

DECISION RECORD

RRT CASE NUMBER: 1102850

DIAC REFERENCE(S): CLF2011/15544

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Andrew Rozdilsky

DATE: 19 May 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of China, applied to the Department of Immigration and Citizenship for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] February 2011. The delegate decided to refuse to grant the visas [in] March 2011 and notified the applicants of the decisions.
3. The delegate refused the visas on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] March 2011 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.

17. 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.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
19. 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

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The applicants appeared before the Tribunal [in] May 2011 to give evidence and present arguments. The applicant's sponsor also gave testimony. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
22. The applicants were represented in relation to the review by their registered migration agent. The representative attended the Tribunal hearing.
23. The applicant's grandfather was a Tian Dao leader before the Communist takeover of China.
24. In 1951, Tian Dao was banned by the Communists. The applicant's grandfather was arrested by the PSB and imprisoned for 18 years. He died in jail in 1969.
25. The applicant's mother was a Taoist since childhood, but was unable to practice. The applicant's mother was forced to undergo re-education in [district deleted: s.431(2)] in Fuzhou from 1973 until 1978. The applicant was [age deleted: s.431(2)] at the time, and his father raised him and his siblings. When she was released in 1978, she was in poor health, and suffered from various illnesses arising from her time in re-education. The applicant's family lived in dire poverty.
26. The applicant only had a primary education as he was required to work to support his family and look after them.

27. The applicant was married [in] January 1988. The applicant's mother died as a result of illness in April 1988. In 1996, the applicant moved to Nanping City in Fujian, and worked in construction.
28. In early 2007, the applicant made arrangements for his daughter to study in Australia, and prepared to accompany her. She arrived in Australia in September 2007, and the applicant arrived in Australia in March 2008.
29. In October 2008, the applicant's father became seriously ill. He had no medical insurance, and the applicant was required to cover the costs of his treatment. The applicant was unable to pay for his daughter's study and went into debt.
30. In March 2009, the applicant got to know a devout Taoist in Australia. This individual began to instruct the applicant in Tian Dao, and the applicant began to attend worship every weekend as well as celebrations held on the new and full moons.
31. The applicant was baptised [in] June 2009, and became a devout Taoist. His daughter has also become a Taoist.
32. The applicant claimed that Tian Dao is still banned in China and is a secret society in China. He claimed it would be impossible to practice Tian Dao, and that when he does practice it in China, he would face persecution.
33. The applicant feared that he and his daughter would be arrested by the PSB immediately and imprisoned. It would be impossible for the applicant and his daughter to give up their beliefs in Tian Dao.
34. The applicant provided a letter of support from The Tian Ci Holy Dao Association in [suburb deleted: s.431(2)].
35. The applicant's sponsor also testified in support of his application.

The delegate's decision

36. The delegate determined that the applicant was not a devout Tian Dao follower, that he was reluctant to divulge details about Tian Dao, and had a superficial knowledge of the practices and principles of Tian Dao. The delegate accepted that the applicant may have been baptised, and attended Tian Dao gatherings, but noted that at his compliance interview the applicant had indicated that there were no reasons why he could not return to China, but that he would like to remain a bit longer and make some money. When asked why he so indicated he stated at interview that he was too frightened to disclose that he is a Tian Dao follower. When asked why he did not apply for protection until after he was detained he said he did not become a Tian Dao follower so that he could apply for a protection visa and that further he did not know about protection visas. In the delegate's view, the applicant had not established the strength and depth of his Tian Dao beliefs.

The Tribunal hearing

37. The applicant testified that he took up Tian Dao because he was born into a Tian Dao family but that he did not practice in the PRC because it is banned and because of his mother's and grandfather's experiences as a result of following the religion. His first opportunity to practice Tian Dao arose in Australia.

38. The applicant described how he took up Tian Dao, when he first became a Tian Dao follower. The applicant testified regarding the principles of Tian Dao, and described how he practices. He named the other names that Tian Dao is known by. He described the history of Tian Dao. He described the ceremonies and demonstrate prayers and kowtowing. He is a cantor in the local temple in [suburb deleted: s.431(2)] and described and recited his role as the cantor on the left who counts the kowtows. He named the principles and his baptism. He described the role of the indicator, who was the individual who testified on his behalf. He described the three treasures, and the location of the heavenly portal. He also described spirit writing. He recited the prayer of repentance.
39. When asked why he delayed lodging his protection visa application until after he was detained, he testified that his faith is for no other purposes and that he did not want to use it as the basis of his claim.
40. When asked why at the compliance interview [in] January 2011 he had stated that he wanted to work for another year or two to earn money, he testified that Tian Dao is not an open religion. It was hard for him to decide at the time and that he remains uncomfortable in discussing it in the open and did not want to use it as an excuse.
41. When asked why he had stated that there were no reasons why he could not return to China but that he wanted to stay a bit longer, he testified that at that time he was very nervous, he was not sure about what he was talking about and that at the time a telephone interpreter was being used and he may not have understood the question correctly.

Documentary evidence

42. Tian Dao (Yiguan Dao) is a Taoist sect. It has two names in Chinese but, due to different systems of Romanisation, there are many different ways to spell these
 - Yiguan Dao, or I-Kuan Tao (translated as the Way of Unity, Path of Unity, Unity Sect, Religion of One Unity, Way of Basic Unity, Unity Teachings, Way of Pervading Unity, Unity Way, etc), and
 - Tian Dao or Tien Tao the Way of Heaven, Heaven's Way or the Celestial Way)

Basic Tenets

43. The distinctive features of the beliefs, practices and organisation of Yiguan Dao are outlined by Joseph Bosco in a 1994 journal article 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan'. Bosco's article is based on field work in southern Taiwan where he studied the Yiguan Dao sect and was initiated into it. He notes that Chinese religion has generally been divided into "orthodox popular religion" and "heterodox sects." He says the term "popular religion" has referred to "the mixture of Buddhism, Taoism, spiritism, and ancestor worship that centres on family altars and village temples." Heterodox sects, on the other hand, have been "groups of believers claiming to have found the way to individual salvation, implicitly rejecting the worldly hierarchy (emperor to local official) reflected in popular religion's pantheon (Jade Emperor to Earth God)."
44. Bosco states that heterodox sects, though usually meditative and quiescent, were responsible for several of China's largest millenarian rebellions. A tradition commonly called "White

Lotus" has persisted in a recognisable form since the sixteenth century and, despite ruthless state suppression, sectarian religious groups of the White Lotus tradition surfaced in nearly all parts of China over the past four centuries and "still exist in Southeast Asia and Taiwan." Partly because of its association with rebellion, "sectarian religion has been viewed as separate from popular religion." Traditional village-level popular religion were seen as influenced by - and in turn influencing - the state religion. In imperial times, this was seen as maintaining ideological support for the emperor and the bureaucracy. Even with the demise of the imperial system, popular religion has been seen as supporting the social hierarchy and state power, whereas Sectarian religion "has been viewed as a totally different tradition that offers a radical critique of society and a rejection of the worldly order." While Yiguan Dao is a part of the Sectarian tradition, several elements of its belief and practice are "rooted in popular religion" meaning that

.....the practices may be slightly different from practices in a village temple but that believers and non-believers make sense of these beliefs or practices in terms of popular religious "orthodoxy" and not as a separate tradition. Certainly no one considers these beliefs and practices bizarre. (pp. 422-3)

45. Some further extracts follow:

As the name implies, Yiguan Dao claims it unites "the world's five great religions": Buddhism, Taoism, Confucianism, Islam, and Christianity. Scriptures from all these religions are believed to be sacred texts, but the current followers of the five religions are believed to be misguided. Initiates are told they are fortunate for they have just received the dao or "way," which supersedes all previous religions. Religions merely urge humans to be good; the dao, on the other hand, allows believers to escape from the cycle of death and rebirth (reincarnation) and reach nirvana. (p.424) Yiguan Dao uses spirit writing to receive encouragement and direction from deities. (pp.431-3)

A number of Yiguan Dao beliefs appear to be heterodox but are in fact part of the variegated and sometimes contradictory beliefs of popular religion. Many religious symbols and rituals allow alternative interpretations; sectarian beliefs combine with alternate beliefs to create a "heterodox" theology.

Yiguan Dao members worship all gods; this syncretism is typical of Chinese religion. Yiguan Dao differs from popular religion primarily in its focus on the Maitreya Buddha and in its belief in the Venerable Heavenly Mother. Yiguan Dao followers believe the Maitreya Buddha, the Buddhist Messiah known as Milefo, has already arrived and given humankind the dao. Buddhists also worship the Maitreya Buddha but do not believe he has or is about to return (Weller 1987). Neither the deity nor the idea of his return were invented by Yiguan Dao.

Yiguan Dao believers worship an all encompassing spirit known as Laomuniang, the Venerable Heavenly Mother, who has existed since before the universe. The Heavenly Mother is a sectarian invention; as a female figure outside of but giving order to the cycle of growth and the destruction of kalpas (eras), she challenges the orthodox concepts of patriarchy, linear time, and worldliness. Many believers, however, interpret her as merely another among the many gods and goddesses of the religious pantheon. In fact, she is often confused with Guanyin, the goddess of mercy, in part because representations of the Venerable Heavenly Mother are not allowed and statues and pictures of Guanyin are frequently used as substitute symbols. Only after periods of study do the more intellectual and theology minded followers learn of her special role. One informant, a grandmother who had been attending the full and new moon services regularly for several years and had even

made a vow to be a vegetarian, answered my question of why she believed in the dao by saying, "They are all gods, they all require incense, they are all the same." (p.433)

According to Yiguan Dao beliefs, those who have not been initiated have no way of delivering themselves from the cycle of death and rebirth; they are doomed to being reborn in this bitter world rather than attaining bodhisattva status and going to Western Heaven. Believers try to earn "merit" (gongde) to improve their karma so as to be worthy of bodhisattva status. Their karma, they believe, is primarily determined by what they did in past lives (pp.433-4)

The most unconventional belief of Yiguan Dao is that the end of the world is imminent and that only believers will be saved. Expressed in its most direct form, this millenarian view certainly seems rather "heterodox," or outside Chinese popular religion. Several factors mitigate the heresy of this belief. First, the end of the world is couched in the Buddhist terminology of kalpas (eras) and the savior Buddha. Although these beliefs are partly the messianic message of the White Lotus tradition, they are based on traditional Buddhism (Weller 1987:166). Second, these beliefs are widely current in present day Taiwan: ... Furthermore, most believers are not consumed with the idea of the end of the world. In fact, initiates are only told of this idea months after they have learned the basics of the rituals and beliefs. Millenarianism is consciously played down to avoid frightening converts and the government. (p.435)

Much of Yiguan Dao belief and ritual is borrowed from popular religion. Sect members are able to discuss the texts of planchette seances in the open with non-members present, because the contents of the texts resemble those produced by shamans in local temples. The discreet propagation of the faith depends on the fact that little of Yiguan Dao belief strikes most prospective and new initiates as strange or heterodox (xie), though the fervor of believers often repels new members. Many loosely associated members, especially older persons, are often naive as to the meaning of the rituals. Yiguan Dao praying involves very rapid kowtowing in a kneeled position while a cantor on the right announces the names of gods and a cantor on the left counts out the kowtows. This bowing is similar to that performed by the family of the groom on the evening before a wedding, though some of the details such as hand position and the speed of portions of the kowtowing are different. The chanting is typically Confucian, much like the state sponsored ceremonies on Confucius's birthday, which are broadcast on television each year. Furthermore, the chanting and bowing resemble in a general way the ceremonies held at a local Buddhist temple.

Although there are similarities with other religious bowing, Yiguan Dao bowing is obviously different. Nevertheless, Taiwanese families accept the idea that there are different ways of bowing for different gods and different occasions. Buddhist, Taoist, and Confucian rituals are each different, and an individual will perform different rituals on different occasions. Not only are there variations between occasions, but there are personal variations as well (if one observes closely at temples). Some of the faithful bow deeply from the waist, others rock three times, or hold the incense in special ways. This is all within the acceptable range of variation. (pp.435-6)

46. With regard to Yiguan Dao's organisation Bosco notes that:

Yiguan Dao operates secretly, in keeping with White Lotus tradition. Its temples are in ordinary homes and members seek converts discretely. Its ceremonies are only open to initiated members. Initiation involves receiving the secret three treasures: a mantra, a hand position, and the symbolic opening of a door in the body so the soul may depart from the proper exit and not from one of the body's other orifices. After initiation, new members are taught the three treasures meaning, which is the core secret of the sect. (p.424)

The Yiguan Dao is organized as a secret sect, with temples located on the top floors of private homes. Believers are organized in temple cells of eight to ten core followers per temple. Religious activities include morning and evening Prayer sessions but only the most devout do them daily. Believers are expected to attend at least on the full and new moon. The ceremonies themselves involve group kowtowing to a long list of gods.

Temples are organized in districts under the loose leadership of a master. The master presides over initiation ceremonies and guides the activities of the district faithful. He is treated with great respect. He links the district with the islandwide hierarchy. At the top of the hierarchy is the man who brought Yiguan Dao to Taiwan from China in 1945. The people he and his followers have converted form what is known as a line (much like a lineage of teacher pupil links). Each missionary who came from China has a line of followers behind him, forming in essence separate though loosely federated sects. (pp.425-6)

47. As Bosco notes, 'spirit writing' figures in Yiguan Dao worship:

Yiguan Dao uses spirit writing to receive encouragement and direction from deities. Spirit writing has a long tradition in China. In its simplest form a spirit medium in trance writes in the air or on paper, but the writing is scribbled and open to interpretation. The Yiguan Dao uses a more elaborate and impressive form known as a planchette (writing on a board covered with sand), and spirit writing is held in the district's larger and more luxurious temples. Three specially selected and trained youngsters represent heaven (tian), humankind (ren), and earth (di). "Heaven" writes, "humankind" reads, and "earth" writes. Writing involves moving a wooden stylus attached to a hoop over a tray covered with a thin layer of sand. The child holds the hoop and writes from a side of the table so that the characters face "humankind." The hoop is moved rapidly (and seems to move on its own, with the child barely holding on), but produces easily legible characters said to have the calligraphy not of the child but of the god who descends on the child and makes him or her write. "Humankind" reads the characters out loud and glides a flat rake over the sand to erase the three or four characters and prepare the sand for the next characters. "Earth" writes the message on paper. The message typically is in doggerel rhyme and encourages followers to work for the dao. Names of persons present are often sprinkled in the text, sometimes with puns on their names, identifying them as persons especially counted on to do the dao's work. Since the youngsters are not from the area and do not know the people they name, and since the message appears too long to be memorized, participants are impressed by the power of the dao.

Several features distinguish spirit writing in Yiguan Dao from the more common forms of spirit writing in private temples. First, these seances are very rare in Yiguan Dao, occurring perhaps once or twice a year in one township, while they are typically the regular feature of small cults. Second, only one spirit medium goes into trance in Yiguan Dao séances, not the followers as occurs in some cults (see Jordan and Overmyer 1986:184 85). This medium is not a tang ki, the shaman of folk religion. Third, the Yiguan Dao seance involves receiving messages (typically exhortations to work harder for the dao) from Heaven for all the congregation, while small cults typically answer personal questions.

... The greater control over organization and over spirit possessions sought by Yiguan Dao, is necessary for any local cult to develop into a broadly based religion. The strong organization of the Yiguan Dao, which holds together many followers, is satisfying to believers and proves to them that their enterprise of spreading the dao and saving souls is valid and important. Yet because of its secret nature and its reliance on temple cells tied to a hierarchy of masters, the sect cannot fully control its members and sometimes even local leaders go astray. In Wandan Township, one temple owner began to make claims of personal religious power and was thus expelled from the organization, but he took all his temple's congregation with him. There are thus limits to the strength of the Yiguan Dao organization, but it is its organization that makes it distinct from small private sects.

(Bosco, Joseph, 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the Present*, East Gate, NY Ch.16 pp.429-30).

48. There are somewhat divergent versions of Yiguan Dao's history, but most commentators agree that:
- the religion was founded in Shandong province in north China between 1925 and 1930 by a man named Zhang Tainran (or Chang Tien-jan also called Shi Zueng or "teacher-reverend"), although some commentators give credence to stories of its founding in the late 19th century;
 - the religion spread through the Japanese occupied part of China through the 1930s and early 1940s;
 - Following the defeat and departure of the Japanese army, the religion was outlawed by both the Nationalist and Communist governments for its perceived collaboration with the Japanese puppet government and many leaders fled to Taiwan where it has become established. The group was heavily suppressed in China during the 1950s. Its history in China since then is little known.

Tien Dao in the PRC

49. There is considerable evidence indicating that Yiguan Dao was banned in China after the end of the Second World War and that it remains illegal. The government has been largely successful in repressing the sect and there is little to suggest that it now has any but the most furtive presence in the People's Republic of China. There are few reports about mistreatment of followers in recent times, although there are reports of the detention of six priests from Taiwan in 1994, and the destruction of twelve temples in Fujian: (Canada's IRB 1997, CHN26564). There is also information suggesting recent attempts by Taiwanese followers to revive Tiandao in the PRC: *Encyclopedia of Contemporary Chinese Culture*, edited Edward Davis, Routledge, 2005, at 699. According to a source consulted by the IRB in April 2000, Tian Do remains "very illegal", a "universal villain", and is not likely to be accepted by the PRC government any time soon, especially given the recent scrutiny of local religion and groups regarded as "cults" following the campaign against Falun Gong: IRB 2001, CHN36541.

The three treasures

50. According to Lu and Lang the term "three treasures" in Yiguan Dao refers to "mystic portal", "pithy mantra" and "hand seal". Formally secret, their meaning is now public: the mystic portal is the point between the two eyebrows; the true sutra includes five words which praise Maitreya Buddha, so it is called the "true sutra with five words"; the hand seal requires the left hand to be put under the right hand with two thumbs pressed on a certain part of the right hand (Lu, Yunfeng and Lang, Graeme 2006, 'Impact of the State on the Evolution of a Sect', *Sociology of Religion*, Vol. 67, No. 3, p.264, note 14 <http://www.baylor.edu/content/services/document.php/37386.pdf> – Accessed 30 October 2008).
51. The World I-kuan Tao Headquarters website also refers to the Three Treasures, and to the "three treasures of the body":

“The Mystical Gate, Wordless Sutra and Unity Seal are the Three Treasures... Three Classes or Three Flowers are the three treasures of the body: vitality, spirit and soul.”

http://www.with.org/classics_ten.html

What attitude do the PRC authorities have with practitioners?

52. Regarding the situation and treatment of Yiguandao practitioners in China, RRT information indicated in 2007, in general, that the religion is:

- a proscribed religion in the People’s Republic of China, and was radically stamped out by the Communist government in the 1950s.
- Yiguan Dao groups outside China (principally in Taiwan) try to make converts in the People’s Republic and re-establish the religion there. The province of Fujian is a centre of such activity due to the strong presence of Taiwanese-owned companies and joint ventures in this area.
- The Chinese authorities do crack down on such cells when they are discovered.

The religion remains banned in China (See 2009 book review of *The Transformation of Yiguan Dao in Taiwan: Adapting to a Changing Religious*

Economy by Yunfeng Lu (Lanham: Lexington Books, 2008), p.710

[http://www.purdue.edu/crcs/itemPublications/articles/reviews\(Lu\).pdf](http://www.purdue.edu/crcs/itemPublications/articles/reviews(Lu).pdf))

Was Chang Tien Jan, the 18th generation leader of the religion?

Jordan and Overmyer in their 1986 publication, *The Flying Phoenix: Aspects of Chinese Sectarianism in Taiwan*, state that “The last (eighteenth) of these post-Ch'an Unity masters, and the second of the "white" age was Chang Kuang-pi more usually called Chang T'ien-jan” and go on to provide further details in their history of the group’s founding, growth and suppression between 1925 and 1949:

The last (eighteenth) of these post-Ch'an Unity masters, and the second of the "white" age was Chang Kuang-pi more usually called Chang T'ien-jan. He is said to have led the sect from about 1925 until his death in 1947, although he seems not to have succeeded formally immediately upon Lu's death.

According to Li Shih-yu, the Unity Sect was in fact founded as an independent organization only in 1928 by Chang T'ien-jan himself, a date in accord with that of the earliest texts clearly produced by this group, which appeared in about 1935 (Li Shih-yu 1948: 32-37, 97). As mentioned earlier, the Unity Sect is a modern manifestation of the sixteenth-century sectarian tradition, as can be seen by its worship of the Venerable Mother, its doctrine of three stages of time, each with its reigning Buddha, and its use of a variety of old sectarian names and terms. ...

Under Chang's leadership, in any event, the Unity Sect survived the Japanese occupation of large parts of China (despite occasional massacres of believers [Dunstheimer 1959: 336]). Because Chang's movement had been centered in North China, he had had to do much of his organizing under the Japanese. In the course of things, his movement was fortunate to enough to attract a number of officials of the Chinese puppet government of Wang Ching-wei

(also named Wang Chao-ming), founded in Nanking in 1940, and these connections enabled him to gain a low-level post in the Ministry of Foreign Affairs, and thus a passport for internal travel. Because of its conversion of officials in the Wang government, the Unity Sect was able to shield itself against some of the disruption of the war years in Japanese areas, but its very success there had made it unwelcome in the Communist- and Nationalist-held parts of China.

With the reassertion of control by the Nationalist government came the urgent need to disavow any enthusiasm for the Wang government or the Japanese. The stain of erstwhile collaborationism was upon the movement, however. And when Chang himself, who had been in failing health as the war ground to its end, finally died in Szechwan in 1947, some, especially Buddhist, detractors immediately sought to exploit his Japanese associations by maintaining that Chang was executed for treason. The charge is almost certainly not true. ...

In Taiwan the Administrative Yuan investigated the sect in 1953, and it was never quite possible to shake the suspicion that Chang's association with the Wang government reflected enthusiasm for it. The Unity Sect was (and continues to be) suspected of having collaborated with the Japanese. The Chinese government outlawed all secret societies, political or religious, in 1946, including the Unity Sect by name; the Communists re-enacted this abolition from 1949, the Nationalists in 1952 and again in 1959. The legal persecution of the sects may have limited their activities, but did not stop them. ... Newspaper reports through the following years described police raids on Unity meeting places both in Taiwan and on the Chinese mainland. Still, from the end of the war until very recently, the Unity Sect has seen troubled times. Indeed, already in 1948, Li Shih-yu (1948: 32) regarded 1945 as marking the beginning of its disintegration and collapse (Jordan, David K. and Overmayer, Daniel L. 1986, *The Flying Phoenix: Aspects of Chinese Sectarianism in Taiwan*, Princeton University Press Ch.9 'Case Study III: The Unity Sect (I-kuan Tao)', pp.216-8).

Patriarchs of the Tian Dao

53. The sixteenth patriarch of the Yiguan Dao religious movement was Liu Qingxu; and the seventeenth patriarch, Lu Zhongyi (Lu, Yunfeng 2005, *Chinese traditional sects in modern society: a case study of Yiguan Dao*, PhD, Dept. of Applied Social Studies, City University of Hong Kong, pp. 24-25 <http://lbms03.cityu.edu.hk/theses/ftt/phd-ss-b19290536f.pdf>, accessed 16 December 2009).

FINDINGS AND REASONS

54. Having regard to the applicant's passport and other evidence, the Tribunal finds that the applicant is a national of China. It has assessed his claims accordingly.
55. The Tribunal accepts that the applicant is a genuine Tian Dao practitioner. He was a cantor at a local Tian Dao temple. It further finds that the applicant's claims regarding his family members experiences in the PRC prior to his departure are genuine. It accepts that the applicant has been baptised. The applicant testified in a spontaneous and forthright manner and responded largely accurately to extensive questioning regarding Tian Dao. The Tribunal accepts the applicant's evidence in relation to his Tian Dao beliefs, based on his knowledge, which largely accords with the documentary evidence cited above.
56. The Tribunal again notes the applicant's testimony regarding Tian Dao summarised above, and accordingly, the Tribunal accepts that the applicant continues to be a genuine Tian Dao practitioner. The Tribunal finds that the applicant would remain a member of Tian Dao if he were to return to the PRC.

57. The applicant throughout the course of his testimony conveyed to the Tribunal the depth of his religious convictions. The Tribunal again notes the applicant's knowledge of Tian Dao.
58. The Tribunal further finds that the harm feared by the applicant is for one or more Convention reason, namely his religion.
59. The country information is somewhat dated, but the Tribunal finds the following.
60. The Tribunal finds that, the situation still exists as it did in 2000, that, Tian Dao remains "very illegal", a "universal villain", and is not likely to be accepted by the PRC government any time soon, especially given the recent scrutiny of local religion and groups regarded as "cults" following the campaign against Falun Gong (IRB 2001, CHN36541).
61. The Tribunal also finds that Tian Dao is a proscribed religion in the People's Republic of China, and was radically stamped out by the Communist government in the 1950s. The province of Fujian is a centre of such activity. The Chinese authorities do crack down on such cells when they are discovered.
62. The 2009 book review of *The Transformation of Tian Dao in Taiwan: Adapting to a Changing Religious Economy* by Yunfeng Lu (Lanham: Lexington Books, 2008), p.710 confirms that the religion remains banned in China.
63. Given that the agent of persecution feared by the applicant is the Chinese government, that there is no part of the PRC to where the applicant can reasonably be expected to relocate safely from the threat of harm feared by him.
64. The Tribunal accepts that if the applicant returned to China now or in the reasonably foreseeable future, there is a real chance that he would be detained, tortured and imprisoned because of his activities as a member of Tian Dao.
65. Overall, the Tribunal finds that the persecution which the applicant fears clearly involves 'serious harm' as required by section 91R(1)(b) of the Migration Act in that it involves a threat to his life or liberty, significant physical harassment, and physical ill-treatment.
66. The Tribunal finds that the applicant's religion, Tian Dao, is the essential and significant reason for the persecution which he fears, as required by section 91R(1)(a). The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by section 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason.
67. The Tribunal has considered s.91R(3) of the Act and it is satisfied that the applicant engaged in his religious conduct in Australia otherwise than for the purpose of strengthening his claims to be a refugee. The Tribunal finds that he engaged in the activities because he is a genuine Tian Dao practitioner.
68. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere

within that country: *Randhawa v Minister for Immigration Local Government & Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 440-1.

69. However, this principle only applies to people who can genuinely access domestic protection, and for whom the reality of protection is meaningful. If relocation is not a reasonable option in the particular circumstances, it may be said that, in the relevant sense, the person's fear of persecution in relation to that country as a whole is well-founded: *Randhawa* per Black CJ at 442-3, Beaumont J at 450-1.
70. The Tribunal has considered whether relocation is a reasonable option. The Tribunal accepts that there is no part of the PRC to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears. The Tribunal finds that Tian Dao is a banned cult throughout China, and this would bring him to the adverse attention of the PRC authorities.
71. The Tribunal finds that there is no adequate and effective state protection as the applicant's religion is illegal and operates underground; and that the Chinese authorities continue to crackdown on practitioner cells.
72. Considering all of the claims of the applicant, both specific and general, the Tribunal is satisfied that the applicant faces a real chance of persecution should he return to PRC now, or in the reasonably foreseeable future. Therefore the Tribunal is satisfied on the evidence before it, that the applicant has a well-founded fear of persecution for reasons of his religion if he returns to that country now or in the reasonably foreseeable future.
73. The Tribunal is not satisfied that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, the PRC. The Tribunal therefore finds that the Applicant is not excluded from Australia's protection by subsection 36(3) of the Act.
74. Therefore, the Tribunal is satisfied on the evidence before it that the applicant has a well-founded fear of persecution for a Convention related reason.
75. Accordingly, the Tribunal is satisfied that the applicant is a refugee.

CONCLUSIONS

76. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.
77. Although the applicant's daughter claims to recently have become a follower of Tian Dao, insufficient evidence was advanced by her to make a finding that she is a person to whom Australia has protection obligations under the Refugees Convention.
78. The Tribunal is not satisfied that the second named applicant is a person to whom Australia has protection obligations. Therefore she does not satisfy the criterion set out in s.36(2)(a) for a protection visa. The Tribunal is satisfied that the applicant's daughter is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of her application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other

applicant will be entitled to a protection visa provided she meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

79. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
 - (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.