

1413824 (Refugee) [2015] AATA 3334 (13 August 2015)

**DECISION RECORD**

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1413824
<b>COUNTRY OF REFERENCE:</b>	China
<b>MEMBER:</b>	Rachel Homan
<b>DATE:</b>	13 August 2015
<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)(aa) of the Migration Act.

Statement made on 13 August 2015 at 3:08pm

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who the Tribunal accepts is a citizen of China, applied for the visa [in] September 2013 and the delegate refused to grant the visa [in] July 2014. The applicant sought review of that decision [in] August 2014.
3. The applicant appeared before the Tribunal on 3 August 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The issue in this review is whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that he will suffer significant harm.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

### RELEVANT LAW

6. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
7. Section 48A of the Act imposes a bar on a non-citizen making a further application for a protection visa while in the migration zone in circumstances where the non-citizen has made an application for a protection visa which has been refused. The Full Federal Court in *SZGIZ v MIAC* (2013) 212 FCR 235 (*SZGIZ*) has held at [38] that the operation of s.48A, as it stood at the time of this visa application, is confined to the making of a further application for a protection visa which duplicates an earlier unsuccessful application for a protection visa, in the sense that both applications raise the same essential criterion for the grant of a protection visa.
8. The applicant is a [national] of the People's Republic of China. The applicant first arrived in Australia [in] July 2009, using a [foreign] passport in the name of [another person], which has been found by the Department's document examination unit to be fraudulently altered. The applicant also held a validly issued PRC passport in his true identity which was used to make a protection visa application [in] September 2009. The applicant's first protection visa application was made on the basis that he had a fear of being persecuted by the Chinese authorities as a consequence of his involvement in a land dispute. That application was refused [in] December 2009 and the applicant unsuccessfully sought review of that decision by the Refugee Review Tribunal (RRT).
9. The Tribunal finds that the applicant's previous protection visa application was made and refused with reference to the Refugees Convention criteria, and prior to the commencement of the complementary protection provisions on 24 March 2012. Applying the reasoning in

SZGIZ, the Tribunal finds that it does not have power to consider the Refugees Convention criterion in s.36(2)(a) in the present case, and has proceeded on the basis that it can only consider the applicant's claims under the complementary protection provisions in s.36(2)(aa) of the Act.

### **Complementary protection criterion**

10. A person may 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.
12. 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**

13. 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. The DFAT Country Report on the People's Republic of China, dated 3 March 2015, and the DFAT Thematic Report on Unregistered Religious Organisations and Other Groups in the People's Republic of China, of the same date, are relevant in the present case.

## **CONSIDERATION OF CLAIMS AND EVIDENCE**

### **Background**

14. According to the information provided in the applicant's visa application form, he was born in Fuqing, Fujian, China and resided there immediately prior to his departure from China. The applicant identified himself as belonging to the Han ethnic group and gave his religion as I-Kuan Tao.
15. The applicant was married in 1992 and provided details of a wife, [and children] remaining in China. According to the application, the applicant's parents, [and siblings] also remained in China. The applicant stated that he maintained contact with his family in China by calling



them sometimes. Submitted with the application was a certified copy of the identity page of a PRC passport issued to the applicant in Fujian in [2007].

16. The applicant's claims for protection were set out in a typed personal statement in the Mandarin and English languages. According to the statement, the applicant was born in the countryside of China and came to Australia because he was suffering injustice from the Chinese government. The applicant's family members and countrymen were all followers of I-Kuan Tao and were baptised. The applicant had a family shrine and, under the influence of his family members, converted to I-Kuan Tao. The applicant described I-Kuan Tao as a religion deriving from heaven. Its followers are encouraged to practice eight virtues (filial and fraternal duties, loyalty and trustworthiness, sense of propriety, justice, honesty and honour). Its main god is Wusheng Laomu or Wuji Laomu (Ancient Mother of Limitless Heaven) or Ming Ming Shang Ti (Luminous Emperor on High).
17. According to the statement, the applicant was baptised in early 2011 when a fellow believer from the family shrine visited him in Australia. The applicant's wife had asked her friend to bring the applicant several books on I-Kuan Tao doctrines. From that time onwards, the applicant exchanged views online with his wife and fellow believers. Sometimes they talked on the Internet and phone about I-Kuan Tao. The applicant was unable to find an I-Kuan Tao temple in Australia and had once been told it was a cult so became very cautious.
18. In 2012, the applicant's wife's [brother] went to Taiwan on a spiritual tour to seek Tao. He invited a preacher from Taiwan to the family shrine to give lectures. The family shrine developed quickly and soon attracted about 100 followers who came to learn the Tao's doctrines. The shrine had connections with shrines in Taiwan, Hong Kong and Macau and they exchanged visitors and views on a constant basis. The shrine imported books from Taiwan. There were regular rituals of incense burning on the 1<sup>st</sup> and 15<sup>th</sup> of every month, a sermon every Wednesday and a congregation every month.
19. Seeing more and more believers coming to seek Tao in the family shrine, the Chinese government imposed a penalty upon them and came to harass them, finding fault with their activities. The family shrine was searched twice and all the ritual instruments and books confiscated.
20. Shortly after the Spring Festival of 2013, a congregation attending the family shrine was assaulted by the village security guards. All the participants were arrested and the applicant's wife was kept in custody for a week to be investigated. The applicant was watching the congregation online while this happened and witnessed the arrests.
21. In September 2013, the applicant's family members were attacked by security police in the shrine. The applicant's mother, wife and son were injured by police. The applicant sister-in-law was detained and his son had to go into hiding. Later, the police searched the applicant's home and took away their computer. The applicant hastily deleted the corresponding information on the computer for fear that the police would find it. The police nevertheless found in the computer information about the applicant preaching Tao, including materials he had sent to his family members about the faith. This information had been downloaded from Australian websites which are inaccessible in China. From those materials, the security police came to the conclusion that the applicant was preaching a cult religion from outside China. The police began to harass the applicant's wife in order to coerce him to return to China in order to confess. The police also discovered at the same time that the applicant had used a false passport to leave China.
22. The "other day" the applicant happened to learn of the existence of an I-Kuan Tao temple in [City 1]. He went to the temple and realised a long cherished dream and regarded the temple as his spiritual home and decided to pursue Tao all his life there. The applicant told his wife

and countrymen at home about the news of the temple and they reminded him not to come back to China because it was very dangerous to be a follower of I-Kuan Tao in China.

### **Departmental interview**

23. The applicant was interviewed by an officer of the Department of Immigration [in]6 April 2014 and the Tribunal has listened to a recording of that interview.
24. At the interview, the applicant submitted a USB stick containing a number of still images and a four-minute video depicting a violent clash between a number of civilians and a large number of people wearing police and military uniforms in a rural location. The images show physical altercations between the two groups, rocks being thrown by both sides and number of injuries being suffered by those in civilian clothing as a result of being hit or beaten. Also contained on the USB stick are images of the applicant's wife and two children wearing clothes that resemble the clothing worn by persons involved in the clash. In addition, there are several photographs of the applicant with unknown persons in what appears to be a small shrine, as well as photographs of several untranslated documents.
25. During the interview, the applicant gave evidence that he departed China using a fraudulent Hong Kong passport in [another name], which he said he obtained from a snakehead. The applicant then clarified that he used his genuine PRC passport to travel from Shenzhen to Hong Kong. From Hong Kong he travelled to [another country] and from [there], the applicant used the false passport to travel to Australia. The applicant stated that he had no difficulties leaving in China on his genuine passport, stating that everything was handled by the snakehead. The applicant denied having previously travelled to any other country.
26. The applicant confirmed that his religion was I-Kuan Tao.
27. The applicant told the officer that his family continued to reside in Fuqing, Fujian in the same place they had lived all their life. The applicant stated that one of his brothers now lived in [another country], but his [other siblings] continue to reside in the same village in China.
28. The applicant told the officer that the claims in his first protection visa application were true. The applicant said he had told his story to a migration agent who completed the application. The applicant was beaten and detained on two occasions in 2009 but had made a mistake about the dates during the RRT hearing. The applicant stated that he had no documentary evidence to support those claims.
29. The applicant told the officer that he became a follower of I-Kuan Tao before he travelled overseas, when he was about [age] and working as a butcher. At that time, only a few of his family and friends were followers. On the 1<sup>st</sup> and 15<sup>th</sup> day of each lunar month he burnt incense and knelt down before his god. The applicant stated that his family hosted I-Kuan Tao gatherings four times a year but conducted incense burning rituals each lunar month.
30. The applicant gave evidence that his wife and children had been beaten at a gathering in September 2013 because the Communist Party did not agree with I-Kuan Tao. The applicant said his wife had been injured during the raid and hospitalised for one month. She was not arrested but the applicant's brother and sister in law were arrested. The applicant claimed that documents pertaining to their arrest appeared on the USB stick. The applicant said his son had gone into hiding after the incident.
31. The applicant told the officer that when he was in China, his family had not experienced any difficulties because of their I-Kuan Tao practice and it was only since the September 2013 incident that the applicant had become fearful. The applicant had heard through friends that

he was able to lodge a further protection visa application and, as soon as he heard about the incident back home, decided to lodge the present application.

32. The applicant claimed that his wife had also been arrested and detained following the Spring Festival in 2013 but that incident wasn't so serious. The family used to have small gatherings but more and more people began to attend, which is why the police began to take an interest in them. Around 90 people attended the gathering in September 2013 shown on the USB stick. The Public Security Bureau and police were involved in the raid.
33. The applicant gave evidence that his family established the shrine in 2012. It used to be a very small shrine for the family's private use but since his brother-in-law returned from Taiwan, the shrine had expanded so that people from outside the family could visit.
34. The applicant said that since September 2013, people have been afraid to worship at the family's shrine. Only a few people have continued to worship with the applicant's wife and so things have been OK.
35. The applicant claimed he had been attending the Tian Yan Tao Temple in [City 1] almost every Saturday since August 2013. The applicant was asked about the eight virtues all I-Kuan Tao practitioners were required to follow, mentioned in his written statement. The applicant stated that when he first attended the Temple he was given the three treasures. At the temple, the applicant worships and listens to the doctrine of Tao, which consists of eight characteristics – which he described as filial piety, loyalty, trust, kindness, sense of shame, sense of honour, love and respect for elder brothers.
36. The applicant stated that I-Kuan Tao was founded in 1930 by Tian Lan Zhang or Zhong Yi Lu and another person Hui Min Sun. The applicant claimed that he was not very familiar with the history of I-Kuan Tao, but stated that Hui Min Sun and Tian Lan Zhang were a couple. The applicant said he might have read about the origins of I-Kuan Tao but could not remember the details. When he goes to the Temple on Saturdays they talk about modern times and recite the scriptures. The applicant stated that they use a book called Tai Shan Quietness for chanting. The applicant stated that he found information about I-Kuan Tao by browsing the Internet and going to the Temple.
37. The applicant was asked why he had not attended a temple prior to 2013. The applicant said that previously his family was more involved in I-Kuan Tao than him and he just burnt incense with them. He also couldn't find any temple in Australia before then. The applicant stated that his wife became involved in I-Kuan Tao around the same time as him, when she was in her 20s. Their son followed them.
38. The applicant described the symbol of I-Kuan Tao as a circle and a vertical line with two points at either side like a body. He said the symbol represents the mother of no limit who is their god. The applicant explained that he understood the word "Tao" to mean "the road". He said it was important to teach people the right path or road. To follow the right road, one needs to worship and follow the eight virtues.
39. The applicant showed the departmental officer a membership card from his temple and a receipt for the purchase of incense sticks. Copies of these documents appear on the Department's file.
40. The applicant said he would continue to practice I-Kuan Tao if he were to return to China. Even he did not, he would still be perceived as an I-Kuan Tao follower. The applicant said there was nowhere in China where he could live a safe life.



### **Previous protection visa application**

41. The claims raised in the present application were not mentioned in the applicant's first protection visa application. According to the Refugee Review Tribunal decision record in relation to his first visa application, in 2002, the applicant and two friends rented a farm to raise pigs. After two years, the business started to become profitable with more than 3000 pigs and an annual income of over 300,000 RMB. The business had to send gifts or bribes to the main town officers every Chinese New Year or else they would cut their water and electricity. The applicant's piggery was expropriated by the government for the construction of railway in May 2006. The applicant and his colleagues received a small compensation fee, which they regarded as inadequate, but did not dare speak out about it.
42. In 2007, they contracted an area covering 300mu to grow vegetables. The contract period was five years and the annual contract fee was 60,000 RMB. The applicant and his colleagues grew celery, cabbages and other vegetables and the business was profitable. In January 2009, [the director of the town] government came to see the applicant and told him that the annual contract fee would be increased to 100,000 RMB. [The director] required a response before [a date in] February. At 8 AM [later in] February 2009, a group of unidentified people came to the farm and said that the land was contracted to them now and asked the applicant to leave. The applicant took several his workers to the town government to complain. The police came and took applicant to the police station where he was detained for seven days on a charge of malicious injury.
43. [In] March 2009, the applicant took a complaint letter to the Fuqing Municipal Bureau for Complaints asking for justice. On his way home, the applicant was stopped by several men and beaten. The applicant was tortured for about 10 minutes and threatened that if he went to appeal again his family would be killed.
44. [In] April 2009, more than 10 people including the applicant and his friends took a banner to the Fuqing government to tell of their sufferings. The police arrived and took the group to the police bureau. The applicant was detained for 15 days on the charge of disturbing security of society. The applicant was warned against spreading words that were not favourable to the government.
45. The applicant felt he was being followed after being released from the police station and decided to go abroad. In June 2009, an application to travel to [another country] was denied. The applicant then paid 30,000 RMB to get a [foreign] passport from human trafficker. Under this arrangement, the applicant came to Australia. After his arrival, the applicant asked his wife to secretly mail complaint materials to the Fujian Municipal Bureau. [In] August 2009, the applicant received a call from his wife who said that the police had been to search their home [the day before in] August 2009. His family had been warned that they should report to police if they got any information from the applicant.
46. The RRT found that the applicant had given inconsistent evidence regarding the dates on which he was attacked and the number of attacks, as well as the number of petitions or complaints he made.

### **Review application**

47. Shortly prior to the Tribunal hearing, the applicant submitted obscure photocopies of eight photographs apparently showing the applicant and various other persons at a temple or shrine. Also submitted was a translated declaration made by [a named person] who claims to be a leader at [a] Temple and the applicant's "introducer". According to the declaration, the author came to know the applicant in September 2013. Since his ordination, the applicant has dedicated his whole heart to Taoist study. The applicant is very faithful and

every Saturday comes to the temple to study. During the 1<sup>st</sup> and 15<sup>th</sup> days of the lunar calendar, the applicant comes for masses and to listen to the preachers.

48. At the Tribunal hearing, the applicant submitted originals of the eight photographs referred to above. The photographs show the applicant with various other persons and, having regard to their clothing, appear to have been taken on at least three separate occasions. The Tribunal asked the applicant to describe several of the photographs. The applicant described some as showing his initiation ceremony, others showed the applicant with several cantors from his temple. Another photograph showed persons sitting on chairs looking at a whiteboard containing writing in the Mandarin language. The applicant explained that the whiteboard was used in the teachings he participated in after worshipping at the temple. The Tribunal asked the applicant why he had taken the photographs. The applicant told the Tribunal that when his visa application was rejected, he was told he did not have enough evidence. The applicant had the idea to take these photographs and thought that without them he may not be able to convince the Tribunal that he was an I-Kuan Tao practitioner. The applicant also submitted to the Tribunal screenshots taken from the video contained on the USB stick submitted to the Department and described the contents of several of those images.
49. The applicant showed the Tribunal a small, red, leather-bound booklet, embossed with gold writing, containing writings which the applicant described as mantras he used to practice I-Kuan Tao every Saturday. He also showed the Tribunal a booklet or magazine containing writings and photographs which the applicant described as a seasonal publication for I-Kuan Tao practitioners from Taiwan, which he obtained from his temple [in City 1].
50. The Tribunal asked the applicant how the written statement submitted with his visa application was prepared. The applicant explained that he wrote down his experiences then took the statement for translation to a friend. The applicant claimed that the statement was read back to him and he was satisfied that it contained an accurate account of his experiences before he signed it.
51. The Tribunal asked the applicant why he had failed to mention his practice of I-Kuan Tao at either the Department or the RRT in connection with his first protection visa application, noting that according to his evidence at the departmental interview he was already practising I-Kuan Tao by that time and the practice had been banned in China since the 1950s. The applicant explained that, at the time, he wasn't aware that his practice of I-Kuan Tao would make him eligible for a protection visa. His family were still practising I-Kuan Tao on a small-scale in their home and lived in a remote area. The applicant explained that as a young person, he witnessed his grandfather performing I-Kuan Tao rituals. It was only later, [as an adult], that the applicant started participating in those rituals and burning incense. After 2013, there were more followers and it was then that they began to experience difficulties.
52. The Tribunal enquired whether the applicant continued to hold any fears for his safety as a consequence of the matters referred to in his first protection visa application. The applicant stated that although those events had occurred more than six years ago he could not be sure that there was no outstanding risk to him. The applicant indicated that he wished the Tribunal to take those matters into consideration.
53. The Tribunal noted that the RRT had found a number of inconsistencies in his evidence with regard to the land disputes and invited the applicant to comment on the RRT's findings. The applicant made some criticisms of the RRT decision and provided a description of the two land disputes in terms which were broadly consistent with his previous evidence. The applicant was, however, unable to provide a detailed description of the harm he claimed to have suffered following the occupation of his land. The Tribunal observed that it was having difficulty accepting his claims of past harm were true given that he was currently unable to



provide a detailed account of his experiences and had provided inconsistent evidence regarding those experiences at a time much closer to the actual events. The applicant suggested that the passage of time had made it more difficult for him to recall the timing and order of events and reiterated that his primary reason for fearing harm now was his I-Kuan Tao practice.

54. The applicant told the Tribunal that he commenced practising I-Kuan Tao [as an adult] or in around 1992. The applicant told the Tribunal that he and his family, as well as a few other villagers, including his now wife, mostly practiced at home. On the 1<sup>st</sup> and 15<sup>th</sup> of the lunar month, and on other special occasions, they would conduct ceremonies at which they would burn incense, kneel and kowtow to worship their gods and pray for health and peace. The applicant described a small shrine in his family home consisting of an incense burner and some writings on vertical banners.
55. The applicant denied having ever participated in an official initiation ceremony or baptism whilst in China but commented that the manner of his practice of I-Kuan Tao in China was very different to the manner in which he practiced in Australia. The applicant noted that there were regional differences in the practice of I-Kuan Tao. In his village in China, they did not conduct initiation ceremonies but simply followed the traditions of their grandparents or village elders. When asked whether he had participated in an initiation ceremony since leaving China, the applicant stated that he had participated in an initiation ceremony at his temple [in City 1] in September 2013. The Tribunal asked the applicant about the 2011 'baptism' mentioned in his written statement. The applicant explained that the term 'baptism' incorrectly described the ceremony but stated that a Taoist from his village was visiting Australia. They performed a ritual involving the three treasures and oral transmission of Taoist mantras as the applicant's wife had thought it would bring him peace and safety but the applicant denied it was an initiation ceremony or baptism.
56. The Tribunal asked the applicant about his practice of I-Kuan Tao in Australia. The applicant told the Tribunal that he used to practice at home by praying and kowtowing and speaking mantras in his heart. When he was receiving treatment for some lower back pain he heard people talking about the temple in [City 1], which he started attending in September 2013. The Tribunal asked the applicant why he had not attended a temple before that time. The applicant suggested that his English was not sufficient to enable him to find any. He had asked some Chinese speakers about temples but was told that I-Kuan Tao was bad so was reluctant to make further enquiries.
57. The applicant stated that his temple [in City 1] usually hosts between 10 and 40 people, depending on the event. The applicant stated that he was referred by a master who is his mentor and participated in an initiation ceremony. The applicant told the Tribunal that during the initiation ceremony he kneeled and was given the three treasures which he described as the symbolic opening of a door, a hand position and a mantra. The applicant expressed reluctance to show the Tribunal the hand position explaining that it was not normally shown to those who had not been initiated. The applicant did, however, describe it and explained it was a gesture intended to give protection or safety. The applicant also said it was not appropriate to tell the Tribunal the words of the mantra.
58. The applicant described the rituals conducted at his temple each Saturday evening. The applicant stated that upon arrival, they wash their hands and go upstairs. They pray and worship their gods by performing around hundred kowtows, with the men and women performing their prayers separately. After the ceremony, they share vegetarian dishes and listen to the masters telling stories or tenets of I-Kuan Tao. The applicant told the Tribunal that he did not wear any particular outfit when attending the temple unless an initiation ceremony was being performed, in which case they would wear traditional clothing.

59. The applicant described the fundamental principle of I-Kuan Tao as unity and explained that it encompasses five main religions. The applicant listed the eight virtues and explained that they essentially taught followers to be good, make life better and treat people well. The applicant expressed the belief that he would go to heaven after death. The applicant denied ever witnessing spirit writing, but stated that he had heard of people with such abilities.
60. The applicant told the Tribunal that in his village many people followed I-Kuan Tao traditions in their own home. There was an increase in interest in the practice of I-Kuan Tao at his family shrine after 2012 when his wife's brother returned from Taiwan bringing with him some official materials. Word spread amongst the villagers and, at times, up to 80 people would gather at the family shrine. Sometimes fewer people attended. Ceremonies were held in the family's old house or outside on the grass if there were too many people.
61. The Tribunal asked the applicant about the video and screenshots of the clash. The applicant told the Tribunal that [in] September 2013, a number of people gathered at his house to participate in a ceremony. After they had worshipped, prayed and kowtowed and collected offerings from new participants, some people from the village's executive committee came to the home and told them what they were doing was wrong. The applicant's mother tried to explain what they were doing, that this was their belief but her explanations were not accepted. The applicant's mother was beaten which caused the applicant's other family members to intervene. All of his family were beaten but the applicant's wife suffered the most serious injuries and was hospitalised for 1 to 2 months afterwards due to injuries to her liver. The applicant's son received nine stitches.
62. The applicant pointed out to the Tribunal screenshots showing his wife and mother lying on the ground after being injured. He also pointed out another screenshot showing a large burnt patch on the ground which he claimed was where the shrine's belongings had been burned. The applicant told the Tribunal that his brother-in-law's ribs were broken during the clash and showed the Tribunal a screenshot of a man lying on the ground, apparently injured, whom he identified as his brother-in-law. The applicant's brother-in-law and sister-in-law, as well as some other believers were arrested. They were charged and received sentences and were now on bail but being monitored and had their movements restricted.
63. The applicant also showed the Tribunal a photograph of his wife, [and children] taken some time after the September 2013 incident. The applicant explained that he had asked his wife to take the photograph showing herself and her son in the clothing that they had worn at the time of the September 2013 incident as evidence for his visa application to help prove that they were the people in the video. The Tribunal asked who had filmed the video of the September 2013 clash. The applicant told the Tribunal that his friend had taken the video on his phone by hiding it in his pocket.
64. The applicant told the Tribunal that after her release from hospital, his wife had been afraid to go home. Following her discharge, she stayed at different places. Because she kept moving, the applicant was unable to tell the Tribunal where exactly she had been staying. The last time he had contact with his wife and children they were staying at his grandparents' place, which was his ancestral home, in a remote area near Changle. They had been staying there for a few months but the applicant was not sure where they were now. The Tribunal noted that during the departmental interview the applicant had indicated that his family continued to reside in Fuqing in the place where they had lived all of their life. The applicant explained that, at that time, some of his family were still living in the village and some were still in hospital or arrested, so had not yet gone into hiding.
65. The applicant told the Tribunal that, after hearing of the incident, he became very upset and was unable to go to work for a couple of months. He kept thinking of his family members being beaten up, including those who were elderly. He was not there but, if he had been, he

would have wanted to fight back. The applicant stated that if he ever went back to China he may feel as though he wanted to take revenge against the people who hurt his family but according to I-Kuan Tao, he should not do harm to others or take revenge on other people. When he was younger he would have acted on emotion, but he has now changed.

66. The applicant stated that his wife continues to believe in I-Kuan Tao but is afraid to practice openly. Before the September 2013 incident, the family were not aware of the potential cost to them of practising I-Kuan Tao. Now, if the applicant's wife wants to pray, she does so discreetly in the privacy of her home.
67. The Tribunal asked the applicant about his fears if he were to go back to China. The applicant said that his mother had advised him not to return to China. The applicant had shown his family the photographs he took at his temple in [City 1] and they all believed that the applicant would be unable to practice I-Kuan Tao in a similar fashion in China. The applicant would be arrested or harmed if he were to put up the kinds of decorations used at the temple [in City 1]. The applicant said he had applied for a protection visa in order to be able to practice his religion freely in Australia. It was the incident in September 2013 that prompted him to make a second protection visa application.

### Country information

#### Origins of I-Kuan Tao

68. The DFAT reports of March 2015 do not provide specific information on I-Kuan Tao.
69. According to information on Taoism.net<sup>1</sup>, the modern movement of I-Kuan Tao was established by Lu Zhong Yi, the 17th Patriarch of the later stage of the East Tao Orthodoxy. In 1930, his disciples Zhang Guang Bi and Sun Hui Ming became the 18th Patriarchs to carry on the Tao Orthodoxy. These two practitioners, also known as Shi Zun (literally "Teacher-Reverend") and Shi Mu (literally "Teacher-Mother") started the practice of I-Kuan Tao in Chi Nan City, Shangdong province. Their work spread by word of mouth, and by 1946 I-Kuan Tao became prevalent among 36 provinces of China. In 1949, many I-Kuan Tao followers found their beliefs incompatible with Communist doctrines and followed Shi Zun and Shi Mu out of China and established themselves in Taiwan. I-Kuan Tao thrived and spread in Taiwan, despite initial attempts by the government to suppress it. Soon there were millions of followers, hundreds of temples, and tens of thousands of family shrines. Amongst other things, I-Kuan Tao advocated vegetarianism for all Tao cultivators.
70. A 2011 background paper prepared by the RRT<sup>2</sup> reports that I-Kuan Tao was founded in Shandong province in the 1920s<sup>3</sup> and spread widely throughout Japanese-occupied areas within China during World War II. The religion was outlawed in China in 1951 resulting in members being arrested or driven underground. Many of the remaining followers found their way to Hong Kong and Taiwan, escaping communism in China. The religion remains illegal in China but since the 1980s it has gradually been re-establishing itself as an underground movement supported by missionaries particularly from Taiwan.

<sup>1</sup> <http://www.taoism.net/index.htm> accessed 22 July 2015

<sup>2</sup> *Background Paper: China – Buddhism, Taoism, Folk Religions*, RRT Country of Origin Information Section, January 2011 CR96642C611 at p. 8

<sup>3</sup> Clart, P. 2005, 'Yiguan Dao', in *Encyclopaedia of Contemporary Chinese Culture* ed E.L. Davis, Routledge, London, p.699 ([\INTSSYD\REFER\Research\INTERNET\EASTASIA\chn32439.web.pdf](#))



## Rituals and beliefs

71. I-Kuan Tao, also known as “Yiguan Dao” or “Tian Dao”, broadly translates into the English language to mean the Way of Unity or Path of Unity. The word Tao means the Way, Truth or Path, and the religion is characterised by a belief in the unity of all things and a search to attain harmony with the Tao<sup>4</sup>. Followers of I-Kuan Tao, claim that the sect unites “the world’s five great religions: Buddhism, Taoism, Confucianism, Islam, and Christianity”.<sup>5</sup>
72. The 2011 RRT background paper<sup>6</sup> noted that as the sect operates secretly in China, there is limited information on its beliefs and practices. Furthermore, due to the variety of traditions and the lack of any central authority ruling on religious matters (the sect is described as consisting of closely related yet autonomous branch associations), local temples and their committees can innovate and reinterpret rituals and beliefs. As a result, a variety of beliefs and rituals may coexist within one area.<sup>7</sup>
73. According to Bosco, in his review of Yi Guan Dao in Taiwan, much of Yi Guan Dao belief and ritual is borrowed from popular religion and Yi Guan Dao members worship all gods.<sup>8</sup> Some common elements can be identified and its practices include:
- **Temples** – temples are located on the top floors of private homes and believers are organised in temple cells of eight to 10 core followers per temple. Temples are organised in districts under the loose leadership of a master. The master presides over initiation ceremonies and guides the activities of the district faithful. He is treated with great respect. Due to the Yi Guan Dao being organised as a secret sect, its members seek converts discretely.<sup>9</sup>
  - **Ceremonies** – ceremonies are only open to initiated members. Initiation involves new members being taught the *Three Treasures* which is the core secret of the sect. The Three Treasures are a mantra, a hand position and the symbolic opening of a door in the body so the soul may depart from the proper exit and not from one of the body’s other orifices.<sup>10</sup>
  - **Rituals** – there are five rituals common to Yi Guan Dao gatherings<sup>11</sup>:
    1. The Ritual of Saluting and Taking Leave of the Honourable Presence
    2. The Ritual for Presenting Incense
    3. The Ritual for Presenting Offerings
    4. The Ritual for inviting Spirits to the Altar
    5. The Ritual for Transmission of the Way/ The Rite of receiving the Way

<sup>4</sup> Ward, R. & Humphreys 1995, *Religious Bodies in Australia*, 3<sup>rd</sup> Ed., New Melbourne Press, Wantirna, p.367.

<sup>5</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.424 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf2](#))

<sup>6</sup> *Background Paper: China – Buddhism, Taoism, Folk Religions*, RRT Country of Origin Information Section, January 2011 CR96642C611

<sup>7</sup> Clart, P. (n.d.), ‘Way of Former Heaven (Hsien-Tien Tao) sects’, Overview of World Religions, PHILTAR (Division of Religion and Philosophy, University of Cumbria) ([\INTSSYD\REFER\Research\INTERNET\EASTASIA\CHN35859.web.doc](#))

<sup>8</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.433 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf](#))

<sup>9</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.425 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf](#))

<sup>10</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.425 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf](#))

<sup>11</sup> Jordan, D.K. & Overmayer, D.L. 1986 ‘The Flying Phoenix: Aspects of Chinese Sectarianism in Taiwan’ Princeton University Press p. 227 ([\ntssyd\REFER\Research\Library\GenPapers\22560.pdf](#))

- **Prayer/Kowtows** – Religious activities include morning and evening prayer sessions but only the most devout carry them out daily. Believers are expected to attend at least on the full and new moon. Yi Guan Dao praying involves very rapid kowtowing in a kneeled position while a cantor on the right announces the names of gods and a cantor on the left counts out the kowtows.<sup>12</sup>
  - **Spirit writing** – Yi Guan Dao also uses *spirit writing* to receive encouragement and direction from deities. Spirit writing, in its simplest form, involves a spirit medium in a trance “writing in the air or on paper, but the writing is scribbled and open to interpretation”.<sup>13</sup>
74. The website, Taoism.net contains a number of articles and materials relating to the practice of I-Kuan Tao. According to information on that site, I-Kuan Tao is rooted in Chinese traditions, with teachings emphasizing traditional values such as family, honour, respect and moderation.<sup>14</sup> The “Eight Virtues” referred to by the applicant in his evidence are filial piety, brotherly love, loyalty, truthfulness, courtesy, righteousness, integrity, and a sense of shame.
75. As indicated above, those wishing to follow I-Kuan Tao receive the “Three Treasures” during an initiation ritual in which they “request the Tao” (*Qiu Dao*), performed by an ordained Master. Details of the three treasures are generally reserved for initiates.<sup>15</sup> The first treasure of I-Kuan Tao is the Mystic Portal, described as “the spiritual nexus of your being”. When you close your eyes, clasp your hands together and lower your head to pray, you automatically focus your mind at the Mystic Portal. The second treasure of I-Kuan Tao is the True Sutra. It consists of sounds without words, so it is also known as the Wordless Sutra. The True Sutra is never written down, and therefore cannot be seen by the eyes. It is never said out loud, and therefore does not engage the mouth and the ears. It originates in the mind and goes from there directly to the spirit.<sup>16</sup> The third treasure of I-Kuan Tao is the Hand Seal. The central meaning of this treasure is nurturing love. It is a gesture where one hand holds the other in a symbolic representation of the tender loving care that you feel when you hold an infant in your arms.

#### Treatment of I-Kuan Tao practitioners in China

76. According to the background paper prepared by the RRT in January 2011<sup>17</sup>, traditional folk religions (a blend of Taoism, Buddhism and polytheistic elements involving worship of local gods, heroes, and ancestors) are practiced by hundreds of millions of citizens in China and are tolerated to varying degrees as loose affiliates of Taoism, Buddhism, or ethnic minority cultural practices. While the Government has taken cautious measures to promote some folk religions, it has also labelled others as “feudal superstitions”, and in the past there have been reports of followers being subject to harassment and repression<sup>18</sup>. Many new and old sects which incorporate Buddhist and Taoist beliefs have been targeted by the Chinese Government as “superstitious” cults. I-Kuan Tao is a prominent proscribed group.

<sup>12</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R., 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.425 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf](#))

<sup>13</sup> Bosco, J. 1994, ‘Yiguan Dao: “Heterodoxy” and Popular Religion in Taiwan’ in Rubenstein, Murray R., 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.425 ([\melsrv1\melref\LIBRARY\FIRST.links\Archived GPs\Archive 6\Archive 6\RRT Country File Asia - Other Part 4\198723.pdf](#))

<sup>14</sup> *Introduction to I-Kuan Tao*, Derek Lin; <http://www.taoism.net/> accessed 22 July 2015

<sup>15</sup> *Initiation Ritual Q&A*, Derek Lin <http://www.taoism.net/index.htm> accessed 22 July 2015

<sup>16</sup> *The Three Treasures of I-Kuan Tao*, Derek Lin <http://www.taoism.net/index.htm> accessed 5 August 2015

<sup>17</sup> *Background Paper: China – Buddhism, Taoism, Folk Religions*, RRT Country of Origin Information Section, January 2011 CR96642C611

<sup>18</sup> United States Department of State, *International Religious Freedom Report 2009 – China*, 29 October. ([\INTSSYD\REFER\Research\usdos\irf\09\www.state.gov\dlr\rls\irf\2009\127268.htm](#))

77. According to that paper<sup>19</sup>, no reports of arrests or detention of I-Kuan Tao practitioners by the Chinese authorities since 1995 had been found. The most recent reported instances of I-Kuan Tao being adversely treated in China were the arrests of I-Kuan Tao believers and destruction of I-Kuan Tao temples in Fujian in 1993 and 1994.
78. The Chinese Government has authority to crackdown on any unauthorised religious activities and according to one expert (Professor Philip Clart, Department of Religious Studies, University of Missouri-Columbia) writing in 2007, authorities do “crack down” on I-Kuan Tao groups when they are discovered.<sup>20</sup> In October 2007, Professor Clart was contacted by the RRT and asked to comment on the treatment and situation of followers. His response indicated that:

(1) Yiguan Dao is a proscribed religion in the People’s Republic of China, and was radically stamped out by the Communist government in the 1950s.

(2) Efforts are under way by Yiguan Dao groups outside China (principally in Taiwan) to make converts in the People’s Republic and re-establish the religion there. The province of Fujian is a centre of such activity due to the strong presence of Taiwanese-owned companies and joint ventures in this area.

(3) The Chinese authorities do crack down on such cells when they are discovered.

79. Research by the Immigration and Refugee Board of Canada of December 2009, *CHN103303.E: China: Reports of ill-treatment of Tian Dao (Yiguandao) religious practitioners*, quoted the following information from a Professor of Chinese Studies at the University of Leipzig:

... Yiguandao like other technically illegal religious groups operate at best in an administrative grey area. Depending on local conditions, they may have to exist in total secrecy or they could openly run publicly accessible and visible premises. A lot depends on the political climate and attitudes prevailing among local, regional, and provincial authorities. There are areas of China, for example, where (again, technically illegal) Protestant house churches operate openly without much interference from local authorities, while in other regions, house church leaders may end up in labour camps. Yiguandao groups, generally speaking, are given less political leeway than Christian groups, though recently there have been signs that official attitudes toward Yiguandao are shifting towards a greater tolerance. (29 Oct. 2009)

80. In May 2011, DFAT provided advice to the RRT on the attitude of the Chinese authorities to those who practice or consider themselves members of I-Kuan Tao. The DFAT advice states:

Yiguan Dao was banned in mainland China in the 1950s and there has been no information to suggest that this ban had been lifted, we would consider that Chinese authorities would regard Yiguan Dao followers along the same lines as other banned religious sects.

Post notes that as authorities' treatment of unauthorised religious activities differ depending on the province and city, it is difficult to assess how Chinese authorities would deal with individual cases of this largely unknown religious sect. Were

<sup>19</sup> *Background Paper: China – Buddhism, Taoism, Folk Religions*, RRT Country of Origin Information Section, January 2011 CR96642C611 atp. 10

<sup>20</sup> Clart, P. 2007, Email to Research & Information 'Re: Yiguan Dao in China', 13 October ([\INTSSYD\REFER\Research\LETTERS\REPLIES\chn32439.lr.doc](mailto:INTSSYD\REFER\Research\LETTERS\REPLIES\chn32439.lr.doc))



authorities to come across Yiguan Dao followers, they would probably seek guidance from higher authorities on handling the issue. We note that Yiguan Dao's origins as a secret religion with an organised structure would raise the suspicion of authorities if Yiguan Dao followers were known to exist in mainland China.<sup>21</sup>

#### Religious freedom in China generally

81. The US Department of State International Religious Freedom Report for 2013, reports that the Chinese constitution states that citizens enjoy “freedom of religious belief” but limits protections for religious practice to “normal religious activities.” The government applies this term in a manner that is not consistent with China’s international human rights commitments with regard to freedom of religion. In practice, the government restricted religious freedom. Only religious groups belonging to one of the five state-sanctioned “patriotic religious associations” (Buddhist, Taoist, Muslim, Catholic, and Protestant) are permitted to register with the government and legally hold worship services. The government’s respect for religious freedom overall remained low. The government exercised state control over religion and restricted the activities and personal freedom of religious adherents when these were perceived, even potentially, to threaten state or Chinese Communist Party (CCP) interests, including social stability. The government harassed, assaulted, detained, arrested, or sentenced to prison a number of religious adherents for activities reported to be related to their religious beliefs and practices. There were also reports of physical abuse and torture in detention.
82. The Human Rights Watch World Report for 2015 states with respect to religious freedom in China,

Although the constitution guarantees freedom of religion, the government restricts religious practices to officially approved mosques, churches, temples, and monasteries organized by five officially recognized religious organizations; any religious activity not considered by the state to be “normal” is prohibited. It audits the activities, employee details, and financial records of religious bodies, and retains control over religious personnel appointments, publications, and seminary applications. In 2014, the government stepped up its control over religion, with particular focus on Christian churches.<sup>22</sup>
83. The US Commission on Religious Freedom reports that under Article 300 of China’s Criminal Law, those who participate in so-called “superstitious sects or secret societies or weird religious organizations” or other similar activity are subject to imprisonment. In 2014, the Chinese government took its broadest steps yet to designate and criminalize some groups as “cult organizations.” On June 3, 2014, the government published a list of 20 “cults” and began a sweeping crackdown against these organizations.<sup>23</sup>
84. According to a background report by the Council on Foreign Relations<sup>24</sup>, fringe religious and spiritual groups, dubbed “heterodox cults” by the CCP are subject to regular government crackdown. The government has banned such organizations, on the grounds that adherents use religion “as a camouflage, deifying their leading members, recruiting and controlling their members, and deceiving people by molding and spreading superstitious ideas, and endangering society.” Suppression of these religious groups is tough and has been consistent.

<sup>21</sup> Department of Foreign Affairs and Trade 2011, *DFAT Report No. 13/26 – China: RRT Information Requests: CHN38597*, 11 May <CISNET China: CX310527>

<sup>22</sup> <https://www.hrw.org/world-report/2015/country-chapters/china-and-tibet> accessed 22 July 2015

<sup>23</sup> U.S. Commission on International Religious Freedom (USCIRF), "USCIRF 2015 Annual Report - China", *U.S. Commission on International Religious Freedom (USCIRF)*, 30 April 2015, CISEC96CF1685

<sup>24</sup> Eleanor Albert, "Religion in China", *Council on Foreign Relations*, 10 June 2015, CISEC96CF12828

## Religious freedom in Fujian province

85. Fujian is generally regarded as one of the provinces of China that is said to have applied regulations on religion more liberally than others.<sup>25</sup> However, police and local officials have sometimes arrested underground Catholic priests and, although not recently, police and officials have arrested parishioners and demolished churches.<sup>26</sup>
86. In the 2006 edition of *China Christians Millions*, Lambert describes religious policy in Fujian as 'relatively liberal'; however, he also notes the occurrence of 'occasional crackdowns on house churches'.
87. Lambert's characterisation of Fujian as a relatively liberal province in relation to religious policy was supported by a Canadian government fact-finding mission to the province in 2000<sup>27</sup> and by the executive secretary of the Hong Kong Christian Council in 2005.<sup>28</sup> A 2009 report on the Protestant Church in Fujian Province in a Global Chinese Ministries newsletter confirmed that there were large numbers of independent house churches in Fujian. The report also indicated that '[i]n general, local government in Fujian seems fairly tolerant of unregistered believers as it is rare that one reads of cases of persecution of house-church Christians in this province'.<sup>29</sup>
88. Fujian is rarely mentioned in reports on breaches of religious freedom by the US Department of State, the United States Commission on International Religious Freedom, Amnesty International, Human Rights Watch or the various Christian NGOs that report on China.

## Findings on land dispute claims

89. The applicant was able to describe in a manner that was broadly consistent with his previous evidence the two farming ventures referred to in his first protection visa application and the occupation of his farms. When asked, however, about the events following the occupation of his farm in 2009, the applicant's evidence became vague, somewhat confused and lacking in detail. Whilst the applicant sought to blame his inability to provide a coherent account of the harm he claims to have experienced in China on the passage of time, as noted at the hearing, the applicant's evidence regarding those events in 2010 was also inconsistent.
90. The Tribunal considers it plausible that the applicant was involved in farming in China and may have had his farms occupied or expropriated. The Tribunal is not satisfied on the evidence before it, however, that the applicant lodged any petitions or complaints, or experienced any harm, such as beatings, torture, arrest or detention, as a consequence of the occupation or expropriation of his farms. In view of this finding, the Tribunal is not

<sup>25</sup> Lambert, T 2006, *China's Christian Millions*, Monarch Books, Oxford, pp .240-1 <[Attachment](#)>

<sup>26</sup> For example see: 'Another underground priest arrested in Fujian' 2010, *Asia News*, 24 March <<http://www.asianews.it/news-en/Another-underground-priest-arrested-in-Fujian-17965.html#>> Accessed 20 April 2010 <[Attachment](#)>; 'Church destroyed in Fujian, another to follow shortly' 2006, *Asia News*, 4 September <<http://www.asianews.it/index.php?l=en&art=7112#>> Accessed 21 April 2010 <[Attachment](#)>

<sup>27</sup> Immigration and Refugee Board of Canada 2000, CHN34099.E 'China: Report of a fact finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing', 23 March <[Attachment](#)>

<sup>28</sup> In comments to the Immigration and Refugee Board of Canada (Immigration and Refugee Board of Canada 2005, CHN100387.E – China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2001-2005), 7 September <<http://www.refworld.org/docid/440ed6db11.html>> Accessed 5 September 2013 <[Attachment](#)>

<sup>29</sup> Global Chinese Ministries 2009, 'The Protestant Church in Fujian Province', *OMF (Overseas Missionary Fellowship) International web site*, April <[http://www.omf.org/omf/us/resources\\_\\_1/newsletters/global\\_chinese\\_ministries/gcm\\_newsletter\\_2009/global\\_chinese\\_ministries\\_apr\\_09/the\\_protestant\\_church\\_in\\_fujian\\_province](http://www.omf.org/omf/us/resources__1/newsletters/global_chinese_ministries/gcm_newsletter_2009/global_chinese_ministries_apr_09/the_protestant_church_in_fujian_province)> Accessed 2 November 2009 <[Attachment](#)>; The information is said to be taken from information has been taken from November 2008 *Tianfeng and History of Christian Missions in China* by K.S. Latourette. *Tianfeng* is a Protestant magazine published by the TSPMCCC and can therefore not be taken to be unbiased in relation to house churches.

satisfied that the applicant would protest or complain in the future should he return to China now. As a consequence, the Tribunal is not satisfied that there is a real risk of significant harm befalling the applicant arising from these circumstances.

### **Findings on I-Kuan Tao practice**

91. The Tribunal has approached the applicant's evidence with regard to his claimed I-Kuan Tao practice with caution given its credibility concerns in relation to the claims made in his first protection visa application. The applicant failed to mention his I-Kuan Tao practice to either the Department or the RRT in his first application, despite claiming to have been a practitioner since [an adult]. The timing of the applicant's first attendance at a temple in [City 1] and the incidents of harm directed towards his family in China, coinciding with the Full Federal Court's decision in *SZG/Z* permitting the applicant to make a second protection visa application, has also aroused suspicion in the Tribunal's mind about the genuineness of the applicant's claims.
92. In contrast to his evidence regarding the land disputes described above, however, the applicant's oral evidence at hearing with regard to his I-Kuan Tao beliefs and practice was detailed, lucid and confident. The Tribunal accepts that at the departmental interview the applicant was not able to speak convincingly about the history and origins of I-Kuan Tao or demonstrate familiarity with the literature or the names of authors who have written about I-Kuan Tao. However, his evidence to the Tribunal with regard to his personal beliefs and manner of practice of I-Kuan Tao in China and Australia was persuasive.
93. In assessing his evidence, the Tribunal is mindful of the country information indicating that I-Kuan Tao is characterised by a variety of beliefs and rituals and lacks a central authority. Nonetheless, the applicant's evidence was consistent with the country information with regard to the location and organisation of his temple at [City 1], the manner of his introduction and initiation to the temple, the method of praying and kowtowing, the sharing of strictly vegetarian meals and the timing of rituals. At the departmental interview, the applicant accurately described the symbol of I-Kuan Tao and the eight virtues (also repeated during the Tribunal hearing), and his descriptions of the three treasures and main principles of I-Kuan Tao at the Tribunal hearing were consistent with the independent information before the Tribunal.
94. The applicant's oral evidence with regard to his I-Kuan Tao practice is supported by documentary evidence including the photographic evidence, the declaration by [a named person], his temple membership card, a receipt for the purchase of incense, the book of mantras and the seasonal publication from Taiwan. Whilst these documents by themselves are only indicative of some level of exposure to I-Kuan Tao and do not satisfy the Tribunal that the applicant's beliefs are genuine, when taken together with his oral evidence, the Tribunal is satisfied that the applicant is presently a genuine practitioner or follower of I-Kuan Tao.
95. The Tribunal has also considered the applicant's evidence with regard to the harm he claims his family members remaining in China have experienced as a consequence of their I-Kuan Tao practice. The Tribunal finds the applicant's written statement to be somewhat unreliable as the applicant has identified some incorrect terminology and other errors in the English translation of his written claims. The applicant's oral evidence to both the Department and Tribunal with regard to the establishment of his family shrine, the timing and reasons for its expansion, and the 2013 incidents has, however, remained broadly consistent. The applicant's demeanour at hearing whilst talking about the beatings of his mother, wife and son and his emotional response to the news, appeared sincere and unaffected.



96. The USB stick, which the applicant submitted to the Department, contains images of several untranslated documents, which the applicant asserts are evidence of his relatives' arrest and hospitalisation. As the documents have not been translated, the Tribunal has not been able to place weight upon them. The applicant's claims are, however, generally supported by the video evidence. The Tribunal accepts that the video shows images of the applicant's family members and other persons being beaten and injured in a violent clash with authorities. The Tribunal is unable to discern when the video was made or the cause of the altercation, but is satisfied that it genuinely occurred and was not staged.
97. The Tribunal has also considered whether the applicant's claims regarding the incident are consistent with the country information. There is a distinct lack of information regarding the Chinese authorities' current attitude towards I-Kuan Tao practice. One possible explanation for this is that the practice is tolerated and there have not been any recent crackdowns. Some information suggests there has been a shift towards increasing tolerance of I-Kuan Tao. On the other hand, the information before the Tribunal indicates that I-Kuan Tao was proscribed in the 1950s. There is no information to indicate that the ban has been lifted. I-Kuan Tao is not a registered religion and there are reports indicating that sects incorporating Buddhist and Taoist beliefs such as I-Kuan Tao have been targeted by the government as "superstitious cults". This information, together with I-Kuan Tao's origins as a secret religion with an organised structure and strong links to Taiwan, all suggest that the authorities' attitude towards followers practising in large public groups is likely to be unfavourable. There are reported instances of I-Kuan Tao believers being arrested and temples destroyed in the applicant's home province of Fujian in the 1990s. The information further indicates that there has been a particular resurgence of I-Kuan Tao in Fujian province on account of the strong presence of Taiwanese business interests in that province.
98. The information suggests it is plausible that the applicant's relatives may have been able to practice their religion in a discreet manner in their own homes without any interference or difficulty for some time. This tends to support the applicant's explanation for his failure to mention his I-Kuan Tao practice in his first protection visa application. The applicant's evidence that his family members only began to experience difficulties following his brother-in-law's trip to Taiwan and the rapid expansion of the family shrine leading to the holding of large gatherings on the grass outside the family home is also broadly consistent with the independent information available to the Tribunal.
99. Given that the applicant's claims broadly align with the independent country information, and having regard to the Tribunal's findings in relation to the credibility of the applicant's claim to be an I-Kuan Tao practitioner, and the video evidence, the Tribunal is prepared to accept that the applicant has presented a truthful account of his family's experiences. The Tribunal accepts that the applicant's wife and children have been forced to move from their home and practice I-Kuan Tao discreetly owing to a fear of further harm from the local authorities. The Tribunal also considers it plausible that the applicant's relatives remaining in the village are subject to monitoring.
100. Having made these findings, that Tribunal has turned its mind to the applicant's situation now and in the reasonably foreseeable future, should he be removed to China. The Tribunal accepts that, should the applicant return to China, he would wish to practice I-Kuan Tao in a community consistently with his current practice of that religion in Australia. The Tribunal further accepts that were he to do so, there is a real, as distinct from a remote or far-fetched, risk of him being arrested and/or beaten. The Tribunal accepts that this would entail either torture or severe pain or suffering intentionally inflicted for the purposes of punishing the applicant for an act he has committed or is suspected of having committed; or cruel or inhuman treatment or punishment.

101. The Tribunal has also considered the possibility that the applicant would, like his family, modify his conduct and practice I-Kuan Tao discreetly in his home. In these circumstances, it is more likely that the applicant would avoid harm of the kind described above. The Tribunal is unable, however, to exclude the risk of the applicant being detected and harmed in this way as remote or far-fetched, given the arrest and monitoring of his relatives and the fact that his return from a period abroad may in itself arouse suspicion.
102. The Tribunal does not accept that the harm described above would arise from or be incidental to lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 2 of the ICCPR, for example, requires States parties to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in the Covenant, without distinction of any kind, including in relation to religion.
103. For the purposes of s.36(2B), as the harm in question arises from State sanctioned policies, the Tribunal does not accept that the applicant could obtain from an authority of China protection such that there would not be a real risk that he will suffer significant harm. For the same reason, the Tribunal does not accept that the applicant would be able to relocate to an area of China where there would not be a real risk of him suffering significant harm. The Tribunal does not accept that the risk in question is faced by the population of China generally and finds that it is a risk faced by the applicant personally.
104. There is no information before the Tribunal indicating that the applicant is ineligible for the grant of a protection visa for the reasons set out in s.36(2C). There is also no information before the Tribunal indicating that the applicant has a right to enter and reside in any country apart from China for the purposes of s.36(3).
105. For the above reasons, the Tribunal is satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that the applicant will suffer significant harm. The Tribunal is, therefore, satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

## **DECISION**

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

Rachel Homan  
Member