

1310089 [2013] RRTA 611 (10 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1310089

DIAC REFERENCE(S): CLF2013/32425

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: John Blount

DATE: 10 September 2013

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of China (PRC), applied to the Department of Immigration for the visa [in] March 2013 and the delegate refused to grant the visa [in] July 2013. [On a further date in] July 2013 the applicant applied to the Tribunal for review of that decision. The case was constituted to this Member [in] July 2013.
3. The applicant appeared before the Tribunal [in] August 2013 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's paternal uncle, [name deleted]. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicant was represented in relation to the review by his registered migration agent, [name and firm deleted].

RELEVANT LAW

5. The relevant law is set out at Attachment A.

CLAIMS AND EVIDENCE

6. The applicant is a [age deleted] Chinese man from Fuqing in Fujian province, who arrived in Australia with a student visa in January 2007. The applicant remained unlawfully in Australia after his visa ceased in March 2009. When apprehended and detained in February 2013 the applicant initially provided a false identity. The applicant shortly thereafter applied for a protection visa.
7. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision and country information cited in the decision made by the delegate and in submissions made by or on behalf of the applicant.
8. The applicant's circumstances and claims were in the first instance provided to the Department in his protection visa application [of] March 2013, an accompanying claims statement of the same date and at an interview [on a later date in] March 2013.

Protection visa application

Protection visa application and claims statement, [in] March 2013

9. The applicant stated that in around October 2012 his father was advised that the Chinese authorities were going to resume his land for construction of a new highway. He would be compensated 180,000 RMB, which (the applicant stated) was unreasonable and was barely enough for his parents to purchase land or a new house. His father queried the compensation with village leaders but was told they had no

power to increase the amount. Their neighbours were also being compensated only a small percentage of what their land and house was actually worth.

10. The applicant stated that [on a date in] December 2012 his parents were evicted from their house so that it could be demolished.
11. [On the following day] his father went to the local government to complain about the inadequate compensation and accused them of retaining some of the amount that was actually awarded to him and said he would take the matter to court and expose their corruption. The officials became angry and beat his father and he was detained at the local police station. When his mother enquired with the local government about his whereabouts she was told they did not know where he was. About 5 days later an officer from the police station telephoned his mother to inform her that her husband was detained and that she would need to pay a significant (but unspecified) amount of money for his release.
12. The applicant stated that when his mother went to the police station she was told that she needed to pay 5000 RMB but that her husband would not be released for another 10 days. He was released [in] January 2013. His father then consulted a lawyer about court proceedings against the local government for beating him and retaining some of the compensation amount and an application was lodged at a court in Fuqing.
13. [On a further date in] January 2013 when his father went to a shop to photocopy some documents for the case, he was approached and beaten by 4 or 5 men whom (his father believes) were hired by the local government. Her father was taken to hospital with concussion, a broken leg and severe bruising to his internal organs and (at the date of the statement) was still in hospital for observation.
14. The applicant stated that when [in] February 2013 he was caught and detained by the Australian authorities for being unlawful, later that day he telephoned her mother to inform her where he was and that he might be deported back to China. It was only then that his mother had informed him of the events involving his father. She told the applicant that he could not return to China “as there was a high chance I would be beaten and harassed by the Local Government and Chinese authorities for my association with my father” She had not informed him until then as she did not want to worry him and thought that the issue would have been resolved.
15. The applicant stated that he fears that if he returns to China the authorities will harass, torture and detain him for his father’s actions and for wanting to seeking redress against the authorities. As his parents’ land has been taken without proper compensation, he would be struggling to provide financial support for himself and his parents to cover necessities and to save enough money to purchase a house and land. He would not be able to stand by while his parents’ land is taken without adequate compensation; it is unreasonable for him not to seek redress on behalf of his father against the local government and then would face the same treatment as his father.
16. The applicant provided with his protection visa application an (untranslated) “letter from government” and “father’s medical records”.

Protection visa interview, [in] March 2013

17. The applicant repeated his claims at a subsequent interview with the delegate [in] March 2013 (although he now stated that his father had been detained [in] December 2012). He had been in regular contact with his parents over the internet and by telephone since arriving in Australia but said he had not contacted his parents over the internet in the preceding 6 months. Asked how the documents submitted were sent to him from China, the applicant first said they had been posted to him by his family. He then said they had been emailed to him by his family. Reminded that he had said that he had not contacted his parents over the internet in the preceding 6 months, the applicant then said that they had been emailed to a friend as he did not have an email address.
18. The applicant stated that the authorities will impute to him a political opinion by virtue of him expressing his opposition to government land acquisition policies and that he will be arrested and detained.
19. [In] April 2013 the applicant's adviser provided the following documents, with translations:

Compensation & relocation agreement

Issued by the local authorities, this advised the resumption of the father's property and stated that total negotiated compensation shall be RMB 180,708. It appears that this agreement was signed [in] October 2012.

Medical documents relating to applicant's father

There is what appears to be an admission record dated [in] January 2013, stating that the patient had been beaten up and had "multiple tissue torn in the head; red and swollen right leg; sore eyes; lung and heart; abdomen: and suggesting immediate x-ray of right leg. A "diagnosis report" dated [in] March 2013 stated that the applicant's father has "head injury, broken right femur". There is also a hospitalisation receipt of the same date.

Civil complaint filed on behalf of applicant's father

The court was requested to order the authorities to pay the applicant's father "the difference in compensation according to law" of RMB274,427.50 for housing demolition and RMB101,170.27 for land-use right, as well as RMB112,679.28 as compensation for the plaintiff's economic loss. The document was dated [in] February 2013.

Delegate's decision, [in] July 2013

20. In rejecting the applicant's claims, the delegate set out a number of matters which led him to characterise the applicant's responses as evasive and illustrative of poor credibility. In relation to the documents tendered, the delegate also noted evidence concerning the ease with which fraudulent Chinese documents can be obtained.

Review application, [in] July 2013

21. A copy of the delegate's decision record dated [in] July 2013 was provided to the Tribunal by the applicant with his review application.

22. In response to the Tribunal's invitation to a hearing [in] August 2013, the applicant [on a date prior to the hearing] requested that the Tribunal take evidence from three persons: an uncle resident in Australia and two persons resident in China (his father and a "village leader"). Telephone numbers were provided. No indication was given of the evidence they might provide other than, in each case, "This person will give evidence in support of my claims" The Tribunal in [response] requested that statements be provided in writing by the two proposed witnesses who are in China (noting that emailed statements would be acceptable).

Submission, [in] August 2013

23. A submission from the applicant's adviser dated [in] August 2013 was received by fax the afternoon before the scheduled hearing.
24. It was stated that the applicant's family business went bankrupt in about June 2007 (while the applicant was studying in Australia). His parents could no longer continue to financially support the applicant who stopped attending classes to work in order to support himself and his family. His student visa was cancelled and he subsequently became an unlawful non-citizen. [In] February 2013 the applicant was located and detained.
25. In October 2012 the Applicant's father received notification that his land was being resumed for a highway project, but the amount of compensation offered was far less than the market value of the property and he refused to sign the compensation agreement.
26. It was stated that [in] December 2012 government officials and police officers came to evict the applicant's parents and prepared to demolish the house. The Applicant's father objected but was dragged from the house by one the police officers. He fought back and a fight ensued between the Applicant's father and several police officers. Eventually, the Applicant's father agreed to leave.
27. [Two days later] the applicant's father went to the local government where he complained to the officials that the amount that they were planning to compensate him was not enough to build a new home or purchase land. He accused the local government of retaining some of the amount that he was entitled to and said that he would submit the dispute and expose their corruption.
28. It was stated that [on a date in] January 2013 the applicant's father consulted a lawyer about lodging a dispute against the Local Government. The applicant's father having been notified that the demolition would commence on that day he went there to take photographs of the forced demolition with his mobile phone but demolition labourers grabbed his phone and destroyed it. It was stated that this particular incident was not included in the applicant's earlier statutory declaration or in his evidence at his PV interview because he then had only the account of the incidents recounted to him by his mother via telephone on just a few occasions.
29. [On a further date in] January 2013 about 30 people, including government officials, police officers and demolition labourers, arrived to continue the demolition. When the applicant's father attempted to block the demolition, several demolition labourers and police officers beat him with batons and rods. The applicant's father attempted to

defend himself but eventually surrendered as there were too many of them and was arrested and taken to the police station and given 15 days detention. It was stated that the applicant also failed to include this incident previously because he was not aware of it until a teleconference was held between him, his father and his migration agent [in] August 2013.

30. [In] January 2013 the applicant's mother got together 45,000 RMB from savings and borrowing and went to the police station to secure the applicant's father's release by bribery. However, prior to his release he was forced to sign the compensation and relocation agreement. He was also informed that the amount of compensation would be approximately 35,000 RMB less than what was originally offered, for physically harming the demolition labourers and government officials.
31. It was stated that later that same day (that is, [in] January 2013), the Applicant's father was at a store near his house taking photographs of the demolition when he was approached by about five of the demolition labourers who severely beat the applicant's father with batons and rods. He was not at the store to photocopy some documents as indicated in the earlier statutory declaration. Shortly after, the applicant's mother was informed of the incident and came and took the applicant's father to the hospital, where he was informed by the medical staff that he had sustained a concussion, broken leg and severe internal bruising.
32. When the applicant's mother arrived home from the hospital, she received a telephone call from an unknown male to the effect that if they continued to cause trouble, more of this would happen.
33. It was stated that when he was detained [in] February 2013, asked why he wanted to remain in Australia the applicant (then unaware of his parents' dispute with the local government) had said he needed to remain in Australia in order to financially support his parents, because of their bankrupt business. It was only when the applicant telephoned his mother that evening, to inform her that he might be deported, that he found out that his parents' land had been seized by the local government and that his father had been injured. Prior to this telephone conversation, the applicant last spoke to his mother [on a date in] February 2013 but she had not informed him of the issues they were facing in China.
34. [On a further date in] February 2013 a civil complaint against the local government was lodged at the court but the applicant's father has not heard any updates about this complaint and believes that it has been refused.
35. [In] March 2013 the applicant's father was released from hospital.
36. It was stated that during the interview with the delegate [in] March 2013, the delegate had requested medical documents to support the applicant's father's injuries. On the same day the applicant spoke to his father and asked him to provide medical documents but was told by his father that it would be difficult to retrieve these medical documents and that it would take a while to obtain them. The applicant therefore arranged with his cousin in China to obtain fraudulent documents which were received [in] April 2013. The migration agent had been told that these were genuine medical documents.

37. [In] August 2013 a telephone conference was held between the applicant, his father and the migration agent, during which the applicant found out more details about the incidents involving his father.
38. [On a further date in] August 2013 the applicant advised his migration agent that the medical documents he previously provided in support of his father's injuries were fraudulent. The applicant told his agent that genuine documents would be provided in support of his father's injuries shortly.
39. It was acknowledged that the delegate had had concerns about the applicant's credibility based on the applicant's false identity documents; the applicant's specification of an inconsistent date; varying accounts of how the applicant received the documents submitted; and whether the documents submitted by the applicant are genuine. With regard to the applicant's migration history and possession of false identification documents, it was submitted that these were not material facts in determining the truth of his account of the incidents involving his father.
40. With regard to the date of his father's detention it was stated that the applicant had said "on or around" the particular date, based on a telephone conversation with his mother. It was not until the conversation with his father that the applicant found out in detail what occurred to his father and the exact dates that they occurred.
41. It was stated that the documents which were submitted with the protection visa application had been emailed by the applicant's cousin [the one who provided the fraudulent documents] [on two dates in] March 2013 to a friend of the applicant at Villawood. (Printed screen shots of these emails were attached to the submission.)
42. The delegate had refused to give any weight to the documents provided by the Applicant on the basis of country of origin information that any official document can be either bought or forged. It was submitted that this does not necessarily mean that all Chinese documents are therefore bought or forged. While the applicant has admitted to providing fraudulent medical documents, he asks that when considering whether the remainder of his documents are genuine the Tribunal take into account that he has admitted to this prior to the hearing.
43. It was submitted that the applicant has a well-founded fear of persecution on the basis of his political opinion. Upon return to China, the applicant will seek redress for just compensation on behalf of his father, who still has an outstanding debt from his bankrupt business. This is properly regarded as an expression of political opinion. The Applicant fears that whilst seeking redress, he will experience beatings, imprisonment and harassment by Chinese authorities. There is therefore a real chance that the applicant will face significant harm on return to China for reason of his political opinion.
44. In relation to complementary protection, it was submitted that the mistreatment or harm, which the applicant would face, in the event he is removed from Australia, would amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. It was asserted, without further elaboration, that the circumstances in which there is taken not to be a real risk (Section 36(26) of the Act) do not apply to the applicant.

45. There were attached to the submission:

- A copy of a signed “Compensation and Relocation Agreement dated [in] October 2012, with a translation;
- A copy of a brief letter signed by a person said to be the local village head, and that person’s identity document, with translations;
- A copy of a statement by the applicant's father (see below), and his identity document, with translations;
- A copy of a civil complaint dated [in] February 2013, with a translation;
- Copies of what appear to be two screen shots of emails dated [on two dates in] March respectively, attaching (illegible) documents.

Statement by former village leader

46. This letter, dated [in] August 2013, and signed by “former leader, village committee”, states briefly that the applicant’s father had suffered a forced “demolish and relocate” [in] December 2012 due to a highway construction project and had been hospitalised for injuries inflicted upon him by the demolition/relocation personnel and was then coerced into signing the compensation agreement.

Statement by applicant’s father, dated [in] August 2013

47. The applicant’s father stated that [in] December 2012, when a highway construction project came to his village, his home was designated for demolition. They had to move out [three days later].
48. The government’s compensation offer of ¥147,700 was more than 700,000(RMB) short of its market value. He argued that the compensation should be based on current market value but the authorities refused, resulting in continued disagreement and an unresolved dispute.
49. When forced demolition began [in] January 2013, he tried to take pictures with his cell phone, but they grabbed the phone to destroy evidence. [On the following day], over 30 people from the relocate-for-demolition office, the local government and the local police came again to carry out the demolition. As he tried to block them from carrying out the demolition, he was beaten up and taken into custody and given 15 days detention. He managed to get released 5 days early because the sum of ¥45,000 was paid via connections. Prior to his release, at the local police station he was coerced into signing the "Agreement on Compensation for Demolition-Relocation" before they would let him go.
50. The applicant’s father stated that (afterwards) when he tried to take a photo from a neighbour's shop, he was discovered and beaten up again. His leg was broken and he was taken to the hospital the same day, and was not discharged until [a date in] March 2013.
51. During his hospital stay, he asked his brother to file a civil lawsuit but the case was not accepted by the court, for reasons unexplained.

RRT hearing, [in] August 2013

52. The applicant appeared before the Tribunal in Sydney [in] August 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant was accompanied by his agent, [name and firm deleted]. Evidence was also provided by a witness, the applicant's paternal uncle, [name deleted].
53. The applicant confirmed that he came to Australia on a student visa in January 2007, attended an English language college in Sydney for 6 months, and remained living in Australia unlawfully for 4 years after his student visa ceased in March 2009, until he was apprehended and detained in February 2013.
54. The applicant stated that his family had received a notice about relocation and compensation. They believed the house was of greater value; the compensation was not enough to build another house. People came to the house asking them to move. After they moved out, his father went to get some legal advice, whether he could sue the government or not. After a few days the applicant's father took his mobile phone to take photos of the house as evidence of its value but the relocation workers smashed his phone. His father went to the house again on a second day and had an argument there. There were 20 to 30 people. They hit his father and he was taken to the local police station and detained there. His father was supposed to be detained for 15 days but his family spent 45,000 Yuan to bail him out so he was released after 10 days.
55. The Tribunal asked about the clash when they were first evicted, [in] December. The applicant replied that it was only a verbal argument on that day. The Tribunal referred to paragraph 26 of the submission [of] August 2013, stating that his father was dragged from the house but "fought back" and "a fight ensued". The applicant replied that he had not been there, he had heard from his mother that then they had not physically hurt his father.
56. The applicant stated that his father was taken to the hospital straight away after he was released from detention, where the doctor examined him and said he had a broken foot. Queried, the applicant confirmed that when his father was released from detention, they took him straight to the hospital. The Tribunal then drew the applicant's attention to paragraphs 33 and 34 of the statement [of] August 2013, recounting an incident after the applicant's father was released, "later that day" when he was taking photographs and was severely beaten and was then taken to the hospital. The applicant said he had heard that information from his mother earlier, but had since spoken to his father. The applicant repeated that his father was taken to the hospital straight after his release. The Tribunal enquired when his father's injuries had been sustained if this was the case. The applicant replied that these were the injuries he had suffered previously and also he was abused by them in prison. The Tribunal commented that this latter claim had not been mentioned previously. The Tribunal asked if he was saying that the second incident when his father was beaten outside the shop after he was released did not occur: the applicant confirmed that this was the case, there had been no such thing.
57. When the applicant's father was released, at the police station before he went to the hospital, he was forced to sign something about the compensation.
58. The applicant stated that his father was still living with a brother in Fuqing.

59. Asked about the court case, the applicant stated that because they had no money they did not complete the proceedings and lodge the document.
60. The Tribunal asked why, if these events involving his father occurred as he now said, they would in the future result in harm directed against himself. The applicant replied that if he went back he would also ask for their money back. They had suffered financial loss; if he goes back to China how can he survive. The Tribunal put to the applicant that no other family member was said to have been harmed save for his father, who was actively pursuing allegations of corruption against local officials. His father had owned the land, the case was in his name and he was the one who clashed with those seeking to evict the family, and he was the one who went and threatened the local officials. The applicant was not in the same situation and on the face of it, it was speculative that he would do something similar on return. The applicant replied that he would surely sue the government on his return. The Tribunal commented that his father had owned the land and house and was offered the compensation, it was not clear what legal standing the applicant himself would have to sue. He replied that the land had belonged to his father who had built the house and would have passed it on to the applicant. If he did not go back and sue them, he cannot survive.
61. The Tribunal put to the applicant that if he was concerned about possible harm by particular local officials acting corruptly, why could he not go and live elsewhere in China to avoid this, outside the local town where his family lived (and where he had not lived himself for a number of years). Even Fuqing itself was a geographically large and populous city, where he could live apart from that local town area. The applicant replied that he did not have the hukou (household registration) elsewhere so he cannot live there. The Tribunal noted that on the last information it had seen, well over 100 million Chinese were living in areas where they did not have a local hukou; this did not appear to be a real barrier especially in urban areas. The applicant acknowledged this but said that he had no educational qualifications and there is great competition for labouring jobs, he could not survive and support his family. The Tribunal observed that economic difficulties on return seemed to be a separate issue from whether he was owed protection because of persecution. The applicant said it was true he did not have any money, that was why he would ask the government for the money taken away by the government.
62. The Tribunal put to the applicant that there were some self-evident differences between his earlier claims statement, yesterday's submission and his evidence at the hearing. The applicant agreed and said this was because he had learned the previous information from his mother and later from his father. The Tribunal pointed out that there were also differences between yesterday's submission (after he had spoken with his father) and today's evidence. The applicant said he did not think there were any major differences. The Tribunal reminded him of the differing details concerning when his father sustained the injury and was taken to hospital.
63. The Tribunal put to the applicant that given that he was in regular telephone contact with his parents, it was hard to understand that the initial resumption and dissatisfaction with the compensation offered back in October 2012 had not been mentioned to him, or his parents' eviction, or his father's detention and hospitalisation, all of which occurred prior to his own detention. The applicant replied that because he was working in Australia, his parents did not tell him because they did not want to disrupt him. There was no point telling him as there was nothing he could do.

64. The Tribunal then turned to the documents which had been submitted earlier, in particular the compensation and relocation agreement, the civil complaint and the medical documents. The applicant admitted that the medical certificates are forgeries, he said because the delegate had told him at the interview that time was really tight so he had no option. The Tribunal put to the applicant that the medical documents were in fact submitted before his interview with the delegate, who had simply asked for translations of the documents earlier submitted. The applicant repeated that the fraudulent documents were only received and provided after the interview. The Tribunal stated that it was clear from the file that the medical documents had been referred to in his claims statement dated [in] March 2013 and that the untranslated copies had been provided with his protection visa application [three days later]. The delegate had asked at the interview [on a further date in] March 2013 for *translations* of these documents which were submitted subsequently.
65. The Tribunal advised the applicant that even prior to his admission it had had serious concerns regarding the medical documents which it now accepted are fraudulent. This raised the question as to why, given his history of submitting fraudulent documents, the Tribunal should accept any other documents submitted by him. Further, if he was prepared to submit fraudulent documents, it also raised the question as to whether he would be prepared to ask someone to write or say something untrue on his behalf.
66. At this point, the Tribunal invited in and took evidence from the witness (in the presence of the applicant).
67. The witness confirmed that he is the brother of the applicant's father. He had arrived in Australia about 10 years ago. He had visited China most recently in January and February 2013 and had gone to see the family in February.
68. The witness stated that he had gone to see his brother in hospital in February 2013 (shortly before he returned to Australia [in] February 2013). His brother had then told him that his house had been demolished and that he had argued with the government because of the demolition. His brother had not told him a lot of detail about what had happened, but had said that his injuries (the broken foot) were as a result of the argument with the government because he did not want the house to be demolished and had also resulted in him being detained. He was detained for about 10 days and then released after a payment of 45,000 Yuan. Asked if his brother had told him when the injuries occurred, the witness said he thought it was in January, about 10 days earlier. Asked if this was before or after his brother was detained, the witness said it was before.
69. He had told the applicant about this on his return to Australia, after the applicant's arrest when he had telephoned him from the detention centre.
70. The Tribunal then resumed taking evidence from the applicant.
71. The Tribunal put to the applicant that he had made no mention previously of receiving information about events at home from his uncle, only from his mother and later from his father. The applicant stated that it was because he had learned from his mother first and his uncle had visited him at the detention centre and also mentioned the family information.

72. The Tribunal noted that it would be giving careful consideration to credibility, including in relation to the matters raised only for the first time after he was detained and the weight to be given to the various documents submitted. It would also be considering possible issues in relation to the Convention and to complementary protection.
73. The adviser was invited to provide any further information or written submissions not later than [a date in] September 2013.

Post-hearing submission, [in] September 2013

74. The applicant's adviser provided submissions in relation to possible relocation, arguing that relocation within China would not be reasonable, in particular due to limited employment opportunities which would affect the applicant's ability to sustain himself.
75. In relation to the question of whether the applicant would have any legal standing to sue the local government and thus attract adverse attention on return, it was submitted that in the event that the applicant returns to China he will also protest/petition against the local government about the acquisition of his father's land and the insufficient compensation. Such actions would give rise to a real chance of harm.

FINDINGS AND REASONS

Country of Reference.

76. The Tribunal accepts that the applicant is a national of the People's Republic of China and is not a national or citizen of any other country. Nor does he have an established right to enter and remain in any other country. The country of reference is therefore the PRC.

Claims

77. The applicant has essentially claimed that:
- if he returns to China the authorities will harass, torture and detain him for his father's actions
 - he would complain and seek redress on behalf of his father against the local government and then would face the same treatment as his father
 - he would be struggling to provide financial support for himself and his family
 - the authorities will impute him with a political opinion by virtue of him expressing his opposition to government land acquisition policies and he will be arrested and detained
 - In relation to complementary protection, he would face mistreatment or harm which would amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.

78. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth, especially in the context of entry interviews constrained by time and the inherent limitations of interpretation and often before an applicant fully appreciates what is relevant and the degree of detail required. But nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.
79. In this instance, as will be evident from the subsequent discussion, the Tribunal had significant difficulties with the applicant's credibility in relation both to the events said to have occurred in China and to the well-founded fear this was said to have given rise to for himself.
80. There were some fundamental issues with the applicant's credibility and good faith flagged by the delegate which were of concern to the Tribunal and which it sought to explore at hearing.
81. The applicant remained unlawfully in Australia after his student visa ceased in March 2009 and only applied for a protection visa after he was apprehended and detained four years later in February 2013. He also, when detained, sought to present a false identity, supported by fraudulent documents. The delegate's stated concerns about fraudulent documents were borne out when the applicant subsequently acknowledged that the medical documents provided by him to substantiate his account of his father's injuries were fraudulent. The applicant further muddied the waters by providing conflicting and inaccurate information about when these documents had in fact been provided to the Department (see para 64 above). No evidence was subsequently provided in relation to the claimed hospitalisation of the applicant's father other than the evidence at hearing by the applicant's uncle.
82. Given the applicant's history of submitting fraudulent documents, and having regard to evidence cited by the delegate concerning the high incidence of fraudulent documents available in China, the Tribunal was not prepared to simply accept at face value any documents submitted by the applicant. It also caused the Tribunal to approach other supporting evidence with caution: if the applicant was prepared to submit fraudulent documents, it might be reasonable to suspect that he would be prepared to ask someone to write or say something untrue on his behalf.
83. The Tribunal found it highly unlikely that the applicant would have been (as he claimed) completely unaware of the family's eviction and his father's arrest and hospitalisation in December 2012/January 2013 until after his detention [in] February 2013 had these events actually occurred, given that he claimed to have been in regular contact with his family in China and, he said, had last spoken with his mother a little over a week earlier.
84. It will also be clear from the material recounted in detail that there were significant variations - indeed, substantial inconsistencies - in the evidence provided by the applicant. For example, the dates given for his father's detention varied substantially. The original date said to have been provided to the applicant by his mother [in] February 2013 was [in] December 2012 (although at the protection visa interview the applicant said [three days later]). However the submission [in] August 2013 stated that the applicant's father was detained [on a date in] January 2013 and released [ten days

later]. Such a substantial variation for a significant event said to have occurred so recently (at the time that the applicant first spoke to his mother) is not adequately accounted for by the assertion (at para 40 above) that the date provided by his mother was only “on or around” the particular date and that he later found the exact date from his father.

85. There were other inconsistencies which in the Tribunal’s view cannot be adequately accounted for by the explanation that the applicant obtained a more accurate account once he had spoken with his father [[in] August 2013 and apparently not previously]. For example, the central issue of when and in what circumstances the applicant’s father’s injuries were sustained which resulted in him being hospitalised. The father’s statement dated [in] August 2013 and the submission [of a further date in] August 2013 both refer quite specifically to the father’s injuries having been sustained after he was released from police detention when he was taking photographs from a neighbour’s shop and that he was taken directly to hospital immediately afterwards. At the hearing, the applicant stated (and explicitly confirmed) that when his father was released from detention he was then taken straight to hospital with his prior injuries. He now stated that the incident outside the shop subsequent to his father’s release from detention had not occurred at all: his father had been injured during the earlier clash which resulted in his detention and he was also abused while in detention. (See para 56 above). It is difficult to reconcile the evidence deliberately provided just days apart.
86. Another significant inconsistency was that although it was stated [in] August 2013 submission that the applicant’s father had heard nothing more about the civil complaint lodged [in] February 2013 and believed it had been refused, and the father’s statement dated [in] August 2013 stated that the case had not been accepted by the court “for reasons unexplained”, the applicant stated at the hearing a week later that they did not complete the proceedings and lodge the document because the family had no money.
87. The various inconsistencies highlighted by the Tribunal at hearing were not addressed in the post-hearing submission.
88. After careful consideration, and having regard to issues in relation to the applicant’s credibility and good faith, the Tribunal found itself unable to rely on his account of events involving his father. While it is plausible that land was resumed and compensation offered which the family thought inadequate, the Tribunal does not accept that the applicant’s father was involved in a confrontation which resulted in him being detained and hospitalised. The Tribunal does not accept the evidence offered to the contrary. The Tribunal further finds that it is not the case that the applicant, on return to China, would himself sue or confront the local authorities leading to harsh treatment of himself.
89. The Tribunal is satisfied that the applicant concocted the account now presented to the Tribunal subsequent to his apprehension and detention in order to found a claim for protection.
90. The Tribunal is satisfied that the applicant’s apprehended financial difficulties on return to China do not arise for any Convention reason and do not of themselves amount to a well-founded fear of persecution.

91. The Tribunal is satisfied that the applicant does not have a well-founded fear of persecution for a Convention reason.

Complementary Protection

92. Relevant law is set out at Attachment A. The Tribunal has carefully considered whether the applicant's circumstances as set out and discussed in this decision amount to, or give rise to, substantial grounds for believing that he would face a real risk of significant harm should he return to China.
93. Having regard to all the relevant matters including those already discussed, and in particular the Tribunal's findings at para 88 above, the Tribunal is satisfied that the circumstances relied upon by the applicant do not provide substantial grounds for believing that he would face a real risk of significant harm should he return to China.
94. The applicant therefore does not meet the complementary protection criteria.

CONCLUSIONS

95. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
96. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
97. 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

98. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

ATTACHMENT A

RELEVANT LAW

1. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
4. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
6. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
7. 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.

8. 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.
9. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
10. 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.
11. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

12. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
13. '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.
14. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not

be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally:
s.36(2B) of the Act.

Section 499 Ministerial Direction

15. 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 – to the extent that they are relevant to the decision under consideration.