests of their neighbours or others, and they did not hold it in a public place. She was punched and kicked on the basis that she did not regret her behaviour. The police alleged that the Korean pastors were actually spies and asked who invited them. The applicant said that she did not know. As a result, she was detained for 15 days in the detention centre for attending an illegal gathering [Ms A], their organiser, was detained in the re-education through labour centre for three months. The two Korean priests were banned from travelling back to China for the next two years. The applicant heard that one of the priests felt ill during interrogation but was not permitted to take his medication.
26. The applicant wrote that she was angry and did not understand why the underground church was declared illegal by the Chinese government. She sobbed out her suffering and pain to her husband when he called from overseas. He advised her to come to Australia but at first she was reluctant because their daughter was still too young. Her husband said they would be able to arrange for their daughter to come to Australia later on so she paid RMB 90,000 to an agent to arrange for her to travel to Australia in May 2002. She was given the Korean passport by the agent and arrived in Australia and was reunited with her husband.
27. In Australia, she wrote that she felt true democracy and freedom and can believe freely in God without fear of arrest. She and her husband have integrated into Australian society and are willing to make a contribution to the country by their hands. She does not understand why her husband's protection visa application was refused. She wrote that the democracy campaigners still cannot return to China. She has not seen her daughter for 7 years and they really want to go back to China but they are more scared of being persecuted if they go back.
28. She said that her husband's failure in his protection visa application had a negative impact on her motivation for apply for protection herself. Her hope was reignited when she heard that the current Australian government strengthened its protection for refugees.
29. [The applicant] attended an interview with the delegate [in] February 2010 and the Tribunal listened to a recording of that interview. The evidence the applicant gave at that interview has been summarised as follows:

The applicant said that the last time she came to the Department's offices, they took away her Korean passport. She has her Chinese ID card in her true identity. Asked about the translation of the ID card stating that her nationality is Korean, the applicant said that she is from the Korean minority but is a PRC citizen, and is not a Korean citizen. She gave her address in Liaoning Province, China.

Asked to relate everything that happened to her in China from 1996 to 2002, the applicant said that in 1996 her husband left her home and came to Australia because he had conducted pro-democratic activity and was persecuted. He left in May that year and didn't tell her anything. He called her in October and said he was in Australia. After he left, because her husband was not around and her child was only [age] years old, the officials from the village came to her house quite a lot asking about her husband. After her husband left she didn't really know why but her child got a lot of high fevers, mostly in the evenings. She was worried about her future and she was under great pressure and was depressed. She didn't like to share her feeling with others and became very inward. Her child had

fevers from time to time and she had to take her to hospital in the evening and bring her back – it happened quite often.

She took her to hospital to undergo a health examination but they couldn't find anything. Her sister in law said she should take the baby to the temple and pray there. Because there was no Buddhist temple nearby the sister in law took her to another suburb of Shenyang City - they went there together and she prayed to Buddha and told him her story. They went home and her child was fine but she got a high fever later that day which was severe and lasted for several days. Her husband's aunt worked in a small hospital and said she couldn't find anything wrong with the child. She used medical alcohol to clean her body and after that she became OK. After these incidents of her child being sick and her husband leaving her she felt great pain.

She graduated from [college] and one of her friends opened a shop in their village so she went to help the friend and do some small tasks there. She had to make a living. Sometimes she had to work until very late. Physically and mentally there was a lot of pain for her for those two years, and her child's sickness still happened from time to time.

Her friend [Ms A] was a Christian because of her mother in law. [Ms A] is her neighbour and came to her home a lot and witnessed what happened to her. She told Christian stories to her. The applicant remembered one night her child got a high fever again and she put the light on. [Ms A] saw the light and came to her home and stayed with her during the night. She stayed while her child was having the injection. She also helped her a lot such as taking care of the baby. She told [Ms A] her true feelings.

The applicant said she is from a Christian family: her parents, her grandma and her grandma's mum were all Christian. This was the case even before the applicant was born: she had a three year old brother before she was born who died from acute pneumonia; her mother was 7 months' pregnant with her but because of the shock, she had an early delivery so the applicant was born prematurely. She was born at home because there were no nearby hospitals at that time. Her father sent her to the nearest hospital. They were a poor family at that time. When she was sent to hospital, the doctor told her parents that the chance of survival was very low. They could not guarantee she would survive. Her father took her back home because they were poor. Her grandma and her grandma's mother who were Christian said there was no other way but to leave it in God's hands. Her grandma had two sons and no daughters so she liked the applicant a lot. She heard from her parents and her grandparents that they prayed to God. As she was told, it was like a miracle that a missionary came and at that time, only 3 people believed in Christianity besides this missionary. The missionary didn't know they were a Christian family – later he knew this – but he came to their home. The family told him the applicant's story and he prayed for her and told her family to put her in God's hands. He suggested that they should baptise her and asked permission from her parents. There was no sign of her surviving at that time and because they were a Christian family they agreed. After she was baptised, amazingly she survived.

She couldn't remember clearly but they moved once when she was about 6 years old and Chairman Mao had just passed away. The Government was very strict with religious activity. The Grandma's mother and the Grandma sometimes missionised and had gatherings at home. When the local government knew this they punished her parents and her grandmother. The punishment wasn't a one time thing – it was everyday. Her father was the oldest son of the family, and he thought they couldn't stay there for long. It was a tragedy for her family: he found out that they should move to a remote area. He was an expert in rice. But even then they had to have household registration. He looked for places that were remote and would accept them. One day he found a place – the place where she grew up. Liaoning Province, Liaoyang City, [County and Village deleted: s.431(2)]. The officials in that village were ready to accept them so they moved to that place. Her grandma's mother and her grandma began to missionise to the Korean minority. She still has the memory of that time. For the other families, Spring Festival is big but for them Christmas is the big holiday. The other children wanted to know what Christmas meant. She told them that Christmas Day is when Jesus was born. She shared the candies with them. She went to school when she was 8 years old. The education

she received was Godly. Because she looked beautiful and studied hard, the teacher gave her a position on the study committee. When she was 9 years old, the teacher told them they were the flowers of the country and they should not be superstitious. Some of the classmates visited her home from time to time and saw her grandma read this book. They told what they saw to the teacher and asked if this was superstitious. The teacher said of course it is because there is no God, and no Ghost. The applicant was very unhappy. She was ambitious. She talked with the classmate who told the teacher what he saw in her home, and asked why he told on her. Whatever it is we have to report it to the school, said the classmate They argued and started fighting. The teacher took them to the school office and she was told that she held a position on the study committee so she should not have made this issue bigger. Her teacher dismissed her from the study committee. For her as a child this was something that put hatred in her heart. She came home and told her parents she would never believe in God again.

Her great grandma passed away when she was 9 years old at the age of 83. Her grandma liked her a lot and they were from the North. She can tell even now that she had a closer relationship to her grandma than to her mother. She shared a bed with her grandma till she was 16 so they had a very close kinship. She missed her a lot when her grandmother went to visit her relatives and stayed away for one night or two nights. They had a small railway station in her hometown. She would go there and wait for her grandma to return. Her grandma told her that God created the heaven and earth. The applicant told her he did not, it was nature Grandma said that human beings were made by God but the applicant said they came from monkeys and they argued even though they had a close relationship.

When she was 14, her grandma was informed on by neighbours for having a gathering and was taken away by the [County] police. Her grandma was interrogated for several days and they were told that they had to pay RMB 300 to bail her out (it was a big sum of money for her family). Her father borrowed from everywhere and bailed her out. She cried with her grandma when she came home. She told her grandma to stop believing in God or else she would be arrested again. She still believed in Christianity. As for the applicant, after graduation she found a job and met her husband. She told [Ms A] this story of her family.

[Ms A] said she could hardly believe that the applicant was from a real Christian family. If so, she should really believe in the Lord. [Ms A] convinced her so she began to read the Bible. Because she grew up in a Christian family, her parents read the Bible but she had not. Her grandma told her she was a child from God and he would protect her. But because of the incident at school, she couldn't accept what her parents and family told her. Her education was under Party control and she didn't believe such a good person exists. [Ms A] tried to help her when she was at her worst: she felt really depressed by that time; her parents didn't know what was happening to her because after she got married she lived in Shenyang and her grandma and parents lived two hours away in Liaoyang and didn't know what happened to her. So the applicant began to read the Bible starting from the Old Testament. When she read the full gospel she knew that God tried to get rid of their sins and she found she had a second life. She thought it was a sin not to have believed in him before. Because her child was sick from time to time, one night it was October 1998, was the first time she prayed to God ("my Holy Father, my God"). It was like she hadn't seen her parents for ten years. She prayed and said she knew she was a sinner and prayed for His forgiveness. "If you are real, if you are true, please take away the illness from my daughter and I will believe in you my whole life." It was like a miracle – a few days later her daughter was healthy. She thought she should believe in God.

After that she started to attend the family gatherings with [Ms A] because she didn't know much. Any confusion or misunderstanding she would discuss with [Ms A]. They read the Bible together and sang praising songs together. The officials from the village warned them several times but they still believed in God. After that she was converted and felt comfortable giving her life to God. Her daughter never had a fever again or the illness. She thought she should believe even deeper in God. She read the Bible quotes: Jesus said don't worry for tomorrow; you only worry about today. She felt this was a quote for her: she should not be so depressed and she should relax. She felt optimistic again

and her child was healthy. She became another person. Once she visited her parents and told them she was Christian. Her grandma was so happy that she jumped. She said she knew this. She had prayed for it every day. She told her parents her pressure after her husband left. They were happy for her conversion to Christianity. Though her husband had left, she still felt happy because she felt the Lord was watching her.

She said she is scared that her daughter in China might be persecuted by the Government if she says something.

December [date], 2001 was a shameful day for her. On that day about 20 people were gathering at [Ms A]'s home which was at a remote position of that village. They just built a new big home. Sometimes they had the gatherings at other homes. About 20 people were there – she couldn't remember clearly – that week was a few weeks before Christmas and usually they had 7 or 8 people together but because on that day two missionaries from Korea were there as well and other believers from villages around went to [Ms A]'s on that day. As this was a special occasion, they managed to get some non-believers there as well. Usually they had a gathering from 9am to noon. In the group there were Han and Korean ethnicity. When the Korean missionaries were reading the Bible, there came the officials from the village. Policemen from the police station and with them two small vans surrounded [Ms A]'s home. They broke the door and came into the house. They showed a warrant saying it was an illegal gathering and no-one would escape. They handcuffed people together, two by two. They would send them to the Police station. A neighbour called [Ms B] in her sixties had her left hand cuffed to the applicant's right hand. She had her four year old grandson in her arms. The police took them away.

They thought they would be sent to the local police station but they were sent to the [District A] police bureau. One policeman said you people were conducting illegal activities and you brought the missionaries from Korea and that's even worse: without government permission you cannot do so. So they put them into groups of six people. They wouldn't let them sit and asked them to put their hands at their back. Two police interrogated each single person. When the police interrogated her she said that she didn't believe it was illegal because they didn't disturb their neighbours or their society. They started beating her up. They asked her, you are Korean minority, did you invite these missionaries? She said she did not. They used a powerful lamp against her and asked her to admit it. She refused to admit it because she did not invite these two missionaries. They said they didn't believe her and hit her with their police stick. Because she didn't admit anything, they sent her into custody. In custody, that's the day she will remember her for all her life. For 15 days it was really simple: all the inmates were female; the room she was in was a bit bigger than the interview room; they pushed her in with about 20 inmates; they looked like battered persons; she was scared; one person asked her how she came in; she refused to answer and squatted in a corner of the room; those people surrounded her and without saying a word started beating her; they told her because she was the last one to come in and this was the rule; she was very angry. They didn't give her any food. They had to pee in that room. They had 3 chances to go to the toilet in another room. It was about noontime (she had no watch). She was cornered in that room by a person who told her to come over to her and do some massage. She ignored that person and didn't say anything. They grabbed her hair. They started beating her again. They told her this is our boss, if you refuse her you will be beaten up. The so called big boss said that she heard the applicant was a Christian but there were more religions than you can believe in, so why believe in Christianity? She assumed the police must have said something to the big boss and were trying to ask her to quit Christianity. She was on the ground and they beat her. She had no memory of that moment. The big boss was smoking and put the cigarette out on her wrist from which the scar is still visible now. That moment she will remember her whole life. For the 15 days, her mother in law came to visit her with the child. They brought a lot of stuff and gave it to the Police. Finally when that stuff got into the room, people in the room robbed everything and she only got two sausages. This is not a life that a human being can take.

15 days later the policemen showed her an apology letter and said she had to sign this as it was the regulation. She had to sign a letter to stop believing in Christianity and she would be released.



Because she could not live such a life in the prison, she signed the letter. Her father in law paid RMB 2000 for her release.

When her husband called her she told him and he suggested she should go to Australia. By that time her daughter was 7 years old, poor child. Her father left her when she was [age] and the applicant felt she could not leave her again to go to another country, but her husband told her Australia is very democratic and you can enjoy freedom of religion. He told her that if she stayed in China she would be persecuted again. Her parents and grandma in Liaoyang thought she should go to Australia as well. They tried to persuade her to go and told her they would look after the child. So she decided to leave China.

She had to get a passport to leave China. She tried to look for one because to get a passport you have to get a stamp of agreement from the police. Because of her record of being in custody once they refused to stamp her Police check. Through an agent, she told them her story and that she wanted to go to Australia but didn't have a passport. The agent told her that she could only get a passport by getting someone else's passport and they could arrange this. She spent RMB 90,000 on this. She prayed to God what she thought in her heart. She prayed to please let her get to Australia safely. In October 2002 she got here safely and was united with her husband.

Asked what part of the Bible the applicant used to read with [Ms A], the applicant said they read the New Testament most of the time about God sending his Son to save human beings. The four gospels was what they read most of the time.

Of the Bible stories that [Ms A] used to tell her, the applicant said there were many including the story of how Mary gave birth to Jesus and the king tried to kill Jesus at that time. The father and Mary took Jesus to Egypt. They returned to the place, Nazareth, where Jesus grew up. When he was 33 he was baptised. When Jesus came out from the water, the sky opened for him and the pigeons descended from the sky. There came a voice from sky, "You are my son" Jesus fasted for 40 days. The devils tried to test him. Jesus came through this, then the angels took care of him and served him. From Nazareth to Jerusalem, Jesus began to missionise. He had a lot of disciple – most of them were fishers. He cured a lot of people: a blind man; cripples who could walk again, people who could see again, paralysed people who could stand up again. He turned water into wine. He gave food to five thousand people. The left overs were put into 12 baskets. There were lots of stories of miracles. Jesus eased the waves. Jesus tried to missionise the Israeli people until one of his disciples, Judas, betrayed him and he was nailed on the cross. Three days later he was alive again.

She said that one quote from the Bible made a very deep impression: I am the Path, I am the Truth and I am the Life, without me, no-one can reach God. She said that this was a sentence she had thought about deeply: only through believing Jesus can we reach God and be immortal. She said that this was a quotation from Matthew's gospel, 6:34. Another quote she mentioned was, "I am the bread/food of life. People who come to me will never be hungry. Who believes in me will never be thirsty." She said this was from John's gospel, chapter 6:35.

The applicant said when asked that she has a Bible in Chinese but she also reads the Korean version. She got it from the church. Because she has moved a lot she has been to a lot of churches. She said that she goes to church on Sundays and she got the Bible the second year she was here at a Chinese church. She reads every day a few paragraphs if she has time. She reads in the evenings. Recently she was reading the part where Jesus was nailed on the cross and people put a crown of thorns on his head and put a purple robe on him and tore his clothes. They tried to humiliate him. There were two more prisoners as well and they verbally humiliated Jesus. They said if God does exist ask him to save you. You saved a lot of people. Why can't you save yourself? Even to the last moment, Jesus wouldn't say he was not the son of God. They gave vinegar alcohol to Jesus. Even when he was nailed on the cross he prayed for the people who nailed him on the cross. He said Father forgive them, they don't know what they are doing. This showed that Jesus was very generous in love.

The delegate said he was trying to determine whether the applicant had read these Bible stories for the purpose of getting a visa or because she was a practising Christian. Asked what else she could say about Mary's pregnancy, the applicant said that Jesus came from the Holy Spirit; the angels passed messages in a dream to Mary that she would have a baby in her body. She was surprised because she wasn't even married. Joseph and Mary married and the angels passed the message to Joseph that Mary would have a baby. Joseph was scared. The angels told him not to be scared. Of Jesus's baptism, the applicant said that he was baptised by John in the Lake of Galilee. John told Jesus that he had a higher status but Jesus said this should not be so and asked him to proceed. The delegate said that it was not correct that Jesus was baptised in the lake. The applicant said she read this a long time ago and in her memory it was like this. Asked about when Jesus calmed the waters, the applicant said that the sky opened for him and the Holy Spirit descended on him like pigeon. The delegate said this story was about his baptism and asked again about Jesus calming the waves. The applicant said that Jesus can control the ocean and the sea because all the creatures in the sky and on the earth are created by God and given to human beings. Jesus and his disciples were in the boat and Jesus was sleeping in the boat and the waves were big and heavy. The boat was going to sink. His disciples woke him and told him the boat would sink and asked for his help. Jesus told them they were not genuine believers. He said, "I am here, you should believe in me". Jesus scolded the waves and they became calm.

Asked how often the applicant attended house church gatherings in China, the applicant said that she went every week, once per week on the resting day, which means Sunday. It was from 9am to 12 noon. Basically [Ms A] organised the gatherings because she had better knowledge. The applicant held the gathering several times only at her house because she rented and her home was very small. Her daughter went with her to church gatherings.

At the gatherings they read the Bible and [Ms A] and she would pray together and sing Korean songs (such as "We Will Go with God"). It was the most beautiful blessing in her life. After the meeting, they brought dishes from their own homes and put them together and had food. Most of the time, they were the same people who attended. Sometimes there were newcomers as well. The Bible says Christians should bring non-believers.

Asked if she knew who would be at the gathering on [date] Dec 2001, the applicant said that she did and that people came from other places to their gathering place. A few days before, other friends informed them they were coming.

Asked who organised for the Korean missionaries to come, the applicant said it was [Ms A].

The applicant said when asked that she had never attended a state registered church. Firstly there is no such government church near her home and secondly they are under government control and they follow the Chinese Communist Party. They don't put God in top place.

Even if there was a registered church nearby, she wouldn't want to go because she has heard from others that they are under government control and don't have a lot of freedom. She said she also saw online that always express positive things about those public churches and avoid negative things. The positive is that the Chinese Government allows the existence of churches but the negative which they never say is that those churches are under their rules and regulations. She said that there are some things that Christians cannot practise or believe in. The government doesn't allow foreign missionaries such as those from Korea because they think that those missionaries are spies and they will harm or destroy the sole party control.

The applicant was asked why she did not take her daughter with her when she left China. The applicant responded that she could not take her daughter out because she would have needed a passport and a visa for her. The agent told her that the way to come to Australia is very dangerous and she would need to stop at several countries because she didn't have a visa.

The applicant said that she left China in July 2002. Because she had been once in custody, she couldn't get a five year passport, but she could get a certificate that can be used to travel to Hong Kong. She went to Hong Kong from the local entrance and exit port. The certificate was in her true name. She was asked a lot of questions at Customs about why she was holding a certificate instead of a passport. She told them she only went to Hong Kong to travel and they let her go. She thinks she left Hong Kong on July [date], 2002. She arrived in Melbourne on October [date] 2002.

Of what she did between July and October, the applicant said she spent 3 days in Hong Kong then there were people waiting for them and they sent her to Malaysia. She stayed in Malaysia for about two months. They said she had to wait for a while but didn't explain why. She stayed with another woman in the capital.

She said that she received the Korean passport when she was in Hong Kong.

Asked what activities she had been involved in since arriving in Australia, the applicant said that she goes to the nearest church on Sunday but she has to make a living to pay the rent so she has to work on weekends. Because she speaks Korean and because she doesn't have a tax file number, no employers wanted her.

She goes to a Korean church, the [Church A], at [Suburb A], every Sunday from 10am to noon. She goes by herself because she doesn't know anyone else. The pastor has a Korean name, [name deleted: s.431(2)]. There are a lot of brothers and sisters and she told them the first time she went there that she was from China. Between 30 and 40 people attend. The first church she went to was a better one. She has been here unlawfully so she has moved a lot. She lived in [suburbs deleted: s.431(2)] as well and now she lives in [Suburb B].

Asked how she celebrated Christmas last year, the applicant said she went to church in [Suburb B]. On that day, they gathered there, prayed and sang. At noon, they gathered at [location deleted: s.431(2)] and had a party there where they sang and had food. Her husband was with her. He comes to big festivals with her. He is "sort of" a Christian but is not baptised yet.

Of what she thought would happen if she returned to China now, the applicant said that she will continue her mission and she will return to the previous situation and will be persecuted again.

Of her employment in China, the applicant said that after her husband left home she had to make a living. She couldn't work full time because of her baby but she was able to help her friend. Her aunt's mother in law is a Japanese who cooks sushi sometimes. She opened a sushi shop in another community half an hour from her community and she sometimes went there to help out and her aunt paid her some money. The agent told her as that this wasn't a full time job so she didn't have to declare it. These jobs covered her and her daughter because her daughter didn't go to school then. Later when she was older and went to school, the applicant had to spend more time in the aunt's shop. Her husband sent money a couple of times but not that much, because he doesn't have a proper visa here so can't work properly.

Asked where her daughter was when the applicant was detained, she said that her daughter was playing outside. All of the attendees at the gathering were detained. When this happened, her daughter was scared (she was only 7 years old). Her mother in law told her later that her daughter cried and ran to the mother in law's house. The applicant's parents live two hours' train ride away in Liaoyang City. They have lived there since the applicant was 6. They hold Christian family gatherings. The applicant's daughter does not live with them; she lives with the applicant's mother in law. Her daughter usually visits the applicant's parents and lives with them for a month during her holidays. Her parents and grandmother support themselves by growing rice.

The applicant said when asked that she was converted to Christianity near New Year in 1998.

Of whether anything else happened to her family apart from the one incident of mistreatment she said that her grandparents received because of their religious beliefs, the applicant said her mother was with her grandmother and was sent to the police station when the applicant was 14 years old. They have not been arrested since then. The applicant said that her parents have a Bible at home and they continue to discuss it and sing songs at home.

Asked why, when she was mistreated by the authorities, the applicant did not go back to live with her parents and grandmother, the applicant said it was because the household she had then was at the place she got married. She said that in China you have to stay where you are registered. She did not apply to change her hukou because it was transferred when she married to the place where she was going to live and there is no policy to transfer back again. She said that she had not asked about this; she never considered it because she was married with her own family. At her parents' home, there is no spare space because her brother and his wife live there already. She wouldn't be able to move back. She never thought of doing that and her parents never mentioned it either.

Asked when she last attended a church gathering in China, the applicant said that it was in 2002 two weeks before she left, around mid July.

Of whether anything else happened to her apart from the 15 days of detention, the applicant said that because of this, they didn't gather at [Ms A]'s home anymore. They were very careful. In spring and summer we gathered in the outdoors, not in the villages but in the forest between the villages. They would find a space in the forest because they were afraid of being caught again.

The delegate put to the applicant that the authorities may have disturbed their [date] December gathering because there were foreigners there, but after that and before that, they were able to participate in church gatherings undisturbed. The delegate suggested that after her release from detention, she and her fellow house church members were of no further interest to the authorities. The applicant responded that they were very careful and gathered underground outside. The officials of the village hung around a lot around [Ms A]'s home and warned her not to let it happen again.

Asked if [Ms A] attended gatherings after the detention, the applicant said that she did but at other places and that she is no longer in China. The applicant said that she heard from her mother in law that [Ms A] went to the USA in the summer of 2000 with her daughter. She also tried to make contact with [Ms A] and her husband told the applicant that [Ms A] was not at home. She left China after the applicant did. She called [Ms A] from Australia and told her that the human rights, religious freedom and democracy here are unbelievable and that China cannot compare.

Concerning how she was able to raise the money for the agent and passport to come here, the applicant said that her mother in law and her aunt gave money and her husband transferred some and altogether that was the money.

The applicant said when asked that she was baptised soon after her birth. She was asked in Australia whether she baptised and she told them her story from when she was little.

The delegate put to the applicant that the Department has country information indicating that people who leave China illegally are fined on return according to the Chinese law. If a person is not an organiser of people trafficking, they would just be sent to administrative detention then required to pay an administrative fine. The delegate put to the applicant that if she were to return to China, and because of having a false passport, the authorities would question her and may put her in administrative detention to check her details and then she would have to pay a fine. The applicant responded that she is scared; if she returns some day, her daughter will be shot. She has been hiding for all these years and she wants a normal life. For all these years it's been really difficult. She said that she could not say how much she wants to be reunited with her daughter.

The delegate put to the applicant that she came to Australia in October 2002 and only applied for a Protection Visa in November 2009. The applicant responded that when she arrived in Australia she didn't know any Australian laws. Her husband came earlier and applied for refugee status but at that time the government didn't have such a law and he was refused. He told her that if she applied she also would be refused. When he applied he added her name and her daughter's name to his application. The previous government didn't have such a refugee policy and she didn't know much about this. In Australia she can attend activities at a church and believe in God freely which is like spiritual food for her. She said that her husband said he applied in about 1998 but she doesn't know the specifics. He was refused and for all these years they have lived like this.

Of what made her apply now, the applicant said that she got information at church that she could apply for protection since the Rudd government was established. People at the church advised her that she and her husband should apply again. At end of 1989 he wrote to the Minister saying that his wife (the applicant) would come to Australia too, but got no reply. At the end of September 2009, the Department sent them a letter saying that her husband's application to the Minister had been rejected. Since he was rejected again they were both scared so they moved from [Suburb A] to [Suburb B]. Because she believes in the Lord she attends church in [Suburb B] where she got acquainted with a person from the north eastern part of China. That person asked her her name and how she got to Australia. When her story was told, the person asked her why she didn't apply for a Protection Visa under her real name because the new government has a better policy and the applicant cannot hide forever. The person told her that she herself had got a Protection Visa because of being a Christian. From that the applicant gained hope. So she wrote down her statement and applied.

Invited to add anything further, the applicant said that, on the Bible, her soul has been given to God and she cannot lie. What she has said is her true feeling. Her husband, herself and her daughter have been separated for many years and all they want is a reunited life.

30. The delegate decided to refuse her application for a Protection Visa [in] March 2010. The applicant sought review of the delegate's decision [on a further date in] March 2010.

### **The Tribunal hearing**

31. The applicant appeared before the Tribunal [in] May 2010 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 her registered migration agent who did not attend the Tribunal hearing.
33. The Tribunal explained the purpose of the hearing and said that it had listened to the recording of the interview conducted by the Department with her concerning her protection visa application. The Tribunal said that it considered the interview to have contained a very full account of her life in China and her understanding of the Christian religion, and so it proposed not to go over that information again but to focus on certain issues, perhaps not covered at interview or requiring further clarification for the Tribunal.
34. Concerning the statement of claims in her protection visa application, the applicant said that she wrote the statement herself in Chinese and her migration agent arranged for it to be translated into English. She confirmed that it was read back to her in Chinese before she signed it, so she is satisfied that its contents are a true statement of her claims to be a refugee.
35. Regarding how she travelled to Australia in 2002, the applicant said that she was unable to obtain a Chinese passport because she had to get a stamp from the police station and could not do so because she has a criminal record. Instead she went through the foreign affairs

office and paid the money and they handled all the procedures. They said that they could not obtain a passport for her but they asked her to complete an application for a pass, which was a piece of paper allowing her to travel to Hong Kong. When asked, she said that she does not have that pass any longer because she was not able to keep it; after she arrived in Hong Kong, the affairs office took back that piece of paper and gave her a Korean passport. She and another person travelled and the officer took the two of them to Luohukou and then they arrived in Hong Kong. The applicant stayed in Hong Kong for three days. That same person who travelled with them gave her the Korean passport. She said that she then travelled to Malaysia where she stayed for three months and after that came to Australia via Vietnam where she stayed for two nights. She confirmed that she arrived in Melbourne then travelled to Sydney to be reunited with her husband. She said that she did not know anyone else in Australia apart from her husband at the time she arrived.

36. At the hearing she submitted a letter from a senior pastor at the [Church B] in [Suburb B] stating that the applicant has genuine Christian faith and attends the church every Sunday. The letter states that the applicant is not just attending Sunday service to pretend to be a Christian but because she genuinely has faith. Asked how long she has been attending that church, the applicant said that she has been attending it since she moved to the suburb in October last year. She was able to give its street address and the times of the Korean services. She said that she attends every Sunday unless she has something else she must do. At the moment, if she has to work on a Sunday (her job is not regular and she only works some Sundays), she will attend the early morning service which starts at 7am; otherwise she attends the service which starts at 12 noon.
37. Before that, she attended several churches close to her various homes. The church that she attended for the longest period was the church in [Suburb A] which is located in the street opposite [location deleted: s.431(2)]. She said that she started attending church in the second week of being in Australia in mid 2002. She found that Korean church in [Suburb A] because her husband told her he had heard there was one nearby and she went out looking for it.
38. Of the similarities or differences between worshipping in a church building in Australia and worshipping in the house church in China, the applicant said that the atmosphere is different here; they believe in the same Lord but the biggest difference is that there is a pastor who preaches every week here whereas they had no priest who could preach in China.
39. The Tribunal asked the applicant whether there was any event in the church calendar which had been celebrated at church the previous Sunday. The applicant said she did not recall anything though the previous week they had celebrated the pastor's [birthday] and the [anniversary] of the church. The Tribunal said that the previous Sunday had been Pentecost and asked if the applicant knew what this term meant. The applicant said that this is the celebration of the coming down of the Holy Spirit and that it was an important occasion, but she had not realized it was on the previous Sunday.
40. Of the house church in China, the applicant said that usually seven or eight people attended. They gathered every Sunday. Very infrequently they would have a meeting on another day at which they would go through things they did not understand from the Bible. The applicant said that normally 7 or 8 people attended the gatherings. Asked the names of regular attendees, the applicant named the following (including two people who had written statements in support of her in January 2010 and which had been submitted in connection with the Protection Visa application): [Ms A], [Ms C],(female), [Mr A] (male), [Ms D](she

went to Canada); [Ms E](still in China), and herself. Six of them attended regularly. [Ms B] was not a regular attendee but they asked her to come on that day because they had a pastor visiting. She is old and there are a lot of older people who are Christians.

41. [Ms A] arranged the Korean pastors' visit. She went through her friend who was also a member of the Korean ethnic group and that friend introduced the pastors to come to their gathering. Of whether they had had visiting pastors before at their gathering, the applicant said that it was the first time. [Ms A] knew many fellow Christians. One of these pastors had come to China several years ago so when [Ms A] learned that he was intending to return to China again, she invited him and another pastor to come to their gathering to preach. She said that having a pastor to preach is a rare opportunity and very difficult to get; normally they just talk about the bible amongst ourselves and there were a lot of things they didn't understand, so having the pastor to preach made them very happy.
42. The Tribunal asked if there were many foreign preachers operating in Liaoning Province? The applicant responded that this kind of opportunity was rare and that's why there were about 20 people attending.
43. They were very happy on that day because the way these pastors preached was different. Two pastors came to their gathering and they both had had an opportunity to speak before the police arrived. They were known to have preached before in China in house churches. They travelled to China as tourists and they came and preached to them they were very happy about it.
44. Asked if it was something their house church would do again, the applicant said that they would although they are afraid. She said that they would invite them to come over because the opportunity like this is rare to get.
45. Asked who was present [in] December 2001, the applicant said that those brothers and sisters in Christ and also people from the neighbouring villages, for example [name deleted: s.431(2)]. Also they invited several other believers to come along. They also invited several people who did not believe to come along. For example, [Ms B] who didn't understand the Holy Bible came over to listen.
46. Regarding who might have told the police about the gathering, the applicant said that it was probably the person in charge of law and order of the village. This person came often when they had their gatherings to warn them because he knew that they were Christians. He usually didn't know where they were gathering, but if he found out he would come to warn them.
47. The Tribunal asked what this person threatened to do if they continued to ignore his warnings. The applicant said that they never thought about that; they only believed in the Lord and got peace and happiness from their religion. They knew that some people were arrested at a few gathering places in neighbouring villages. Even though they knew that, their trust in believing in the religion has never faded.
48. The Tribunal asked the applicant to confirm that the six people she named previously as regular attendees were all present [in] December 2001 and the applicant confirmed that they were. The Tribunal put to the applicant that the statements of [Ms C] and [Mr A] say that the applicant was detained but the statements do not say that they themselves were detained. The applicant confirmed that these two were also detained together with herself. The Tribunal said that it found it odd that these people would not mention that they also were detained

along with the applicant. She responded that it is indeed true that they were detained with her. She said that she was detained for 15 days and [Ms C] was also detained for 15 days and the other one ([Mr A]) was her husband and he was only detained for 3 days and then he was released. Why he was released she does not know. Like [Ms B] who did not believe, she took her grandson to the gathering and they questioned her and they questioned the other grandmothers and they were released shortly after on the same day. The applicant heard this after she was released.

49. Asked if the applicant still keeps in touch with any of her fellow house church members, the applicant said that several young people among the group have already left China: [Ms D] has gone to Canada, [Ms A] has left China and the applicant has left. [Ms C] and her husband, [Mr A], are still in China.
50. Of the couple still in China, the applicant said that she heard that they still attend gatherings occasionally. Before, [Ms A] used to organise them but after she left she heard that the congregation became fragmented. [Ms A] left and went to America probably about two years after the applicant came to Australia, so probably about 2004.
51. The applicant said that [Ms A]'s case was more serious than her own at the time they were all detained; she was detained for three months. The police sent her to a different place from the one where the applicant was detained for 15 days. The applicant said she was probably taken to a different detention centre but she is not clear on the details. [Ms A] was seriously harmed in detention but never gave up her belief in the Lord. The applicant said that when they were suffering, our Lord was suffering together with them so their physical suffering was nothing.
52. The Tribunal asked if [Ms A] had further problems between being released in February 2002 and her departure for America in 2004. The applicant said that after [Ms A] was released she was arrested twice and detained twice more. The applicant learned this when she telephoned home. Of what [Ms A] had done to warrant the further arrests, the applicant said that because people like them who believe in the Lord have the spirit of uniting together, they definitely would meet together on Sundays so that's why [Ms A] was arrested again. However, their determination in believing in the Lord does not change.
53. The Tribunal asked about the applicant's statement in her interview with the delegate that after their release, they started to have their meetings in secret. The applicant said that they had secret gatherings and sometime they even went to the forest to have gatherings. Of how long they continued to have the gatherings in secret, the applicant said that there were several occasions when they gathered in the forest because the person in charge of law and order of the village patrolled their homes so when they saw the sign that he was going to come round, they just went to the forest to have their gathering.
54. Asked if the applicant thought it continued this way after she left, the applicant said she thought this was the case; sometimes when they were not careful, [Ms A], was arrested and detained. Of how long [Ms A] was detained on the two further occasions, the applicant said she telephoned and heard from [Ms A] that she was detained 3 days at the local police station and released and on the second occasion, she was detained for about four months. After [Ms A] was released, she determined to leave the country and not stay there anymore. During that period of time the applicant said a lot about Western countries, how they are very democratic and how Christians have great freedom. [Ms A] heard a lot from the applicant on this subject. The applicant sent a CD of sermons and also two copies of the Holy Bible back to her country because those materials are hard to find there; one can't find the Holy Bible in any



bookshop. When she attended a gathering, the police came and they took the CD and the Holy Bible copies the applicant sent. [Ms A] was detained for four months.

55. The CD which the applicant sent was called, "Witnessed by a Generation", which she obtained from her previous church in [Suburb A]. She sent more than one CD. Other CDs contained preaching by US pastors and pastors in Australia. The CDs were in Korean and Chinese. The brothers and sisters in Christ from the church recorded them. She had a look at them and thought they were good so sent them by mail to [Ms A].
56. The applicant said that at her parent's home they only had one copy of the Bible whereas they had several people there who were believers so the applicant said she felt she had to send several copies of the Bible to her parents.
57. The applicant said she had a very clear memory of when she was little and there was a Bible which was passed down by her paternal grandfather's mother and her parents used to hand copy information from it and give it to the house church followers.
58. Asked if it occurred to her that it might create danger for [Ms A] to receive these CDs and Bibles, the applicant said she thought about it but because they don't come across this kind of information in China, so she thought that this would give the sisters and brothers in Christ greater strength which is why she decided to send it to China.
59. The Tribunal asked the applicant if she was aware of registered churches in Shenyang City. The applicant said that she was. The Tribunal said that information before it from November 2005 said that up to 200 churches had been built in rural areas outside Shenyang in the villages there. Other information indicates that there are over 1400 registered churches and meeting points in Shenyang City. The Tribunal asked if it had occurred to the applicant to attend one of those churches.
60. The applicant said she had never thought about going to a public church because those churches do not abide by God - they are all government sanctioned Three Self Patriotic churches - so they are not embraced by the Holy Spirit and do not believe in God totally. If they truly believe in God, why can't one find even one copy of the Holy Bible in any bookshop in China? The applicant said in addition that at the third meeting of the Chinese Communist Party 11<sup>th</sup> Conference held between February and March this year, they talked about issues regarding religion but nevertheless the public churches are ruled by the Party. The applicant said that the computer [the internet] stated the number of churches established in Liaoning but to her that is unbelievable. Of course this information showing on the computer is to show outsiders, but in terms of the dark side of what is going on in China, nothing will show on the computer and nobody knows about it. The applicant said she only learned after arriving in Australia that about 60% of the population is Christian. She feels that churches in Australia abide by God and place him first.
61. The Tribunal said that country information indicates that there is an explosion of interest in Christianity in China and there are many thousands of believers in registered and unregistered churches. The Tribunal said that a book published in 2006 called, "China's Christian Millions", indicated that there were an estimated 200,000 Christians in Shenyang. The Tribunal said also that Bibles are printed in China although their publication is restricted to one printing house (called the Amity Press). The applicant said that when she was in China, she was not able to find and buy a Bible at all.

62. The Tribunal asked whether, after being in Australia for so many years and being used to attending in a church building with pastor to preach every week, the applicant would not want continue to worship in such an environment, in other words, to attend a registered church. The applicant responded that she would not attend that kind of church. She said that she thought if she went back she would be arrested and detained. Asked her reason for thinking this, the applicant said that when she goes back to China she would definitely evangelise and preach and would stick to her religious career and therefore she would definitely be arrested and detained. In addition she said that she doesn't dare to go back. In addition, [Ms A] has left China. The applicant said that if she goes back she will be arrested, so therefore she can't go back.
63. The Tribunal asked why the applicant told the delegate at interview that she thought her daughter would also be persecuted. The applicant responded that if she goes back she will be arrested and detained and this would have a great impact on her daughter; this would give her a great setback because now she is going through adolescence and she would feel very sad. Her daughter knew since she was very little that her mother was persecuted and is happy for her mother to stay here, rather than coming home and being arrested which would hurt her a lot. The Tribunal asked if the applicant thought her daughter would be physically harmed in any way. The applicant said she feels her daughter would be persecuted because the Government knows she is the child of a religious family (even though her school doesn't know that yet) but imagine if the school were to find out, she would be punished and the applicant is very scared about this. When the applicant was little, hatred became buried in her heart because of the way she was treated on account of her religion, and she does not want her daughter to suffer in the same way. The applicant said that she had almost died (as she had recounted at her interview with the delegate) but the Lord saved her when there was no sign of life after her premature birth. Her grandmother and great grandmother asked the Lord to take care of her. She received such a blessing from the Lord but when she went to school, the school taught them to be atheists so as a result she stopped believing in the Lord when she was nine years old. If it was not for that kind of school environment, she would not have left the Lord for so many years. She does not want her daughter to suffer similar persecution.
64. The Tribunal asked the applicant what she would do to preach and evangelise, as she had said she would on return to China. The applicant said that she would tell the brothers and sisters about what she heard and seen in Australia. In China people cannot hear a pastor preach at all regarding true information; the pastors here preach the Bible in connection with real life experiences, but in China people cannot hear anything like that. She said that, according to the Bible, human beings have a sin limit and death, and the Lord died for our sins so therefore our sins are forgiven. Regarding limits, we live on earth and cannot see what lies ahead, but Jesus gave us unlimited truth. Regarding death, He gave us the hope of eternity. We do not leave this world alive - we are all going to die – but before we leave this world, Jesus has given us the hope of being resurrected and eternal life. She said that statements like this cannot be heard in China. If she goes back she would tell them whatever she knows. The Tribunal asked if, in so doing, she would use any foreign religious materials if she could obtain them. The applicant said that she would definitely do this.
65. The applicant gave an example of how she evangelised the gospels to other people in 2007. She said that her uncle's son (her cousin) who was on drugs and was taken to an institute had sinned and didn't know it, so the applicant was very anxious for him. As a result, she copied quotations from the Bible onto a piece of paper and made photocopies of it. Through her

uncle, she learned the address of the institute where he was kept, and she sent the copies to him there. Her cousin, after he received the information and read it, passed it on to others within the institute so all the people there read these Christian messages. Later on, the police officers in the institute knew about it and started asking who had sent the information. They had the envelope which had an overseas address but no name of the sender, so they didn't know who sent it. This was one way she evangelised the gospels.

66. The Tribunal asked if the applicant returned to house church worship in China, whether she would anticipate having further contact with foreign missionaries. She said that she would.
67. The Tribunal asked if the applicant had sent any materials to her daughter, given she sent materials to [Ms A] and her parents and her cousin. The applicant said that she did. The Tribunal said that these were all important people in the applicant's life and asked if the applicant had considered the risk this would pose. The applicant responded that she did think about this but in the Bible it teaches believers to tell the Good News to others (this is our obligation as a Christian). The Tribunal asked if the applicant's daughter has become a Christian. The applicant said that when she telephones her daughter, she talks about it with her. Her daughter is still studying and lives with the applicant's mother-in-law who is not a Christian. When her daughter was little, she went to house church with the applicant so deep down in her mind she knows about Christianity. She talks about it with her over the phone. When the applicant praised the Lord loudly, her daughter was very proud of her.
68. The Tribunal asked about the applicant's detention for 15 days in the [District A] Police Station. The applicant said when asked that she could not clearly remember the address of that police station. She said that she was put into a small room with other prisoners. The other house church members who were detained were not put in the same room with her; they were all separated. On the first night that she was taken into custody, the police made separate groups with six people to a group and started to interrogate each of them.
69. The Tribunal asked what the document said which the applicant had to sign after 15 days in order to be released. The applicant said that she was asked to write a self-repentance letter guaranteeing that she would not attend further gatherings and would not believe in the Lord. She was told if she did not sign, she would stay there forever. She said that the warden tried to brainwash her. After signing, her father in law paid 2000 yuan for her release. The 15 days she spent in the detention centre she doesn't really want to remember. The applicant said tearfully that it was a very difficult period in her life. The applicant said that she has a mark on her arm caused by another prisoner and she can never forget it for the rest of her life.
70. Of any documents she might have been given on release from detention, the applicant said that she was given a document and she still had it at the time of leaving China. She left things with her mother-in-law and asked her to mind them, but she was not quite sure if her mother-in-law kept it or threw it away.
71. Asked if she required any medical attention on release, the applicant said that the burn became gangrenous and she went to a medical centre and they dressed it and it took half a month to heal.
72. The Tribunal asked who became the organiser for the gatherings she attended when she was released, given that [Ms A] was still detained. The applicant said it was mainly her who organised actively to get everyone together. She said that she was arrested and detained on [date deleted: s.431(2)] and released [fifteen days later] and remembers that it was Christmas

Eve. Even though she had sustained a severe injury, she could not forget about the Lord so she still organised a gathering for Christmas Day. She prayed even though physically she had sustained a severe trauma however the Lord was always with her and that comforted her heart.

73. The Tribunal put to the applicant that she was detained once and then released and has now been away overseas for seven years. It asked if there was anything that made the applicant think she was still of interest to the authorities. The applicant responded that because she sent CDs and Bibles from Australia to China, the Government would know about it and if she goes back, they will pay attention to her and that is why she is frightened. Of how the Government would know the applicant said that the authorities would have seen that the incoming materials came from Australia.
74. The Tribunal put to the applicant that she arrived in Australia in 2002 and did not apply for a protection visa until 2009. It asked the reason for the delay. The applicant said that after she arrived here, she heard from her husband that he lodged the application here (including her name and her child's name) but was refused. He said that the previous government would not pay attention to people like them who came to Australia illegally. At that time, she had not been here for long so she didn't know the law or the situation here.
75. The Tribunal said that the applicant's husband understood the process of applying for protection because he had been through it himself. His reasons for thinking himself to be a refugee were quite different from the applicant's whose reasons had not been considered. The applicant responded that all she knew was what she heard from her husband. The Tribunal said that if she genuinely feared to return to China, it seems reasonable to expect she would take the first available opportunity to seek Australia's protection. The applicant said she didn't know anything when she first arrived. This was the most pitiable thing about it because if she had known, she would have applied earlier and told the Department all about it. At that time she always thought as long as she could believe in the Lord freely and not be persecuted that would be fine, so she didn't think about other things. She said that looking back she really feels regret.
76. The Tribunal said that part of the time the applicant has been in Australia she has been unlawful and at risk of removal to China. The Tribunal put to the applicant that she must have been conscious of this because she said she moved frequently for fear of detection by the Department, and yet she did not come forward it appears until around the time that the Department started talking with her about her bridging visa and departing Australia. The applicant responded that it wasn't like that; through the church she learned she could apply for refugee status because her husband had used his own name and lodged his own application and he wrote himself to the Minister. In her husband's letter to the Minister he talked about what happened to him and mentioned the applicant and said she was also in Australia, but did not say any more about her. He didn't talk much about her because at that time she had been illegal for almost 7 years and was relatively scared. But she said that when she went with him to the Department, the officer there told her that she and her husband could be treated separately. Because she was persecuted in her country, when it comes to dealing with Government organisations she is very scared so didn't dare talk about what was in her heart. She only knew that what she said at the interview with the delegate would not be passed on to her country.
77. The Tribunal said, regarding the issuing of passports in China, that information available indicates that even people who have been through re-education through labour can after a

period obtain a passport in their own name. The applicant said that back then, they had to get a stamp from the police station on their passport application otherwise it would not go through. She said that she went to apply on a number of occasions and was refused. That's why she had to go through an agent.

78. The Tribunal put to the applicant that the China Aid Association, a non-profit Christian organisation based in the US which publishes annual reports on the treatment of unregistered Christians in China, in its reports for 2006 and 2008, doesn't list any cases of arrests of Christians in Liaoning Province. In 2007 it reported that Liaoning had amongst the lowest number of Christians arrested in comparison with other Provinces. The Tribunal said that nevertheless there is general information saying that unregistered Christians are mistreated in different places and it very much depends on local officials as to how they are treated. The Tribunal said that just looking at those statistics, it might conclude that if the applicant went back and resumed house church activity in Liaoning Province, she might not have any problems in the future. The applicant commented that the information from the material quoted by the Tribunal cannot be believed; the Chinese government has its dark side and is also corrupt and when it comes to dealings with the outside world, it says everything so well, however the truth is not like that. The Tribunal said that the figures were from a US organisation and not from Chinese government sources. The applicant said that she is still scared to return. Her biggest fear is to go back to face the same persecution she suffered before. If she can stay and have the opportunity, she said she would like to study at theological college here to learn more about religion.
79. The applicant said that she has been in Australia for 7 years but if she did not suffer harm in China, she would never have come here because it was not easy to leave her daughter. She is scared of going back and of not being able to live in the Lord freely.
80. Invited to add anything further, the applicant said that, according to the Bible, God made human beings in his own image; when we hold God's image high, our dignity is respected, but when we look down on God, our dignity is trodden underfoot. The applicant said she was persecuted in her country and there is no comparison between the environment there and here, so she hopes that she can stay. She added that this is her last chance to have her future generations able to believe in the Lord in this beautiful country.

### **Information from other sources**

#### *Concerning the printing and availability for sale of Bibles in China*

81. The China 1994 *Provisions Regarding the Administration of Contracts to Print Bible Texts* control the printing of Bibles, according to the US Department of State. (US Department of State 2009, *International Religious Freedom Report 2009 – China*, 19 September, 'Legal/Policy Framework', p.4-5). These name the Nanjing Amity Printing Company (Amity Press) as the sole printer for domestic Bibles.
82. Michelle Vu of *The Christian Post* stated in 2007 that "access to religious material remains difficult in China despite the Chinese government's claim that it prints a sufficient number of Bibles", and in 2009 that "it is difficult for many house church Christians to obtain a copy of the Bible" (Vu, Michelle 2009, 'Report: House Church Persecution Increases 418 Percent in Beijing', *The Christian Post*, 7 February <http://www.christianpost.com/article/20090207/report-house-church-persecution-increases-418-percent-in-beijing/index.html> – Accessed 5 February 2010)

83. Most sources indicate that in cities Bibles are only sold through official church (CCC or CPA) distribution points, which may be official churches or church bookshops. ('China's Bible Industry' 2008, *Beijing Review*, 3 July, [http://www.bjreview.com.cn/books/txt/2008-07/03/content\\_131490.htm](http://www.bjreview.com.cn/books/txt/2008-07/03/content_131490.htm) – Accessed 5 February 2010). The *Beijing Review* in 2008 confirmed that Bibles were only available in bookstores attached to CCC churches, but they could be purchased by anyone in these stores, not just by church members:

Most of the Bibles on the market are printed to fulfil the needs of the China Christian Council, they are unavailable in common bookshops such as Xinhua Bookstore. But Liu confirms that non-Christians can also buy Bibles because bookstores in churches are open to all citizens. Sometimes people can even buy them at the gates of a church. ('China's Bible Industry' 2008, *Beijing Review*, 3 July, [http://www.bjreview.com.cn/books/txt/2008-07/03/content\\_131490.htm](http://www.bjreview.com.cn/books/txt/2008-07/03/content_131490.htm) – Accessed 5 February 2010)

84. Similarly, Jenna Lyle stated in 2008 "it is illegal to sell Bibles in bookshops", and Hans Petersen confirmed that Bibles cannot be sold at independent (non-CCC) bookshops. (Petersen, Hans 2005, 'Why can't all Christian bookshops sell Bibles', *Forum 18 News Service*, 24 August [http://www.forum18.org/Archive.php?article\\_id=636](http://www.forum18.org/Archive.php?article_id=636) – Accessed 12 October 2009)

*Concerning the attitude of the Chinese authorities to the involvement of foreign missionaries and foreign churches in Chinese churches*

85. Sources agree that the Chinese authorities oppose the involvement of foreign missionaries and foreign churches in Chinese churches:

The US Congressional-Executive Commission on China 2009, *Annual Report 2009* states:

#### **Restrictions on proselytizing, contact with foreign Christians**

The Chinese Government restricts Protestants from proselytizing beyond the physical confines of registered churches, a prohibition that prompts many evangelicals to worship in unregistered congregations and limits interaction between Chinese and foreign Protestants. An ethnographic study conducted in a major city in southern China found that official policies "significantly curtailed" evangelization efforts by both registered and unregistered churches. Authorities often punish Protestants who proselytize with administrative detention, including reeducation through labor (RTL)... In February 2009, police stormed a meeting of house church leaders from four provinces that was held in Henan and detained more than 60 participants, claiming that the presence of two South Korean pastors, whom the government deported and banned from China for five years, rendered the meeting an "illegal gathering." In 2008, the Daqing Municipal People's Congress in Heilongjiang province warned that the South Korean Good News Missionary Society had "infiltrated" local universities.

Chinese officials routinely characterize contact between Chinese Protestants and international Christian organizations or individuals as dangerous incidents of "foreign infiltration," which security forces are tasked with preventing. State regulations on religious activities prohibit foreigners from engaging in missionary activity outside of the physical confines of government-registered churches and require foreigners to obtain government authorization before preaching inside registered churches. ...The Guangdong United Front Work Department (UFWD) deputy head has described the "house churches and underground churches" that receive support from "foreign enemy forces" as a "political tool in a plot to subvert the Chinese Government." (US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>)

86. The US Department of State 2009, International Religious Freedom Report 2009 – China, states:

The Government permits proselytism in registered places of worship and in private settings, but does not permit it in public, in unregistered places of worship, or by foreigners. The Constitution states that religious bodies and affairs are not "subject to any foreign domination" and affirms the leading role of the officially atheist Chinese Communist Party (CCP). ... Citizens are not permitted to attend religious services conducted by foreigners unless the services take place in an authorized venue under the supervision of a registered religious group. (US Department of State 2009, *International Religious Freedom Report 2009 – China*, 26 October <http://www.state.gov/g/drl/rls/irf/2009/127268.htm>)

*Concerning Christians in Shenyang City and Liaoning Province*

87. Estimates of the numbers of Christians in Shenyang city and Liaoning Province are provided by Tony Lambert in the 2006 edition of *China's Christian Millions*:

...In 2002 the TSPM stated that there were 600 000 Protestants meeting in over 1400 registered churches and meeting-points [in Liaoning Province]. There is also many unregistered house churches. As there were only 65000 believers in 1965, on the eve of the Cultural Revolution, the registered church has seen explosive ten-fold growth in under forty years. ...I was told in 2000 that the total number of registered believers in Shenyang was 200 000 – compared to only 70,000 in 1996...The province also has about 80,000 Roman Catholics. (Lambert, Tony in his 2006, *China's Christian Millions*, OMF Publishing, Monarch Books, London, 2nd ed., pp. 261-262).

88. On 30 December 2007, *The Times-Picayune*, a New Orleans based paper, reported on an American pastor who conducted religious instruction classes with underground Christian lay leaders in Shenyang. The following is an extract of the report:

In late November, Pastor Jerry Hobren of the Northshore Bible Church in Covington saw this firsthand when he teamed up with a former classmate to spend two weeks in China, serving as an instructor in an ongoing missionary ministry outreach. His students were a group of lay leaders from local Christian underground congregations in Shenyang near the border of North Korea.

Hobren said he found the students eager to learn and noted that they lacked resources many take for granted in the United States, such as books or the Internet, to gain information.

"In China there is no freedom of speech or freedom of religion. The students all were determined to learn more about Christianity. It was more open than I expected and I felt no fear or intimidation anywhere we visited."

Hobren added that he had learned that about two years ago, after a similar session in another part of the country, arrests had been made. (Kell, K. 2007, 'Ministry delivers Christian teachings to China; Local pastor helps underground groups', *Times-Picayune*, 30 December).

89. The China Aid Association's annual report for the 2007 period, lists one incident of mistreatment against a Christian in Liaoning. According to the report on 14 March 2007 Ms Guo Changrong was arrested for "preaching the Gospel to the village party secretary". Ms

Changrong was reportedly sentenced to one year of education through labour (China Aid Association 2008, *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2007 – December 2007*, February, p.7 <http://chinaaid.org/pdf/2007%20persecution%20report/caa%202007%20annual%20persecution%20report%20english.pdf>).

90. The China Aid Associations report for 2007 also includes a diagram of the “number of people persecuted and arrested in the various provinces and municipalities directly under the central government” According to the diagram in 2007 Liaoning had among the lowest number of Christians arrested in comparison to other provinces. (China Aid Association 2008, *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2007 – December 2007*, February, p.21 <http://chinaaid.org/pdf/2007%20persecution%20report/caa%202007%20annual%20persecution%20report%20english.pdf>).
91. Though not reflected in other sources, the China21.org website, a US-based group which concentrates on the persecution of Christians and religious adherents in China, has nine separate reports referring to events of detention, arrest, and ill-treatment of practitioners between September 2002 and March 2003 in Shenyang.

One report included below (‘30-40 K RMB Fine or 3-4 Year Imprisonment’ 2003, China.21.org website, 11 May <http://www.china21.org/English/News/2003/051103.htm> –) states that “the city government issued a secret document ordering crackdown on religious believers”.

Brief summaries of each of these reports are as follows:

- A Seventh Day Adventist preacher from Wushun in Liaoning City was sentenced to three years’ jail on 20 September 2002 “under charge of “cult”“ and sent to Masanjia Labor Camp (Laojiao Camp) in Shenyang City (‘A Liaoning Christian Sentenced to Three-Year Imprisonment’ 2002, China.21.org website, 31 December <http://www.china21.org/English/News/2002/123102eng.htm>).
- Ms Suhua Qin and a fellow preacher of the “Gospel” were arrested at a house in Huanggu District Shenyang city on 14 September 2002, beaten, and released on the evening of 16 September 2002 (‘The Police Struck Her Until She Collapsed onto the Ground’ 2003, China.21.org website, 10 February <http://www.china21.org/English/News/2003/021003.htm>).
- On 26 October 2002, a preacher Yuxian Mu was arrested while sharing the Gospel in Shenyang city. This report states “that police took her as an example since she was the first arrested after the city government issued a secret document ordering crackdown on religious believers” (‘30-40 K RMB Fine or 3-4 Year Imprisonment’ 2003, China.21.org website, 11 May <http://www.china21.org/English/News/2003/051103.htm>).
- Another report refers to the detention on 5-6 December 2002 and jailing for one month of eight house church members, on account of “Obstruction of law enforcement through cult activity.” Several were reportedly beaten (‘Nine “Three Servants” house church members in Shenyang City were detained’ 2003, China.21.org website, 23 November <http://www.china21.org/English/News/2003/112303.htm>).
- Two preachers from the “Red Elijah” house church from the Dongling Area of Shenyang city were detained beginning 7 December 2002 for 24 and 45 days at the Shenyang city detention



centre ('The police ripped off the hair of a female preacher' 2003, China21.org website, 19 November <http://www.china21.org/English/News/2003/111903.htm>).

- On 10 December 2002 a female preacher from Beiling Town of Yuhong District, Shenyang City was arrested. She was reportedly arrested and detained while preaching at a home in Huanggu District, Shenyang City. The police referred to Article 61 of the *Criminal Law Procedure* to authorise the action ('Shenyang: Another Female Preacher Arrested' 2003, China21.org website, 16 July <http://www.china21.org/English/News/2003/071603.htm>).
- A female preacher was questioned on her faith and preaching activities at Dugong police station in Shenyang on 15 December 2002. She was reportedly beaten and tortured. Bibles were also confiscated ('Two Female Preachers Sexually Harassed and Beaten up by Policemen' 2003, China21.org website, 14 September <http://www.china21.org/English/News/2003/091403.htm>).
- A 39-year old female preacher was beaten and tortured during a two day period from 4-6 March 2003 at Xinchengzi district branch of Shenyang City Public Security Department ('With a Stone Written with "God Is in China", the Policewoman Asked Her Who Gave It to Her' 2004, China21.org website, 24 September <http://www.china21.org/English/News/2004/092404.htm>).
- Two Catholic evangelists from Shenyang city were detained, interrogated and beaten and then sentenced to one year of reeducation through labour on 29 March 2003. One was released on 30 April due to mental illness ('Two "Catholic" Evangelists Sentenced to Labor Camp Because of "Preaching Cult"' 2004, China21.org website, 25 September <http://www.china21.org/English/News/2004/092504.htm>).

92. A 2005 article about certain registered Protestant churches in Shenyang contains the following information indicating that there are a large number of worshippers but that even the registered churches are restricted in their activities and in the involvement of foreigners:

This is the East Church of Shenyang, built in 1889 by a Scottish Presbyterian named John Ross with 800 seats. About 3,000 people attend the service, many sitting outside on foldable chairs in the crisp autumn air or in rooms in an adjoining building and listening over a sound system.

...The Protestant church in Shenyang, which boasts 130,000 members, ...

...One member of the East Church who travels frequently to rural areas outside Shenyang said that up to 200 churches had been built in the villages there, using money from the faithful, especially private business people.

This means that membership of the Protestant church in Manchuria – the three northeast provinces of China – may have surpassed that of the Presbyterian Church of Ireland (PCI), 300,000 strong, which, with sister churches, established it through the work of more than 80 ministers, doctors and teachers from 1869 until 1951, when the last missionary was expelled by the Communist government.

The PCI watched with dismay as the new government in 1952 moved the theological seminary it had set up in Shenyang to Beijing and subjected all religious activity to party control. The Cultural Revolution led to the closure of religious establishments, the looting and destruction of many churches and persecution of their members and pastors.

In 1982, the seminary moved back to Shenyang, churches reopened and religious life resumed. Former missionaries have been welcomed back for short visits and invited to preach but they may not stay nor can foreign churches provide direct financial support, apart from money given through the United Bible Societies which enables the Amity Foundation to purchase paper to print bibles. The 50 million mark will be reached this year. The small number of PCI members who have come since 1949 have worked as English teachers on short-term contracts. The church here must be Chinese and Chinese only.

...But the government remains suspicious of the Christian churches. It does not allow them to operate nurseries, schools, hospitals and other welfare services, despite a serious shortage of them, and denies them access to the media. It does not allow them to preach anywhere but within the walls of their churches and controls the construction of new ones. It denies them access to the official media and bans them from operating their own. While the constitution provides for 'freedom of religion', an ambitious person who wants to succeed in the army, civil service, teaching and other state-controlled professions is best advised to stay away from religion and hold on to his Communist Party card ('How China's Presbyterians are growing' 2005, *Belfast Telegraph*, sourced from the China Infodoc Service, 28 November).

### *Concerning house church protestants in general*

93. The UK Home Office's 2010 China Country Report provides the following summary of information from various sources on freedom of religion and Christians in China

#### CHRISTIANS

19.01 An article by *The Economist*, dated 2 October 2008, cited an estimate of up to 130 million

Christians in China. The article stated, "This is far larger than previous estimates. The government says there are 21m (16m Protestants, 5m Catholics). Unofficial figures, such as one given by the Centre for the Study of Global Christianity in Massachusetts, put the number at about 70m... And according to China Aid Association (CAA), a Texas-based lobby group, the director of the government body which supervises all religions in China said privately that the figure was indeed as much as 130m in early 2008."

19.02 The report continued:

"In the 1950s, the Catholic and main Protestant churches were turned into branches of the religious-affairs administration. House churches have an unclear status, neither banned nor fully approved of. As long as they avoid neighbourly confrontation and keep their congregations below a certain size (usually about 25), the Protestant ones are mostly tolerated, grudgingly. Catholic ones are kept under closer scrutiny, reflecting China's tense relationship with the Vatican... Most Christians say that theirs is not a political organisation and they are not seeking to challenge the party. But they also say clashes with public policy are inevitable: no Christian, one argues, should accept the one-child policy, for example.

Formally, the Communist Party forbids members to hold a religious belief, and the churches say they suffer official harassment."

...

## PROSELYTISING

19.07 The USSD International Religious Freedom Report 2008 noted:

“Government authorities limited proselytism, particularly by foreigners and unregistered religious groups, but permitted proselytism in state-approved religious venues and private settings... Offenses related to membership in unregistered religious groups are often classified as crimes of disturbing the social order. Religious leaders and worshippers, however, faced criminal and administrative punishment on a wide range of charges, including those related to the Government’s refusal to allow members of unregistered groups to assemble, travel, and publish freely or in connection with its ban on public proselytizing.” (Introduction to China and Section II. Status of Religious Freedom, Abuses of Religious Freedom)

...

## 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.” (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.” 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.” (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’). 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.” (Section II. Status of Religious Freedom, Restrictions on Religious Freedom)

19.21 The USCIRF Annual Report 2009, published in May 2009, noted:

“Members and leaders of unregistered Protestant groups in China continued to face harassment and harsh punishments, including detention, fines, beatings, confiscation of property, arrest, and mistreatment and torture in custody. In the last year, according to credible reports, 764 Protestant leaders and adherents were arrested for some period of time during the past year, 35 of whom were sentenced to terms of imprisonment over one year, including in China’s infamous ‘re-education through labor’ system. The State Department estimates that ‘thousands’ of house church members were detained for short periods in the last year. Arrests for and harassment of peaceful Protestant religious activity occurred in at least 17 provinces and two municipalities, with the most incidents occurring in Henan, Xinjiang, Shandong, Hebei, and Zhejiang provinces. Members of unregistered churches that the government deems ‘evil cults’ were the most vulnerable to detention... In the lead up to the Beijing Olympic Games, the government’s repression of house church and unregistered Protestant groups increased dramatically. Many house churches report that they were asked by local public security officials to disband during the Games, especially high-profile congregations that met near Olympic venues.” (p78)

19.22 A report by Christian Solidarity Worldwide, dated 1 June 2008, stated:

“The approach of the Beijing 2008 Olympic Games has been accompanied by a significant deterioration in religious freedom for China’s unregistered Protestant Church, also known as the house church. China continues to seriously restrict

religious freedom, requiring religious activity to take place within the confines of the restrictive state-controlled bodies. Those practising their faith outside these bodies risk sanction, with penalties including discrimination, fines, confiscation and destruction of property, arrest, humiliating treatment, torture, imprisonment and forced labour. Alongside these punishments, meetings are raided, Bibles and religious materials are confiscated and churches are destroyed.”

19.23 The same source noted:

“In April 2008 CAA [China Aid Association] reported that Chinese government officials had launched a strategic campaign, called the ‘Anti-illegal Christian Activities Campaign’, against house church members in Xinjiang. While both Han and Uyghur Christians have been targeted, the plight of the minority Uyghur Christian population is especially harsh as they face persecution on the grounds of both their unusual religious faith and the broader ethnic persecution of the Uyghur people in Xinjiang. Even the limited religious freedoms protected elsewhere in China are further restricted in Xinjiang and there have been repeated arrests and mistreatment of Christians in Xinjiang over an extended period. Of particular concern is the use of national security and separatism charges against religious believers.”

19.24 As reported by the Canadian IRB on 17 August 2004:

“It appears that the Chinese government most fears religious groups not willing to submit themselves to official supervision, and that proliferate beyond official control. If a Chinese citizen became a practising Christian overseas and was willing to attend an officially sanctioned church upon his return to China, it’s unlikely that he would encounter any difficulty. However, if he became an active member of an unsanctioned congregation, and especially if he contributed to the growth of the congregation through evangelizing, he would expose himself to a real risk of persecution.” (Based on Information supplied by Human Rights in China)

## **FINDINGS AND REASONS**

94. The applicant claims to be a citizen of the People’s Republic of China but to have travelled to Australia using a Korean passport in another identity. The Korean passport was retained and examined by the Department. A photocopy of a Chinese ID card in what the applicant claims to be her true identity is on the Department’s file. The delegate’s decision includes the information that the Department forensically examined the ID card and found it be genuine, and examined the Korean passport and found it to have been photo-substituted with the applicant’s photograph. On the basis of this information, the Tribunal accepts that the applicant’s real identity is that of [name deleted: s.431(2)], and that she is a Chinese citizen. The Tribunal has assessed her claims against China as her country of nationality.
95. The applicant’s claims are as follows. The applicant is of Korean ethnicity and was born into a Christian family in Shenyang City, Liaoyang Province. She was baptised as an infant but lost her faith at a young age under the influence of the state education system. Her husband left China for Australia in 1996. Because of depression from having to bring up a frequently ill child by herself, the applicant was persuaded by her friend and neighbour, [Ms A], to turn to Christianity for comfort. The applicant claims to have been converted to Christianity again in 1998.
96. She commenced attending house church gatherings and continued to do so until mid July 2002, about two weeks before she left for Australia. She claims that the house church

attendees received warnings from the person in charge of law and order in the village, and [in] December 2001 police raided one of their gatherings at which two visiting Korean pastors were preaching, and detained the attendees for various periods. The applicant claims to have been detained for 15 days and to have been beaten by the police and also by other inmates. They used a bright lamp when interrogating her and did not provide her with adequate food. She received a cigarette burn to one hand from another inmate, which required medical attention on her release. She claims she was released after signing a letter of guarantee and the payment of a fine by her family. [Ms A], as the organiser, was detained for three months. After the applicant's release, she claims that she took over organising the gatherings, and took extra care to conceal their location, including meeting sometimes in the forested area outside the village. The applicant's husband and other family members persuaded her to leave her daughter and go to Australia. She claims that she could not obtain a passport because of her record of having been in custody so paid an agent to obtain a Korean passport in another identity which she used to travel to Australia from Hong Kong via Malaysia and Vietnam. [Ms A] was detained twice more, first for three days and then for four months before she departed China for the USA in 2004.

97. The applicant claims to have sent from Australia to [Ms A] several CDs of sermons by US and Australian pastors and two copies of the Bible. She also claims she sent several Bibles to her parents and other religious materials to her daughter. In 2007 she claim she sent photocopies of passages copied from the Bible to her cousin at a rehabilitation institute in China, which were circulated among the inmates and came to the attention of police who tried to trace the overseas source.
98. The applicant claims to have commenced attending Sunday worship about two weeks after arriving in Australia in 2002 and claims she has continued to do so since then in various locations close to her places of residence. She has presented a letter from her current pastor stating that she attends regularly and is genuine in her faith.
99. The applicant claims to fear that she would be arrested and detained on return to China, because she would continue to attend house church gatherings and would evangelise using overseas religious materials and sharing what she has learnt in Australia. She would take any available opportunity to have visiting foreign preachers attend house church gatherings. She fears that her daughter would be adversely affected if she herself is arrested and detained, and she fears that her daughter may suffer discriminatory treatment if it becomes known that she is the family member of a Christian. The applicant claims she would not attend a registered church because they are state controlled and not truly Christian.
100. The Tribunal is satisfied that the applicant gave a consistent account in her written application, her interview with the Department and her evidence before the Tribunal, of her Christian family background and of the events surrounding her claimed arrest and detention for 15 days in 2001. With one or two minor exceptions, she appeared to have a detailed and accurate knowledge of Christian theology and the Bible, consistent with her claim of having been a practising Christian since 1998 and having grown up in a Christian family. The applicant was readily able to name the regular attendees at her house church gatherings and to detail their current whereabouts.
101. Independent country information, such as that quoted above, confirms that the Chinese authorities are strongly opposed to the involvement of foreign missionaries and foreign churches in Chinese religious life. The Tribunal notes the corroborative statements from two fellow house church members who remain in China that the applicant attended house church

gatherings and was detained in 2001, and accepts on the basis of the applicant's evidence together with those statements, that the applicant attended a protestant house church regularly before she left China, and was detained and suffered serious physical mistreatment for 15 days as claimed in 2001 for reasons of her religion and because of the participation of foreign evangelists in their house church gathering.

102. The applicant claims to have attended church regularly in Australia since soon after her arrival in 2002. She has provided the details of the previous churches she attended and has submitted a letter from her current pastor indicating that she attends every Sunday and is a faithful Christian. The Tribunal accepts that the applicant was a practising Christian in China and that she has continued her practise of Christianity since being in Australia. In such circumstances, the Tribunal is satisfied for the purposes of s.91R(3) of the Act that the applicant has carried out her religious activities in Australia otherwise than for the sole purpose of strengthening her claim to be a refugee.
103. The Tribunal is also satisfied that the applicant would, if she returned to China, continue her Christian house church worship and that she would not attend a registered church for the reasons she gave. The Tribunal formed the view that the applicant is actively interested in furthering her knowledge of Christianity and in evangelising if she returns to China. Though not mentioned in her written claims, the applicant was readily able to give examples at hearing of opportunities she has taken to proselytise and to share religious materials with her family and other Christians in China. The Tribunal considers plausible and accepts the applicant's claim to have sent copies of the Bible, photocopies of religious tracts and CDs of foreign preachers to her parents, her cousin, and to the house church organiser at various times since she has been in Australia. The Tribunal accepts that the applicant would again take any opportunity that arose to hear foreign evangelists preach, and would use any foreign religious materials she could obtain in the course of spreading her Christian understanding to others.
104. The Tribunal has considered the delay of many years in the applicant applying for a Protection Visa after her arrival in Australia, a delay from which it might be inferred that the applicant was not in fear of persecution should she return to China. However, the Tribunal accepts that the applicant was in the unusual situation of arriving in Australia after her husband had already been refused a Protection Visa, and of his then referring to her in his subsequent requests over several years for Ministerial intervention. The Tribunal is prepared to accept that the applicant had few resources and was in some trepidation of government authorities, and that she was discouraged by her husband's lack of success in obtaining protection and unclear as to whether her husband's dealings with the Department in which he made reference to her might effectively bar her from being able to apply for Protection in her own right. In these unusual circumstances, the Tribunal does not draw an adverse inference from the lengthy delay for the application was made for Australia's protection.
105. Available country information indicates that the treatment of leaders and members of unregistered churches in Liaoning Province has been relatively tolerant as compared with some other provinces. However there are some reports of mistreatment of underground Christians in Shenyang City in the years since the applicant's departure from China, and other reports indicating that from time to time and in various parts of China unregistered Protestant groups continued to face harassment and harsh punishments, including detention, fines, beatings, confiscation of property, arrest, and mistreatment and torture in custody. Sources indicate as already mentioned that the Chinese government does not permit proselytism in unregistered places of worship or by foreigners, and the Tribunal has accepted

that the applicant is likely to proselytise and to use foreign materials or seek to associate with foreign evangelists if she returns to China.

106. In these circumstances, the Tribunal is satisfied that there is a real chance that a person known to attend an unregistered church and to have associated with foreign evangelists may be subjected to serious harm, particularly where they have previously come to the adverse attention of the authorities.
107. The Tribunal accepts that if targeted for reasons of her religion, the applicant would face detention and probable physical mistreatment. The Tribunal is satisfied that the persecution the applicant fears involves serious harm to the applicant as required by s.91R(1)(b) of the Act, and that the applicant's religion is the essential and significant reason for the persecution she fears as required by s.91R(1)(a). The country information quoted above indicates that it is the Chinese public security authorities who persecute underground church members and that this conduct is systematic and discriminatory as required by s.91R(c) in that it is deliberate or intentional and involves selective harm for a Convention reason. Because policing is carried out by the Public Security Bureau which is a national agency, and because incidences of persecution of underground church members have been reported in a number of provinces of China, the Tribunal considers that there is no part of China to which the applicant could be reasonably expected to relocate, where she would be safe from the feared persecution.
108. There is no evidence that the applicant has a right to enter and reside in any country other than China for the purposes of s.36(3).

## **CONCLUSIONS**

109. 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) for a protection visa.

## **DECISION**

110. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.