

1503329 (Refugee) [2016] AATA 4037 (24 June 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1503329
COUNTRY OF REFERENCE: China
MEMBER: Tony Caravella
DATE: 24 June 2016
PLACE OF DECISION: Perth
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 24 June 2016 at 11:12am

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 claims to be a citizen of China, arrived in Australia [in] November 2007 and entered as the holder of a [temporary] visa which was valid until [February] 2008. He then applied for a Protection visa [in] December 2007 and that application was refused by a delegate [in] January 2008. He then applied for a review by the Refugee Review Tribunal of the delegate's decision and that Tribunal affirmed the delegate's decision on 29 April 2008. The applicant remained in Australia and then made a further application for protection [in] December 2013. The delegate refused that application [in] February 2015. The applicant then applied to this Tribunal for a review of that decision. The delegate's decision dated [in] February 2015 is therefore the subject of this Tribunal's review as recorded in this decision record.

Background and protection claims

3. In his protection visa application lodged [in] December 2007, the applicant claims he was born into a Catholic family and was involved in an unregistered Roman Catholic Church in China. He claims the local Communist cadre and police threatened, extorted, harassed, and imprisoned him. He also claims that in January 2007 he was in charge of transporting several children home from a Bible class when he was arrested by police and detained for two days. He claims he had to agree to not organising church gatherings and also paid the police [amount] RMB. He claims a further incident in April 2007 when he was [hit] and [received another obvious injury] while defending his church. He claims he was taken into detention on that occasion and mistreated but subsequently released. He claims he remained home for one month but then decided to leave China. He sold his house, and borrowed money from relatives and friends to travel to Australia. He claims his wife has been threatened by police several times and she and the applicant's child have moved to [a relative's] place. He also claimed he joined a Catholic Church while in Sydney.
4. A delegate of the Department found the applicant's claims lacking credibility. The delegate also found the applicant departed his country legally using his own genuine passport, and his delay in seeking protection was inconsistent with someone who held a genuine and significant fear for their life and safety in their own country.
5. The Refugee Review Tribunal (RRT) found that when considered cumulatively, the applicant's evidence lacked credibility and suggested fabrication. The RRT rejected that the applicant was ever a member of any underground church in China and found he never participated in any actual or imputed religious activities there, or that he ever practised Catholicism. It also rejected his claim that he was ever detained or ill-treated. The RRT also found the applicant's alleged attendance at a church in Sydney was conduct engaged in solely for the purpose of strengthening his claim to be a refugee. The Tribunal consequently concluded the applicant did not have a well founded fear of persecution.
6. In his second application for protection lodged with the Department [in] December 2013, the applicant claims he has been physically tortured and mentally intimidated and that the authorities have turned a blind eye to the encroachment on his land by the villagers. He claims he fears a denial of his right to worship his Catholic belief and to claim a legal right to his property which has been taken by the villagers. He claims his villagers and the authority may harm or mistreat him if he returns to China. He claims the villagers colluded with the

authorities. He also claims that after coming to Australia, the villagers have used his land for a public road without any compensation and that if he is returned to China he will continue to practice his faith and will claim his legal right to his land and the villagers will take revenge upon him.

7. In the delegate's decision record dated [in] February 2015, the delegate states that she found the applicant is not a witness of truth and that his claims in relation to being a follower of the Catholic Church have been fabricated. She also found that the applicant's claim regarding the land dispute have been exaggerated. She concluded that the applicant does not face a real chance of being persecuted for a Refugee Convention reason, and also found there is not a real risk of the applicant being subjected to significant harm should he be returned to the PRC.

Application for review by this Tribunal

8. On 7 March 2015, the applicant applied to this Tribunal for a review of the delegate's decision. A copy of the delegate's decision record accompanied the applicant's application for review. No further written submission or documentary evidence was provided to the Tribunal.

Tribunal hearing

9. The applicant appeared before the Tribunal on 20 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.
10. The Tribunal began the hearing by providing introductory comments and explaining that as a result of the decision in *SZGIZ v Minister for Immigration and Citizenship [2013] FCAFC 71*, the applicant was able to make a new application for protection and have it considered under the complementary protection provisions of the Act. The Tribunal explained to the applicant that it could only consider his claims in accordance with s.36(2)(aa) of the Act. The applicant indicated he understood this to be the case. The Tribunal also explained the definition of 'significant harm' as set out in s.36(2A) of the Act.
11. The Tribunal asked the applicant whether he continued to be represented as it appeared the authorised representative in his case was a firm of solicitors in Sydney. The applicant said that he still has a representative in Sydney and that the representative knows the applicant was attending the hearing alone. When asked whether he felt able to participate in the hearing, the applicant replied that he felt able to do so.
12. The applicant told the Tribunal that his father passed away, and then said he was too scared to go home to see him. He then immediately said that his father-in-law passed away a few days before this hearing. He said his father-in-law passed away [in the previous week]. He said his wife can provide evidence of his death. He then went on to say that his own father is in bed and cannot move and will pass away at any time.
13. He told the Tribunal when his father could still talk, his father told him not to go back to China because of the problems with the block of land which he owns there. He said if he goes back he will try to get the land back and he can even sacrifice his life attempting to do so. He said that someone will die because it is his land and he paid for it.
14. The Tribunal asked him if he had taken legal action in China in the courts to recover the land. He replied that might is right in China, and while he has been in Australia his family has tried to negotiate and they can only get the land back by fighting. He said that either he will die or "they" will die.

15. The Tribunal asked the applicant to explain why the land dispute claim was not included in his first protection application. He replied that for his first application, his ground was religion, and the Australian government did not believe him. He said he even had a priest give evidence before the RRT. As the applicant had not answered its question, the Tribunal again asked him why there was no reference to the land dispute in his first application. The applicant replied by saying that when he lodged his first application, the land dispute was not an issue. He said in 2013, his family told him the block was “totally a mess”. When asked what he meant by this, he elaborated by saying they bought the block to build, but then his neighbours said they wanted to put a road through the middle of the block and because of this he now cannot build. He went on to say that if the local government was to build the road then that would be okay, but in their particular case the neighbouring landowners have land behind his block and they wanted to build a road through his land. He repeated that if the neighbours carry out their plan, he will fight it with his life. The applicant told the Tribunal that the owner of the land behind his land is [Neighbour name].
16. The Tribunal asked the applicant whether there had been any relevant developments since his last interview with the delegate, that is the interview held [in] July 2014. The applicant told the Tribunal there had been no relevant developments.
17. The Tribunal asked the applicant what he had been doing with his time since the last interview with the delegate. He said that he had been working in Perth doing [an occupation]. When asked whether he had work rights or permission to do this, the applicant asked “how can I get work rights?” He went on to say that his agent told him he needed documents which he was unable to provide to support an application for work rights. He said that sometimes he works and sometimes he does not. The Tribunal again asked the applicant whether he was aware of whether he had work rights, and put it to the applicant that it might conclude that he is not credible if it formed the view that he was willing to ignore Australian migration law by working without the permission to do so. The applicant told the Tribunal that he works for many employers. He then asked the Tribunal how he can live if he does not work.
18. The Tribunal referred the applicant to the delegate’s decision record where the delegate found the applicant had been an unlawful noncitizen in Australia from [June] 2008 until to January 2014 at which time he was granted a bridging visa. The applicant did not deny that this was the case.
19. The Tribunal asked the applicant how it was that he remained an unlawful noncitizen for almost 6 years and then obtained a bridging visa. The applicant replied by saying that back in 2007 the RRT refused his application and then he applied to the Federal Court for a review of the RRT’s decision. He said he has had no answer to that appeal to the Federal Court. The Tribunal indicated to the applicant that there appeared to be no record of an appeal being made to the Federal Court. The applicant went on to say that his lawyer lodged his application to the Federal Court within 28 days after the RRT decision. He added that he had not heard back from the Federal Court. The Tribunal put it to the applicant it would be most unlikely that the Federal Court would not have made a decision by now if he had lodged an application for judicial review in 2008. The applicant told the Tribunal that his lawyer told him that he had posted an application for review by the Federal Court, and that his lawyer has a receipt to prove that. When asked for the name of the lawyer, the applicant said he cannot recall the name. He then said he was living in the lawyer’s house in [Suburb name] NSW. He said he never asked the lawyer’s name.
20. The Tribunal asked the applicant whether he fears harm because of his religion. He replied that he did and that he would not survive if he returns to China. The Tribunal put it to the applicant that the delegate, and the RRT, did not believe his claims and that this Tribunal would consider all the evidence and that it was in his interest to provide truthful and detailed

evidence. The applicant said that at the RRT hearing, he was asked to provide further evidence within two weeks, however, he refused to provide any further evidence because it was up to the Tribunal to believe him. He also referred to a Catholic priest who attended the RRT hearing. He said if the Tribunal does not believe him, then it might not matter how much evidence he provides.

21. The Tribunal again returned the applicant's attention to the question of how he remained unlawful for some years before being granted a bridging visa and asked for more detail. He replied by saying he applied for a tax file number and a work permit. He said this occurred around the time he applied for a review of the delegate's decision by the RRT. He then said he presumes that the Federal Court will therefore now consider his case.
22. The Tribunal asked the applicant what trouble he experienced in China. He said he provided information before in the earlier applications, and now he cannot remember. He said it was a long time ago. He said what he remembers is the scar he has on his [body] and the [other obvious injury]. He referred to the claim that he was transporting children who had been to Bible study and the authorities came to beat him up and tortured him. He said he used a tricycle to transport children to Bible study. The Tribunal asked the applicant why after all these years anyone would want to harm him now. He replied, if he goes home he would seek revenge.
23. The Tribunal asked the applicant to confirm the evidence he appeared to give to the delegate, that he had sold his house in China and had borrowed [amount] RMB to come to Australia. The applicant replied that he sold his father's house and he bought a block of land and that the block of land is the property over which there is a dispute. When asked whether he had paid back the [amount] RMB to the people he had borrowed it from, he said he completed that repayment two years ago. The Tribunal put it to the applicant that this evidence appeared inconsistent with his claim that he was forced to work in Australia, without work rights, just to survive. It put to him it appeared he was doing rather better than just surviving and was able to repay a debt. It put to the applicant it may not accept his evidence as credible based on such inconsistencies. The applicant replied that he spent 6 to 7 years working to pay off the debt and it was very hard to pay it back.
24. The Tribunal referred the applicant to the reference in the delegate's decision record where he claimed that his wife had been threatened by the police in China. The Tribunal asked the applicant for detail about this, and when it occurred. He replied that it occurred "10 or 20 years ago". He then said he could not recall and that he had provided details to the RRT. The Tribunal asked whether there had been any more recent threats. He said he has not been told of any recent other threats. He repeated that his father told him not to go back to China.
25. The applicant told the Tribunal that the land over which there is a dispute was very cheap to buy. He said it was less than [a small amount]. The Tribunal asked the applicant how this was relevant to his claim. He then said he planned to build on the property. The Tribunal asked the applicant why he could not sell the block and buy some other land over which there was not a dispute. He said that now it is very hard because some blocks cannot be sold, and other land is limited. The applicant told the Tribunal that he does not own property in Australia and has no money in the bank.
26. The Tribunal asked the applicant whether he goes to church in Perth. He replied by saying "rarely". The Tribunal asked the applicant why. He replied "religion is in your heart, not in church" The Tribunal asked the applicant whether he understood that there was some expectation of church attendance in the Catholic religion. He indicated he understood that there was. He added that it is different in China where the Church in his case is next door and they have classes every night. He then went on to say that he does not attend church in

Australia because his English is no good, and there are not many Catholic churches around Perth, and he cannot find them. The Tribunal asked the applicant how he manages to travel to the various [workplaces] where he works as [an occupation]. He said his friends give him the address of the [workplace] and he uses a GPS to find the job. When asked why he does not use a GPS to find a Catholic church, the applicant said he does not know how to spell 'Catholic church' in English. The Tribunal put it to the applicant that the [workplace] addresses would also be in English and he appeared to have no difficulty in navigating his way to work. The applicant replied that he had provided detail in his earlier applications.

27. The Tribunal asked the applicant whether he holds a valid passport. He said his passport is valid until the end of [month in] 2017. The Tribunal asked the applicant how he was able to depart China using his own valid passport if the Chinese authorities considered him a person of interest. The applicant said that when he came to Australia he used an "underground organisation" to arrange his passport and visa. When asked what he meant by underground organisation, he said he paid someone to get the passport and visa.
28. The Tribunal asked the applicant for detail as to the level of involvement in the church in China. He said he was in charge of taking children to other churches to study Bible or choir. He said he would continue to do this if he returned to China. The Tribunal put it to the applicant that it found it inconsistent that he claims to be a practising Catholic and that he would attend Catholic services in China but does not appear to attend church in Australia. The applicant replied that religion is in your heart and not in church. He claimed that he would be active taking children to Bible or choir and in participating in church activities in China. The applicant also said that it is different in Australia because he has "to survive", that is, he has to work, whereas in China he lived next door to the church. He repeated he cannot find a church in Perth. The Tribunal put it to the applicant that his apparent lack of involvement in the Catholic, or any, church in Perth may lead it to conclude that he is not a genuine practising Catholic. It also put to him that all the evidence may also lead the Tribunal to conclude that he would not practice Catholicism, or attend a church in China, and that there would not be a real risk of significant harm because of that.
29. The applicant told the Tribunal that when he was in Sydney, he would go to church. He then said while in Western Australia he has not been to church many times. He said he has been in Western Australia for five years. He then said that he went to a Christian church with a friend a few times in Perth.
30. The Tribunal asked the applicant to explain the importance of religion in his life. He replied that "we were told you cannot do anything bad".
31. The Tribunal asked the applicant whether there is any other reason for fearing harm in his case upon return to China. He said there was no other reason. The Tribunal referred the applicant to the delegate's decision record where it is indicated the applicant has a son and a daughter in China. It asked the applicant whether he fears harm for reasons of having 2 children in China, or whether he has to pay a social compensation fee pursuant to China's one child policy. The applicant said that he did not have to pay a fine because fines are only paid by people in the city who have more than one child.
32. The Tribunal asked the applicant who he obtained his work from. He said he does not have a fixed employer, and that during any week he might work for a number of employers. When pressed for information about his employers, he said two or three friends contact him and tell him about jobs. He said [an ethnicity] man by the name of [Mr A] who lives "somewhere near the city" gives him some jobs. When asked whether he knows [Mr A's] telephone number, the applicant said he does not have his number in his mobile phone, but has it recorded in a little book at home. He said another person by the name of [Mr B] and who is also from China also gets work for him. He said he does not have [Mr B's] phone number in

his mobile but also has it in a little notebook which was not in his possession at the time of the hearing.

33. After a brief adjournment, the Tribunal put to the applicant that it had, during the break, checked a more recent movement record from the Department which indicates that he has been subject to condition 8101 which is a condition prohibiting him from engaging in work in Australia since the grant of the bridging visa [in] January 2014. It put to him that on this basis it appeared he was working contrary to that condition for over two years (as at the time of the hearing), in addition to apparently working during the six years he was an unlawful noncitizen. It asked the applicant to comment. The applicant responded by asking if he is eligible to apply for work rights. The Tribunal put it to him that it had grave concerns as to the credibility of his evidence if he was willing to disregard Australia's migration law as he appears to have done. The applicant replied that he applied for a tax file number at the same time he applied for work rights, which he said was around the time he applied for a review of the decision by the RRT.
34. The applicant then went on to say that he works one or two days a week, and that he does not think he should check if he has a work permit. The Tribunal asked the applicant to clarify what he meant by this. He immediately replied that he has not heard anything from the Federal Court since 2008. He then asked the Tribunal if he should check with the Federal Court about this. The Tribunal put it to the applicant that his claim that he had failed to make such a check, if indeed any application had been made for judicial review by the Federal Court, may suggest that he did not pursue the matter because in pursuing the matter this might not be in his interest insofar as it might confirm that he does not have a right to remain in Australia. The applicant repeated that he did ask his agent about this, and his agent had told him that he had lodged an application with the Federal Court.
35. The Tribunal asked the applicant to comment on his claim that he is unable to follow his church in China. The applicant said "It is okay now, but not 10 years ago."
36. The Tribunal asked the applicant if he wanted to comment on anything contained in the delegate's decision record or in the RRT's decision record. He said his priest had given evidence to the RRT. He said he has nothing more to say if the government insists that it does not believe his case. He said his life is in danger because of his religion and because of the property dispute. He said the people who harmed him when he was in China are still there and that he would take revenge against them. The Tribunal asked the applicant if he was saying that he wants Australia to protect him because he stands a risk of harm for committing a crime in China, that is the crime of attacking another person or persons to take revenge in respect of the property dispute. He said that people in the villages in China are not as civilised as people in Australia and they fight to settle their disputes.
37. The Tribunal asked the applicant why he does not relocate to another part of China if he fears harm in returning to his village. He said that if he goes home he will try to find someone to help him. He then repeated he would not allow his neighbours to build a road through his property and he would stop them by fighting. The Tribunal put it to the applicant that it appeared he was willing to stay in Australia and thereby allow the road to be built through his property, but if he returns to China he will fight. It put to the applicant this appeared somewhat inconsistent. He replied by saying that if he stays in Australia, there is no necessity for him to build on the property. He said he could even donate the land to the community because he would have his family here. He then went on to say that it is not possible to relocate within China because of the Chinese culture and there is a saying in Chinese that when one is old one goes back to their home town.
38. The Tribunal referred the applicant to his claim made to the delegate where he said that he had engaged a lawyer on 4 or 5 occasions to take the dispute up with the land authority in

China but that every time his claim was rejected. The applicant said he could not recall saying this and then added that it would not be four or five times. The Tribunal asked the applicant again whether he could recall employing a lawyer in China to assist him in this dispute. He said that people in China's countryside wouldn't do this and they would fight to settle a dispute. Sensing the applicant appeared to be evasive, the Tribunal put this to him again and asked the applicant whether he had employed a lawyer to assist in the land dispute. On this occasion he replied that the problem is not negotiable. The Tribunal again repeated the question asking the applicant whether he employed a lawyer to assist him in the claimed land dispute, and again repeated that he appeared to be evading the question. He replied that everything regarding the dispute was handled by his wife. The Tribunal again repeated the question. The applicant said he could not recall and that his wife called him about the land.

39. The Tribunal referred to country information which it considered might be adverse to the applicant's claim and put this to the applicant for comment. It firstly put country information from various sources indicates that religious policy in the province of Fujian was being applied relatively liberally. It explained if it accepted this country information, it might conclude this would suggest he does not face a real risk of significant harm for reasons of his religion. The applicant asked the date of the country information. The Tribunal indicated the country information goes back to 2006, but is also dated 2015. The applicant replied that he does not know the situation now.
40. The applicant then said that "if I go home now the government wouldn't harm me. I can guarantee 100%, but the people who bashed me are still there". The Tribunal asked the applicant why he could not obtain police protection in a case such as this. He said if he could get police protection he would have returned 10 years ago.
41. The Tribunal referred the applicant to country information indicating there are national laws passed in China to deal with land disputes, and laws passed in 2009 intended to assist in the mediation and arbitration of land disputes. It put to the applicant that the Tribunal might conclude that in such circumstances he can rely on the legal processes rather than rely on physically fighting with his neighbour. The applicant commented that they do not have authorities in his village and that it doesn't work this way there. He repeated that his neighbour wanted to build a road through his block because it is more expensive to build a road around it.
42. The Tribunal put country information to the applicant which indicates there are certain factors which increase the likelihood of official action against the church. It put to the applicant that country information from the DFAT Background Paper *China: Protestants in China* (August 2015) suggests that a person who followed religion in one of the registered churches and who was otherwise not politically active or critical of the government did not appear to face a real risk of significant harm. It put to the applicant that country information appears to suggest that a person with his profile, which appeared to be a low profile, did not appear to face a real risk of significant harm. The applicant replied by saying he has given all the details about this before. The Tribunal asked the applicant whether he had been politically active through his church activities in China. He replied that he transported children and that he was harmed because of this.
43. The Tribunal asked the applicant whether he thought his representative wanted time to submit written submissions in support of his claims. He said there is no need for this and that he had said everything.
44. When asked whether he wanted to make any concluding comment, he repeated that at the RRT hearing he had a priest come in to give evidence. The Tribunal acknowledged that the RRT decision record does refer to evidence given by [Father A], but that the Tribunal noted

the Father's evidence included his statement that he did not have an independent source of knowledge regarding the applicant's claims, and that it was for that Tribunal to decide what weight to place on that evidence. The Tribunal also pointed out to the applicant that, at paragraph 62 of the RRT's decision record, [Father A] also agreed that it is possible in China to be a Catholic and to practise in a registered Catholic church in China. The applicant concluded by asking whether Australia does not believe he is Catholic, and requested that Australia seriously consider his claims.

Relevant law

SGZIZ

45. 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. In *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71 the Full Court of the Federal Court of Australia determined that s 48A does not prevent a person from making another application for a protection visa on complementary protection grounds where the first application was made (and refused) before the commencement of the complementary protection provisions of the Act on 24 March 2012. The applicant made his first application for a protection visa [in] December 2007. This was refused [in] January 2008. A further application was made by the applicant [in] December 2013. Accordingly, the applicant was not prevented by the decision of *SZGIZ* from lodging his current application for protection. His application will be considered only on complementary protection grounds, a matter which was acknowledged by the applicant at the Tribunal hearing.

Complementary protection – s.36(2)(aa)

46. 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 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').
47. '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.
48. 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.
49. In accordance with Ministerial Direction No.56, made under s 499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3

Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Credibility

50. The Tribunal accepts that 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. It remains for the applicant to satisfy the Tribunal that he or she satisfies all of the required statutory elements. 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 Tribunal to establish the relevant facts. A decision-maker is not required to make the applicant’s case 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.)
51. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the applicant’s claims. This may involve an assessment of the applicant’s credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
52. The Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant’s country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
53. In *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32; (2004) 207 ALR 12; (2004) 78 ALJR 992 (17 June 2004), Kirby J stated:

“*Remembering the purpose of credibility*: Credibility is often seen as the crucial issue in Tribunal determinations of refugee status. The references in the Refugees Convention to the existence of “fear”, and to the grounds of that emotion, necessarily imply that those deciding refugee claims will have to make highly personal evaluations of the subjective feelings and motivations of applicants. As I said in *Minister for Immigration and Multicultural Affairs v Rajamanikkam* <http://www.austlii.edu.au/au/cases/cth/HCA/2004/32.html> - fn74, “[m]any, perhaps most, claims to refugee status involve examination of the truthfulness of the factual assertions of the applicant. Many turn on the assessment of credibility”. There was some suggestion during the hearing of this appeal that inconsistent statements by asylum seekers might suggest fabrication of evidence, and might justifiably lead to negative conclusions as to credibility. While such a conclusion is sometimes justified, refugee cases involve special considerations where credibility is an issue. There is no *necessary* correlation between inconsistency and credibility in such cases. Many factors may explain why applicants present with the appearance of poor credibility. These include: mistrust of authority; defects in perception and memory; cultural differences; the effects of fear; the effects of physical and psychological trauma; communication and translation deficiencies; poor experience

elsewhere with governmental officials; and a belief that the interests of the applicants or their children may be advanced by saying what they believe officials want to hear. The Tribunal must be firmly told - if necessary by this Court - that the process is one for arriving at the best possible understanding of the facts in an inherently imperfect environment. It is not to punish or disadvantage vulnerable people because they have made false or inconsistent statements, or are believed to have done so." [footnotes omitted]

54. Foster J in the Federal Court case of *Guo Wei Rong and Pan Run Juan v Minister of Immigration and Ethnic Affairs* [1996] FCA 1263 (26 February 1996) said:

"In my view, a proper application of the definition does not require that applicants be, as it were, pinned irrevocably to the establishment in toto of all allegations made in support of their claims. Although resort to exaggeration or even fabrication is distinctly unwise, the finding of either should not necessarily mean that the claim is doomed. There must always remain the possibility that, notwithstanding such blemishes, there is nevertheless a significant basis of truth in the material which can establish a real chance of persecution. The procedure is inquisitorial not adversarial. It is not a matter of the applicant making out a case; rather, the interrogator should seek to ascertain the truth."

55. Foster J went on to also say in that same case:

"It is well to remember that self-contradictory statements and apparent evasiveness, although of obvious importance, do not necessarily require a conclusion that the witness is being untruthful in those aspects of his or her evidence or, more significantly, that the whole of his or her evidence should be rejected. Exaggeration or even fabrication of parts of a witness's testimony does not exclude the possibility that there is a hard core of acceptable evidence within the body of the testimony. Where proof beyond reasonable doubt is required, self-contradiction, inconsistency and evasiveness may, of course, give rise to sufficient doubt to warrant the rejection of evidence. However, in cases where only a real possibility need be shown, care must be taken that an over stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted."

56. The Tribunal carefully considered the applicant's written statements. It then carefully considered the oral evidence provided by the applicant at the hearing before this Tribunal. Having done so, the Tribunal formed the view that the applicant is not a witness of truth and that he has fabricated his claims for the purpose of obtaining a permanent visa to remain in Australia. It found the applicant to be evasive on matters such as the identity of his employers, and in his reply to the Tribunal's questioning on whether he engaged a lawyer to assist him in his claimed property dispute in China. It found numerous inconsistencies in his claims as were put to him at the hearing and as are described in the above account of the applicant's evidence given at the hearing. It also found the applicant was inconsistent in his evidence from one point of the hearing to another, where, for example, he claimed to fear harm if he practised Catholicism, but then said it is okay now but that it was not 10 years ago. The Tribunal also places some weight on the applicant's failure to comply with relevant migration law, including working without work rights, and remaining an unlawful non citizen for a number of years, and finds this undermines his character, credit, and credibility. It does not accept his explanation that he was waiting to hear back from the Federal Court, or that he had no option but to work without permission. For these and for other reasons expressed below, the Tribunal finds the applicant is not to be a reliable or credible witness but rather a person who does not face a real risk of significant harm but who nonetheless seeks to use the protection visa regime as a vehicle to secure a permanent visa.

Independent country information

57. Relevant independent country information to which the Tribunal had regard in this review, in addition to that referred to in the delegate's decision record, is set out in Appendix A of this decision record.

CONSIDERATION OF CLAIMS AND EVIDENCE

58. The issue in this case is whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia, there is a real risk that he will suffer significant harm.
59. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
60. The applicant's claims are essentially two-fold. First, he claims he will suffer serious harm for reasons of his Catholic religion if he returns to PRC. Second he claims he will seek to assert his property rights over a piece of land and that this will result in conflict with his neighbours, in collusion with the police, and which will result in significant harm to him.
61. The Tribunal is prepared to give the applicant the benefit of the doubt and accept that his father-in-law passed away a few days before the hearing and accepts his father may be unwell and that he has encouraged the applicant to remain in Australia. However, it finds that these particular circumstances, that is the passing away of his father in law, or the illness of his father, do not give rise to a real risk that the applicant will face significant harm if returned to PRC.

Harm for reasons of religion

62. In respect of his claim to fear harm as a practising Catholic in China, the Tribunal found his evidence in this respect to be vague and evasive. It also found his evidence, even within the Tribunal hearing was inconsistent, as for example when he repeatedly claimed he would be harmed for his Catholic faith, but then said that it is now okay. The Tribunal formed the impression that the applicant had rehearsed his evidence and adopted a conscious approach to simply repeat his two core claims of religion and property dispute, irrespective of the truth or them, and irrespective of the absence of credible evidence to support the claims. The applicant repeated that he had brought a priest to give evidence at the RRT hearing, and the Tribunal put it to the applicant that the priest's evidence was qualified and also suggested he would not face a real risk of significant harm in China for reasons of his religion. The Tribunal rejects the applicant's claim where he said that it might not matter how much evidence he provides. In fact, the applicant has only provided vague, general and inconsistent claims as to his involvement with the Catholic church in China. Even if the Tribunal was to give the applicant the benefit of the doubt, which it does not in this respect, and even if it found he was likely to practice the Catholic faith if he returns to China, it finds the relevant country information indicates there is not a real risk that he would not be targeted for significant harm, particularly in light of his profile and lack of political activism.
63. The Tribunal considered the applicant's evidence where he claimed that he was assaulted and detained and mistreated by police when he was transporting some children home after Bible class. While the Tribunal understands he might feel some frustration when he was asked to provide detail of this at its hearing, having provided it previously, it does not accept that he was unable to remember details as he claimed. He claimed he sustained a scar on his leg and [another obvious injury]. When the Tribunal asked the applicant why after all these years anyone would want to harm him now, even if that particular incident occurred, he replied that if he goes home he would seek revenge. The Tribunal considers this reply, and his lack of credibility as a witness of truth, coupled with the significant inconsistencies put to the applicant at the hearing, leads to the proper conclusion that the applicant was not

attacked as he claims at any time when living in China. To the extent that the applicant claims to have scars, the Tribunal rejects that these were sustained as he claims to have been sustained. They could have been sustained in a number of ways, and it is not necessary for the Tribunal to determine how exactly they were actually sustained.

64. The Tribunal considered the applicant's evidence as to his non-attendance at church while living in Perth. In this respect he claimed that he "rarely" attended. He explained this in various ways, including claiming not to know where to find Catholic churches, and also it being different because he lived next door to a church in China. The Tribunal accepts that church attendance, or lack thereof, is not determinative of whether a person is genuine or committed to their faith, however, the Tribunal found the applicant's evidence when taken as a whole left it completely unconvinced that he has any commitment to Catholicism, or any other religion, for that matter.
65. The Tribunal also considered the applicant's evidence that he holds a valid passport which is current until the end of [month in] 2017. The Tribunal asked the applicant how he was able to depart China using his own valid passport if the Chinese authorities considered him a person of interest. He replied that he used an "underground organisation" to arrange his passport and visa. When asked what he meant by underground organisation, he said he paid someone to get the passport and visa. The Tribunal found this evidence vague and unconvincing. It accepts that persons are able to pay agents to apply for and obtain passports in China. Having regard to all of the evidence, the Tribunal finds the applicant was able to obtain a valid passport because he was of no adverse interest to the Chinese authorities. Further, he was able to depart China lawfully using that passport, because he was of no interest to the Chinese authorities. Further, having regard to all of the evidence, the Tribunal finds the applicant continues to be of no adverse interest to the Chinese authorities and does not face from them, or from anyone else and does not face a real risk of significant harm if he is removed to China. The Tribunal observed the applicant in fact said at the hearing that "if I go home now the government wouldn't harm me. I can guarantee 100%..." The Tribunal accepts that is the case, based on all the evidence.
66. Having considered all of the evidence before it, the Tribunal finds there is not a real risk that the applicant will suffer significant harm for reasons of his claimed religious beliefs if he returns the PRC.

Harm for reasons of a property dispute

67. In respect to the claim that the applicant fears significant harm for reasons of a property dispute, the Tribunal accepts there is reliable country information as to the existence of property disputes in China. However, it finds the applicant's evidence that he faces significant harm because he purchased land and that his neighbours have used, or intend to use, part of the land for their own use as a road to access other land, is not credible. It found his evidence on this matter to be repetitive, vague and unconvincing. As put to the applicant at the hearing, he did not raise this matter in his first application for a protection visa, to which the applicant claimed it was not an issue at that time. However, it is clear from the delegate's decision that he claimed that there were many disputes going back as far as 2007. Having regard to this evidence, and considered in light of its adverse credibility findings, and to the applicant's apparent willingness of disregard Australia's relevant migration laws, including ignoring the requirement to maintain a current visa and not to work without a work permit, the Tribunal rejects his explanation that the land dispute only became an issue after his first application for protection. Rather, having regard to all of the evidence, and to his evasiveness in answering the question put to him at hearing over whether he engaged a lawyer to act for him in the dispute, the Tribunal is not satisfied that there has been a land dispute at all. It finds after considering all of the evidence, that there has not been a dispute over land with his neighbours such that it would give rise to a real risk of the

applicant suffering significant harm if he returns to China. Further, and for similar reasons, the Tribunal rejects his claim that he would face physical conflict with his neighbours attempting to reclaim the claimed dispossessed land.

68. As put to the applicant at the hearing, the Tribunal considered country information indicating that there are legal processes available in China to arbitrate or settle land disputes. The Tribunal notes the country information extracted below on the legislative and judicial avenues open to deal with land disputes indicates it is less than a perfect system and is affected by corruption in its administration. However, as the Tribunal finds it is not satisfied that there is an ongoing land dispute, the existence of a less than effective mechanism for dispute settlement is not critical in the circumstances of this case.
69. The Tribunal considers it noteworthy that when it asked whether there had been any relevant developments since his last interview with the delegate, that is the interview held [in] July 2014, the applicant replied that there had been no relevant developments. It considers that if there was an ongoing dispute that there would have been some further action or conflict between his neighbour and his family even in the applicant's absence. However, the applicant's evidence is that there has not been. The Tribunal considers the applicant's response is all the more significant in light of his statement made at the hearing that his wife was threatened by police "10 or 20 years ago", and not subsequently. It considers that if there had been more recent threats the applicant is likely to have been informed about them.
70. The Tribunal considered the applicant's claim at the hearing where he said that the people who bashed him are still there and they will harm him. As it does not accept on the evidence before it that there is an ongoing dispute over land, it rejects the applicant's proposition that his neighbours would inflict any harm on the applicant if he returns to China now. It follows from this that the question of state protection does not arise as the Tribunal finds there is not a real risk that the applicant will be targeted for harm for reasons of a claimed land dispute, or for reasons of religion. Nor is it necessary for the Tribunal to make findings in respect to internal relocation in circumstances such as in this case where there is not a real risk of significant harm.
71. The Tribunal is therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
72. 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

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

Tony Caravella
Member

APPENDIX A

Independent country information

74. The Department of Immigration and Border Protection's Background Paper – China: Protestants in China (August 2015) states:

6.1 Treatment of Christians in Fujian Province

Fujian is a province on the south-eastern coast of China, and is the province from which most asylum seekers have come to Australia. Many come from the county of Fuqing City¹, which is part of the prefectural city of Fuzhou in the north of the province. Although both the province and the county contain relatively large numbers of Protestants, there are few reports of repression of house-church Christians in the province and the county. In the 2006 edition of *China's Christians Millions* Lambert also describes religious policy in Fujian as 'relatively liberal' however, he also notes the occurrence of 'occasional crackdowns on house churches'. Lambert provides the following information on the Christian community in Fujian and the treatment of house churches (bolding added):

Fujian has a thriving and rapidly growing Christian community. As a coastal province in the south east, it was one of first to be evangelised from the early 19th century. By 1949 there were about 10,000 Protestants. Official estimates of Protestant Christians in 2004 were 1,179,000 – a twelve-fold growth after fifty-five years of Communism. In early 1999 a TPSM spokesman stated there were 4,000 registered churches and meeting points. In 2000 the TSPM magazine *Tianfeng* revealed there were over 1,200 pastoral workers in Fujian.

Fuzhou, the capital, with its six surrounding rural counties and two smaller municipalities had at least 350,000 Protestants in 2002, meeting in 300 registered churches and 2,000 meeting points. In 2004 Fuqing City had 350,000 believers meeting in 520 churches, according to a Hong Kong Pastor. After Wenzhou, it is the area with the second greatest number of churches in the whole country and has been dubbed 'China's Second Jerusalem'. About 26 per cent of the population are Christian. Pingtan, a large island off the coast, has also seen incredible growth, from under 5,000 Christians in 1959 to 60,000 today, divided equally between registered and unregistered congregations. At least 15 per cent of the island's population are Christians.

The 'Little Flock' or 'Assemblies' were started by Watchman Nee in the 1930s and are still strong in Fujian, especially in the Fuzhou and Fuqing areas where they number many thousands. Many of them prefer to have no links with the TPSM. In Xiamen at least one third of the believers meet in over 100 independent house churches, according to a knowledgeable Hong Kong Christian. The 'True Jesus Church', another indigenous church is also strong in the province with some 70,000 members in total. They are very strong in Putian County, numbering about 20,000 there. There are about 210,000 Roman Catholics in Fujian. **In general, the official religious policy has been applied relatively liberally in Fujian, although there have been occasional crackdowns on house churches and 'underground' Catholics.**²

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 2000³

¹ Fuqing is a 'county-level' city and is largely agricultural with over 90% of its one million population living in rural areas. It has a long history of legal and illegal emigration abroad.

² Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.240-1, CISBE8E6BE680

³ 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
<<http://www.refworld.org/docid/3ae6ad3d4.html>> OGA7924783

and the executive secretary of the Hong Kong Christian Council in 2005.⁴ A 2009 report on the Protestant Church in Fujian Province in a Global Chinese Ministries⁵ newsletter confirms that there are large numbers of independent house churches in Fujian. The report also indicates 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'. It should be noted that one of the sources for this report is the TSPM/CCC.⁶

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.

In its Annual Report published in April 2015, China Aid includes a diagram of the total number of people detained by province, however Fujian province is not included in the diagram.⁷ In November 2007 the Department of Foreign Affairs and Trade (DFAT) advised that they had no information on the treatment of unregistered churches in Fujian and reported on the difficulty in gaining politically sensitive information in China.⁸ Nevertheless a few actions against local Protestants in Fujian have been reported. These are the incidents reported since 2010:

- In December 2012, Fujian was mentioned in relation to a nationwide crackdown on members of a Christian sect, the so-called Church of Almighty God, also known as Eastern Lightning.⁹ The Longyan Public Security Bureau issued a press statement in December 2012 saying that 27 members of the Church of Almighty God had been arrested for illegal propaganda and spreading malicious rumours. Also in December 2012, six people were detained for 15 days in Gongkou village in Zhangzhou city, Fujian province for promoting the Church of Almighty God.¹⁰ This well-known sect has been declared an 'evil cult' and its members have been subject to waves of arrest since the late 1990s. It has also been condemned by other Christian groups.¹¹
- In October 2010, the authorities reportedly took away a worker and sealed three venues used for church gatherings of a church in Lianjiang county in Fujian described as having 'a strong heart for evangelism'.¹²

⁴ 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)*, 1 September <<http://www.refworld.org/docid/440ed6db11.html>> OG8866BA47)

⁵ Global Chinese Ministries is described on the website of the Overseas Fellowship Mission (OMF) as: "Written by China expert Tony Lambert, this monthly newsletter shares current events, milestones and testimonies from around China to help you pray for Chinese people all over the world." Source: <http://omf.org/us/newsletters/>

⁶ Global Chinese Ministries 2009, 'The Protestant Church in Fujian Province', OMF (Overseas Missionary Fellowship) International website, 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> CISE1310071628. 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 TSPM/CCC and can therefore not be taken to be unbiased in relation to house churches.

⁷ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.13, Table 4 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

⁸ Department of Foreign Affairs and Trade (DFAT) 2007, *CISQuest CHN9120 - 'Shouters' Christian group and Fujian Province*, 28 November, CX189037

⁹ Li, Yao 2012, 'Christians warn against cult influence', *China Daily*, 20 December <http://www.chinadaily.com.cn/china/2012-12/20/content_16033787_2.htm> CX312592

¹⁰ Department of Foreign Affairs and Trade (DFAT) 2013, *RRT Country Information Request - CHN41439 - Family planning; Falun Gong; Christians, Returnees, and Corruption*, Country Information Report No. 13/28, 3 July, CX310619

¹¹ See Section 5 *Cults and Sects*

¹² 'Abduction and Building Closures in Fujian' 2010, *China Aid*, 19 October <<http://www.chinaaid.org/2010/10/abduction-and-building-closures-in.html>> CX264498

75. The Australian Department of Foreign Affairs and Trade's thematic report on unregistered religious organisations and other groups in the People's Republic of China, does not address specific regions of China separately but writes that:

As with members of Protestant churches in China, Catholics in China can experience officially-sanctioned harassment and discrimination when their activities are viewed by authorities to be politically sensitive. Incidence of societal discrimination and violence against Catholics in China is generally low.¹³

76. In respect to land disputes in China, all land in China is publically owned by the state and allocated for use by various levels of local government down to the village collective.¹⁴ Land rights certificates and contracts are designed to provide some protections and security for land users.¹⁵ National laws which govern the expropriation of land include the *Land Administration Law* and the *Property Law*. China's provinces have their own implementation regulations based on these laws.¹⁶ In addition, the *Law of the People's Republic of China on the Mediation and Arbitration of Disputes over Rural Contracted Management*, passed in June 2009, is intended to provide instruction for mediation and arbitration in land contract disputes regarding land which is not acquired by the state authorities.¹⁷
77. Research conducted by the Country of Origin Information Services Section, located in background paper: *Land Expropriation and Compensation*¹⁸, gives an overview of the administration of land expropriation in China, including its legislative framework, practical implementation, avenues for citizens to contest the acquisition of land and their rights to compensation. At paragraph 4.1 it states:

Avenues of complaint relating to land disputes are set out in the Land Administration Law.¹⁹ Article 16 of the Land Administration Law provides three levels of action for settling disputes

¹³ Department of Foreign Affairs and Trade 2015, *DFAT Thematic report: unregistered religious organisations and other groups in the People's Republic of China*, 3 March, p. 8 <https://cisnet.immi.gov.au/CountryInfo/Library/2015/Documents/DFAT%20Thematic%20Report%20-%20China_Unregistered%20Religious%20Organisations%20-%20Final.pdf> Accessed 8 March 2015 <CISE96CF1260>

¹⁴ Wong, V 2014, *Land Policy Reform in China: Dealing with forced Expropriation and the Dual Land Tenure System*, Centre for Comparative and Public Law at the Faculty of Law, The University of Hong Kong, 1 May, p.34 <<https://www.law.hku.hk/ccpl/pub/OP%20No%2025%20Vince%20Wong.pdf>> Accessed 10 March 2016 <CIS2F827D92360>; Ding, C and Lichtenberg, E 2011, 'Land and urban economic growth in China', *Journal of Regional Science*, vol.51, no.2, May, Wiley Periodicals, p.302 <CISD9559B11833>; 'China expects new law amendment to upgrade protection of farmers' land rights' 2011, *Xinhua*, 31 December <http://news.xinhuanet.com/english/china/2011-12/31/c_131337693.htm> Accessed 7 October 2014 <CXCB3E63420415>

¹⁵ Landesa Rural Development Institute 2012, *Insecure Land Rights: the Single Greatest Challenge Facing China's Sustainable Development and Continued Stability*, 26 April, p.1 <http://www.landesa.org/wp-content/uploads/Landesa_China_Survey_Report_2011.pdf> Accessed 3 October 2014 <CIS961F9401917>; 'China expects new law amendment to upgrade protection of farmers' land rights' 2011, *Xinhua*, 31 December <http://news.xinhuanet.com/english/china/2011-12/31/c_131337693.htm> Accessed 7 October 2014 <CXCB3E63420415>

¹⁶ Immigration and Refugee Board of Canada 2010, *China: Procedures for land expropriation; whether individuals from Guangdong, Fujian and Liaoning are issued documentation when their land is expropriated; recourse available to and treatment of citizens who oppose land expropriation (2007 – 2010)*, CHN103402.E, 5 July <<http://www.refworld.org/docid/4dd20a4d2.html>> Accessed 12 June 2014

¹⁷ *Law of the People's Republic of China on the Mediation and Arbitration of Disputes over Rural Contracted Management* 2009 (China), promulgated 27 June 2009 (effective 1 January 2010), Ministry of Agriculture of the People's Republic of China <http://english.agri.gov.cn/governmentaffairs/lr/resm/201301/t20130115_8103.htm> Accessed 3 October 2014 <CIS9BE2467657>; 'China's legislature eyes stability with law on rural land disputes meditation' 2009, *Xinhua*, 27 June <http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm> Accessed 1 October 2014 <CX5E56FED18983>

¹⁸ DIBP Country of Origin Information Services Section (COISS) 2014, *Background paper: land expropriation and compensation*, 28 October, p.4 <CRF90949693>

¹⁹ Immigration and Refugee Board of Canada 2010, *China: Procedures for land expropriation; whether individuals from Guangdong, Fujian and Liaoning are issued documentation when their land*

relating to land. Article 16 states that disputes concerning land ownership or use should be first settled through negotiation. If negotiation is unsuccessful, the dispute is then handled by government officials at either the township level for urban areas or at county level or above for other areas. If either party rejects the decision made at government level, the dispute can then be brought before the people's court providing this occurs within 30 days after the government decision is received.²⁰

A July 2010 Immigration and Refugee Board of Canada (IRB) response quotes a lawyer from Lawyers Rights Watch Canada as reporting that although Chinese citizens theoretically have a right to pursue legal recourse for land repossession, 'in practice those who try commonly experience intimidation, beatings, imprisonment on spurious charges, and refusal by the courts to accept their cases'.²¹ Moreover, Chinese lawyers who attempt to represent clients seeking legal recourse in land dispute cases have reportedly been intimidated, imprisoned and disbarred.²² Additionally, due to a lack of independence in the judiciary, rulings tend to favour local officials.²³

In June 2009, the government passed the *Law of the People's Republic of China on the Mediation and Arbitration of Disputes over Rural Contracted Management*, which provides farmers with access to mediation and arbitration in land contract disputes with entities such as local officials and developers.²⁴ The law is intended to help 'settle disputes concerning rural land contract management in a timely and just manner', according to a 2009 *Xinhua* article.²⁵ Disputes arising from requisition of collectively owned land are not, however, covered by the law; Article 2 of the *Law of the People's Republic of China on the Mediation and Arbitration of Disputes over Rural Contracted Management* states that:

The disputes arising from the requisition of collectively owned land and the compensations incurred accordingly is not under the jurisdiction of rural land contract arbitration commissions, and they may resort to means of administrative reconsideration or lawsuits for settlement.²⁶

The abovementioned 2009 *Xinhua* article explains how the law is to be implemented:

is expropriated; recourse available to and treatment of citizens who oppose land expropriation (2007 – 2010), CHN103402.E, 5 July <<http://www.refworld.org/docid/4dd20a4d2.html>> Accessed 12 June 2014

²⁰ *Land Administration Law of the People's Republic of China*, promulgated 25 June 1986 (revised 28 August 2004), Asian Legal Information Institute website, art 2

<<http://www.asianlii.org/cn/legis/cen/laws/lalotproc2004r572/>> Accessed 11 June 2014

²¹ Immigration and Refugee Board of Canada 2010, *China: Procedures for land expropriation; whether individuals from Guangdong, Fujian and Liaoning are issued documentation when their land is expropriated; recourse available to and treatment of citizens who oppose land expropriation (2007 – 2010)*, CHN103402.E, 5 July <<http://www.refworld.org/docid/4dd20a4d2.html>> Accessed 12 June 2014

²² Immigration and Refugee Board of Canada 2010, *China: Procedures for land expropriation; whether individuals from Guangdong, Fujian and Liaoning are issued documentation when their land is expropriated; recourse available to and treatment of citizens who oppose land expropriation (2007 – 2010)*, CHN103402.E, 5 July <<http://www.refworld.org/docid/4dd20a4d2.html>> Accessed 12 June 2014

²³ Immigration and Refugee Board of Canada 2010, *China: Procedures for land expropriation; whether individuals from Guangdong, Fujian and Liaoning are issued documentation when their land is expropriated; recourse available to and treatment of citizens who oppose land expropriation (2007 – 2010)*, CHN103402.E, 5 July <<http://www.refworld.org/docid/4dd20a4d2.html>> Accessed 12 June 2014

²⁴ Lee, J 2009, 'China's emptyland reform', *The Guardian*, 4 July

<<http://www.guardian.co.uk/commentisfree/2009/jul/04/china-land-reform>> Accessed 6 June 2014 'China's legislature eyes stability with law on rural land disputes meditation' 2009, *Xinhua*, 27 June <http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm> Accessed 1 October 2014 <CX5E56FED18983>

²⁵ 'China's legislature eyes stability with law on rural land disputes meditation' 2009, *Xinhua*, 27 June <http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm> Accessed 1 October 2014 <CX5E56FED18983>

²⁶ *Law of the People's Republic of China on the Mediation and Arbitration of Disputes over Rural Contracted Management* 2009 (China), promulgated 27 June 2009 (effective 1 January 2010), Ministry of Agriculture of the People's Republic of China <http://english.agri.gov.cn/governmentaffairs/lr/resm/201301/t20130115_8103.htm> Accessed 3 October 2014 <CIS9BE2467657>

When a dispute arises, the parties concerned can reach a compromise on their own, or resort to a village committee or local government for mediation. If reconciliation fails, the parties can apply for arbitration by a local committee or take their case to court. Under the law, local governments are to set up arbitration committees on rural land contract management disputes at the county or city levels. The committees will be responsible for hiring arbitrators, hearing disputes and supervising the process of arbitration. They should inform applicants of whether they will accept cases in less than five working days. The law also specifies that disputes over land expropriation that involve government organizations are not subject to arbitration and must be resolved through administrative appeals or litigation...The law represents an attempt to standardize the arbitration process, with land contract disputes having become more frequent and varied in recent years. These disputes are addressed as 'a factor affecting rural harmony and stability'.²⁷

Although the law is a demonstration of the central government's intent to provide farmers with an avenue for settling rural land contract disputes, it has attracted some criticism from observers who do not believe it will make a difference to farmers – due to corrupt law enforcement and political influence over the judiciary. For example, writing in *The Guardian* in July 2009, John Lee (a foreign policy research fellow at the Centre for Independent Studies in Sydney and a visiting fellow at the Hudson Institute in Washington), stated that while the law has the intent of standardising arbitration procedures, the problem 'is not bad legislation but enforcement'.²⁸ A December 2011 *Xinhua* article reported that the Standing Committee of the National People's Congress sent six teams to six provinces from August to October 2011 to inspect the enforcement of the law, but no follow up reports on the teams' findings were located.²⁹ As a result, it is unclear how the 2009 legislation has affected the situation on the ground.

²⁷ 'China's legislature eyes stability with law on rural land disputes meditation' 2009, *Xinhua*, 27 June <http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm> Accessed 1 October 2014 <CX5E56FED18983>

²⁸ Lee, J 2009, 'China's empty land reform', *The Guardian*, 4 July <<http://www.guardian.co.uk/commentisfree/2009/jul/04/china-land-reform>> Accessed 6 June 2014

²⁹ 'More Chinese farmers benefit from transfer of land-use rights: legislative report' 2011, *Xinhua*, 28 December <http://news.xinhuanet.com/english/china/2011-12/28/c_131331902.htm> Accessed 1 October 2014 <CXCB3E63420404>; 'China to check implementation of rural land contract law' 2011, *Xinhua*, 28 August, China.org <http://www.china.org.cn/china/2011-08/28/content_23298272.htm> Accessed 1 October 2014 <CXCB3E63420403>