

1511185 (Refugee) [2016] AATA 3832 (12 May 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1511185
COUNTRY OF REFERENCE:	China
MEMBER:	Christine Cody
DATE:	12 May 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 12 May 2016 at 5:20pm

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

STATEMENT OF DECISION AND REASONS - APPLICATION FOR REVIEW

BACKGROUND

1. The applicant is a national of People's Republic of China ("China") who seeks to be granted a Protection visa under s.65 of the Migration Act 1958 (the Act).
2. He first arrived in Australia [in] August 2011 as a student. [In] February 2013 he applied to the Department of Immigration for a protection visa. He claimed that he feared persecution as a result of his involvement and participation in Xiang Gong in China.
3. The applicant was invited to attend an interview with the delegate. He did not attend. His application was refused by the delegate [in] July 2013. The delegate stated that the applicant had provided insufficient detail to support his claims, which could not be accepted just based upon assertions.
4. In 2013 the applicant applied for a review with the Refugee Review Tribunal ("the first Tribunal"), which was differently constituted. On 22 September 2014, the first Tribunal affirmed the delegate's decision on the basis that the applicant did not attend the hearing and that there was insufficient detail to accept the applicant's claims (1311419).
5. In 2015 the applicant lodged a further application for review of that decision. The Refugee Review Tribunal, differently constituted ("the second Tribunal", 1500411) found that it did not have jurisdiction to consider the review, on the grounds that there had already been an application for review lodged and determined. The applicant applied for judicial review of that application and was given leave to amend the judicial review application to seek review of the decision of the first Tribunal. That matter (1311419) was remitted by consent on the basis that there had been a failure by the first Tribunal to send the hearing invitation to the applicant's last known address.
6. The matter is now before the current Tribunal (1511185). The applicant was invited to attend a hearing as the Tribunal was unable to make a favourable decision on the information before it. The applicant provided no further submissions or documents to the Tribunal in support of his claims. He appeared before the Tribunal on 29 April 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

Claims

7. The applicant's claims are set out in his protection visa application lodged with the Department, and his statement (February 2013). According to those documents, his claims are that:
 - He was born in [year] in [town], Hebei Province. His ethnicity is Han and his religion is "Xianggong". He has never been married. His parents and [siblings] remain in China.
 - He has [number] years of education, lastly attending [name] University from [year] to [year]. From October 2010 until May 2011, he worked for (and resided at) [workplace].
 - His passport was issued [in] 2009. He had no difficulties in obtaining his passport.
 - He left China [in] August 2011.
 - He did not travel outside his home country prior to his travel to Australia.

- He travelled to Australia as a student (TU-570) [in] August 2011. He provides no detail of any studies, or work, carried out in Australia, although he suggests that he has been doing some unlawful, casual work, in Australia.
 - He speaks, reads and writes in Chinese, and he reads and writes in English.
 - He is in contact with his father and a schoolmate in China.
 - He commenced learning and practising the cultivation practice of Xiang Gong from the end of 2007. He learned from a friend. After commencing the practice the applicant felt energised and more focused in his studies. Another [number] friends also joined them to practice Xiang Gong.
 - While at university, he practised Xiang Gong each evening at a quiet place on the University campus.
 - [In] June 2011, he went to dinner with his friend and the other [number] friends who practised Xiang Gong. They were in a private dining room, and one of the friends suggested that they practice it inside the restaurant, at the end of the meal. They all agreed, they asked the restaurant staff to move the dining table and chairs aside. They then practised Xiang Gong together. Just before they completed their practice, the police suddenly came into the restaurant, and detained them, including the applicant.
 - Once they were in the police station, they were beaten with a belt and then with an electric baton. The applicant suffered electric shocks which caused him to blackout. Cold water was poured on him to make him come around. He was questioned about who taught him Xiang Gong, but he did not say anything to them. He was again struck with the electric baton, and he lost consciousness.
 - The next thing he knew was his parents were taking care of him and he found out they had paid a fine of 5000 RMB. The police said he was a member of an evil cult banned by the government, but that as this was his first offence, he was only punished by fine, and he would have to give his undertaking that he would not do this offence again otherwise he would be arrested and sent to labour camp.
 - After resting at home for five days, he returned to Beijing to resume his work however he had been dismissed by his employer, because he is a member of an evil cult and practices Xiang Gong. He then realised that he would have to leave the country as he was a target of persecution; his only option was to go to a democratic country. He came to Australia to protect his rights and his personal beliefs.
8. The applicant indicated in his application form that he would provide documents in support of his claims (which would be posted from his schoolmate in China), however no such documents were provided.
 9. At the hearing with the Tribunal, the applicant said that he studied for one month, in [city], when he arrived in Australia (August 2011), and he moved to [another city] in October 2011. He did not study anymore, instead he worked initially doing a variety of manual jobs. From October 2011 to date he has worked full-time (five or six days a week).
 10. The applicant did not claim to currently practice Xiang Gong. Instead, he claimed to be a Christian; although he did not claim to the Tribunal that he would face harm on that basis.
 11. The applicant said that he only practiced Xiang Gong in Australia for about one month, he stopped it once he started work. The Tribunal said it did not understand why he would stop,

and he said because Xiang Gong is a way to improve health and as he started work, [occupation], it is physically demanding and it is just like the Xiang Gong exercises, so he feels very tired.

12. The Tribunal was concerned that his statement, signed in February 2013, referred to his religion being Xiang Gong, but gave no indication that, in accordance with his evidence to the Tribunal, he had stopped practicing Xiang Gong one month after he arrived in Australia [in about October 2011]. He responded that he did it occasionally. The Tribunal noted that his statement was all about Xiang Gong, and he gave no indication that he had effectively given up his religion when he made that statement. He said he made his application because he would be arrested and harmed if he returns on the basis of his record with the police as a member of an evil cult, Xiang Gong.
13. The Tribunal put to the applicant issues of concern as well as information pursuant to s.424AA of the Act and country evidence. In accordance with Ministerial Direction No. 56, the Tribunal has also taken into account the country information assessment prepared by DFAT expressly for protection status determination purposes, DFAT Country Information Report China, 3 March 2015 (the DFAT report), and DFAT Thematic Report, Unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015, the DFAT Thematic report).
14. The applicant told the Tribunal that he may be detained, just like Falun Gong practitioners. The Tribunal put to him that he was not a Falun Gong practitioner and he agreed. The Tribunal put to him that on the basis of the country information (referred to below) it did not seem like he would be considered to be a Falun Gong practitioner.
15. The Tribunal put to the applicant that according to the United States Department of State 'International Religion Freedom Report for 2012 – China' Xiang Gong (as opposed to Falun Gong) is not considered illegal in China:

The PRC government banned the Falun Gong under an "anti-cult" provision in the criminal law in 1999 ... Other spiritual movements, including Xiang Gong and Yan Xin Qigong, were free to practice.¹

16. In response the applicant said it is a banned cult. He did not however offer any further information or evidence in support.
17. As noted above, the applicant had raised at hearing that he was now attending church. The Tribunal put to the applicant at hearing information from the DFAT Reports. It notes that:

Religion

3.12 Official statistics state there are around 100 million religious believers in China, including over 23 million Protestants, six million Catholics, and over 22 million Muslims. It is difficult to quantify the number of Daoists or Buddhists in China because of the mostly private nature of their faith. The Chinese government claims there are about 5,500 religious groups in China, along with nearly one hundred religion-affiliated academic institutions and as many as 140,000 registered places of religious activity. Officially, there are 360,000 registered religious clergy. In reality, the number of religious believers is estimated to be much higher and rising, particularly

¹ US Department of State 2013, *International Religious Freedom Report 2012 – China* (Includes Tibet, Hong Kong and Macau), 20 May
http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dynamic_load_id=208226&year=2012#wrapper

among believers in unregistered religious organisations (see separate DFAT Thematic Report on Unregistered Religious Organisations and Other Groups)².

.....
2.11 Broadly speaking, DFAT assesses religion in China can be practised within state-sanctioned boundaries, as long as such practices do not challenge the interests or authority of the Chinese Government³.

18. The Tribunal put to the applicant that according to these reports, it would indicate that even if it did accept that he was attending church and would want to attend church in China (in relation to which it had some doubts), there are 100 million believers in China and it would appear that he could go back and attend church in the same manner that he attends in Australia; and it did not appear that he faced a real chance of serious harm or a real risk of significant harm. In response the applicant said that he hopes so, and the only concern that he has about returning is that he has a record with the police that he was with an evil cult, and he is concerned they will take him again. The Tribunal noted that it had concerns with this claim, and if it did not accept that claim, then it appeared there was nothing in the country situation as set out in the DFAT Reports to which the Tribunal is required to have regard, which would indicate that he would face a real chance of serious harm or real risk of significant harm in China.
19. Relevant evidence and information is set out below.

FINDINGS AND REASONS

Country of reference

20. The applicant produced to the Tribunal his passport issued by the Chinese authorities. The Tribunal accepts that the applicant is a national of China, and that the appropriate country of reference for the assessment of his refugee claims, and the receiving country for the purposes of his complementary protection claims, is China.

Credibility

21. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. Similarly, that the applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to "significant harm". It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out.
22. Pursuant to s.5AAA of the Act it is the responsibility of the applicant to specify all particulars of his or her claim to be a person to whom Australia has protection obligations and to provide sufficient evidence to establish that claim. The Tribunal does not have any responsibility or obligation to specify, or assist the applicant in specifying, any particulars of his or her claims. Nor does the Tribunal have any responsibility or obligation to establish, or assist the applicant in establishing, his or her claims.
23. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case

² DFAT Report 3 March 2015.

³ DFAT Thematic Report

for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).

24. The Tribunal had a number of concerns about the applicant's inconsistent, changing and not credible evidence as to past events, and what he fears upon return to China. The Tribunal did not find the applicant to be a credible, truthful, or reliable witness in relation to matters central to, and related to, his claims. The Tribunal's concerns are set out below.
25. **Firstly**, the Tribunal was concerned with inconsistencies between the applicant's statement and his evidence to the Tribunal about details of his claims, as set out below:
 - The applicant told the Tribunal that he was detained due to Xiang Gong, he was tortured and forced to admit that he was a cult member. His claim to have been forced to admit that he was a cult member was inconsistent however with his statement; so the Tribunal asked him when he admitted that he was a cult member, and he said that it was while he was being questioned and beaten in June 2011. The Tribunal then put to him that this was inconsistent with his statement, where he claimed that he did not tell the authorities anything when he was held by them. He did not explain the inconsistency; he just repeated his evidence to the Tribunal.
 - The applicant gave evidence to the Tribunal that he chose to stop working so that he would not be arrested again, but that this was also inconsistent with his statement, where he claimed that he tried to return to his work but he could not do so because he had been dismissed from his work. He then said that the employer would have sacked him because he was involved in a cult.
 - The Tribunal also noted that according to his application form he had stopped working at his job in May 2011 and asked whether this was correct; he agreed. The Tribunal noted that this was also inconsistent with his statement because he had been arrested in June 2011 and after that he had lost his job and decided to leave; so it was not possible that he had stopped working in May 2011. He then said that in July he resigned, there is no difference to resigning or being sacked. The Tribunal then asked which one was applicable, and he said he was sacked.
26. The Tribunal considers that the applicant would have been able to give consistent evidence as to whether he was sacked or he quit his employment; and it considers that this, as well as the other inconsistencies referred to above, undermines his credibility and his claims.
27. **Secondly**, the Tribunal had concerns about the applicant's inconsistent evidence concerning when he applied for his student visa to come to Australia.
28. According to his statement, it was after he had been arrested, tortured, released, and then sacked by his employer⁴, that he realised that he could not remain in China and practice his cultivation, as is his human right, and so he decided that the only option was for him to go to a democratic country, so he contacted a travel agency that could help to obtain his visa.
29. The applicant told the Tribunal that he decided to apply for his student visa to come to Australia after he had been released (not after he had lost his job). The Tribunal noted that this was inconsistent with his statement where he said that it was only after he lost his job that he realised he needed to leave China because he is a target for persecution by the

⁴ As put to the applicant, according to his date of detention [in] June, and five days after he was released from detention, he found out he lost his job, then the date he decided was at least after [date] June 2011.

Chinese authorities. He did not explain the inconsistency; he just repeated his evidence to the Tribunal.

30. The Tribunal was further concerned at the claimed timing of his decision to apply to leave China. As noted above, according to his statement the decision must have occurred some time after [date] June 2011, even if the decision to apply for his student visa was made after his detention, as claimed at hearing, this decision would have been made after [date] June 2011 (he insisted that the date of his date of detention was [in] June 2011).
31. However, as put to the applicant pursuant to s.424AA of the Act, according to Departmental records, the applicant made his student visa application [in] June 2011, before he was even detained. In response, the applicant said that when he had applied for his student visa [in] June 2011⁵, the employer and his family both supported it, and [in] June he was arrested and he had already applied to come to Australia on his student visa and he wouldn't have come if Australia was not a democratic country. The Tribunal has considered this response however it does not explain the applicant's claim, repeated in his statement and at hearing, that the only reason for applying for the student visa was because he was detained. The Tribunal considers this inconsistent evidence undermines his credibility, and his claim that he was detained, tortured, and lost his job and then decided to come to Australia to escape further persecution and so that he could practice his religion.
32. **Thirdly**, the Tribunal was concerned about the applicant's delay in leaving China once his student visa was granted. The Tribunal notes that the applicant claimed in his statement that his only option was to go to a democratic country because he was unable to practice his religion and he was the target of persecution by the Chinese government. However, according to Departmental records, his student visa was granted [in] June 2011, but he delayed in departing China until [date] August 2011, a period of almost two months.
33. When the Tribunal put this information to the applicant pursuant to s.424AA of the Act, he said that when his visa was granted he wanted to come immediately, but because his grandmother was sick, he delayed. The Tribunal does not find this response explains a delay of almost two months, given his serious claims of being tortured, sacked, and facing further persecution because he knew he was a target of the Chinese government. In the circumstances, the Tribunal considers that the applicant would have left China as soon as possible to avoid further harm if his claims were true. The Tribunal considers that his delay in leaving China undermines his claims to have experienced harm as claimed.
34. **Fourthly**, the Tribunal was concerned with the applicant's evasive, inconsistent and changing evidence about his delay in lodging a protection visa application, and whether he saw a migration agent, as set out below. The Tribunal noted that he arrived in Australia in August 2011, but he did not sign his protection visa application until February 2013.
35. The applicant told the Tribunal that when he was in China, he was aware he could apply for a protection visa in Australia. The Tribunal asked why then he did not lodge a protection visa application when he came to Australia, and he said he didn't know how to apply. The Tribunal asked what enquiries he made about applying, and he said he enquired from a friend who had lodged a protection visa application (this friend had seen a lawyer). When the Tribunal asked if the applicant had gone to see an agent himself, he said he saw an old man who was a friend of a friend. The Tribunal noted he was not answering the question, and asked whether he had seen an agent, and he said no, just a friend. The Tribunal put to the applicant that if he had a fear of persecution, it would expect that he would have consulted an expert in the field, who could help him. In response, the applicant said that he thought he could find everything out himself by the internet. The Tribunal then asked the applicant that if

⁵ At hearing, he said [date] June 2011, but this appears to be an error.

he could do so, why did it take him so long, from his arrival in August 2011 to sign his protection visa application (until February 2013). He responded that he needs to prepare and find out information from the computer and asked his friend. The Tribunal put to the applicant that it did not see why this would take 18 months to do this. In response, the applicant then said that he thinks he consulted a few times an agent or lawyer. The Tribunal noted that it had earlier asked him whether he had done so, and he had said no. It asked him why he was now changing his evidence, and he said it just occurred to him now. When the Tribunal asked the applicant whether he wanted to say anything further about the delay, he said that after he came to Australia he didn't know about Australia and after he stopped studying he went to work and he didn't have time and he was busy. The Tribunal does not find his explanation for his delay to be persuasive.

36. The Tribunal was also concerned because the applicant gave inconsistent evidence about why he did not lodge his protection visa earlier. It noted his claim that (despite having a student visa), he only studied for one month. He had initially told the Tribunal however that he did not lodge a protection visa application because he thought that if he did so, he would not be allowed to study. The Tribunal put to the applicant that when he had the chance to study, he did not do so, so it was hard to accept that this was a reason for him not to lodge a protection visa application. In response, the applicant said that his original plan was to be transferred to [city] but he didn't know how to transfer schools and so he worked to get money. The Tribunal does not find the applicant's explanation as to why he did not lodge a protection visa application earlier to be persuasive.
37. Further, according to the delegate's decision record, the applicant's student visa was cancelled [in] December 2011; he remained unlawfully present in Australia, but he did not lodge his protection visa application until [date] February 2013. The Tribunal put this information to the applicant pursuant to s.424AA of the Act. In response, the applicant said that after he came to Australia, he adapted to the life here and he was not worrying about being arrested, he enjoyed the freedom and so the application was delayed. When he was working, he asked friends about it and he came to know he could make such an application. The Tribunal has considered this response however it does not find it persuasive (noting also that he claimed to be aware he could make such an application before he came to Australia).
38. The Tribunal has also taken into account the reason offered in the applicant's statement, namely that he thought that the Public Security Bureau (PSB) might know about his protection visa application and then his family members would be involved, so he couldn't make up his mind to lodge the application, but because it was hard to get work without a work permit, he decided to lodge his protection visa application. The Tribunal considers that if the applicant had serious fears about the confidentiality of his application, he could have made enquiries about this. Further, he told the Tribunal, as noted above, that he had been working on a full-time basis from October 2011 to date, which undermines his explanation that he could not get work. The Tribunal does not consider his explanations to be persuasive.
39. The Tribunal considers that if the applicant had consulted an agent and obtained advice, he would have remembered this and would have told the Tribunal when asked. The Tribunal considers it more likely that the applicant failed to make any enquiries about his migration situation, and instead spent his time working in Australia. The Tribunal also considers it unlikely that the applicant wanted to study in Australia, given his lack of study in Australia. The Tribunal considers that there was a significant delay in lodging his protection visa application after his arrival and the cancellation of his visa, and the Tribunal considers that if his claims were true, he would have made enquiries about his immigration status and how he could be protected, given his circumstances. The Tribunal considers that his delay in

lodging his application indicates that he did not have a fear of harm in China and was not escaping persecution.

40. **Finally**, the Tribunal was concerned that the applicant's evidence about his claimed religions was vague and evasive, and not indicative of a person who had been attending religious activities as a committed follower.
41. Concerning Xiang Gong, he said that he thinks he became a member of Xiang Gong in December 2007. However, when the Tribunal asked him how he practiced his religion he was not able to say. He started to repeat what was in his statement (about why he started it), however the Tribunal said that it wanted to know how he practiced his religion. He again did not explain how he practiced. Finally, when he referred to Xiang Gong exercises, the Tribunal asked him to describe them, and he said "how to describe this?". He then said some words: dragon wiggle the tail and jade phoenix. The Tribunal said it still did not understand what the exercises are and asked him to tell him the name of an exercise with its description, and he said "from my personal opinion I just do the morning exercise". The Tribunal again asked him to describe the actual exercise and he said: stand up just like practice yoga. The Tribunal noted this was all he could say. It asked him why would he be considered to be part of a cult if he was just doing yoga exercises and he was not able to explain why his religion was considered to be a cult, other than to say that the authorities did not have enough for their quota of cults so that is why his religion is considered a cult. The Tribunal considered that the applicant's evidence to be vague, evasive and unlikely.
42. Concerning Christianity, he claimed that he could not recall when he started to attend church; it was about 2-3 years ago. The Tribunal was concerned that the applicant gave evasive evidence about his new religion. He was able to refer to some concepts, for example baptism, although he said he was not baptised, as he hadn't wanted to be; and that there was the old and new testaments, which had stories, but he couldn't really remember the stories except one, and said he needed time to think about what the stories might be.
43. When the Tribunal asked him to tell it about his religion, he said "to believe in Jesus we can get eternal life and we can go to a good heaven and so if we have guilt we just repent in front of Jesus and we need to do good deeds and be good men". The Tribunal asked if there was anything else and he said he makes donations to African orphans. When the Tribunal asked if there was anything else he could tell about his religion because although he could say some words, it was finding it difficult to accept that he was a Christian, he was unable to do so despite being given several opportunities to do so. The Tribunal considers that the applicant's evidence about his claimed new religion to be vague and lacking in detail.
44. Further, the Tribunal was concerned that the applicant was unable to provide any real information about the differences between his claimed religions. As the Tribunal noted that the applicant claimed to be devoted to Xiang Gong for about four years in China, but that he had instead chosen to practice Christianity in Australia, the Tribunal asked the applicant to explain to it the differences between the two religions. In response, the applicant said that Xiang Gong is a Chinese religion and Christianity comes from Pakistan and it is a belief from westerners and he doesn't really know. The Tribunal put to the applicant that country information indicated that Christianity did not come from Pakistan⁶, and asked if he wanted to say anything about that and he laughed. He then responded however the interpreter said he was not speaking clearly; the Tribunal asked him to speak in a complete sentence so that he can be understood. The Tribunal repeated the question, saying that it was difficult to accept from his evidence thusfar that he had been genuinely involved with either religion and so it was giving him an opportunity to explain the different religions. In response the

⁶ "Christianity started about 2000 years ago in Judea (present-day Israel) with Jesus Christ and His faithful group of disciples: <http://www.allaboutreligion.org/history-of-christianity.htm>

applicant said that Xiang Gong put more emphasis on exercises and Christianity is a spiritual belief in his opinion. The Tribunal noted that he had actually changed religions, and it would expect that he would be able to say more about his religions than this. His response was that it is just like he said before and to believe in Jesus is very appealing. The Tribunal also notes that his claim that Xiang Gong puts emphasis on exercises is inconsistent with the country information referred to above, calling it a spiritual movement; further, the Tribunal considers that the applicant's evidence undermines his claims to have been committed to any religion and to have then converted.

45. For the reasons set out above, the Tribunal does not consider the applicant to be a credible witness.

Other matters

46. While the Tribunal acknowledges that the applicant could have been nervous at the hearing, and that some of the events occurred some time ago, the Tribunal does not accept that this can explain the difficulties with the evidence. Further, while the applicant gave some information about the religions, the Tribunal considered his knowledge to be inconsistent with his claimed devotion and practice of each religion, and it does not consider that such knowledge is corroborative of his claims having regard to all of the Tribunal's concerns.

Credibility summary

47. Considered cumulatively, the concerns the Tribunal holds about the applicant's credibility as discussed above lead the Tribunal to conclude that the applicant is not a witness of truth and that the applicant has fabricated accounts of events and claimed fears, upon which he has based his protection claims.

Findings on the applicant's claims

48. On the basis of the adverse credibility finding the Tribunal does not accept that the applicant was ever involved in either Xiang Gong or Christianity, nor does it accept that he was accused of involvement in Xiang Gong, nor that he was detained, tortured or released upon payment of a fine, nor that he lost his job or had a police record, nor that he escaped to Australia due to a fear of persecution. The Tribunal finds that the applicant remained in Australia to work and that he was prepared to make false claims to support a protection visa application. The Tribunal finds that the applicant was working (as claimed) in China and that he was living with his parents when not working. It finds that upon return he will continue to work and live with his parents and it is not satisfied that there is any reason for considering that the applicant faces a real chance of serious harm or a real risk of significant harm. It does not accept that he will have no freedom, nor that he faces a chance of being imputed with involvement with any religion. It does not accept that he will seek to attend church or be involved in any religion. It does not accept that he has undertaken any activities in Australia other than one month study and thereafter work; it does not consider that there is any reason for the applicant's time in Australia to draw the adverse attention of anyone.
49. The Tribunal is not satisfied on the evidence before it that the applicant suffered, or faces a real chance of suffering in the reasonably foreseeable future, serious harm from anyone.
50. The Tribunal has considered the applicant's claims individually, and on a cumulative basis, having regard to the findings that the applicant is not a credible witness concerning past or future harm feared, as well as the relevant country information, other than those claims accepted above, the Tribunal rejects all the various claims made and finds that he does not have a well-founded fear of Convention-related persecution for any of the reasons put forward by him, or on his behalf.

Complementary protection

51. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa) (see Annexure A, which provides a summary of the relevant terms).
52. The Tribunal has accepted that the applicant is a young male from China, who was educated and worked in China, and then studied for one month in Australia and thereafter worked. For the reasons discussed above, the Tribunal is not satisfied that the applicant has been truthful in relation to the majority of his claims. The Tribunal does not accept that he has experienced any of the past harm claimed, nor that he fled China in fear nor that anyone has ever shown any adverse interest in him. The Tribunal does not accept that he has been involved in any religions as claimed, nor that there is any reason for such involvement to be imputed. The Tribunal considers that he will return, live with his parents again, and work. The Tribunal is not satisfied that there is a real risk that he will face a real risk of adverse attention amounting to significant harm, from anyone, for any reason.
53. On the evidence before it, and for the reasons discussed above, and having considered the claims singularly and cumulatively, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, namely China, that there is a real risk he will suffer significant harm. Accordingly, the Tribunal finds that the applicant does not satisfy the requirements of s.36(2)(aa) of the Act.

CONCLUSION

54. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention, therefore he does not satisfy the criterion set out in s.36(2)(a).
55. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa), however it is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
56. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

57. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Christine Cody
Member

ANNEXURE A - RELEVANT LAW

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

Refugee criterion

2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
3. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
4. 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.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution. 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.
6. 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.
7. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched

possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

8. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
9. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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

Section 499 Ministerial Direction

12. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration, and it has done so.