

1203936 [2012] RRTA 1070 (14 December 2012)

DECISION RECORD

RRT CASE NUMBER:	1203936
DIAC REFERENCE(S):	CLF2012/5538
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Charlie Powles
DATE:	14 December 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 and Citizenship (the delegate) to refuse to grant the applicant a Protection (Class XA) visa (the visa) under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of the People's Republic of China (China), applied to the Department of Immigration and Citizenship (the department) for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2012.
3. The delegate refused to grant the visa [in] February 2012, and the applicant applied to the Refugee Review Tribunal (the tribunal) for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 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.
14. 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.

15. 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.

Complementary protection criterion

16. 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 to 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').
17. '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.
18. 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.

Credibility

19. The tribunal accepts the difficulties of proof faced by applicants for refugee status and complementary protection. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraph 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status and complementary protection obligations.
20. However, the tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, the tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

CLAIMS AND EVIDENCE

21. The tribunal has before it the department file relating to the applicant. 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.

Visa application

22. The applicant provided the following evidence in support of his claims to be owed protection with the visa application forms lodged with the department [in] January 2012.
23. The applicant is a [age deleted: s.431(2)] man, born in Sichuan, China, on [date deleted: s.431(2)]. He speaks, reads and writes Mandarin. He currently holds a Chinese passport, issued [in] May 2010, expiring [in] May 2020.
24. The applicant's parents continue to reside in China. He has one married brother who is currently residing in the United States of America (the USA).
25. The applicant completed primary and secondary school in Qionglai City, China. He worked as a truck driver in Qionglai City between 1995 and 2001 and then ran a small [store] in the same city between 2002 and February 2011. The applicant married in 1997. He has one son, born on [date deleted: s.431(2)].7. His wife and son continue to reside in China. The applicant was granted a Subclass 676 visitor visa [in] January 2011 and arrived in Australia as the holder of that visa [in] February 2011. That visa expired [in] May 2011.
26. The applicant previously travelled outside of China to Korea [in] 2010 when he was "looking for protection". He has not departed Australia since his arrival here in February 2011.
27. The applicant provided a statement typed in English and dated [in] January 2012 setting out his claims for protection in Australia. That statement can be relevantly summarised as follows:
 - a. The applicant came to Australia because he has been persecuted in China.
 - b. He was born and raised in Qionglai, Sichuan province.
 - c. The pollution in Qionglai is very bad. He suffered [problems with his lungs].
 - d. In March 2000, a friend of his father came to visit and told him if he began to practice Falun Gong it would help cure his illness. His father's friend taught him Falun Gong. He knew it was forbidden but his father's friend said he should practise at home to make sure he would not be caught by the police.
 - e. After six months of practising Falun Gong, the applicant stopped [experiencing the health problems] and felt better and strong.
 - f. In February 2001, his father's friend visited again and gave the applicant the book "Zhuan Falun" (the book). He taught the applicant how to speak "Truth". The applicant's father also began to believe in Falun Gong.

- g. The applicant felt much stronger and more broadminded. He continued to practice Falun Gong. He was willing to help others and always talked kindly. He had many friends and told them about Falun Gong.
 - h. In April 2004 he met another more senior Falun Gong practitioner, [Mr A]. He joined a small Falun Gong group of four practitioners. He did not keep the book at home. The group were caught by the police. The applicant thinks a neighbour reported to the police that he saw people coming in and out of the applicant's house. This happened [in] September 2006. [Mr A], a [Mr B] and the applicant were taken by the police to the local police station. The applicant was interrogated and beaten. [Mr A] had been caught by the police before so the police believed they were all Falun Gong practitioners. [Mr A] was sent to a detention centre and the applicant and [Mr B] was sent to a mental hospital.
 - i. At the mental hospital the applicant was given injections against his will and forced to take medicine. He was held in the mental hospital for a month.
 - j. The police went to search the applicant's father's home. He quarrelled with the police and was detained for three days. He had to pay 5000 RMB. The applicant's brother also became involved and was worried about being caught by the police. The applicant's brother escaped to the USA. The applicant's wife took their son to live with her parents.
 - k. The applicant will never give up Falun Gong. He has heard of people being put in jail and beaten so badly that they are permanently disabled. He could only practice Falun Gong at home after he was released.
 - l. [Mr A] was later released but the applicant dared not visit or contact him.
 - m. In 2010 he decided to try to travel overseas. An agent got a visa for him to travel to South Korea. He went there [in] 2010 but could not escape from the tour group because the guide was watching them all the time. In South Korea he saw Falun Gong practitioners practising freely and knew that if he wanted to do the same he would have to leave China.
 - n. A friend helped him to get a visa to Australia and he now wants to start a new life here where he can practice Falun Gong freely. The Chinese government persecuted Falun Gong practitioners and he wants the protection of Australia.
28. The applicant provided a certified copy of the identity and visa evidence pages of his current Chinese passport with the visa application forms.
29. The applicant appointed [name deleted: s.431(2)] (the representative), a registered migration agent, as his migration agent and authorised recipient in relation to the visa application.
30. The delegate interviewed the applicant [in] February 2012 with the assistance of an accredited Mandarin interpreter. The tribunal has read a transcript of that interview.

Delegate's decision

31. The delegate refused the application [in] February 2012.
32. The delegate had concerns about the credibility of the applicant's claims as a result of significant inconsistencies between information provided in the applicant's application for a visitor visa and the information provided in the visa application. The delegate also found that the applicant did not display a level of practical knowledge of Falun Gong that would be expected from a person who, as the applicant claimed, had studied and practised Falun Gong for the previous 12 years, which led to the delegate to not be satisfied that the applicant was a genuine Falun Gong practitioner.
33. The delegate also did not accept that the applicant would have been able to obtain a passport in 2010 if he had been of sufficient interest to the Chinese authorities that he was detained for his Falun Gong practice in 2006. Further, the delegate found that the length of time between the applicant's arrival in Australia and his lodging the visa application raised serious doubts about the genuineness of his fears of harm in China.

Application for review

34. The applicant lodged a valid application for review of the delegate's decision with the tribunal [in] March 2012. The applicant appointed the representative as his representative and authorised recipient in relation to the application for review.
35. The application for review was constituted to the presiding member [in] May 2012.
36. [In] May 2012, the tribunal sent a letter to the applicant advising him that it had considered the material before it but was unable to make a favourable decision on that information alone and inviting him to appear before the tribunal to give evidence and present arguments relating to the issues arising in his case [in] July 2012.
37. [In] May 2012, the tribunal received a completed Response to Hearing Invitation stating that the applicant would attend the hearing scheduled [in] July 2012.
38. [In] July 2012, for reasons beyond the applicant's control, the tribunal was unable to conduct the hearing scheduled for that day.
39. [In] July 2012, the tribunal sent a letter to the applicant inviting the applicant to attend a rescheduled hearing [in] September 2012.
40. [In] July 2012, the tribunal received a completed Response to Hearing Invitation form stating that the applicant would attend at the rescheduled hearing [in] September 2012.

Tribunal hearing

41. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The representative did not attend the hearing.
42. Before the hearing began, the applicant provided the tribunal with a copy of a document appearing to be a marriage certificate for the applicant and seven photographs of the applicant

purporting to participate in Falun Gong activities in Australia. During the hearing, the applicant also provided the tribunal with a full copy of his current Chinese passport.

43. The applicant provided the following evidence in support of his protection claims at the hearing.
44. The applicant confirmed his full name, date and place of birth and that his parents continue to live in his home city of Qianglai. He stated that he has one brother living in the USA. He stated that his brother went to the USA [in 2007]. He stated that his brother obtained a working visa through an agent.
45. The applicant confirmed that he was married to [name deleted: s.431(2)] and that they have one son who is [age deleted: s.431(2)]. His son is at boarding school in Chengdu. His wife has been working in [another location] for over one year selling clothes. The applicant is in contact with his wife and his parents and speaks to his son once a week.
46. The applicant completed [primary and secondary school]. [In] 1992 he served in the Chinese [military] for three years in the communications area. He left the [military] in 1995 because his term of service ended. He then ran a business as a truck driver until 2000 when he opened a [shop] at his home. He ran that [shop] until 2008 when he opened a restaurant. After a serious earthquake in 2008, damage to the restaurant and lack of customers meant the applicant had to close the restaurant. He had continued running the [shop] during that time and his parents took over running the [shop]. He then began [driving trucks again].
47. The applicant lived with his parents until approximately 2001. He married in 1997 and his wife came to live with him and his parents at that time. The applicant moved to another residence in 2001 and he began the [shop] from that residence, where he and his family also lived. His parents own both properties.
48. The tribunal asked the applicant whether he had held a previous Chinese passport. He stated that the passport he had provided to the tribunal at the hearing was his second passport. He stated that he obtained his previous passport in 2007 but lost it in 2008. The tribunal asked the applicant why he obtained a passport in 2007. He stated it was so that he could travel to Singapore, Malaysia and Thailand. He stated that at the end of 2007 he went on holidays with friends for about 11 days to those countries. The tribunal asked the applicant how long his previous passport had been valid for. He stated it had been valid for 10 years. The tribunal asked the applicant whether he had travelled anywhere else outside China before he obtained his current passport. He stated the trip to Singapore, Malaysia and Thailand was the only time he did so.
49. The tribunal asked the applicant whether he had applied for visas to any other countries than Singapore, Malaysia and Thailand before he obtained his current passport. The applicant referred to his trip to Korea in [2010]. The tribunal noted that the applicant travelled on his current passport to Korea at that time. The applicant stated that as he understood it a group of visas had been obtained for a [touring party] to travel to Korea at that time. He stated that he had wanted to leave the tour group and stay in Korea but that he had been unable to do so.
50. The tribunal asked the applicant again whether, before he held his current passport, he had ever applied for a visa to another country than Singapore, Malaysia and Thailand. He stated that he had not. The tribunal asked the applicant whether he had ever planned to travel anywhere else between the time he returned from his trip to Singapore, Malaysia and

Thailand and when he intended to travel to Korea. The applicant stated he had been planning to leave China. He stated that he had obtained the visa through an agent and had gone to Korea but had failed to be able to stay there and so felt very lucky to be able to get a visa to Australia.

51. The tribunal asked the applicant a third time whether he had ever applied to any other country for a visa after his trip to Singapore, Malaysia and Thailand and before his trip to Korea. The applicant stated that he had an agent help with his visa application. The tribunal asked the applicant whether he had arranged for his agent to get a visa to Korea. The applicant confirmed this. The tribunal asked the applicant whether he had ever asked as agents to obtain a visa to any other country before that. The applicant stated that he had: to Canada. The tribunal asked the applicant whether he had asked the agent to get him a visa for any other country in Canada. The applicant stated that his agent had told him there were four countries he could go to: New Zealand, Australia, Canada or the USA. He stated that the agent asked to choose but that he told the agent to apply for him.
52. The tribunal asked the applicant when the agent had lodged an application for him to go to Canada. He stated it was in 2010. The tribunal asked the applicant if he knew what had happened with that application. The applicant stated he was not sure of the details. He stated he had provided property documents and evidence of his savings in the bank but that the agent had told his application was not approved. The tribunal asked the applicant whether he had used his current passport for that application. He stated that he had.
53. The tribunal asked the applicant why he had obtained a new passport in 2010. The applicant stated there was a serious earthquake in his home area [in] May 2008 which had meant he and his family had had to pack their belongings quickly and flee the area. He stated that at that time he lost his passport and so had to apply for a new passport. The tribunal asked the applicant if this meant he did not have a passport for the rest of 2008 and during 2009. The applicant confirmed this. The tribunal asked the applicant about the documents he had provided to the agent in support of his application for a visa to Australia. The applicant stated he had provided his marriage certificate, a property certificate and a financial certificate. He stated the property certificate was for a commercial property he owned in Shanghai. He stated it was a shop. He stated he did not own any other property.
54. The tribunal asked the applicant if the marriage certificate he had given to the agent was the one that he had provided to the tribunal at the hearing. The applicant confirmed this. The tribunal advised the applicant that because the document he had provided to the tribunal was in Mandarin with he would need to provide a certified translation of the document if he wanted the tribunal to consider the contents of that document in relation to his protection claims.
55. The tribunal asked the applicant whether he had been contacted by the Australian government in relation to his visitor visa application. He stated that he had not. The tribunal asked the applicant what telephone number he used when he was living in China. The applicant gave the telephone number.
56. The applicant confirmed that he was granted his visitor visa to Australia [in] January 2011 and that he arrived here [in] February 2011. The tribunal asked the applicant whether he travelled to Australia alone or with some announced. The applicant stated he had travelled to Australia with a woman called [Ms C]. He stated that his agent had introduced her at the

airport and had told them that when they travel to Australia they needed to say they were a couple.

57. The tribunal asked the applicant to confirm his current address in Australia. The applicant provided the same address that he had provided to the department in support of his visa application and to the tribunal in relation to the application for review. The tribunal asked the applicant whether he had gone to live at this address immediately after his arrival in Australia. The applicant stated that the first night he was in Australia he stayed at a hotel and then he found his current accommodation on a rental list. He stated that at this accommodation there are a number of rooms which are rented out by a couple. He stated that currently living at that address were he and an international student.
58. The tribunal asked the applicant if he had been working in Australia. He confirmed he had been working as a [occupation deleted: s.431(2)].
59. The tribunal asked the applicant whether he had seen [Ms C] since he arrived in Australia. He stated that they had stayed at the hotel together and then moved to the applicant's current residence together. He stated that she had moved out of that residence approximately one month ago. The tribunal asked the applicant why he had arranged accommodation with [Ms C]. He stated they had travelled to Australia together and because the landlord at the applicant's current residence had a number of vacant rooms she rented one of the rooms as well. He stated that [Ms C] now has a boyfriend and had moved in with him.
60. The applicant confirmed that he knew his visa had expired [in] May 2011. He stated that he had not applied for another visa to remain in Australia before that visa expired because after he arrived in Australia he had no friends or people who could help them and so he did not know about the visa application process until he was introduced to the representative.
61. The applicant confirmed he had lodged the visa application [in] January 2012. He stated that he had first met with the representative at the end of 2011. He explained that he and the representative had communicated using [a Chinese social media platform]. He stated that he had written down in Mandarin his reasons for seeking protection in Australia and sent them to the representative. She had then translated them into English and sent the statement back to him. He stated that he had signed the statement and the visa application forms. The tribunal asked the applicant whether he had arranged for anyone to check whether what was in the statement in English was correct. He stated that he did not because he trusted his representative.
62. The tribunal asked the applicant whether, to the best of his knowledge, everything that he had told the agent to put in the statement was true and correct. The applicant confirmed this. The applicant also confirmed that he remembered the interview with the delegate. The tribunal asked the applicant whether there was anything he wanted to change about what he had told the delegate during the interview. The applicant stated that during the interview he had been afraid that information about him might be given to the Chinese government so he had not told the delegate that he had served in the Chinese [military]. He stated that he feared that if the Chinese government found out he had sought protection in Australia, he would be punished because they would suspect that he had provided confidential information that he had obtained when working in the communications area for the [military].
63. The tribunal asked the applicant what he feared would happen to him if he went back to China. The applicant stated that because he had practised Falun Gong in China he feared he

would be punished because the Chinese government persecuted Falun Gong practitioners. He stated that because he had served in the [military], he did not know what would happen to him. He feared that he would be treated the same way as the head of the Chengdu police force, Wang Lijun, who had sought protection from the US embassy and was now under a suspended death sentence. He stated that he did not think he would be as treated as badly as Wang Lijun but that he thought he might still be persecuted in the same way for seeking protection in Australia because he had been in the [military].

64. The tribunal asked the applicant why he thought he would be persecuted because he was a Falun Gong practitioner. The applicant stated he had been arrested by the police in the past for practising Falun Gong. He described being questioned and imprisoned and then sent to a mental health hospital where he was forced to take medication and given injections.
65. The tribunal asked the applicant whether he feared being harmed because he had been in the [military]. The applicant stated he had also been a member of the Communist Party but had withdrawn his membership. The tribunal asked the applicant why he thought he would suffer harm in China because he had been in the [military]. He stated that if he was an ordinary person and found to practice Falun Gong he would just be put in detention but because he had been in the [military] he would be treated worse. He stated that he thought the Chinese government would think he would release confidential information overseas and so would want to keep him under control.
66. The tribunal asked the applicant why, if the Chinese government wanted him to stop revealing secrets overseas, it would have allowed him to leave China on at least three occasions after he had stopped serving in the [military]. The applicant stated that the Chinese economy was strong in so many people were going overseas on tours and he would have been allowed to do that.
67. Tribunal asked the applicant when he first became involved in Falun Gong. He stated it was in 2000 when a friend of his father came to visit his family. The applicant stated he had suffered lung [problems] for a decade before then and the friend of his father told him that Falun Gong practice would cure him. He stated that he began secretly practising at home and after six months he was cured. The tribunal asked the applicant how he knew what to do when practising at home. He stated that the friend of his father had taught him the basics. The tribunal asked the applicant how much time the friend of the applicant's father spent teaching him. He stated he had only spent about 30 minutes with the friend of his father, while he came to visit. The tribunal asked the applicant whether he received any lessons about Falun Gong from anyone else at that time. He stated that he did not.
68. The applicant explained that in 2001 the friend of his father came to visit again and brought him a copy of the Falun Gong book, the Zhuan Falun. He stated that he began reading the book and learnt about the Falun Gong principles of truthfulness, compassion and forbearance. He began to feel much better as a person and began to tell his friends to do good things and be tolerant. He stated that he kept the copy of the Zhuan Falun but hid it in the garden of the house. The applicant then described meeting another Falun Gong practitioner in 2004, a man called [Mr A], and beginning to practice Falun Gong with him and sometimes two other men, [Mr D] and [Mr E]. The tribunal asked the applicant whether he had read the Zhuan Falun himself between the time when he was given it in 2001 and when he met the other Falun Gong practitioners in 2004. He stated that he had. The tribunal asked the applicant whether any other members of his family were Falun Gong practitioners. The applicant stated he had

not dared to tell his family about Falun Gong because it was considered a cult. He stated that his parents did not practice Falun Gong but admired it.

69. The tribunal asked the applicant what he would do when he met with the other Falun Gong practitioners. He stated they would read from the Zhuan Falun together and practice Falun Gong exercises. The tribunal asked the applicant whether their group met at the applicant's house. He stated that they took turns as to where they would meet. The tribunal asked the applicant if this meant that they did not always meet at his house. The applicant confirmed this. The tribunal asked the applicant whether the other practitioners had their own copies of the Zhuan Falun. He stated that they did. The tribunal asked the applicant whether they used anything else for guidance other than the Zhuan Falun. He stated they only used the books. He stated they did not dare use any DVDs or audio CDs because they feared that if the neighbours heard them they would be reported to the police.
70. The tribunal asked the applicant to explain more about what happened when he was arrested by the police. The applicant stated that [in] September 2006, he, [Mr D] and [Mr A] were practising together when they were found by undercover police and taken to the police station. He stated that at the police station they were questioned and beaten with sticks. He stated that [Mr A] had previously been arrested for practising Falun Gong and so he was sent to detention. He stated that he and [Mr D] were sent to a mental health hospital where they were held for one month and given injections and tablets. He stated they were released after one month.
71. The tribunal asked the applicant whether he continued to practice Falun Gong after that. He stated that after his release he did not dare contact [Mr A] again but continued to practice at home. The tribunal asked the applicant whether he had had any contact with the police or security services after his release. He stated he had not. The tribunal asked the applicant whether the police and security services had ever come to his house after that. The applicant stated that while he was held in the mental health hospital, police had gone to his parents' home to search it. He stated that his father had become angry with them, got into a fight and was detained for three days. He stated his father had had to pay 5000 RMB fine to be released. He stated the police had also gone to search the house of his brother. He stated that his brother's ex-wife did not want to get involved [with] him.
72. The tribunal asked the applicant again whether after his release from a mental health hospital he had had any further contact with the police. The applicant stated that people from the local Community Committee and police kept watching him to see if he was contacting other Falun Gong practitioners.
73. The tribunal asked the applicant why, if he had continued to be monitored by the police, he was able to obtain a passport in 2007. The applicant stated he had no difficulties in obtaining a passport at that time and that he thought the Chinese government should issue passports even to Falun Gong practitioners. The tribunal asked the applicant why, if he continued to be monitored by the police, he was allowed to travel overseas at the end of 2007. The applicant stated that because he was travelling with a tour group the government would accept that he was just going on holiday. The tribunal asked the applicant whether, when he was on that trip, he intended to leave the group and not returned to China because he feared being harmed there. The applicant stated he had not thought about that at the time because his child was still very young. He stated that he had not wanted to leave his family and his son because he was willing to forego freely practising Falun Gong while he continued to support his child.

74. The tribunal asked the applicant whether he had been practising Falun Gong in Australia. He stated that he sometimes practised in the backyard of his house and sometimes in a park. He stated he would see other practitioners in the park and join them. He stated that sometimes he would go to [Melbourne] and try to persuade people to leave the Communist Party and Communist youth groups.
75. The tribunal asked the applicant about the photographs he had provided at the hearing. The applicant stated they prove that he is really a Falun Gong practitioner. The tribunal asked the applicant about the four photographs that appeared to show him practising Falun Gong in a park. The tribunal asked the applicant who the people in the photograph with him were. He stated they were other Falun Gong practitioners. The tribunal asked the applicant whether he could name them. He stated that he did not know them well and called them by an honorific. He stated they would chat sometimes. The tribunal asked the applicant who had taken these photos. He stated it was another Falun Gong practitioner. The tribunal put to the applicant that the photographs all appeared to have been taken on one occasion. The applicant agreed with this. The tribunal asked the applicant when it was the photographs were taken. He stated it was two months ago.
76. The tribunal asked the applicant about the three photographs showing him standing in front of what appeared to be Falun Gong information boards and speaking to a person in Chinatown. The applicant stated the boards were erected to give visitors information about Falun Gong. The tribunal asked the applicant who arranged for those boards to be placed there. The applicant stated it had been done by the Falun Gong organisation. The tribunal asked the applicant what the Falun Gong organisation was. He stated it was the leaders who ran the Epoch Times. The tribunal asked the applicant if there was a Falun Gong organisation in Melbourne. The applicant stated there was and it was referred to in the newspapers.
77. The tribunal asked the applicant whether he had attended any meetings of Falun Gong organisations in Australia. He stated that he had not. The tribunal asked why he had not. He stated it was because he was working during the week and only had time on the weekends. The tribunal asked the applicant whether he had been to any Falun Gong classes. He stated that he did not need to because practitioners would correct each other's movements. The tribunal asked the applicant whether he read the Epoch Times. The applicant stated that he did. The tribunal asked the applicant whether he read about Falun Gong activities in Melbourne. The applicant stated that there were activities in Melbourne and Sydney and that if he had time he attended them. The tribunal asked the applicant which activities he had attended. The applicant stated he had gone to practice Falun Gong in the park and spoken to people at Chinatown, as he had shown in the photographs.
78. The tribunal asked the applicant why Falun Gong was important to him. He stated that he wanted to have freedom of religion. He stated that Falun Gong had cured him of the [health problems] he had suffered for a decade. He stated it was a really good thing and not a cult. He stated that it was good for the body and guided him to be honest.
79. The tribunal asked the applicant how many parts that were in the Zhuan Falun. He stated there were five sets of exercises. The tribunal asked the applicant how many chapters there were in the Zhuan Falun. The applicant stated he could not remember clearly. He stated that before 2010 he had read the book secretly and understood the principles and theories of Falun Gong.

80. The tribunal asked the applicant about the five exercises. The applicant demonstrated the five exercises and referred to the name of the Buddha in relation to those exercises. The tribunal asked the applicant whether it was Falun Gong practice to refer to Buddha. The applicant stated that Falun Gong was similar to Qi Gong and was taken from Buddhism and Taoism.
81. The tribunal asked the applicant why he had not applied for a protection visa before his visitor visa expired. The applicant stated that he had known he could find an agent from the newspaper but that he did not have friends or familiar people to help him after he came. He stated that his landlord had told him not to trust the agents the newspaper. He stated that later a friend introduced him to the representative.
82. The tribunal asked the applicant whether he had practised Falun Gong with anyone he had shared a house within Australia. He stated that he had practised Falun Gong in the backyard with [Ms C]. The tribunal asked the applicant whether [Ms C] had applied for protection. The applicant stated that she had. The tribunal asked the applicant whether he knew what had happened to her application. He stated that [Ms C] told him that she withdrew it. The tribunal asked the applicant whether he knew why she had withdrawn the application. He stated that [Ms C] had a boyfriend and made her own arrangements.
83. The tribunal asked the applicant whether he feared being harmed in China for any reason other than because he had practised Falun Gong there in the past and would want to continue his Falun Gong practice there in the future. The applicant stated that because he had worked in the [military] in the telecommunications area, he feared he would be mistreated like Wang Lijun because he, the applicant, had sought protection in Australia.
84. The tribunal put to the applicant that the country information before it indicated that individuals who are identified as having unsuccessfully sought asylum overseas did not appear to be subjected to harm on their return to China, even if they had been in the [military]. The tribunal also put to the applicant that the circumstances of the arrest and sentencing of Wang Lijun, where there had been corruption allegations and disputes at senior levels of the Communist Party about the running of Chongqing province, appeared to be very different from those of the applicant. The applicant stated that because he is a Falun Gong practitioner he would never give up. He stated that he had read about what had happened to Wang Lijun and understood that he had been sentenced to death because he had sought protection from the US Embassy. He stated that when he was in the [military] he took an oath to serve his country and not reveal confidential information. He stated that in China the Communist Party was in charge. He stated that his father had been sentenced to 7 years hard labour because he had made complaints about pollution from the mines.
85. The tribunal asked the applicant whether he had ever had any problems in China because of what his father had done. The applicant stated that he was saying this to show that no one can tell what the government may do. He stated that he had not worked in the mines himself. He stated that he had suffered lung [problems] because of contamination from the mines, that his father had mentioned this to his boss, had been accused of being anti-revolutionary and then sentenced to 7 years hard labour.
86. The tribunal asked the applicant whether he feared that the Chinese authorities might know about his Falun Gong activities in Australia. The applicant stated he did not think that the Chinese authorities would know about what he had done in Australia but that he feared that if he went back to China and continued to practice Falun Gong he would be in trouble.

87. The tribunal advised the applicant about the relevance of s91R(3) of the Act and asked the applicant what he would say in response to the proposition that he had engaged in Falun Gong activities in Australia solely for the purpose of strengthening his refugee claim. The applicant stated that he had not done that for this reason. He stated that Falun Gong is his faith and teaches him to be honest and do good things. He stated that Falun Gong makes him stronger and healthy. He stated that in a Western country Falun Gong is a normal exercise, that in China it is a cult but that it is his faith.
88. The tribunal put to the applicant a number of matters that it considered would be a reason all part of the reason for affirming the decision under review, following s 424AA of the Act. The tribunal explained the information and the relevance of the information. In each case, the applicant stated that he understood the information and its relevance. The tribunal asked the applicant whether he wished to respond to the information immediately, after an adjournment or in writing. In each case the applicant stated he wished to respond to the information immediately. The information put to the applicant by the tribunal under s424AA of the Act is set out below.

[Information before the Tribunal]

89. The tribunal put to the applicant that it had information before it [showing that the applicant had made] an application for a visa to the USA [in] March 2009 and [in] April 2009. The information indicated the applicant did not travel to the USA which suggested his applications were either refused or that he was granted a visa but did not travel on it.
90. The tribunal advised the applicant this information was relevant because it may lead the tribunal to believe the applicant did apply for one or more visas to the USA in March and April 2009, which may lead the tribunal to also believe that the applicant held a Chinese passport at that time. The tribunal explained to the applicant that this appeared to be inconsistent with the statements made by the applicant at the hearing that he had lost his passport in an earthquake in May 2008 and that he had not applied for a visa to any other country between when he went to Malaysia, Singapore and Thailand and when he applied for a visa to Canada in 2010. The tribunal also put to the applicant that it may lead the tribunal to believe that a record may have been placed in the applicant's previous passport indicating that his application or applications for visas to the USA had been refused and that this was the reason the applicant had decided to obtain a new passport for his visa applications to Korea and Australia. The tribunal explained to the applicant that this information may therefore lead the tribunal to doubt the credibility of the applicant's claims about when he had a passport and to which countries he applied for visas, which may lead the tribunal to doubt the credibility of other claims made by the applicant, which would be a reason or part of a reason for affirming the decision under review.
91. The applicant stated that he had applied for a visa to the USA in March and April 2009. He stated that he had lost his passport. He stated that he did not get a stamp in his passport that show he had been refused a visa to the USA. He stated that he had not told the tribunal about this during the hearing because his agent had told him not to say anything about anything that would complicate his application. The agent told him that if there was no visa in his current passport he should not mention it. The applicant stated that before he had gone to Korea he had been unable to find his passport and thought he must have packed it when his family fled the earthquake in 2008.

92. The tribunal asked the applicant whether he had the passport with him when he applied to the USA for a visa in March or April 2009. The applicant stated that his agent may have had his passport but that he did not get it back. He stated that when he planned to go overseas, he had engaged in agent who asked him to provide documents of something needed to be done.

Inconsistencies between information provided in the applicant's statement to the department, at the interview with the delegate and at the hearing

93. The tribunal put to the applicant that in his statement the applicant stated that the two men with whom he was arrested in September 2006 were named [Mr A] and [Mr B]. During the interview with the delegate and at the hearing the applicant stated that the two men's names were [Mr A] and [Mr F]. The tribunal also put to the applicant that during the interview with the delegate, the applicant stated that the meetings of the group of Falun Gong practitioners between 2004 and 2006 only took place at his residence whereas during the hearing the applicant had stated that the members of the group had taken turns as to where the meetings of the group were held.
94. The tribunal explained to the applicant that this information was relevant to the application for review because it may lead the tribunal to doubt the credibility of what the applicant claimed about the men with whom he was arrested in 2006 or where the meetings of the group took place, which may lead the tribunal to doubt the credibility of other claims made by the applicant, which would be a reason or part of a reason for affirming the decision under review.
95. The applicant stated that the names he had given during the interview and at the hearing were correct and the difference in the name of one of the men in the statement must have been as a result of a mistake made by the representative. The tribunal asked the applicant whether there would still be electronic records of what the applicant had sent to the representative based on which the representative prepared the applicant's statement to the department. The applicant stated he would look into that. The tribunal stated that if he wanted to say that he had provided to the representative the names that he told the delegate and the tribunal then he would need to provide evidence of this including, if necessary, certified translations and if the evidence was based on electronic records, the tribunal would wish to see that material in its electronic form.
96. The applicant stated that the group of Falun Gong practitioners did meet at his home. He stated that his son was at boarding school during the week but would come home on weekends so, because he did not want to disturb his son, he would meet with other members of the group at their homes on the weekends. The tribunal read to the applicant the relevant portions of the interview with the delegate as follows:

Q: Okay. How often did you continue to meet and practise?

I: At least twice every week.

Q: Is that all together in a group?

I: Yes, always in group, but sometimes just a group of two. But the most is four.

Q: And where did you meet?

I: Well, it was always at my home because I had my own apartment, so it was only me and my wife and child, so it was separate from my parents.

Q: Why didn't you meet in the homes of any of the other group members?

I: Well, I don't know. Probably because I was a businessman, I was willing to invite people to my home. I was, generally speaking, very generous and would just welcome anyone, any friend, to come and visit me. So probably that's why we met all the time in my home.

97. The tribunal asked the applicant why he had made these statements if, in fact, he had met with other members of the group at their homes. The applicant stated it was because he had not been asked where the members of the group practised.
98. The tribunal advised the applicant it had concerns about his protection claims given the number of times he had travelled outside China after the time he claimed to have been detained because of his Falun Gong practice and because of the significant length of time between when the applicant arrived in Australia, his visitor visa expired and he lodged the visa application. The applicant stated that he had not planned to stay in Singapore, Thailand or Malaysia but just went there for a holiday. He stated that he wanted to stay in Korea but the tour guide of the group he was part of was very strict so he had been unable to leave. He stated in relation to his applications for a visa to the USA, his agent had told him that if there was no record of his passport he should not mention it. He stated that he was very sorry that he had not told the tribunal the truth about this. He stated that he had lost his previous passport and that he was sure there was no stamp on it showing that he had been refused a visa to the USA.
99. The tribunal asked the applicant again whether he acknowledged that he had his previous passport when he made his application or applications for visas to the USA in early 2009. The applicant stated that the passport may have been with his previous agent who was different from his current agent.
100. The tribunal asked the applicant whether there was anything else he wished to say in relation to the application for review. The applicant stated that he believed he would be persecuted if he went back to China because Falun Gong is regarded as a cult. He stated that he has been in Australia for two years and misses his wife, son and parents. He stated he will keep the faith and never give up practising Falun Gong.

Relevant country information

101. RRT Research Response No. CHN40767 states the following in relation to the treatment of failed asylum seekers in China:

Information located indicates that Chinese authorities may not view the act of seeking asylum in Australia to necessarily indicate disloyalty to the state; it is a common action by Chinese citizens travelling to foreign countries and DFAT has reported that passport application procedures may take this into account.

In June 2012 DFAT indicated that that they were aware that some failed asylum seekers had only had short interviews with Chinese authorities on their return, primarily to discuss the reason that they travelled back on an entry permit rather than on a normal passport:

[R4]. [...] Post (DIAC) is aware, however, that some Chinese nationals who were failed Protection visa applicants in Australia, and who were returned to China, have only had a short interview ... with authorities upon return. The primary reason for this interview seems to have been to question why applicants had been returned on an entry permit rather than a normal, ordinary passport. (Australia: Department of Foreign Affairs and Trade (DFAT), 2012, *CIS Request No. CHN 13470; Attitude of Chinese government to Falun Gong claimants arriving in Australia by boat*, 25 June, Country Information Report 12/40, CISNET China CX289690)

Information provided by the post in May 2012 indicates that Chinese authorities are aware that some people who travel to foreign countries may not return to China, and as a result people from some areas, including for instance Xinjiang and Hebei, are required to provide more documentation when applying for a passport than people from some other regions:

(R1) A. The Xinjiang Public Security Department (PSD) lists, on their official website (6G(b) in refel IC40227L refers), the requirements for all persons who wish to obtain a private (ordinary) passport for overseas travel. These requirements apply equally to all Chinese nationals, including Han, Uyghur and other ethnic minorities, with their household registration in Xinjiang. Xinjiang PSD has not published requirements for any ethnic minorities to provide any additional documentation as part of the passport application process. Post (DIAC) is not aware of any additional requirements imposed on ethnic minorities to provide additional documentation in a passport application. The Beijing Public Security Bureau (PSB), however, requires less documentation than Xinjiang PSD and Post (DIAC) is aware most other municipalities and provinces have a similar standard of documentation requirements as Beijing. Post (DIAC, is aware that in certain locations in other provinces (e.g. particular cities and counties in Hebei province) there is a higher standard of documentation required by passport applicants as a result of the higher risk that persons from these locations may not return to China after their overseas travel. (Australia: Department of Foreign Affairs and Trade (DFAT), 2012, *CIS Request No. CHN 12966; Financial guarantees and exit documents for Uighurs*, 1 May, Country Information Report 12/28, CISNET China CX286221)

In March 2007 DFAT advised that seeking asylum in Australia is no longer seen as an unusual step or an indication of political disloyalty by the authorities in China:

R.3. Media publicity of the mere fact that the person had [a]ppplied for asylum would not necessarily lead to harsher [t]reatment for the person on return. Our impression is that these days Chinese authorities view seeking to remain in Australia through a protection application as more commonplace behaviour rather than a sign of political disloyalty. Authorities could, however, treat the person more severely if he or she was quoted publicly as criticising China's regime or senior leadership in the media. (Australia: Department of Foreign Affairs and Trade (DFAT), 2007, *CIS Request CHN8980: China: Publication of client details*, 20 March, CISNET China CX174138)

102. The arrest and prosecution of the Chongqing police chief Wang Lijun has been widely reported. For example, on 24 September 2012, The Australian reported as follows:

THE jailing of Wang Lijun for 15 years was the final tightly scripted act in the downfall of a police chief who always had a flair for theatre.

Once China's most revered crime fighter, Wang's exploits were the basis of a TV series called Iron Blooded Police Spirits. But reality turned out to be more dramatic than the works of any playwright.

Until his spectacular flight to a US consulate, triggering a scandal that has seen one of China's most high-profile politicians sacked and his wife convicted of murdering a British businessman, Wang, 52, had commanded fear, even hatred, for his aggressive ways.

An ethnic Mongolian and martial arts expert, his steely, unsmiling gaze and thin glasses gave him the face of an incorruptible "supercop", and his body carried 20 scars from bullet and other wounds.

He learned his trade in the industrial northeastern province of Liaoning, starting as a patrolman in the 1980s and climbing up the hierarchy.

Zhou Lijun, the screenwriter behind *Iron Blooded Police Spirits*, wrote on his blog that Wang, dressed in a black coat, would fire a single gunshot into the air when confronting criminals.

He equipped his police car with rows of powerful lights so "even on a cold pitch-black night, people far away would know: chief officer Wang is here!" Zhou wrote.

Wang would pay solo visits to death row prisoners the night before they were executed, according to Zhou.

It was in Liaoning that he met Bo Xilai, a Communist "princeling" with powerful connections who went on to become the top party official in the megacity of Chongqing, and made Wang head of its police force.

Bo rose to national prominence courtesy of a Maoist revival and sky-high economic growth rates driven by state-funded investment, while Wang led a crackdown on organised crime.

His quota-driven crusade, which peaked in 2009, clocked up thousands of arrests but was marred by accusations of torture sessions and human rights violations.

Chinese newspapers were plastered with courtroom images from the anti-mafia trials, including one in which Wen Qiang, Chongqing's top judicial official, was sentenced to death and swiftly executed.

Wang was on hand at Chongqing airport - along with a photographer to record the scene - to witness Wen's arrest, and repeated the stunt with Li Zhuang, a Beijing lawyer who had defended an alleged Chongqing mafia boss.

Wang confronted Li at the airport, in front of dozens of police cars, their lights flashing, greeting him with the words "Li Zhuang, we meet again!" before taking him into custody, the lawyer said.

That case provoked uproar amongst China's legal community, and critics also noted Wang's penchant for luxury watches and suits.

But his policeman's methods served him well when suspicions about Heywood's death began to mount.

Trained in forensics and able to carry out autopsies himself, Wang secretly recorded Bo's wife Gu Kailai when she confessed to poisoning Heywood, and took a sample of the victim's blood, according to official accounts.

Exactly what led Wang to confront Bo over Gu's actions - a move that reportedly led the politician to strike the policeman in the face - remains unclear.

But the sensitivity of the scandal - which has exposed murder and double-crossing at the top levels of Chinese politics - meant that Wang's trial last week was closely managed by the authorities.

China's communist party, keen to limit the potential fallout from the case, has settled on an official version of events which has played up a personal conflict between Wang and Gu, while omitting any direct mention of Bo.

An account of Wang's trial by the official news agency Xinhua said he initially agreed to cover up the murder, but changed his mind after Gu "turned hostile" towards him.

Others speculate that Wang's escape to the consulate was aimed not so much at gaining asylum, but at ensuring he would be dealt with by China's central government, protecting himself from the Chongqing machine controlled by Bo.

But President Hu Jintao himself branded Wang a traitor at a meeting of senior Communist party officials, according to Chinese media reports.

Whatever happened, the "iron blooded police chief" long ago anticipated his career would be cut short at the whim of the politicians he served, according to Zhou, the screenwriter who interviewed him several times in the late 1990s.

"Its clear to me that I'm just a piece of chewing gum in the mouths of government officials," Zhou quoted Wang as saying.

"Once they've chewed me until I've lost my taste, I'll be spat onto the ground, and who knows whose shoe I'll end up sticking to."

FINDINGS AND REASONS

Country of nationality

103. The applicant claims to be a citizen of China. He arrived in Australia on an apparently valid passport, issued to him in China by the Chinese government, and stating that he is a national of that country. The tribunal finds on this basis that the applicant is a national of China, and has assessed his claims against that country.

Assessment of Protection claims

104. The applicant fears harm at the hands of the Chinese government and security forces because he claims he has practised Falun Gong in China and Australia and would do so if he were to return to China and because he will be identified as having unsuccessfully sought asylum in Australia if he returns to China. He fears that the Chinese government will regard him as a traitor because he unsuccessfully sought asylum in Australia and, because he undertook military service in an area relating to communications, he will be suspected of knowing secret information about the Chinese military which he may have disclosed in Australia.
105. As put to the applicant at the hearing, the tribunal has significant concerns about the credibility of the applicant's claims. The tribunal put these inconsistencies to the applicant at the hearing and found his explanation for them largely unconvincing. In relation to the inconsistency in the names of the men with whom the applicant claims to have practised Falun Gong in China, the tribunal is willing to give the applicant the benefit of the doubt that

there may have been some this translation or mistranscription of those men's names. However, the tribunal finds the inconsistency in the applicant's claims to the department and the tribunal about where they met to be more serious. The tribunal finds the applicant's willingness to say that they had only met at his house to the department but to say to the tribunal that they met at the houses of other members of the group as well raises serious doubts about the applicant's credibility generally.

106. The tribunal also places significant weight on the inconsistencies between the statements made by the applicant at the hearing about his past travel outside China, his reasons for travelling and when he held a Chinese passport and the evidence before the tribunal in relation to the [applicant's application for a US visa] and the information provided by the applicant to the department. The tribunal finds that the applicant has travelled outside China on a number of occasions before coming to Australia and has been willing to return to China after those travels. The tribunal finds this to be inconsistent with the applicant's claims to have been persecuted before then because he is a Falun Gong practitioner. Further, the tribunal finds the applicant has been unwilling to honestly disclose his immigration history to the tribunal, a finding which contributes to the tribunal's serious concerns about the applicant's overall credibility.
107. The tribunal also has significant doubts about the applicant's claims to have been and be a Falun Gong practitioner given the length of time between when he arrived in Australia, when his visa expired and when he lodged the visa application. The tribunal does not accept as plausible the applicant's explanation for that significant delay and finds that if the applicant did genuinely fear harm in China he would have at the very least sought immigration assistance in relation to, if not actually lodge, a protection visa application at some point before his visa expired. The tribunal also found that the applicant's explanation for why he had not attended any meetings of Falun Gong associations in Australia to be implausible. The tribunal finds that if the applicant had been and was a genuine Falun Gong practitioner, who had decided to make a genuine commitment to Falun Gong as he claimed, he would have contacted Falun Gong associations in Australia and participated in meetings and practice with members of those associations.
108. In light of the above, the tribunal does not accept the applicant as a witness of truth in relation to his protection claims. Accordingly, the tribunal does not accept that:
 - a. the applicant's father was imprisoned in China because he complained about pollution or for any other reason;
 - b. that the applicant suffered lung [problems] as a result of pollution;
 - c. the applicant was ever a member of the Chinese [military] either working in the communications area or in any other area;
 - d. the applicant was a member of the Communist Party;
 - e. that the applicant ever engaged in Falun Gong practice or met with any Falun Gong practitioners in China;
 - f. that the applicant was ever taught Falun Gong by a friend of his father or by anyone else;

- g. that the applicant ever owned or read the book before arriving in Australia;
- h. that the applicant had met with other Falun Gong practitioners in 2004 or at any other time;
- i. that the applicant was arrested, detained or beaten in 2006 or at any other time because he was practising Falun Gong;
- j. that the applicant was held at a mental hospital and given injections against his will;
- k. that the applicant has or is being monitored by the Chinese government or security forces as a result of him being a Falun Gong practitioner or for any other reason;
- l. that the applicant's brother was ever visited by the police because of the applicant's Falun Gong practice;
- m. that his brother fled to the USA because of problems arising from the applicant's Falun Gong practice; or that
- n. that the applicant's father has quarrelled with the police, been detained and required to pay a bribe to be released.

109. The tribunal has considered the photographs provided by the applicant which he claims to be evidence of his Falun Gong practice in Australia. As put to the applicant at the hearing, the tribunal considers these photos as evidence that the applicant has engaged in Falun Gong practice on one occasion with practitioners in a park and has stood in front of and holding Falun Gong materials at two places in Melbourne on one occasion. The tribunal does not accept these photographs are evidence of the applicant engaging in regular Falun Gong practice in Australia or as evidence of the applicant engaging in advocacy about Falun Gong in Australia. In light of its serious concerns about his credibility, the tribunal does not accept that the applicant has engaged in Falun Gong practice at any other time after his arrival in Australia. Nor does it accept that he has engaged in any form of Falun Gong advocacy or expressed any views either publicly or privately about the circumstances of Falun Gong practitioners in China.

110. Accordingly, the tribunal does not accept that the applicant is a genuine Falun Gong practitioner or that he has any genuine beliefs about the treatment of Falun Gong practitioners in China. Based on his evidence provided at the hearing, the tribunal accepts that the applicant has some knowledge of Falun Gong practice and beliefs but finds that he has obtained this knowledge solely for the purpose of strengthening his refugee claim. The tribunal also finds that the applicant engaged in Falun Gong practice on the occasion on which he was photographed and stood in front of and holding Falun Gong material solely for the purposes of strengthening his refugee claim and not because he is a genuine Falun Gong practitioner or has any genuine beliefs about the circumstances of Falun Gong practitioners in China.

111. The tribunal also does not accept that the applicant will be identified as a failed asylum seeker if he is to return to China in the reasonably foreseeable future. The tribunal finds the applicant will be returning to China on a Chinese passport that is valid until 2020. The

tribunal accepts the applicant will be returning on a passport that shows he remained in Australia for a significant period of time after his visitor visa expired. However, the tribunal does not accept that the fact of the expiry of his visitor visa and the length of time he has remained in Australia since that time, will result in the Chinese authorities assuming he is a failed asylum seeker on his return. Under Australian immigration law, there are a number of visas the applicant may have applied for, the time taken for the consideration of the applications for which could explain the length of time the applicant has remained in Australia since his visitor visa expired.

Well-founded fear of persecution for a Convention reason

112. The applicant has made claims against China based on the Convention grounds of religion (as Falun Gong involves commitment to certain transcendent values, and is perceived and denounced by the Chinese government as a heretical sect); political opinion (as Falun Gong is persecuted as a political threat and/or because failed asylum seekers are perceived to be opposed to the Chinese government) and membership of the particular social groups "Falun Gong practitioners" (as Falun Gong is a movement with certain distinct set of values and behaviours) and "failed asylum seekers".

Risk of Serious Harm Capable of Amounting to Persecution

113. In light of its findings set out above in relation to the credibility of the applicant's claims, the tribunal does not accept that the applicant faces a risk of harm either because he has engaged in Falun Gong practice in China or in Australia or because he will be identified as a failed asylum seeker on his return to China.
114. In relation to the applicant's claim to face a risk of harm because he is identified as a failed asylum seeker on his return to China, the tribunal, in the alternative, finds that the country information set out above does not show that individuals identified as failed asylum seekers on their return are targeted for harm and, accordingly, finds that even if the applicant were identified as a failed asylum seeker on his return to China he would not suffer a risk of harm as a result.
115. Further, the tribunal finds that the applicant has engaged in the Falun Gong activity in Australia evidenced in the photographs provided by him to the tribunal solely for the purpose of strengthening his refugee claim and is not satisfied that the applicant has engaged in that conduct for any other reason. Accordingly, under s 91R(3) of the Act, the tribunal disregards this conduct by the applicant in Australia in assessing his protection claims under the Refugees Convention.
116. Accordingly, the tribunal finds that there is not a real chance the applicant may suffer serious harm at the hands of the Chinese authorities or security forces if he were to return to China now or in the reasonably foreseeable future.

Conclusion on Persecution

117. In light of the above, the tribunal considers that, taking all the information together, there is not a real chance that the applicant will face arrest, detention, beating or death or any other form of serious harm at the hands of the Chinese government or security forces if he were to return to China. The tribunal finds there is not a real chance the applicant will encounter serious harm capable of amounting to persecution for reasons of his religion, actual or

imputed political opinion or membership of the particular social group set out above, considered both individually and cumulatively, in the reasonably foreseeable future should he return to China.

118. As the tribunal has found the applicant does not face a real chance of serious harm for a Convention reason on his return to China, it is unnecessary for the tribunal to consider whether effective state protection or safe relocation will be available to the applicant within China.
119. Accordingly, the tribunal is not satisfied the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Complementary protection

120. The tribunal has considered whether, in light of its findings in relation to the applicant's claims set out above, there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that he will suffer significant harm.
121. In light of its adverse findings about credibility of the applicant's claims set out above, the tribunal does not accept that the applicant faces a real risk that he will be arbitrarily deprived of his life, have the death penalty carried out on him or be subjected to torture, cruel or inhuman or degrading treatment or punishment if he returns to China because he is a Falun Gong practitioner, because he has engaged in Falun Gong practice in China, because he would engage in Falun Gong practice after he returned to China, because he is identified as a failed asylum seeker or for any other reason.
122. The tribunal has considered whether the applicant faces a real risk of significant harm on his return because he has posed in photographs engaging in Falun Gong practice on one occasion in Australia and distributing Falun Gong materials on one occasion in two locations in Australia and because he has some knowledge of Falun Gong practice. The tribunal notes the applicant conceded at the hearing that he had not attended any meetings of Falun Gong associations in Australia or otherwise publicly expressed views about Falun Gong practice in Australia. The tribunal finds that the risk of the applicant having engaged in Falun Gong practice on one occasion and distributed Falun Gong materials in two locations on one occasion in Australia, as evidenced by the photographs provided by him to the tribunal, coming to the attention of the Chinese government or security forces in China to be extremely low to the point of being non-existent.
123. Accordingly, the tribunal does not accept that the applicant faces a real risk of being arbitrarily deprived of his life, having the death penalty carried out on him, being tortured or suffering cruel, inhuman or degrading treatment or punishment because the Chinese government or security forces discover that he engaged in Falun Gong practice on one occasion and distributed Falun Gong materials in two locations on one occasion in Australia, particularly given that, as the tribunal finds, he only did so for the purposes of strengthening refugee claim and not because he is a genuine Falun Gong practitioner or genuinely holds any beliefs about the treatment of Falun Gong practitioners in China or elsewhere.
124. As a result, the tribunal is not satisfied that there is a real risk that the applicant will suffer significant harm in the form of being arbitrarily deprived of his life, having the death penalty carried out on him or suffering torture, cruel or inhuman or degrading treatment or

punishment as a result of his return to China from Australia. The tribunal is therefore not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that he will suffer significant harm.

CONCLUSIONS

125. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
126. 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 to whom Australia has protection obligations under s.36(2)(aa).
127. 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 s36(2) for a protection visa.

DECISION

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