

**0910146 [2010] RRTA 162 (12 March 2010)**

**DECISION RECORD**

**RRT Reference:** 0910146

**Country of Reference:** China

**DIAC Reference** CLF 2009/113276

**Tribunal Member:** Dominic Lennon

**Date:** 12 March 2010

**Place:** Melbourne

**Decision:** The Tribunal affirms the decision not to grant a protection visa.

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In accordance with section 431 of the *Migration Act 1958* the Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

## **BACKGROUND**

1. The applicant arrived in Australia [in] July 2009 on a tourist visa for three months. [In] August 2009 she lodged an application for a protection (class XA) visa with the Department of Immigration and Citizenship under the Migration Act 1958 (the Act). [In] November 2009 a delegate of the Minister for Immigration and Citizenship refused to grant a protection visa and the applicant applied for review of that decision.

## **THE LEGISLATION**

2. Under s.65(1) of the Act a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied.

3. Subsection 36(2) of the Act relevantly provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. “Refugees Convention” and “Refugees Protocol” are defined to mean the 1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a protection (class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

## **DEFINITION OF “REFUGEE”**

4. Australia is a party to the Refugees Convention and the Refugees Protocol and, generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

5. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v Minister for Immigration & Ethnic Affairs* (1989) 169 CLR 379, *Applicant A & Anor v Minister for Immigration & Ethnic Affairs & Anor* (1997) 190 CLR 225, *Minister for Immigration & Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559, *Chen Shi Hai v Minister for Immigration & Multicultural Affairs* (2000) 201 CLR 293, *Minister for Immigration & Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1, *Minister for Immigration & Multicultural Affairs v Khawar* (2002) 210 CLR 1, *Minister for Immigration and Multicultural Affairs vs Respondents S152/2003* (2004) 205 ALR 487 and *Applicant S v Minister for Immigration & Multicultural Affairs* (2004) 217 CLR 387.

6. Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

7. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

8. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

9. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the

persecutor.

10. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

11. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

12. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or (countries) of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

## **CLAIMS AND EVIDENCE**

14. The Tribunal has before it the Department’s file which includes the protection visa application and the delegate’s decision record.

15. In response to questions on her visa application form, the applicant stated that:

- she is Catholic. (Question 13)
- she got married [in] December 2003 in Japan (question 14)
- her occupation was "home duties" (question 19)
- she is a Chinese citizen (question 21)
- her country of former habitual residence or transit before arrival in Australia was Japan (question 25)
- she ticked "temporary resident" when asked to indicate her status in Japan (question 27)
- her current travel document (passport number [deleted: s.431(2)]) was issued in Shanghai [in] June 2009 and is valid until [a date in] June 2019 (question 30)
- she lived, at least from 2000– 2009, in [suburb deleted: s.431(2), Fuli City, Qianye County , Japan (question 35)
- her past employment included working in a “frozen machinery factory’ as a technician between 1978 and 1998 and then in unnamed self-employment from November 1998 until July 2009 (question 39)
- the point of departure from her home country was Japan (question 47)
- she has a valid travel documents for the return to her home country (question 52)
- she has never applied for refugee status in any country other than Australia (question 56)
- she had not been assessed for refugee status by the United Nations High Commissioner for Refugees (question 57)
- she does not have nationality nor is she a citizen of any country other than the

country in which she claims to the persecution (question 59)

- she has the right to enter or reside in Japan (question 60)
- she has not registered or had any contact with the Embassy, High Commissioner or Consulate or other representatives of her home country in Australia (question 61)

16 In response to question 40, (which asked her to nominate which countries she is seeking protection from) she responded "China, Japan".

17. In response to question 41 *Why did you leave that country?* the applicant stated as follows:

I had political troubles when I was in China because of my involvement in the world-known Falun Gong. I was worrying about my own personal safety as well as that of my family. I had to leave China and went to Japan for a better future. However, I was wrong and too naive. The Chinese authorities kept chasing me. I lived in fear.

18. In response to question 42, *What do you fear may happen to you if you go back to that country?*, the applicant replied:

I lived in nightmare and depression after I was attracted by the Chinese police because of my active activities in Falun Gong. If it did not leave China, I would be in real-life danger. Refer to attachment

19. In response to question 43, *Who do you think may harm/mistreat you if you go back?* the applicant replied

of course it's the Chinese Communist Party authorities and its public security officers

20. In response to question 44, *Why do you think this will happen to you if you go back?* the applicant stated as follows:

because my family of generations and I are Catholics. In addition, I was an active Falun Gong follower. When I was in China, the police already regarded me as

their target. My fellow Falun Gong friend disappeared. I lived in nightmare. I could be taken away by the police any time.

21. In response to question 45, *Do you think the authorities of that country can and will support you if you go back? If not, why not ?*, the applicant responded:

No, I do not believe or trust the Chinese Communist Party from what they have done to Catholics and Falun Gong followers in China. If they protect me, I would not have left my family and China. Please refer to attached statement.

22. The “attached statement” is set out below:

I, [the applicant] was born on [date] in Shanghai, China. I would like to apply for refugee visa to the Australian Immigration Department as I believe that I have accumulated fear of being persecuted by the Chinese Communist Party if I return to China.

My reasons are as below:

I was born and brought up in China and I am a Chinese citizen. A copy of my Chinese passport is included in the application.

I arrived in Australia on [date] July 2009 as a tourist for three months.

I was born in a Catholic family and I am a Catholic.

All my family members of generations in China and they have been politically persecuted by the Chinese Communist Party for being Catholic. My grandparents were tortured to death during the well-known Great Cultural Revolution due to their religion. However, none of the family members would change their belief in this religion.

I have built up enough evidence to be persecuted upon return to China for being a Catholic, and especially, for believing in the famous Falun Gong, too.

All my family and I have been through hardship and punishment during the past few years and I have good reasons to fear persecution if I return to China.

Influenced by my grandparents and friends, especially my good friends- [Person

1] and [Person 2], whom I had regular contacts when I was in China, I started practising Falun Gong many years ago. Actually, I was influenced more by my friend [Person 1] who is a loyal Falun Gong follower. [Person 1] introduced Falun Gong to me as early as 1997. He taught me how to practice it and told me how it worked on him and his family.

I realised that there is no future and hope for me to live in China because of my family background. So, I went to live in Japan to change my life and to get away from the Chinese authorities. However, I was wrong. My family in China were regularly visited by the local police and I received constant threatening phone calls from them.

For the sake of my future and safety, of course, my Falun Gong belief, I arrived in Melbourne in July 2009. I like to stay in live here. I enjoy the peaceful and good political environment. With the help of my friends here, I found contacts with Falun Gong followers in Melbourne. I have joined them in the practice. The only thing worries me is that when I speak to my family on the phone, all of them tell me that is very dangerous for me go back to China. All of them encourage me to stay here for political reasons. That's why I decided to seek political protection from the Australian government.

My trip to Australia is to escape the mistreatment and persecution by Chinese officials and the police.

I cannot go back to China and I need protection from the Australian government.

23 [In] November 2009 a delegate proceeded to a decision to refuse the visa. The delegate considered the issue of the applicant's right to reside temporarily in Japan and seek protection from Japan:

.. In her application for a Protection visa the applicant stated that she has the right to enter and reside in Japan and has been residing in Japan since 2000. As part of her supporting documents the applicant also presented a copy of the biodata page of her previous Chinese passport [number] The claimant did not present copies of all pages of this passport when applying for Protection however copies of all relevant pages were held as part of her tourist visa application lodged at the Australian Embassy in Tokyo. This passport held two permits and re-entry



permits issued to the "spouse or child of Japanese national"; the first granted on [date] September 2006 and valid to [date] July 2007 and the second valid from [date] October 2007 to [date] July 2010. As part of her supporting documentation for her tourist visa the claimant also lodged a "Certificate of Alien Registration" issued by the Government of Japan valid from [date] July 2006 to [date] July 2010. As a result I find that the applicant has a valid permission to return and re-enter Japan.

24. The delegate concluded that, in light of the effective protection that was available to the applicant in Japan, Australia did not owe protection obligations to her.

25 [In] December 2009 the applicant lodged an application for review with the Tribunal.

26 On [a date in] January 2010 the Tribunal posted a Notice of Hearing to the applicant inviting her to attend a hearing before the Tribunal at 9.00 am on [a date in] February 2010. On [a date in] January 2010 the applicant sent a facsimile to the Tribunal advising it that she wished to take part in the hearing. However, on [the day before the hearing in] February 2010 the applicant sent a medical certificate by facsimile to the Tribunal which is set out below:

This is to certify that [the applicant] is receiving medical treatment and for the period [date] February 2010 to [the following day in] February 2010 inclusive she will be unable to continue her usual work/study.

This certificate was completed [in] February 2010

27. On [the original hearing date in] February 2010 the Tribunal posted a Notice of Hearing to the applicant inviting her to attend a hearing before the Tribunal at 10.00 am on [a date in] February 2010. On [the day prior to the second scheduled hearing in] February 2010 the applicant sent a facsimile to the Tribunal advising it that she did not wish to take part in the hearing. She did not attend the Tribunal for a hearing on [the second scheduled date in] February 2010.

28. Given the applicant's waiver of her entitlement to a hearing, the Tribunal makes a decision on the review without holding a hearing pursuant to section 426A of the Act.

29. The Tribunal considered the following country information:

#### **Spouse or Child of Japanese National visa**

Foreign nationals married to Japanese citizens can apply for a spouse visa that allows them temporary residence in Japan. The validity of this visa, known as a ‘Spouse or Child of Japanese National’ visa, ranges from one year to three years, and can be renewed with Japan’s Ministry of Justice before it expires. This visa does allow holders to work legally in Japan.<sup>1</sup> In July 2009 it was announced that Japan intends to reform this visa, extending its maximum validity period from three years to five years. This reform has yet to be enacted.<sup>2</sup>

#### **Application Procedures for Chinese Nationals**

To apply for a Spouse or Child of Japanese National visa, the visa applicant must apply for a ‘Certificate of Eligibility’ from the “regional immigration authority under the jurisdiction of the Ministry of Justice” (The husband or wife who is the Japanese national will usually do this on the visa applicant’s behalf). This certificate acts as “evidence that the foreign national meets the conditions for landing in Japan” and is submitted when applying for the spouse visa. Citizens of the People’s Republic of China applying for a spouse visa must submit extra documents, including: a copy of the “Chinese Family Register” that indicates the residency status (Hukou) of the applicant in China; Temporary Residence Permit or Residence Certificate “[i]f the applicant does not have a family register within the region under the jurisdiction of the embassy or consulate where the application will be made”; and applicants must complete a questionnaire, obtainable at Japanese embassies and consulates in China.<sup>3</sup>

#### **Re-entry into Japan**

A person holding a Japanese spouse visa must obtain a re-entry permit before departing Japan. Most Japanese re-entry permits are only valid for a single use, however all holders of residency and spouse visas can apply for a multiple re-entry permit. Holders of spouse visas and residency visas will automatically have their visas cancelled if they leave Japan without a valid re-entry permit and re-entry permits cannot be applied for once outside of Japan.<sup>4</sup>

If a spouse visa is cancelled or expires before a holder re-enters Japan then a new application for a spouse visa must be made. If a person cannot return to Japan before their spouse visa and re-entry permit expires for “unavoidable reasons, such as illness”, then that person may apply for an extension of the re-entry permit at an Embassy or consulate:

It is not possible to apply for re-entry permission at the Embassy or Consulate after departure from Japan. However, if a foreign national who has departed from Japan after acquiring re-entry permission is unable to return to Japan before expiration of the permit for unavoidable reasons, such as illness, the foreign national can apply at the Embassy or Consulate General for an extension of the re-entry permit's period of validity.<sup>5</sup>

In July 2009 it was announced that Japan intends to reform the re-entry permit system, and abolish the need for permits for travel abroad for periods of less than twelve months. This reform has yet to be introduced, however it is expected to be enacted by 2012.<sup>6</sup>

### **Residency Visa**

After a period of time (usually a minimum of three years) a spouse may apply for a residency permit, which is valid for an indefinite period of time:

A spouse of a Japanese national needs to have lived in Japan for not less than three years after marriage. In case such person married and lived with the spouse for certain time period in a foreign country, such person needs to have married the spouse for more than three years and stayed in Japan for not less than one year. It is required that a normal and substantial marriage life be sustained without breakdown of the marriage or a separation incidental to such breakdown.<sup>7</sup>

### **Divorce**

If the holder of a spouse visa divorces then the spouse visa is cancelled and any application for a re-entry permit will be denied:

However, a Re-entry Permit is not always issued. It would be rejected if you had come on student-type visa but have been expelled or **you had obtained Spouse or Child of Japanese National visa by marrying a Japanese national but have since divorced**. In these cases, you are assessed as no longer justified to stay in Japan and the Immigration Bureau of Japan would not permit your re-entry into Japan.<sup>8</sup>

### **Japanese Citizenship**

Long-term residents can apply for citizenship, however the conditions are strict (usually requiring many years of constant residency and vary depending on the nationality of the applicant):

Foreigners, who have resided in Japan for at least five consecutive years (less if married to

a Japanese national), have shown good conduct, have never plotted against the Japanese government, have sufficient assets or ability to make an independent living and are willing to renounce any other citizenship held, can be granted Japanese citizenship.<sup>9</sup>

## **RELEVANT LAW, FINDINGS AND REASONS**

30. [In] November 2009 a delegate proceeded to a decision to refuse the visa. The delegate did not analyse the applicant's claims of persecution in detail. Instead the delegate considered the applicant's apparent right to reside in Japan and whether that right obviated Australia's responsibility to the applicant

31. On the merits of the claim for protection (as distinct from the issue of whether protection is available to the applicant in Japan), the Tribunal is not satisfied, on the evidence before it, that the applicant has a well founded fear of persecution Had the applicant attended the hearing, the Tribunal would have explored a number of issues such as:

- her knowledge of the basic tenets of the Catholic faith, her practice of the Catholic faith, any incidents of persecution she has suffered by virtue of her belief in and/or practice of the Catholic faith;
- her knowledge of the basic tenets and physical exercises of the Falun Gong, her practice of Falun Gong, any incidents of persecution she has suffered by virtue of her belief in and/or practice of Falun Gong;
- why she returned to China to apply for a new passport if she had a fear of persecution by the authorities of that country;
- details of the incidents which the applicant claims to have been affected by in China, including when and where they occurred, precisely who targeted her, and for what reason or reasons;
- where she lived and worked during this period, and whether the problems she claims to have experienced impacted on her living or working arrangements;
- what efforts, if any, she made to obtain the protection of the Chinese authorities against the harm she claims to have feared;
- whether the applicant made any attempt to relocate within China in order to avoid the harm feared, and if not, why not; and

- the reasons, if any, for the delay between the applicant arriving in Australia and applying for a Protection visa.

32. In the absence of more detailed information in respect of these matters, the Tribunal is not satisfied that the applicant is a Catholic or a follower of Falun Gong or that she has been targeted by Chinese authorities, or that her safety or freedom is at risk in China as she claims, whether because of her religion or for any other reason. Accordingly, the Tribunal is not satisfied that the applicant faces a real chance of persecution in the reasonably foreseeable future in China for a Convention reason, or that the applicant's claimed fear of persecution is well-founded within the meaning of the Convention.

33. Even if the Tribunal had been satisfied of the merits of the applicant's claim to face a real chance of persecution in China in the reasonably foreseeable future for a Convention reason, an issue would have arisen (it was the issue which was dispositive of the application by the delegate) as to whether section 36(3) of the Act applies to abrogate Australia's responsibility to the applicant (on the basis that she has a right to reside in Japan).

34. Sub-sections 36 (3) to (5) of the Migration Act are set out below:

(3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.

(4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.

(5) Also, if the non-citizen has a well-founded fear that:

(a) a country will return the non-citizen to another country; and

(b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or

political opinion;

subsection (3) does not apply in relation to the first-mentioned country.

35. The delegate noted that the applicant had the right to reside in Japan, that neither (4) nor (5) applied and that therefore section 36 (3) applied to absolve Australia of its protection obligations toward her. The delegate did not therefore, proceed to assess the merits of the applicant's claim in the event that she did not have the right to reside in Japan and that section 36 (3) did not apply to absolve Australia of its protection obligations toward her.

36 Had the applicant attended the hearing, the Tribunal would have explored a number of issues such as:

- whether she is still married and, if so, to whom, the nationality of her spouse and the rights, if any, which flow from her status as spouse of a person of that nationality;
- the rights, if any, which flow from her period of residence in Japan before her arrival in Australia;
- the rights, if any, which flow from her status as "temporary resident" in Japan;
- whether she considered Japan to be her "home country";
- the effect of the travel documents, if any, she has for return to Japan and, in particular, whether she has the right to enter or reside in Japan;
- whether she has never applied for refugee status in any country other than Australia and, if not, why not;
- whether she has taken all possible steps (for the purposes of section 36 (3)) toward obtaining residence in Japan and, in particular, whether she has registered or had any contact with the Embassy, High Commissioner or Consulate or other representatives of Japan in Australia;
- whether she has a well-founded fear of being persecuted in Japan for reasons of race, religion, nationality, membership of a particular social group or political opinion, for the purposes of subsection 36 (4);
- whether Japan would return her to China or another country and whether she has a well-founded fear of being persecuted in China or another country for reasons of race, religion, nationality, membership of a particular social group or political opinion for the purposes of subsection 36 (5);

- whether she has applied for a Japanese "residency visa" and, if so, the status or outcome of her application or, if not, why not; and
- whether she has applied for Japanese citizenship and, if so, the status or outcome of her application or, if not, why not

37. In a decision by the Full Court of the Federal Court of Australia in *NBGM v The Minister* (2006) FACFC (12 May 2006) Black CJ held that:

Section 36(3), to adopt the words of Hill J in V872/00A v Minister for Immigration and Multicultural Affairs [2002] FCAFC 185; (2002) 122 FCR 57 at [21]- [22], provides

an automatic disqualification for persons falling [within its terms] from obtaining a protection visa. I use the phrase "automatic disqualification" because that is the consequence of s 36(3). There is no question of discretion; no room for differences of opinion. A legally enforceable right to enter and reside in a safe third country automatically disqualifies a person from being granted a protection visa in Australia

38 In other words, if section 36 (3) of the Act applies there is no need to go any further and consider the merits of the claims of persecution. The issue of the applicant's visa status in Japan would, therefore, have been (in the event that the Tribunal was satisfied that the applicant had a well founded fear of persecution for a Convention reason) of critical importance as it would have determined whether she has "a legally enforceable right to enter and reside in a safe third country" (namely Japan) and whether the section 36 (3) "automatic disqualification" applied

39. The applicant stated in her application that "I went to live in Japan to change my life and to get away from the Chinese authorities"

40. If the applicant is married to a Japanese citizen that marital status would appear to "avail (the applicant) of a right to enter and reside in" Japan for the purposes of obviating, under section 36 (3) of the Act, Australia's responsibility to provide protection to the applicant.

41. However sub-section 36 (3) of the Act only applies if subsections (4) or (5) do not apply

42. Sub-section 36 (4) of the Act makes sub-section 36 (3) of the Act inapplicable if the applicant has a well founded fear of persecution in the third country, in this case, Japan. As indicated above, the applicant declined the hearing and the Tribunal was thereby deprived of an opportunity to obtain *vive voce* evidence on whether the applicant has a well founded fear of persecution in Japan. On the evidence before it there is, therefore, some doubt on this issue and the Tribunal is not satisfied that the applicant has a well founded fear of persecution in Japan and is not satisfied that sub-section 36 (4) of the Act applies to render sub-section 36 (3) of the Act inapplicable.

43. Sub-section 36(5) of the Act makes sub-section 36(3) of the Act inapplicable if the applicant has a well founded fear that Japan will return the applicant to another country and that she has a well founded fear that she will be persecuted in that other country (in this case the only likely country being China). As indicated above, the Tribunal is not satisfied, given the paucity of evidence, that the visa applicant has a well founded fear of persecution in China. Even if it was so satisfied, the Tribunal notes that the Country Information indicates that Japan grants ongoing residence to persons married to Japanese citizens with a right to eventually apply for citizenship. On the evidence before it there is, therefore, some doubt on this issue and the Tribunal is not satisfied that Japan would return the applicant to China or any other country and is not satisfied that sub-section 36(5) of the Act applies to render sub-section 36(3) of the Act inapplicable.

44. On the evidence before it, the Tribunal is satisfied that the applicant has not taken all possible steps to avail herself of a right to enter and reside in Japan. Accordingly, pursuant to section 36(3) of the Act, Australia would be taken not to have protection obligations to her.

45. It is, however, not necessary to determine this issue. Given the Tribunal's inability to take oral evidence on and explore the issues identified in paragraph 31 above, the Tribunal is not satisfied that the applicant has been targeted by the authorities in China or that her safety or freedom is at risk in China as she claims, whether because of her religion or for any other reason. Accordingly, the Tribunal is not satisfied that the applicant faces a real chance of persecution in the reasonably foreseeable future in China for a Convention reason, or that the applicant's claimed



fear of persecution is well-founded within the meaning of the Convention

46. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant does not satisfy the criteria set out in s.36(2) for a protection visa.

## DECISION

47. The Tribunal affirms the decision not to grant a protection visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer: PRMHSE

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<sup>1</sup> 'Immigration' (undated), Japan-Guide.com <http://www.japan-guide.com/e/e2221.html> – Accessed 22 February 2010

<sup>2</sup> Immigration/Business Registratiton (sic) News' 2009, Takizawa-Toshiyuki Gyoseishoshi-Lawyers [http://www1.ocn.ne.jp/~higuchis/46.html?\\*session\\*id\\*key\\*=\\*session\\*id\\*val\\*](http://www1.ocn.ne.jp/~higuchis/46.html?*session*id*key*=*session*id*val*) - Accessed 22 February 2010

<sup>3</sup> 'If your objective is work or a long-term stay – Specified visa: Spouse, etc. of a Japanese national', [http://www.mofa.go.jp/j\\_info/visit/visa/long/visa10.html](http://www.mofa.go.jp/j_info/visit/visa/long/visa10.html) – Accessed 22 February 2010

<sup>4</sup> 'Exemption of Visas' 2009, Ministry of Foreign Affairs (Japan), [http://www.mofa.go.jp/j\\_info/visit/visa/short/novisa.html#list](http://www.mofa.go.jp/j_info/visit/visa/short/novisa.html#list) – Accessed 22 February 2010

<sup>5</sup> 'Exemption of Visas' 2009, Ministry of Foreign Affairs (Japan), [http://www.mofa.go.jp/j\\_info/visit/visa/short/novisa.html#list](http://www.mofa.go.jp/j_info/visit/visa/short/novisa.html#list) – Accessed 22 February 2010

<sup>6</sup> Immigration/Business Registratiton (sic) News' 2009, Takizawa-Toshiyuki Gyoseishoshi-Lawyers [http://www1.ocn.ne.jp/~higuchis/46.html?\\*session\\*id\\*key\\*=\\*session\\*id\\*val\\*](http://www1.ocn.ne.jp/~higuchis/46.html?*session*id*key*=*session*id*val*) - Accessed 22 February 2010

<sup>7</sup> 'Permanent Resident' (undated), Japan Visa & Incorporation Services <http://www.legal-service.jp/en/service5-1.html> – Accessed 22 February 2010

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<sup>8</sup> 'I want to leave Japan temporarily' (undated), Tokyo Immigration Service  
<http://www.tokyoimmigration.jp/eng/ichiji.html> – Accessed 22 February 2010

<sup>9</sup> 'Immigration' (undated), Japan-Guide.com <http://www.japan-guide.com/e/e2221.html> – Accessed 22 February 2010