

**060425045 [2006] RRTA 182 (15 November 2006)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060425045  
**DIMA REFERENCE(S):** CLF2006/16487  
**COUNTRY OF REFERENCE:** China (PRC)  
**TRIBUNAL MEMBER:** Shahyar Roushan  
**DATE DECISION SIGNED:** 15 November 2006  
**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of China (PRC), arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA). The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter dated and posted the same day.

The delegate refused the visa application as the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged, although some statutory qualifications enacted since then may also be relevant.

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

#### Definition of 'refugee'

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

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

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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.

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

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.

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

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.

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

## **CLAIMS AND EVIDENCE**

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 other material available to it from a range of sources.

The applicant appeared before the Tribunal to give evidence and present arguments.

The applicant was represented in relation to the review by her registered migration agent.

### *Application for a Protection Visa*

According to her application for a protection visa, the applicant is a national of china. She claims to be Christian. She lived at the same address in China from the late 1990's to the mid 2000's. She has completed 15 years of education, including studying at University, and worked as a teacher. She departed China illegally using a false passport.

In a statement attached to her protection visa application, she makes the following claims:

(1) I am from the People's Republic of China ("PRC"), and arrived in [City] of Australia on [date], using a PRC passport with the name of "[name] (date of birth: [date]; passport number: [number]).

(2) My genuine name and personal details are as follows:

Surname: [name]

Given: [name]

Gender: Female

Date of birth: [date] Place of birth: [city], PRC Marital status: Divorced

Nationality: PRC

National ID card No.: [number]

(3) Before I came to Australia, I was a [teacher] in China... However, owing to my political opinions and religious belief, I have become the target of the PRC authorities; and as a result, I had to eventually give up my lovely job and escape to the overseas.

(4) In [month/year], I graduated from [name] School in [city], Fujian Province...

(5) From [month/year] to [month/year], I worked at [school name] in [city]; and I was then transferred to [school name] in [month/year]. There were about [number] students in the school, and most of them came from [name], and [name]. I was mainly in charge of teaching [subject] in the school...

(6) Around [month/year], when the new school term was started, I found that one of my students, [name] (female), had not come to the school on time. I was then notified by the authority of the school that [student] herself had decided to terminate her study... I visited [student's] home personally, and I

was deeply shocked by difficult circumstances of the family... Although [student] was only about [age], she had to take care of her grandmother who had become [medical condition] for many years. [Student] was the only child in the family. Her father and her grandfather had passed away while she was very little. She lived together with her mother, and her grandmother. Unfortunately, in [month/year], [student] mother had been in troubles with the Public Security Bureau ("PSB") for the reason that she had been involved in "illegal" "underground" Christian church; and as a result, her mother had been arrested by the PSB and detained in the detention centre of [city]. From then on, [student] became the only one in the family who could look after daily living of the grandmother. That was why [student] could not go to school.

(7) ... So, although I was warned by the authorities of the school, I decided to teach [student] at her home in my spare time.

(8) From [dates], I spent almost every weekend at [student's] home; and sometime I went to her place during the week. On one hand, I taught [student] at home; and on the other hand, I assisted her to look after her grandmother.

(9) In [month/year], [student's] mother was released from the detention centre; and both of us quickly developed very close relationship with each other. Particularly, [student's] mother started arranging me to attend some religious gatherings or worships at some religious brothers or sisters' families. I was deeply moved by their firm religious beliefs, and gradually found that I, like many Chinese people, really needed the love, the care, and the support of the God. I am also become a Christian in the end while I was baptised in the [date].

(10) In [month/year], arranged by [student's] mother, I had a special meeting with two leaders of the underground Christian church in Fujian. They told me that the underground church had been very much interested in my teaching position in the school. They said that many children like [name] who could not continue their study in the school, because their parents had suffered from various persecutions or discriminations by the PRC authorities owing to their involvement in the underground church. Therefore, the underground church decided to organise a special teaching centre to teach those children in order to guarantee them to accept fundamental education. Obviously, I was the best candidate who would be in charge of the teaching centre.

(11) At that time, the authorities of [school] did not find that I had already become a formal member in the underground church, but knew that I sometimes taught some children at home and some of children were from Christian families. The authorities of the school warned me many times, asking me to stay away from those children who were from the families that had problems with the government. However, as I have said above, I believe that it was my obligations and responsibility as a teacher to guarantee all the children, no matter which families they were from, to accept fundamental education. Based on such an ideology, while I was invited by the underground church to establish and organise a special teaching centre, I immediately agreed to do so without any hesitation.

(12) From [month/year], I tried my best to establish and develop a special teaching centre for the underground church. The centre was organised by about [number] teachers, and financially supported by the donation of the underground church. But, it did not have a fixed address, and normally had a special class in the weekend at different religious brothers or sisters' homes. In the summer school holiday (from [month/year]), supported by [student's] mother and other Christians in the underground, I successfully organised a two-month teaching programme in a remote mountain village for about [number] children who were from Christians' families.

(13) In [month/year], shortly after the new school term was started, I was subjected to question first by the authorities of the school and then by the PSB in [city], I was reported by some of local officials to continually teach some children, who were from Christians family which had problems with the government, in the spare time even if I had been warned many times. Although my special role in the special teaching centre of the underground church had not been discovered at that time, I was forced to suspend from my position, because I openly argued with the authorities of the school and those policemen and because I particularly refused to make any confession. As a matter of fact, I never thought that I had done any wrong things, and any children should have the chance to approach fundamental education in China. As a result, I was regarded as a "die-hard" person, and I was sent to the detention centre for "brain-washing" in the end of [month/year].

(14) From the end of [month] to the end of [month/year], I was detained for one month by the PSB; and I was subjected to miserable persecution during that period; and especially I was mistreated and humiliated by those criminals day and night in the detention centre. Finally, I was temporarily released on bail, because I was seriously ill and continually suffered from high fever. But, I was required to report to the local police station regularly, and moreover, I had to be ready for further investigation from time to time. Particularly, I was dismissed by the school, because I have been regarded as a person who is not suitable for working as a teacher.

(15) After I was released from the detention centre, the underground church thought that it would be much more dangerous for me if I continually stayed in the country, and therefore asked [student's] mother to arrange me to go to the overseas. In order to avoid attention of the PRC authorities, [student's] mother did not expose my genuine name while she did so. Instead, she got a passport for me with a different name; and eventually helped me to escape from my home country in [month/year].

(16) I really cannot return to China, because I have been informed by [student's] mother that the PRC authorities have already discovered my special role played in the special teaching centre of the underground church. It has also been confirmed by my families who are still in China, because the PSB have come to my home for seeking me many time. Furthermore, [number] members of the special teaching centre have arrested by the PRC authorities...

(sic)

In support of her application for a protection visa, the applicant provided the following documents:

- A copy of a passport issued in a name not of the applicant
- A certified translation of a national ID card in the applicant's name
- A certified translation of a People's Republic of China Teaching Certificate, issued in the applicant's name
- A certified translation of a Divorce Certificate, dated, certifying that the applicant is divorced from her husband

### *The Hearing*

The applicant gave evidence consistent with her application for a protection visa and her accompanying statement with regard to her residential addresses in China, educational qualifications and work history. She provided the additional information that after her release from detention, she stayed at her mother's home which was not far away from her own place.

The applicant was asked what would happen to her if she were to return to China and why. She said she will be arrested by the authorities, because they think that she participated in illegal religious activities. She added that she was responsible for setting up an education centre for the underground church.

The applicant was asked about her religion. She said she is a Christian and belonged to the underground church in China. She was asked what differentiated her church from other churches. She said she did not know because she had not attended any other churches.

The Tribunal asked her when she had become a Christian. She said she was baptised several years ago. She explained that after her student's mother was released from detention, she told her about God and what God has told her to do when in difficulty. A month later and after attending underground church meetings, she felt in her heart that Jesus was important to her. She needed the love and care of God. She was abandoned as a child and had a very difficult childhood and in God she found someone she could rely on. She was asked, given that her student's mother had just been released from jail for practising Christianity, why she got involved with the church. She said because of the circumstances of her student's family.

The applicant said that she was baptised and after that she regularly attended a house church. She was asked a number of questions about the Bible and Christian beliefs. She was able to provide a persuasive account of her understanding of Jesus and accurately describe some of the important dates in the Christian calendar and their significance, including Easter. She demonstrated a convincing familiarity with the Bible and was able to recite or refer to specific books and verses. She was asked if she has been attending church in Australia. She said she has been going to a church every Sunday and on other occasions when she is not working. She produced a letter from her church, stating that "[applicant]" has been regularly worshipping at the church every Sunday and that she has proven to be a dedicated Christian over "the past few months".

The Tribunal noted that according to her statement she was approached by the leaders of the underground church to be in charge of a teaching centre. She was asked, if she was only

baptised a few weeks earlier, why they entrusted her with such a task. She said as a teacher it was her duty and responsibility. She added that after her student's mother got to know her, she believed that she could do something for the church. The Tribunal noted that according to her statement there were a number of other teachers and asked her why the church entrusted the task of running the centre to her. She said it was just her in the beginning and she was also the only person who was formally trained as a teacher. She was responsible for training the others who were only religious instructors with a variety of different professional backgrounds. She said the centre was designed to provide primary level education for children who had been banned from attending government schools because of their families' Christian activities. There was no fixed location for the centre. She began training the others and the following month the centre started. They had a meeting every week and the lessons were prepared every week. Because she had continued to teach at the formal school, the teaching at the centre was confined to weekends. Later that year, they organised a teaching program over a two month period at a remote location in order for the Christian children to compensate for lessons they had fallen behind in.

The applicant was asked if anyone was aware of her activities. She said the school authorities found out that she was privately tutoring Christian children, but they were not aware of the centre or the fact that she had been baptised. The school authorities approached her and told her that she should not be involved with the children she was privately tutoring. A week later PSB officers came to her school and said that she was involved with members of the underground church and asked her if she had participated in their activities. She said no. They recorded her answers and told her that the school will let her know what to do. They said that they will return and told her that a teacher should know what to do and what not to do. About three or four days later, they returned to the school and said that she was still in contact with those people. She was told that a local official had reported her involvement with the underground church. She told them that she was not involved in any illegal activities and that she was doing what she is supposed to do as a teacher. At the conclusion of the meeting they showed her a document and said that people are not allowed to participate in illegal religious activities and left. PSB returned at the end of the month and asked her to sign a certificate of detention which she did. She was taken to PSB offices and detained. She was beaten and was forced to share a cell with common criminals who also beat her. She was released about 30 days later after she began suffering from a high a temperature. She was released on the condition of reporting to the police every week. The Tribunal asked her why she was released on account of her fever when she could have been treated in detention. She said because they did not have enough evidence against her. Following her release, she went to her mother's house and was treated at home. The church helped her to get a false passport as it would have been impossible for her to obtain a normal passport. She said she did not know how the passport was organised, but she was given the document before boarding the plane.

The applicant was asked, if she wants to practise Christianity, why she would not be able to practise it at one of the official churches. She said she cannot return to China because the government has now found out about her participation and the fact that she was a key organiser of the education centre. She has been told by her student's mother that a number of the teachers involved with the centre have now been arrested.

The applicant was asked if she has ever held an official passport. She said no.

The applicant produced a photograph showing her in a classroom with half a dozen primary school children. She also produced certified translations and originals of a number of



teaching awards and graduation certificates in her professional field in the name of the applicant, some bearing her photograph.

The applicant provided a certified translation of a copy of a document issued by an authority urging all schools to ban students from being involved in religious activities.

### *Independent Evidence*

The UK Home Office's 2005 China Country Report provides the following montage of information from various sources on freedom of religion and Christians in China:

#### Freedom of religion

6.48 As reported by the US State Department's International Religious Freedom Report 2005 (USSD Religious Freedom Report 2005), published on 8 November 2005:

"The Constitution provides for freedom of religious belief and the freedom not to believe; however, the Government seeks to restrict religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of activities of religious groups. The Government tries to control and regulate religion to prevent the rise of groups that could constitute sources of authority outside of the control of the Government and the Chinese Communist Party (CCP). Nonetheless, membership in many faiths is growing rapidly.

During the period covered by this report, the Government's respect for freedom of religion and freedom of conscience remained poor, especially for many unregistered religious groups and spiritual movements such as the Falun Gong. Unregistered religious groups continued to experience varying degrees of official interference and harassment. Members of some unregistered religious groups, including Protestant and Catholic groups, were subjected to restrictions, including intimidation, harassment, and detention. In some localities, 'underground' religious leaders reported ongoing pressure to register with the State Administration for Religious Activities (SARA) or its provincial and local offices, known as Religious Affairs Bureaus (RAB). Some unregistered religious groups also reported facing pressure to be affiliated with and supervised by official government-sanctioned religious associations linked to the five main religions – Buddhism, Islam, Taoism, Catholicism, and Protestantism."

6.49 This section of the report concluded by stating, "Since 1999, the Secretary of State has designated China as a 'Country of Particular Concern' under the International Religious Freedom Act (IRFA) for particularly severe violations of religious freedom."

6.50 As reported by the USSD Religious Freedom Report 2005 and by the NGO Forum 18 in a report dated 29 September 2004, government officials who illegally deprive citizens of their religious freedom may be sentenced to up to two years in prison. Forum 18 also stated, "However, no instance has become known of officials prosecuted for this type of violation. Without the

sympathetic support of their superiors in higher levels of government, it is doubtful that these officials could have escaped prosecution.”

6.51 As reported by the Government White Paper, *China's Progress in Human Rights in 2004* (II Civil and Political Rights), published in April 2005, “According to incomplete statistics, China has now more than 100 million religious adherents, more than 100,000 venues for religious activities, and about 300,000 clergy members... The accumulative print run of the Bible has reached 35 million.”

6.52 As noted by the USSD Religious Freedom Report 2005:

“The country has five main religions: Buddhism, Taoism, Islam, Catholicism, and Protestantism. While these are the primary religions, the 2005 religious affairs regulations no longer identify ‘official’ religions. The Russian Orthodox Church also operates in some regions and other religions exist in the country’s expatriate community. Most of the country’s population does not formally practice any religion. Approximately 8 percent of the population is Buddhist, approximately 1.5 percent is Muslim, an estimated 0.4 percent belongs to the official Catholic Church, an estimated 0.4 to 0.6 percent belongs to the unofficial Vatican-affiliated Catholic Church, an estimated 1.2 to 1.5 percent is registered as Protestant, and perhaps 2.5 percent worships in Protestant house churches that are independent of government control.”

6.53 As reported by Ian Johnson in his book *Wild Grass* (2004), “Defining what is religion in China, can be a tricky business. Unlike western religions, which often try to sharply distinguish themselves from one another, Chinese belief systems happily overlap, drawing on ancestor worship, popular beliefs in spirits, the indigenous religion of Taoism and the ideas of worldwide religions like Buddhism.”

#### Registration

6.54 As reported by the *Washington Post* on 10 March 2004, “The Chinese government allows people to worship only in party-run churches, mosques and temples, [and] considers any autonomous religious organization a threat and routinely imprisons priest, monks and others.” This report also stated, “There is rising interest in religion and spirituality – from Falun Gong to Christianity – as people struggle to cope with rapid social change and the vacuum left by the collapse of Maoist ideology.”

6.55 As reported by the USSD Religious Freedom Report 2005:

“The state reserves to itself the right to register and thus to allow particular religious groups and spiritual movements to operate. For each of the five main religions, there is a government-affiliated association that monitors and supervises its activities, and with which religious groups must affiliate. The SARA is responsible for monitoring and judging the legitimacy of religious activity. The SARA and the CCP United Front Work Department (UFWD) provide policy ‘guidance and supervision’ on the implementation of government regulations regarding religious activity, including the role of

foreigners in religious activity. Employees of SARA and the UFWD are rarely religious adherents and often are party members. Communist Party members are directed by party doctrine to be atheists.”

“Some groups register voluntarily, some register under pressure, and the authorities refuse to register others. Some religious groups have declined to register out of principled opposition to state control of religion. Others do not register due to fear of adverse consequences if they reveal, as required, the names and addresses of church leaders. Unregistered groups also frequently refuse to register for fear that doing so would require theological compromises, curtail doctrinal freedom, or allow government authorities to control sermon content. Some groups claimed that authorities refused them registration without explanation or detained group members who met with officials to attempt to register. The Government contended that these refusals mainly were the result of these groups’ lack of adequate facilities or failure to meet other legal requirements. At the end of the period covered by this report, it was too early to tell whether the new regulations would result in an increase in the number of or an expansion in the type of registered religious groups.”

“Some underground Catholic and unregistered Protestant leaders reported that the Government organized campaigns to compel them to register, resulting in continued and, in some cases, increased pressure to register their congregations. Officials organizing registration campaigns collected the names, addresses, and sometimes the fingerprints of church leaders and worshippers. On some occasions, church officials were detained when they arrived for meetings called by authorities to discuss registration.”

6.56 As reported by Forum 18 on 28 April 2004:

“The Communist party-state remains determined to maintain control over society, using over the past 20 years an increasing number of laws and regulations as a means to this end... The state claims the exclusive right to decide on what are ‘normal’ religious activities and is effectively pursuing a policy of divide-and-rule towards religious communities... The Chinese state’s relationship with religion can only improve if the state accepts that laws are supreme – even over the party – and protect individuals and society from arbitrary actions by those in power.”

6.57 As reported by Forum 18 on 25 November 2004:

“Religious organizations that either cannot or are unwilling to obtain government approval are automatically deemed illegal. Once an organisation has been classified as illegal, all its activities are automatically considered to be illegal and subversive. As Joseph Kung, an advocate of the underground Catholic community in China, stated, activities such as celebrating the mass and prayers for the dying – which are orthodox Catholic practices – immediately become illegal and unorthodox if they are undertaken by a priest who has not been permitted by the state to perform these activities... Through these repressive measures, the regime creates an atmosphere that indirectly promotes religious distortions.”

6.58 As reported by the official *China Daily* newspaper on 18 December 2004:

“The Religious Affairs Provisions, promulgated on November 30 with the approval of Premier Wen Jiabao, will formally come into effect on March 1, 2005. The provisions, a set of comprehensive administrative rules concerning China’s religious affairs, explicitly specifies that the legitimate rights of religious groups, religious sites and the religious people are protected. It also offers guidance on religious affairs involving state and the public interests. The rules are regarded as a significant step forward in the protection of Chinese citizens’ religious freedom.”

6.59 As reported by the BBC on 19 December 2004, the wording of the regulations makes it clear that there will be no basic relaxation of the policy. This report also noted, “Some scholars have welcomed the fact that officials who abuse their powers in dealing with religious groups could face prosecution under the new rules.”

6.60 According to a report dated 18 January 2005 by Forum 18, “The new rules even singled out the Muslim, Tibetan Buddhist and Catholic communities in specifying requirements for religious pilgrimages and clerical appointments. While one article in the provisions stipulated that government officials (there was no mention of Communist Party officials) would be held legally accountable for abuses, there is no assurance that this accountability will be enforced.”

6.61 The same source continued, “Other than Falun Gong practitioners’ well-known public displays of civil disobedience in the early days of the state’s repression against the movement, and periodic protests by Uighur Muslims and Tibetan Buddhists, which also involve the important political issue of autonomy or independence vis-a-vis China, no significant public demonstrations are known to have been mounted in the name of religion or religious freedom within recent memory.”

6.62 Further to this the same source also stated that resistance to state regulations was essentially evasive in nature, with practitioners generally choosing to avoid direct confrontation with the authorities.

6.63 According to the report the most common types of resistance were as follows:

refusing to register, for reasons of faith or reasons of practicality;

meeting clandestinely;

establishing their own religious training institutions, sometimes involving foreign instructors;

teaching children under the age of 18, despite government regulations that prohibit this;

secretly seeking papal consent (Catholics);

refusing to sign papers denouncing their religious/spiritual leader(s);

using religious material not printed by the state;

communicating via Internet chatrooms.

6.64 As reported by Forum 18 on 8 March 2006:

“One year on from the March 2005 Religious Affairs Regulations their effects are difficult to judge, and repressive actions continue against many communities. China’s religious policies are under increasing strain. Even the definition of ‘religion’ – especially a ‘legal religion’ – is debated among officials, and a comprehensive religion law (as opposed to the Regulations) is awaited. The government seems to favour a law focusing on control of religion, but many religious leaders would prefer a law focusing on protecting religious believers’ rights. Underlying the debate – and the increasing strain on government policy – is the fact that religious faith and practice of all kinds is rapidly growing in China, making the ideological foundation of religious control increasingly unreal. The key question facing the government is, will it seek to create a better environment for religious practice or will it resist genuine reform? Resisting reform may – sadly and unnecessarily – be the most likely direction of current policy.”

6.65 As reported by Forum on 29 September 2004:

“In theory, the central government’s State Administration for Religious Affairs (SARA) oversees religious affairs in China. A key function of SARA and its subordinate offices is registering religious groups and venues. In general, these offices are tasked with ensuring that individual believers and groups comply with state regulations. To meet this objective, like most Chinese bureaucracies, there are provincial and local SARA offices, allowing the agency to keep an eye on all religious organisations, individuals and activities throughout the country. However, it is important to note that SARA lacks enforcement powers. Once SARA has determined that religious groups are either illegal – meaning unregistered – or that they or individual believers are conducting illegal activities, the matter would then be turned over to the law enforcement agency – namely, the Public Security Ministry and its subordinate offices.”

...

Christians

6.69 As reported by the USSD Religious Freedom Report 2005:

“The unofficial, Vatican-affiliated Catholic Church claims a membership larger than the 5 million persons registered with the official Catholic Church. Precise figures are impossible to determine, but Vatican officials have estimated that the country has as many as 10 million Catholics in both the official and unofficial churches. Chinese Catholic sources put the total number at approximately 8 million. According to official figures, the

government-approved Catholic Church has 67 bishops, 5,000 priests and nuns, and more than 6,000 churches and meetinghouses. There are thought to be more than 40 bishops operating ‘underground,’ some of who are likely in prison or under house arrest.

The Government maintains that the country has more than 16 million Protestants, more than 55,000 registered churches and other places of worship, and 18 theological schools. Protestant church officials have estimated that at least 20 million Chinese worship in official churches. Foreign and local academics put the number of Protestants between 30 and 100 million. A 2004 non-governmental survey in Beijing tallied over 100,000 unregistered Protestants, far more than the 30,000 registered with authorities. Domestic and foreign experts agree that the number of Protestants is growing rapidly. According to state-run media reports in August 2004, the number of Protestants is increasing by up to 600,000 annually.”

6.70 As reported by the BBC on 9 November 2004, “Getting reliable numbers about the number of Christians in China is notoriously difficult. Estimates vary between 40m to 70m Protestants, only 10 million of whom are registered members of government churches. The situation is similar for Catholics. Of the estimated 15 to 20 million Catholics in China, less than half belong to state-approved churches, which put authority to Beijing before authority to Rome.”

6.71 This report continued, “Both Catholics and Protestants have long complained of persecution by the Communist authorities, and human rights groups claim the problem is getting worse.” According to the same source, about 300 Christians are detained in China at any one time, and that number is due to rise (based on information from the Jubilee Campaign). This report also stated, “China’s Christian population – especially those who refuse to worship in the tightly regulated state-registered churches – is seen as one such threat.” Furthermore the report stated, “Those Christians who want to avoid the state-controlled religious movements meet in unofficial buildings or even each others’ homes – hence their description as ‘house churches’ – risking fines, imprisonment, torture and even, in some cases, death.”

6.72 As reported by the World Christian Encyclopedia (Second Edition, 2001), “Broadcasting is an absolutely vital component of ministry in China. The typical believer will tune into any broadcast they can find, and many Chinese Christians have come to the faith as a result of programmes alone... These programs are known to be recorded and duplicated for mass distribution.”

#### Availability of Bibles

6.73 As reported by the USSD Religious Freedom Report 2005:

“The increase in the number of Christians in the country has resulted in a corresponding increase in the demand for Bibles. Bibles can be purchased at many bookstores and at most officially recognized churches. Many house church members buy their Bibles at such places without incident. A Bible is

affordable for most Chinese. The supply of Bibles is adequate in most parts of the country, but members of underground churches complain that the supply and distribution of Bibles in some places, especially rural locations, is inadequate. Individuals cannot order Bibles directly from publishing houses, and house Christians report that purchase[s] of large numbers of Bibles can bring unfavorable attention to the purchaser. Customs officials continued to monitor for the 'smuggling' of Bibles and other religious materials into the country. There have been credible reports that the authorities sometimes confiscate Bibles in raids on house churches."

6.74 As reported by the Canadian IRB on 28 November 2003, Protestant house church leaders contacted by the IRB stated that officially sanctioned bibles differ very little from other versions available outside China and that, "The Bible text remains sound and intact." As reported by the same source on 28 February 2003, "It is normal for Patriotic churches to display crosses, crucifixes and portraits of Jesus... It is similarly legal for Chinese citizens to possess these and display them in their homes."

#### Catholics

6.75 As reported by the USSD Religious Freedom Report 2005:

"A number of Catholic priests and lay leaders were beaten or otherwise abused during 2004, prompting Vatican officials to make formal protests. In Hebei Province, traditionally the home of many Catholics, friction between unofficial Catholics, the government-sanctioned Patriotic Church, and some local authorities continued. Hebei authorities reportedly have forced underground priests and believers to choose between joining the official Church, and facing punishment such as fines, job loss, periodic detentions, and having their children barred from school. Some Catholic officials have been forced into hiding. Ongoing harassment of underground bishops and priests was reported in recent years, including government surveillance and repeated short detentions. Many of those harassed and detained were over 70 years old... According to several NGOs, a number of Catholic priests and lay leaders were beaten or otherwise abused during the period covered by this report."

6.76 As reported by the United States Commission on International Religious Freedom (USCIRF) Annual Report 2005, published in May 2005:

"The government also continues its repression of the unregistered Roman Catholic Church in China, which maintains its allegiance to the Vatican. There are at least 20 Catholic bishops or priests under arrest, imprisoned or detained, including Bishop Su Zhimin, who has been in prison, in detention, under house arrest, or under strict surveillance since the 1970s. Clergy in Hebei, Fujian, and Heilongjiang provinces were harassed, detained, and arrested during the past year. In October 2003, Hebei provincial officials reportedly arrested 12 Catholic priests and seminarians attending a religious retreat. In August 2004, Bishop Gao Kexian died of unknown causes in a prison where he had been since 1997. In September 2004, the Vatican issued a statement condemning the arrest of eight priests and two seminarians during a religious

gathering in Hebei. In April 2005, one week after the death of Pope John Paul II, authorities in Hebei arrested a bishop and two priests, reportedly for their continued refusal to register with the Patriotic Catholic Church.”

6.77 As reported by the BBC on 8 April 2005, “China broke off ties with the Holy See in 1951, and even today the nation’s Catholics face the choice of attending state-sanctioned churches, acknowledging Beijing as their ultimate authority, or worshipping in secret ‘underground’ congregations... The Vatican insisted it must have final say on the appointment of bishops – as it does in an agreement with communist-controlled Vietnam – but China found the demand unacceptable.”

6.78 As reported by CNN on 24 February 2006, Hong Kong’s newly appointed Cardinal, Joseph Zen is a vocal supporter of the underground Catholic Church as well as an advocate for greater democracy in the Special Administrative Region. He has, however, been warned to stay out of mainland politics. As reported by *Catholic News* on 14 March 2005, Donald Tsang, Hong Kong’s [then] acting Chief Executive is a devout Roman Catholic and attends church every morning before work.

6.79 On 18 April 2005 *Time Asia* reported that both official and unofficial churches united in mourning for the late Pope, John Paul II (died 4 April 2005). According to the same source, “This was the first time since Beijing severed relations with the Vatican in 1951 that worshippers in state-approved churches were allowed to commemorate a Pope’s death.” The same source also quoted Father Benedictus from Shijiazhuang parish in Hebei province as saying, “As long as we don’t protest or set off firecrackers, we’re basically left alone...”

6.80 On 4 April 2005, the official *People’s Daily* reported:

“Chinese Catholics Sunday joined their counterparts in other countries to grieve over the death of Pope John Paul II, while the Chinese Foreign Ministry extends governmental condolence over the loss of the pontiff, hoping for improving relations between China and Vatican... In their Sunday mass, Catholics in Beijing, Tianjin, Shanghai and other cities mourned for the Pope. Nearly 10,000 Catholics attended masses held in five major Catholic churches in the national capital.”

6.81 According the website of Cardinal Kung Foundation (an NGO), accessed on 11 January 2006, “Currently, every one of the approximately 45 bishops of the underground Roman Catholic Church is either in jail, under house arrest, under strict surveillance, or in hiding.

6.82 As reported by the Canadian IRB on 8 June 2004, “During a 4 June 2004 telephone interview with the Research Directorate, a representative of the Cardinal Kung Foundation stated that there are no standardized baptismal certificates within underground Catholic churches in China nor are baptismal certificates issued as a matter of course. Instead, if a baptismal certificate were requested at the time of baptism, the priest might issue an informal document that would most likely be written in Chinese.”



Protestants (Includes “House Churches”)

6.83 As reported by the USSD Religious Freedom Report 2005

“Local officials have great discretion in determining whether ‘house churches’ violate regulations. The term ‘house church’ is used to describe both unregistered churches and gatherings in homes or businesses of groups of Christians to conduct small, private worship services. SARA officials confirmed during the year that unregistered churches are illegal, but prayer meetings and Bible study groups held among friends and family in homes are legal and need not register. In some parts of the country, unregistered house churches with hundreds of members meet openly with the full knowledge of local authorities, who characterize the meetings as informal gatherings to pray, sing, and study the Bible. In other areas, house church meetings of more than a handful of family members and friends are not permitted. House churches often encounter difficulties when their membership grows, when they arrange for the regular use of facilities for the specific purpose of conducting religious activities, or when they forge links with other unregistered groups or with co-religionists overseas. Urban house churches are generally limited to meetings of a few dozen members or less, while meetings of unregistered Protestants in small cities and rural areas may number in the hundreds.”

6.84 The same source continued, “Authorities continued to harass and detain ‘house’ Christians, especially for attempting to meet in large groups, travel within and outside of China for such meetings, and otherwise hold peaceful religious assemblies... Protestant religious retreats were disrupted on many occasions.”

6.85 As reported by the USCIRF Annual Report 2005, published in May 2005:

“Conditions for unregistered Protestant groups have deteriorated in the last year. According to the State Department, in some regions of China, members of Protestant house church groups that refuse to register, on either theological or political grounds, are subject to intimidation, extortion, harassment, detention, and the closing of their churches. Over a period of six months during 2004, the Chinese government carried out large-scale raids on several meetings of house church pastors in various parts of the country. More than 100 pastors were arrested, briefly detained, and then released, in Heilongjiang in April, in Hubei in June, in Xinjiang in July, and in Henan Province in August. At least 18 pastors remain in custody from the series of mass arrests. In September 2003, house church historian Zhang Yinan was arrested along with approximately 100 others in Nanyang, Henan Province, and was subsequently sentenced to two years of ‘re-education’ through labor. In November 2004, the United Nations Working Group on Arbitrary Detention reviewed Zhang’s case and found that his detention was indeed arbitrary. In August 2004, house church activists Liu Fenggang, Xu Yonghai, and Zhang Shengqi were sentenced to prison terms ranging from one to three years for sending materials on persecution of Christians in China to organizations in the United States. In June 2004, a Chinese newspaper reported that a woman in

Guizhou died in police custody and that her body showed signs of torture. The paper stated that she was detained for distributing Bibles.”

6.86 As reported by the Canadian IRB on 17 August 2004,

“It appears that the Chinese government most fears religious groups not willing to submit themselves to official supervision, and that proliferate beyond official control. If a Chinese citizen became a practising Christian overseas and was willing to attend an officially sanctioned church upon his return to China, it’s unlikely that he would encounter any difficulty. However, if he became an active member of an unsanctioned congregation, and especially if he contributed to the growth of the congregation through evangelizing, he would expose himself to a real risk of persecution.” (Based on Information supplied by the NGO Human Rights in China.)

6.87 As reported by the *Sunday Times* on 8 August 2004, “Ignoring the state-approved official churches, up to 90 million Chinese may be following Christ at prayer groups and Bible study classes, according to western evangelical groups.”

6.88 The same source continued:

“The life of Rev Samuel Pollard, who preached in remote parts of southwest China until his death from typhoid in 1915, is a regular subject of sermons at clandestine ‘house churches.’ Pollard’s books of derring-do and good works – written for a readership of devout Methodists and Edwardian England – have been translated and republished for a modern Chinese audience. ‘I was astonished to learn how these men [early missionaries] are still revered in China when I came to the southwest to preach,’ said a Chinese missionary who is an influential member of the underground Protestant church.”

6.89 As reported by *The Times* newspaper on 23 December 2003, “Independent Christian communities are suppressed to varying degrees across the country. In response, they have built elaborate networks, usually in cell structures in which only the leaders know the locations of underground meeting places. The Government alternates between persecution and turning a blind eye. It is overwhelmed by Christianity’s popularity and aware of the benefits in terms of education and social stability, but worried about new centres of power.”

6.90 As reported by the USSD Religious Freedom Report 2005, “In past years, local officials destroyed several unregistered places of worship, although there were no reports of widespread razing of churches or shrines during the period covered by this report.”

6.91 As reported by Forum 18 on 25 November 2004, “According to Bob Fu, a former house church leader, in the first nine months of 2004, 400 arrests were made of house church leaders. Individuals have been beaten to death by public security officials for distributing Bibles and other biblical tracts. Others have been detained and arrested for printing Bibles and other religious literature.”

## **FINDINGS AND REASONS**

At the hearing before the Tribunal the applicant gave her evidence in a straightforward manner and her evidence was largely consistent with her written claims. Overall, the Tribunal found her to be a reliable and credible witness.

Based on the applicant's original PRC national ID card, her certificate of divorce and other documents, authenticity of which is not in doubt, the Tribunal accepts that she is a national of China and that she was a teacher.

At the hearing the applicant gave a credible account of why and how she had come to know and practise Christianity in China. She provided a persuasive account of her beliefs and activities commensurate with the length of time that she has been a Christian and her answers to most of the Tribunal's questions concerning basic doctrinal and historical aspects of Christianity and Christian beliefs were convincing. Overall, the Tribunal is satisfied that the applicant is a Christian.

The Tribunal accepts that the applicant took the initiative to privately tutor a Christian. The Tribunal accepts that the student's mother had been detained for the reason of her involvement with underground church activities. The Tribunal accepts that the applicant was introduced to Christianity after the student's mother was released from detention. The Tribunal accepts that she was baptised.

The Tribunal accepts that she began teaching and training others to teach children from Christian families who had been barred from accessing formal schools. The Tribunal accepts that while the extent of her activities and involvement with the church was not known, her school and the authorities discovered that she had provided private lessons to Christian children and suspected that she was involved with underground church. The Tribunal accepts that, after being warned on two occasions, she was detained for one month during the course of which she was mistreated. The Tribunal accepts that she was released on the condition that she reports to the police on a weekly basis. The Tribunal is satisfied that the applicant's detention and the treatment she was subjected to amounts to serious harm. The Tribunal is satisfied that the essential and significant reason for the persecution involved was the applicant's religion.

The Tribunal accepts that the applicant was able to leave China when other church members organised a fraudulent passport for her enabling her to leave the country. In the Tribunal's view, the applicant's departure from China on a fraudulent passport and her acceptance of the associated risks of illegal departure is indicative of her fear of harm in China.

The Tribunal accepts that the applicant has continued to attend church in Australia on a regular basis and has remained a devoted believer. The Tribunal is satisfied that she would continue to be involved with Christianity and practise her faith if she were to return to China. The independent information before the Tribunal confirms that respect for freedom of religion in China is poor. Unregistered religious groups experience varying degrees of official interference and harassment. Members of some unregistered religious groups, including Christian groups, are subjected to restrictions, including intimidation, harassment, and detention. Whilst this treatment might vary from locality to locality, it is difficult to assess with certainty the level of the risk to any particular participant in an unregistered church in China.

The Tribunal finds that the applicant's chance of facing arrest, imprisonment and torture for the reason of her religion if she returned to China now or in the reasonably foreseeable future is real. The Tribunal considers this treatment to amount to "serious harm" as required by paragraph 91R(1)(b) of the Act. As the applicant's fear of harm is from the authorities and there is no evidence before the Tribunal to suggest that she could avoid harm anywhere within China, the Tribunal is not satisfied that the applicant could avoid the persecution she fears by internally relocating. The Tribunal therefore is satisfied that the applicant has a well-founded fear of persecution for a Convention reason. The Tribunal is not satisfied that the applicant has a right to enter and reside in any other country besides China.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>.                      PRRRNM</p>
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