

0906541 [2009] RRTA 1004 (28 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0906541

DIAC REFERENCE(S): CLF2009/47027, CLF2009/45853

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Bruce MacCarthy

DATE: 28 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), arrived in Australia [in] July 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2009. The delegate decided to refuse to grant the visa [in] August 2009 and notified the applicant of the decision and his review rights by fax dated [in] August 2009. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
3. The applicant applied to the Tribunal [in] August 2009 for review of the delegate's decision. The Tribunal finds that that decision is an RRT-reviewable decision under s.411(1)(c) of the Act and that the applicant has made a valid application for review under s.412 of the Act.

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. 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.
5. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, "the Refugees Convention" or "the Convention"). Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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; ...
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 and *Applicant S v MIMA* (2004) 217 CLR 387.
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 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.
10. 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.
11. 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.
12. 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 he has 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 probability of the persecution occurring is well below 50 per cent. In addition, an applicant must be unable, or unwilling because of his fear, to avail himself of the protection of his country or countries of nationality.
13. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Credibility

14. When determining whether a particular applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the claims he has made. This may involve an assessment of the credibility of the applicant. When assessing credibility, the Tribunal should recognise the difficulties often faced by asylum seekers in providing supporting evidence and should give the benefit of the doubt to an applicant who is generally credible but unable to substantiate all of his claims. However, it is not required to accept uncritically each and every assertion made by an applicant. Further, the Tribunal need not have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out.

Nor is it 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.

15. If the Tribunal were to make an adverse finding in relation to a material claim made by an applicant but were to find itself unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* (1999) FCR 220).

CLAIMS AND EVIDENCE

16. The Tribunal has before it the Department's files [CLF2009/45853 and CLF2009/47027] relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources. The applicant appeared before the Tribunal [in] October 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant was represented in relation to the review by his registered migration agent, who did not attend the hearing.

Entry into Australia

17. Departmental movement records indicate that the applicant entered Australia [in] July 2008, using a South Korean passport in a false identity and an electronic travel authority ("ETA") issued [in] June 2008 [In] April 2009, he was taken into immigration detention. According to a record of interview [in] April 2009 (see folio 2-3, file CLF2009/45853), the applicant "wanted to apply for PR" [i.e. permanent residence] so he could live in Australia, but did not appear to be eligible on any grounds. He said there were no reasons why he would not be able to return to China though he had just been divorced and he did not wish to return to that country. He said he wanted to work in Australia.
18. On the following day, however, he indicated that he wished to apply to protection. He said he had been a supporter of Falun Gong and that this had resulted in him being expelled from the Communist Party. He became unemployed and could not support his family he said his wife had been opposed to Falun Gong. He completed a *pro forma* application for protection. He later followed up the *pro forma* application with a more detailed application which was lodged some three months later, [in] July 2009.

Protection visa application

19. According to information provided by the applicant in his protection visa application forms and accompanying documents, he is a 33-year-old divorced man from China's Jilin province. He is of Korean ethnicity and says his religion is "Falun Dafa." His only close relative is his 9-year-old son. He completed his high-school education in 1991 and later attended an adult evening College in 1995-96. After leaving school, he worked on a casual basis in various construction companies between June 1991 and November 1993. He then worked in various clerical positions for a bank until December 2006. He was unemployed between January 2007 and July 2008, and then worked in a number of short-term jobs in Sydney between July 2008 and March 2009.
20. The applicant said he lived at one address in China between July 1999 and December 2006, except for a period when he was in a detention. After December 2006 he resided at another address in the same county, until July 2008.

21. He left China illegally [in] July 2008, and travelled to Australia via South Korea, arriving in Australia [in] July. He said that he had departed China with a false Chinese passport, but had left that passport in South Korea on the instructions of a smuggler who assisted him. He then travelled to Australia with a false South Korean passport, the details of which he said he could not recall. He said he had since lost the document. He said that he had never applied for a passport in his own name in China, because his name was on a list of Falun Gong practitioners. He said that prior to his current journey to Australia, he had never previously travelled outside China. He said that he had never been convicted of any crime or offence and, to the best of his knowledge, he was not the subject of any criminal investigation or any pending criminal charges.
22. The applicant said that he was seeking protection so that he would not have to return to China. He said he had been detained for over six months for practising Falun Gong and he feared he would suffer a similar harm if he were to return to China. He said he would submit a detailed statement “shortly” [In] August 2008, his agent submitted an unsigned 11 page statement outlining the applicant’s claims, and a shorter statutory declaration which he said summarised the longer statement.
23. In the statutory declaration, the applicant said he had been a member of the Communist Party of China since 1996. He was an ordinary member but also served on the party committee. He said he had started practising Falun Gong [in] May 2005. Prior to that, he said he did “exercises” in the square near the river in his hometown. He said a former female work colleague (“LA”) had introduced him to Falun Gong, telling him that she had been practising at since 2001. She gave him a photocopy of the book “*Zhuan Falun*,” and he quickly learned how to practise Falun Gong, which he did at LA’s house.
24. He said that, [in] January 2006, all the groups practising Falun Gong in the “Central Community” area of his town held a meeting, which was organised by LA. About 30 people met in a local school during the school holidays. The applicant said that he thought some of the teachers at the school were involved in Falun Gong. At the meeting, one of the speakers suggested that they should “spread the word about Falun Gong.” Some people printed posters with slogans saying such things as “Communist Party is evil” Others, including the applicant, posted them in public places. Each person had five posters and they put them up in the city at night time.
25. The applicant said he did so successfully but, [in] April 2006, he was arrested at home and police found photo copies of the book “*Zhuan Falun*.” He was told that someone had reported him for practising Falun Gong. He later came to suspect that he had been reported by people who had worked at a photo shop with which he had had previous contact. He said that the owners of that shop were also Falun Gong practitioners, but they did not belong to his group.
26. In February 2006, LA had asked him to go and pick up some promotional material for her at the shop and the person to whom he spoke had asked him for his mobile number. He concluded that she must have done so that she could identify him. He later found out after he was released from detention that people from that shop had also been arrested and he thought they may have denounced him in order to avoid harsh punishment. Another possibility was that someone had observed him putting up posters.
27. After being held in a local detention station for about 28 days he was then sent to a “higher level centre where he was held until [a date in] October 2006, when he was finally released, after signing a statement promising that he would never participate in Falun Gong again, and paying a

bond of 5000 yuan. He was never formally charged with anything. From then on, he had to go to the local community centre every Monday and Friday “to receive education.”

28. He returned to work [in] November 2006, but was called to the office of the Governor of the bank branch where he worked. He was told of the previous governor had been dismissed and that, because of his involvement in Falun Gong the Superior Party Committee had decided that he would be expelled from the party and suspended from his job at the bank until further notice. He later found out that the former governor of his branch had not only been dismissed from his job at the bank, but from his position as party committee general secretary. The person who had introduced the applicant to the party had also been dismissed from both the party and his job in the bank.
29. [In] November, human resources people from his bank called him in and told him a decision had been made by the bank headquarters to make him redundant. They said the bank was in the process of restructuring and that, because of his “circumstances” he was not eligible to compete for any other position. He concluded that they were implying that this was because of his involvement in Falun Gong. After that, he could not find alternative employment because potential employers would not employ him once they found out about his problems.
30. He said while he was in detention, people had come to his home and smashed windows and written abusive slogans on the wall and his son was bullied at school. As a result of all these pressures, his wife divorced him and he moved to a different address. He continued to practise Falun Gong at home but never practised with the group again. He suspected that he had been released in order to lead the authorities to his colleagues and thought it would be too dangerous for him to have any physical contact with them.
31. As time went by, he realised he had no future in China and, with financial help from fellow practitioners, and the assistance of an old school friend, he was able to obtain a false South Korean passport and leave China and travel to Australia in the mid-2008. He said that he knew he did not have a legal right to remain in Australia knew nothing about Australian laws and did not know how to solve his problems he said he did not realise he could apply for protection until after he was detained.

Interview

32. [In] August 2009, the applicant was interviewed by the delegate considering his application. A recording of that interview is in the Department’s file. The Tribunal has attempted to listen to it but the recording is so faint that the Tribunal was unable to gain a clear understanding of the applicant’s answers. The delegate, in his decision, referred to some elements of the discussion, as follows:

At interview, the applicant did not know the name of the detention centre or its location when he was first incarcerated. ...

and

His claim that he has continued to practise Falun Gong in Australia is not supported by his claim that he did not acquire a copy of Zhuan Falun until February 2009, being about seven months after he arrived in Australia. Furthermore, he was vague about how he acquired it. At interview when the applicant was asked why he practised Falun Gong he preferred to talk about his incarceration and the physical appearance of the cell in which he claimed to have stayed. He appeared to be evasive about discussing why he practices Falun Gong, explaining only that it then fitted his physical health at a lower level and benefited his heart and mind at a higher level. His knowledge of Falun Gong display that interview was noticeably less than what is displayed in his 12 page statement that was submitted by fax on [date] August 2009. ...

The decision under review

33. The delegate's reasons for rejecting the application are set out on pages 6-8 inclusive of the decision record. In summary, while the delegate accepted that the applicant had been detained in China, he did not accept that he was detained because he was a Falun Gong practitioner. He was not satisfied that the applicant was a genuine Falun Gong practitioner, and was not satisfied that the applicant's conduct in practising Falun Gong in Australia was engaged in other than for the purpose of strengthening his claim to be a refugee. The delegate drew a negative inference from the fact that the applicant did not apply for protection until more than 12 months had elapsed since his arrival in Australia.

Application to the Tribunal

34. The applicant made no claims when applying to the Tribunal, and did not comment on the decision under review. However, [in] October 2009, the applicant's agent made submissions addressing some of the delegate's reasoning. In particular, she said (with minor editorial corrections to spelling, grammar, punctuation, layout, etc and the substitution of other words to replace people's names:

... the delegate did not accept that the applicant had practised Falun Gong in China or that he had been detained as a result of this. In reaching this conclusion, the delegate found a number of his claims to be contradictory or implausible.

The delegate did not find the applicant's evidence regarding his loss of employment convincing largely because his employers never stated clearly that this was the reason for his dismissal. It is submitted that it is plausible that, if his employers knew or suspected that he had been involved in Falun Gong, they would want to get rid of him, but would not want to draw attention to the fact that one of their staff had been involved in illegal activities as they might be seen as complicit in some way and might also face problems. As a former Communist Party member and therefore someone who is well versed in the ways that Chinese officials operate, the applicant was well-placed to assess the situation and, it is submitted, his opinion on this matter should be accepted as credible.

The delegate did not accept that a group of Falun Gong practitioners would meet in a public place such as a school, or that the applicant would have been involved in distributing leaflets at this event. The applicant advises that he pretended to be speaking to people about the work of his bank so that the authorities would not suspect the real purpose of the meeting.

With regard to the delegate's finding that it was not plausible that the applicant was detained while his mentor LA was not, the applicant states that his involvement was exposed, but he refused to betray LA, shielding her from arrest.

The delegate found the applicant's knowledge of Falun Gong limited. He observed that he appeared to be evasive when asked about his reasons for practising Falun Gong and concluded that he was not a genuine practitioner.

The applicant maintains that he is a committed Falun Gong practitioner. He states that he was not trying to avoid the delegate's questions and that he had explained to the best of his ability why he took up the practice. It is submitted that it is highly likely that many followers of Falun Gong, like many followers of other religions or of particular political ideologies, have a limited or distorted understanding of the philosophy of the founders of the movement, but this does not mean that they are not genuinely committed to Falun Gong practice or that they are not at risk of serious harm from the Chinese authorities. The applicant's account of why he became a Falun Gong practitioner should not be dismissed because it did not accord with the delegate's understanding of what most Falun Gong practitioners believe.

The delegate noted that the applicant had failed to mention that he went on a hunger strike while in detention prior to the interview. The applicant states that he was not familiar with the process of applying for a protection visa and was not sure what to include.

The delegate stated in his decision that the applicant was not able to name the detention centre where he was initially detained. He states that he was initially detained at the [County] Police Station. He

believes that he explained this at the interview and believes that if the delegate understood differently it must have been the result of confusion or problems in interpretation.

In reaching his conclusion on whether the applicant was a genuine Falun Gong practitioner, the delegate noted that he appeared to be more concerned to speak about his imprisonment than to discuss Falun Gong practices. It is submitted that it is not surprising or indicative of a lack of honesty that he would speak repeatedly about his time in prison as this was clearly a distressing incident which has affected him greatly. The delegate clearly found his evidence regarding his imprisonment credible and compelling as he accepted that the applicant had indeed been imprisoned. However, because of perceived problems with other aspects of his evidence, the delegate concluded that he had been imprisoned for some other reason. It is submitted that another, and indeed preferable, assessment of his evidence is that the fact he was imprisoned is extremely strong evidence that his claims regarding his involvement with Falun Gong are true. In addition, the stress and anxiety caused by his incarceration has contributed to the difficulty he sometimes has providing evidence regarding his situation.

Evidence given at the hearing

35. This summary of evidence is not set out in strict chronological order. Some issues discussed at different times in the hearing have been grouped together for greater clarity. Some matters discussed, which have turned out not to be material to the decision have not been included in the summary.

The circumstances in which his claims were articulated

36. The applicant explained the reasons why it had taken so long for him to articulate his claims in detail. He said that, although he was assisted by a people smuggler to leave China and travel to Australia, he had not disclosed his reasons for wanting to escape to those who assisted him. He said he was afraid that if he disclosed his background to others it might place his family and his fellow practitioners at risk of harm in China. When he first came to Australia he did not speak English. He practised Falun Gong privately and did not seek to associate with other practitioners, and there was no one to explain to him his right to seek protection.
37. When he was first detained, he was still using the identity derived from the Korean passport which had brought into Australia. He was confused and frightened by the circumstances of his detention, and it was only on the second day that he realised it was appropriate to him to disclose the truth. He said that initially, a friend who he knew had put him in contact with a lawyer (or so he believed at the time) named [Person A] who was going to lodge an application on his behalf. He wrote out his statements in Chinese, and [Person A] organised to have them translated.
38. However, [Person A] never confirmed the contents of the statements as prepared in English. Nor did he lodge a complete application. The applicant eventually became suspicious of [Person A] and concluded he was not acting in his best interests. He accepted the offer of migration assistance by the agents now representing him. The Tribunal inferred from his remarks that the statements in the Department's file at folios 104 to 114 are the translations prepared by the man [Person A], and that his current migration agents produced the statutory declaration at folios 116 to 119, based upon discussions with him and the earlier documents. It is apparent to the Tribunal that the statutory declaration is couched in much better English, and in more logical terms.
39. As the Tribunal sought to verify its understanding of the applicant's claims as set out in the statements it identified some apparent anomalies and clarified them with the applicant to its satisfaction.

Lack of documentary evidence

40. The applicant said he had no documentary evidence to confirm his claims, as it had been impossible for him to bring any documentation out of China [The Tribunal also notes his written claim that he gave assurances to his former Falun Gong colleagues in China that he would not make any attempt to contact them once he left China.]

The events alleged to have taken place in China

41. The applicant's evidence at the hearing was generally consistent with his written claims, allowing for some of the anomalies referred to in paragraph 39 above. He explained to the Tribunal that he had decided to divorce his wife because of the difficulties he was causing her and he was concerned for her welfare and that of his son.
42. He said that he had been aware that Falun Gong was illegal from the time the Chinese government issued an edict to ban it. He said he had been aware that an important official who had assisted him after his parents died had been a practitioner of Falun Gong in 1998, when the practice was legal. He said he could never understand why, if such a person had been involved in it, it could have been a bad practice. It was in that context that he had been receptive to tentative remarks by LA when the subject of Falun Gong had been raised in the middle of 2005.
43. In particular, the Tribunal was impressed by his account of his experiences in detention and said that it accepted, as the delegate had done (see paragraph 33 above) that he had been detained and mistreated while in detention in China.
44. The applicant explained that he could only speculate as to the reasons senior people in his bank were dismissed from their jobs. He thought that they may have been held accountable for his behaviour in bringing the bank into disrepute. He said it was common in China for someone to take the blame for things done by subordinates.

His knowledge of Falun Gong.

45. The applicant said that he had been given a photocopy of Zhuan Falun, on A4 paper, by LA in 2005. He said that, by the time he arrived in Australia he was well versed in Falun Gong and had not needed further literature. However, he purchased a copy Zhuan Falun from a bookstore in early 2009. He was able to answer the Tribunal's questions about the book.
46. The applicant was able to answer all the Tribunal's questions about the practice and philosophy of Falun Gong, with one minor exception. For example, he was able to illustrate which of the movements of the various exercises have male and female variations. There was no hesitation in his answers.

FINDINGS AND REASONS

47. The applicant claims to fear persecution in China because he is a Falun Gong practitioner. He claims that his involvement in Falun Gong was discovered in 2006 and that he was detained and mistreated from approximately 6 months. He claims that, after his release he lost his job and was unable to find further work.
48. Although the applicant came to Australia using a Korean passport in another name, he asserts that he is Chinese citizen. Evidence of that citizenship, in the form of a Chinese household register in the identity claimed by the applicant is contained in the Department's file. On the

basis of that evidence, the Tribunal finds that the applicant is the person he claims to be and that he is a citizen of the PRC. He is obviously outside his country of nationality.

49. The Tribunal accepts the applicant's evidence at the hearing regarding the circumstances in which his claims came to be set out in writing. There is clear evidence on the Department's files supporting his claim that he initially was trying to have his claim handled by a lawyer other than the one who eventually gave him assistance in relation to his application. It is apparent to the Tribunal that his original detailed statements are of a lesser quality in terms of their clarity of expression in English than the summary set out in a statutory declaration prepared by his current migration agents. The Tribunal therefore has given the applicant the benefit of the doubt in relation to apparent anomalies set out in the undersigned statements, and in relation to the absence of reference to some matters later raised at interview. Given that his current migration agents obviously drew on the original statements in preparing statutory declaration, it draws no negative inference from the fact that that declaration also omitted some matters later raised in oral evidence.
50. At the hearing, the applicant gave a persuasive account of the mistreatment he experienced in detention in China. The Tribunal notes, from the decision under review, that when interviewed by the delegate he was able to "recount details of his imprisonment and subsequent community service on his release. Given this evidence, the Tribunal finds that the applicant was detained in China between April and October 2006.
51. Against this background, his claim that he lost his job is plausible. It has considered the delegate's argument that it seemed implausible that the applicant's role would be discovered and that other senior people in the bank would be dismissed whereas LA's role in Falun Gong was not identified. However, given the applicant's claim, which he has maintained consistently, that he steadfastly refused to name any other people involved, the Tribunal does not consider that the failure of the authorities to identify LA's involvement in Falun Gong as being inconsistent with the applicant's claims.
52. The Tribunal has considered the submission by his agent and, in particular, the final paragraph of the submission quoted under [paragraph 34](#) above. The Tribunal has no evidence before it regarding the reasons for his detention other than the applicant's evidence. The Tribunal accepts the agent's submission that the fact of his imprisonment gives support to his claims as to the reason for that imprisonment.
53. As noted above, the applicant was able to answer to the Tribunal's satisfaction almost all of its questions regarding the philosophy and practice of Falun Gong. The exception was a minor issue. The Tribunal has noted the delegate's remarks regarding the applicant's answers at the interview on for August 2009 but, as noted above, the recording is such that the Tribunal was unable to get a clear understanding of the applicant answers. The interviewer's voice was very soft. The Tribunal therefore feels unable to draw a negative inference on the basis of what the applicant said at an interview.
54. The Tribunal has considered whether the applicant's current knowledge may have been acquired in recent times. However, less than three months have elapsed since the interview. Given his answers at the hearing, and the confident manner in which he gave them, the Tribunal finds that the applicant has detailed knowledge of Falun Gong and accepts that that knowledge was acquired in China.

55. In all the circumstances, the Tribunal finds that the applicant was detained in China because his association with Falun Gong was discovered. It accepts his claim that he lost his job, and then found it difficult to find alternative employment in China. It accepts that, notwithstanding his arrest and detention, he continued to practise Falun Gong privately. The Tribunal finds that, were the applicant to return to China he would continue to practise Falun Gong. Although the Tribunal believes he would continue to practise privately, as he has done in Australia, the Tribunal accepts that there is a real chance his continued commitment to Falun Gong might be discovered, given that he is already adversely regarded by Chinese authorities. The Tribunal accepts that he would be at risk of further arrest and detention, and that he might face further physical abuse while in detention.
56. The Tribunal finds that the harm he might face is sufficiently serious as to amount to persecution. It finds that the persecution he faces would be because of his association with Falun Gong. The Tribunal considers that Falun Gong practitioners constitute a “particular social group” in China and therefore finds that the persecution he fears would be motivated by a Convention reason.
57. The Tribunal is of the view, that in a society such as that in China where household registration is required, the applicant would not be able avoid detection by relocating to another location. It therefore finds that he would be at risk of persecution throughout the country.
58. Although the applicant travelled to Australia with a Korean passport, the Tribunal accepts his evidence that this was a false passport arranged for him by a people smuggler. There is no other evidence before the Tribunal which might suggest he is a citizen of Korea or indeed of any country other than the PRC. There is therefore nothing to suggest that the applicant would have rights of residence in a third country where he might obtain protection.
59. In all the circumstances, the Tribunal finds that the applicant has a well founded fear of persecution in China for a Convention reason.

CONCLUSIONS

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

DECISION

61. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being 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</i> 1958. Sealing Officers ID: RCHADW</p>
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