

071649951 [2007] RRTA 259 (18 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071649951

DIAC REFERENCE(S): CLF2007/87178

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Andrew Jacovides

DATE DECISION SIGNED: 18 October 2007

PLACE OF DECISION: Sydney

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

**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 Citizenship 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, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

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.

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)(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 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 Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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:

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] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

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 file CLF2007/87178, with the protection visa application and the delegate's decision, and the Refugee Review Tribunal (RRT) file 071649951, with the review application.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and English languages.

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

Department file CLF2007/87178

The applicant stated that he was a citizen of China and Korea. He provided two dates of birth. He stated he could speak and read Mandarin and Korean. The applicant claimed he belonged to an ethnic group, Group A. He indicated that he departed from the Republic of Korea in the 2000s and he travelled to Australia via several countries. He stated he completed several years of education in,China, and he worked in a particular profession before he came to Australia. He stated he was married and he had a child. He indicated that his wife and child were living in China at the time of application.

The applicant provided the following claims:

I left China due to the policeman, [Mr X], who has pursued me to pay him and the accident victims more... in an accident in [year]. [Mr X] has deep connection with the national police bureau due to his family's influence. He has previously hit me and asking for more money. Therefore, I ran around China for [number of] years until I arrived in [town]. I was still being pursued by these people and did not want my family, wife and [child] to get involved.

In [year], I got into [a] motor accident where I smashed into a vehicle with [some] male and females. They were in hospital for [number of] months. One of the male victim was [Mr X] who happens to be [a] police man. I already paid him \$20,000 RMB [approximately A\$3000] but he wanted more. I got beaten by him and his police people. My life was threatened and also my family too. I decided to flee my province. For several years I was moving around China and then I fled China because [it was] the best way to be safe and my family won't get threatened (Department file, f. 25).

The applicant claimed that Mr X demanded an additional 300,000 RMB and he was fearful that he will be locked up by the police and tortured if he returns to China. He stated that his wife and child maintain a low profile and they have moved several times since he fled. He stated that the man he fears has many connections in government and the police will not protect him.

The applicant provided a partial copy of the passport he used to enter Australia. It was issued in his alias name by the Republic of Korea and valid for several years. He entered Australia with a visa valid for a three month stay. He submitted a copy of a PRC identification card without a translation; a traffic accident report with translation; a Mediation Report for Traffic Accidents Claims with a translation; and another Mediation Report for Traffic Accident Claims with a translation.

The Traffic Accident Report, states that the Applicant was involved in a traffic accident in late 1990s when his truck hit a vehicle driven by Mr X. The report states those injured by the accident. It indicates that Mr X, was also injured in the accident. The report states that the Applicant paid 7543.78RMB compensation to the injured and 61300RMB for vehicle reparation costs.

The two other reports essentially restate the details of the accident. They indicated that the Applicant, an employee of the company A, was held responsible for the accident and compensation costs were to be paid by the Applicant's employer.

The Department submitted the PRC identification card and the applicant's passport to the Document Examination Unit for analysis. The unit advised that the PRC identification card was genuine. The unit determined that the passport was genuine but the photograph had been substituted.

The Department wrote to the applicant seeking further information regarding his identity and citizenship details. The applicant's adviser informed the Department that the applicant was an ethnic Korean citizen of China. A file note (at f.81) indicates that the PRC identification card submitted by the applicant was issued to him, with a Korean alias name.

The delegate decided that the applicant's difficulties in China, and the harm he anticipates in the future, relate to private criminal activity beyond the scope of the Refugees Convention.

RRT file 071649951

The applicant did not provide any claims with his review application.

The hearing

The applicant attended the hearing accompanied by his adviser and an observer. He essentially repeated the claims he provided to the Department.

The applicant stated that he was ethnic Korean and a citizen of China. He stated he was not a citizen of any other country. He indicated that the Korean passport he used to enter Australia was purchased in China.

The applicant restated his claim that he was involved in a motor vehicle accident in late 1990s. He explained that one of the persons injured, Mr X, subsequently harassed him for more money. He claimed that the man works for the PSB and he threatened to harm him and members of his family if the applicant did not pay him 300,000 yuan. The applicant stated that Mr X decided that the accident greatly reduced his quality of life, and life expectancy, so he was seeking more compensation.

The applicant claimed that he left his family and his home town to avoid further harassment from Mr X. He stated that he had no direct contact with Mr X after he left but he received threatening messages from him via an intermediary. He stated that Mr X telephoned one of his former colleagues and made inquiries regarding the applicant's location. He stated that during those telephone conversations he demanded more compensation and he made threats.

The applicant stated that he lived with different relatives for several years before he decided to flee the country and come to Australia. He claimed that he kept moving for several years because he was afraid that Mr X would find him. The Tribunal asked the applicant if he approached the police to report the harassment or to seek assistance. He stated he did not approach the police because he was fearful that such action would further aggravate the man he feared. The applicant stated that he was also fearful that the police would tell Mr X where he lived.

The applicant claimed that his friend told him that Mr X had gangsters at his disposal and he would use those persons to harm him in the future. He stated that those gangsters were looking for him. The Tribunal asked the applicant if he had contact with the gangsters or Mr X's associates. He stated that at the time of the accident he was punched in the face.

The Tribunal discussed with the applicant the circumstances of his wife and child in China. He stated his child lived with a relative and his wife moved around because she did not want to be found by Mr X or his associates.

The Tribunal asked the applicant what motivated Mr X to harass him for almost ten years. He stated Mr X wanted money because he felt that his brain function had diminished since the accident. He stated he wants money to support himself for the rest of his life. The Tribunal asked the applicant if he is still working as a policeman. The applicant stated he did not know.

The Tribunal commented that the applicant had successfully avoided Mr X for approximately five years after the accident. The applicant replied that he has many siblings living in different parts of China and he was able to live with those siblings until a recent year. The Tribunal commented that during that period he successfully avoid the person he fears. He was asked why he decided to flee the country recently. The applicant replied that he was moving around and he was afraid that one day Mr X would find him. He stated if he wanted to settle permanently in another part of China he would have to show his identification to the authorities and he was afraid that they may pass on details regarding his location to the person he fears. The Tribunal commented that China is large country and Mr X's influence is unlikely to extend beyond the area where lives and works. He stated that he was afraid that Mr X will use his friends in government and in the communist party to locate him.

The Tribunal noted that he did not apply for a protection visa until he was detained by immigration officials approximately four years after he arrived in Australia. The applicant stated that he arrived in Australia with a false passport and he was afraid to approach the authorities.

The Tribunal discussed with the applicant information from external sources relevant to his claims. The Tribunal commented that the government has been willing to investigate and punish government officials who use their positions to harass members of the public.

The Tribunal referred to the US Department of State *Country Reports on Human Rights Practices 2006 – China*, which states:

The courts and party agencies took disciplinary action against many public and party officials during the year. According to the SPP's March 11 report to the NPC, prosecutors filed and investigated 24,277 cases of embezzlement, bribery, or dereliction of duty; prosecuted 30,205 officials while investigating a total of 41,477 officials in 2005; and transferred 7,279 cases to judicial organs for prosecution. The CCP's CDIC reported that 110,000 officials were disciplined for breaking laws and party discipline in 2005. Inspection committees stripped 11,071 persons of CCP membership, more than twice the number in 2004. In some cases, sanctions

administered by the CDIC reportedly substituted for sanctions by courts and other legal agencies. (Sec.3) (US Department of State 2007, *Country Reports on Human Rights Practices 2006 – China*, March)

The *China Daily* reported in 2004:

More than 20,000 corruption cases were investigated in the first six months of this year, a senior official confirmed at a meeting of chief prosecutors from around China. Procurator-General of the Supreme People's Procuratorate Jia Chunwang said 24,247 people were being questioned for 21,164 'job-related criminal cases,' about 4 per cent involving more than 1 million yuan (US\$120,000) in bribes. (Cao, Zhe 2004, 'Prosecutor: Big graft cases increase', *China Daily*, 9 August http://www.chinadaily.com.cn/english/doc/2004-08/09/content_363317.htm – Accessed 30 March 2007).

According to the 2006 *Global Corruption Report* on China by Transparency International, there is widespread corruption amongst government officials and party cadres in China and the Central Committee of the Communist Party of China (CPC) has adopted various legal and institutional changes since 2004 that are designed to combat corrupt activities by government officials and party members:

Planned improvements to the strategic system against corruption Shenzhen, the site of China's first special economic zone, is to be the test-bed for the CPC's blueprint for checking internal corruption before it is rolled out to the rest of the country by 2010. The 'implementation guideline for the establishment of a national system of punishing and preventing corruption', unveiled in January 2005, calls for further development of democracy and legal institutions with the goal of bringing power to closer public account. Among the guideline's targets are more dynamic anticorruption tactics; broader channels for public oversight and civil society monitoring; protection of whistleblowers and citizens' rights to criticise; and increased transparency of public policy. Five ordinances were introduced in 2004 with the aim of increasing the accountability of high-ranking officials, including two designed to promote greater meritocracy in the selection and promotion of party and government officials, and another that specifies complaints procedures for party members.

The guideline calls for improved responsibility systems for the administrative and judicial sectors, and a three-pronged programme of ethics education, institutional accountability and civil monitoring. Ethics education will be incorporated into general school curricula; the Central Commission of Disciplinary Inspection (CCDI) will be responsible for accountability capacity building; and the Party Congress will encourage whistleblowing by party members, accountability in the public administration and a code of conduct for the judicial sector (Transparency International 2005, 'China' in *Global Corruption Report 2006 – Countries A-K*, 8 November, Part 2, p.141 http://www.transparency.org/publications/gcr/download_gcr – Accessed 1 September 2006).

The Tribunal noted that the report goes on to state that there have been numerous measures taken to stamp out corruption amongst party cadres, including sending out teams on "inspections tours to monitor senior leaders at provincial and ministerial level" which have "exposed the extent of corruption at all levels of administration"

(Transparency International 2005, 'China' in *Global Corruption Report 2006 – Countries A-K*, 8 November, Part 2, p.141 http://www.transparency.org/publications/gcr/download_gcr – Accessed 1 September 2006).

The Tribunal noted an earlier report by the US Department of State which indicates that the “courts and party agencies” in China “took disciplinary action against many public and party officials” during 2005. The report continues,

According to the SPP, in the first 11 months of the year, prosecutors filed and investigated 33,821 cases of embezzlement, bribery, or dereliction of duty, including 22,503 that were prosecuted. In 2004, 30,788 officials were prosecuted for corruption, resulting in the government recovering more than \$500 million (RMB 4.02 billion) in economic losses. From 2001 through July, prosecutors investigated 152,440 such cases, involving over 170 thousand persons. In Guangdong Province alone, 32 senior officials and 295 mid-level officials were arrested for taking bribes or dereliction of duty, some related to coalmine accidents. The CCP’s Central Discipline and Inspection Commission (CDIC) reported that 164,831 officials were disciplined for breaking laws and party discipline in the 12 months ending November 2004.

During the year at least seven current or former high-ranking officials were executed or given suspended death sentences on corruption-related charges. Of those, 4,775 lost CCP membership and were prosecuted, only half as many as in the previous year. In some cases the CDIC reportedly acted as a substitute for sanctions by the courts and other legal agencies.

The country had no national freedom of information law, but many local jurisdictions continued to enact freedom of information regulations, aimed at improving the public’s communication with and supervision over local government initiatives. Shanghai’s local freedom of information process was viewed as particularly well developed. Some 95 percent of government ministries, provincial governments and prefecture-level cities had Web sites, providing some, albeit controlled, public information. However, citizens, local media, and foreign journalists found it difficult to get information about government decision-making, especially before decisions were formally announced.

The government experimented with various forms of public oversight of government, including telephone hot lines and complaint centers, administrative hearings, increased opportunity for citizen observation of government proceedings, and other forms of citizen input in the local legislative process, such as hearings to discuss draft legislation. Citizens continued to file administrative lawsuit to seek legal redress against government malfeasance. According to official statistics, 92,192 administrative lawsuits were filed against the government in 2004, slightly more than in the previous year. Over one-third of the cases related to individual rights and economic interests, an increase of 19 percent over 2003. Petitioning officials directly and outside the court system was also a common avenue used by citizens to redress grievances (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March).

A September 2006 Carnegie Endowment for International Peace briefing mentioned that southern China stepped up its anti-corruption efforts. *BBC News* reported an anti-corruption drive leading up to the Communist Party Central Committee meeting in October 2006 (Keidel, Albert 2006, 'China's Social Unrest: The story behind the stories', Carnegie Endowment for International Peace, September, p.2 http://www.carnegieendowment.org/files/pb48_keidel_final1.pdf - Accessed 25 October 2006; McGivering, Jill 2006, 'China's leaders hold policy meet', *BBC News*, 8 October <http://news.bbc.co.uk/2/hi/asia-pacific/4801597.stm> - Accessed 23 November 2006).

The Tribunal noted that the government has established a website for the public to report corrupt officials (Toy, Mary-Anne 2006, 'Beijing soothes challenges to its right to rule', *Sydney Morning Herald*, 3 January; 'China Launches Whistleblower Website' 2005, *The Age*, 29 December <http://www.theage.com.au/news/technology/china-launches-whistleblower-website/2005/12/29/1135732678059.html#> - Accessed 27 November 2006; Buckley, Chris 2005, 'China Moves to Halt Fraud After String of Bank Scandals', *The New York Times*, 29 March). One report provides the following overview:

The new website offers Chinese villagers and others a way to lodge complaints while avoiding local authorities, who some complain refuse to take action or retaliate against petitioners ('China Launches Whistleblower Website' 2005, *The Age*, 29 December <http://www.theage.com.au/news/technology/china-launches-whistleblower-website/2005/12/29/1135732678059.html#> - Accessed 27 November 2006).

The applicant stated that he was aware of the information provided to him by the Tribunal but China was a very big country with many people and it was hard to control all the people all the time. He stated that the government cannot prevent criminal activities. He stated he did not believe that the authorities would assist him if asked for assistance.

The Tribunal commented that the above information suggested that citizens of China have access to real protection by the state and that citizens who are harassed or otherwise harmed by other citizens, including persons who worked for the government or members of the communist party members, have access to protection by the state. The Tribunal further commented that the applicant cannot claim failure of state protection if he did nothing to access the protection which was available to him. He stated he did not think the authorities could assist him or protect him from the person he fears. He speculated that the authorities may assist Mr X to carry out his threats.

The Tribunal commented that relocating within China appeared to be an option for him if he did not wish to approach the authorities for assistance. The Tribunal referred to a report indicating that that in recent years there has been significant migration within China. (Kwan, Chi Hung 2004, 'How to Solve the Three Agriculture-related Problems - Labor Mobility Holds the Key', *China in Transition*, 25 August, www.rieti.go.jp/en/china/04082501.html - Accessed 14 September 2006; and Human Rights in China 2002, *Institutionalised Exclusion: The tenuous legal status of internal migrants in China's major cities*, 6 November).

The Tribunal noted an assessment by the Canadian Research Directorate as to whether PRC citizens can relocate within China. The assessment essentially examines the current state of the household registration system in China. It states that migrant workers are expected to register with the authorities for a Temporary Residence Certificate (or Permit), which is legally required for a number of purposes, including obtaining an employment certificate. However, many migrant workers do not register as they do not want to pay the fees and they do not wish to be under scrutiny by the police. Enforcement of the system has relaxed in recent years, and unregistered migrant workers are less likely to be detained, fined or repatriated (Immigration and Refugee Board of Canada 2006, *CHN101198.E – China: The hukou; whether there remains a distinction between urban and rural hukou; social services available to persons holding an urban or rural hukou; the temporary hukou; and whether a person who is not registered in an urban area can obtain social services, including a hukou* (2005 – 2006), 26 April <http://www.irb-cisr.gc.ca/en/research/ndp/ref/?action=view&doc=chn101198e> – Accessed 27 September 2006). The Tribunal commented that greater internal migration in China, and easing of the household registration provisions, enabled him to relocate within China if he did not want to live near the person or persons he fears.

The applicant replied that he has seen migrant workers in places where he lived. He stated they were forced to do things that other people did not want to do. He stated they are not treated like human beings.

The Tribunal indicated to the applicant that it would have to consider whether the difficulties he anticipates in China fall within the scope of the Refugees Convention. The Tribunal commented that his core claim relates to a dispute between himself and another individual over money. The Tribunal commented that his difficulties appear to be about criminal activity and a person's attempts to extort money from him. The Tribunal commented that it did not appear from the evidence he provided that he was targeted by the persons he fears for a Convention reason.

The Tribunal further commented that it would also have to consider whether he will have safe from the harm he anticipates in China by seeking protection from the state or by relocating within China.

The Tribunal commented that if it found that his difficulties in China are unrelated to the Refugees Convention, or that he could be safe from harm by seeking protection from the state, or relocating within China, it may affirm the delegate's decision that he is not a refugee. He was asked if he wished to comment further on these issues. His adviser stated that he did wish to comment further and in writing. The Tribunal asked the applicant and his adviser to make their submissions within one week after the hearing.

The applicant's adviser contacted the Tribunal, requesting an extension of time to respond to the issues raised at the hearing. The Tribunal declined the request. The adviser provided a submission to the Tribunal on the following day. He stated that the applicant cannot seek assistance from the authorities in China because his location will be revealed to his adversaries and the authorities could not provide him with effective protection. The adviser stated that the applicant cannot relocate within China without the attendant risks and he has no support services in other parts of China. He

submitted that the applicant was a member of particular social group, for Convention purposes, in that he “shares similar characteristics with people in the same predicament in China which is widely known to the international community”.

FINDINGS AND REASONS

The applicant claims that he is a citizen of China. He claims that in late 1990s he was involved in a motor vehicle accident and since then he has been harassed by a person who was injured in the accident. He claims that the person, a policeman, is seeking further compensation from him. He claims that the person he fears has threatened to harm him and members of his family if his demands are not met. The applicant claims that he left his home that time seeking to avoid further harassment from the policeman and his associates. He claims that he lived in different locations in China for several years before he came to Australia. The applicant claims that the policeman he fears in China, and his associates, are still seeking compensation from him and threatening to harm him if he does not pay the compensation. The Tribunal accepts these claims.

The applicant claims that the persons he fears in China will seek to harm him or kill him in the future. He claims that the authorities will not protect him, and may even participate in the harm, because the policeman he fears has connections in government, and with gangsters, and members of the communist party. He claims he will not be able to avoid the harm he anticipates by relocating within China.

The Tribunal finds that the difficulties which motivated the applicant to leave China, and which now prevent him from returning there, relate to criminal activities by the persons he fears. The Tribunal does not accept that those criminal activities are linked to a Convention reason or that the applicant is at risk of harm in China for a Convention reason. The Tribunal has formed the view that the applicant’s difficulties in China do not fall within the scope of the Refugees Convention.

The applicant’s adviser argues that the applicant is at risk of persecution in China for reasons of his membership of a particular social group. He argues that the applicant “shares similar characteristics with people in the same predicament in China which is widely known to the international community”. However, the Tribunal is not satisfied that such a group exists for Convention purposes and it does not accept that the applicant will be targeted for being a member of such a group or any other particular social group. The Tribunal has formed the view that the harm suffered by the applicant in China, and the harm he anticipates in the future, relates to criminal activities regarding money and that he was targeted in the past, and may again be targeted in the future, by persons seeking to extort money from him. The Tribunal is aware that criminal activities can also be Convention related and that a person may be subjected to extortion for multiple reasons. In *Rajaratnam v MIMA* (2001) 62 ALD 73, a majority of the Full Federal Court observed that “extortion can be a multi-faceted phenomenon exhibiting elements both of personal interest and of Convention-related persecutory conduct” (ibid, at [48]). The Tribunal has considered whether a Convention reason could be a motivating factor here, in particular political opinion given that the perpetrator is a policeman and he is relying on connections in government and the communist party to achieve his aims. However, after considering the applicant’s description of what happened to him in China and the difficulties he may suffer in the future, the Tribunal cannot be satisfied by the evidence that the

motivation for the harm is anything else other than monetary gain. The Tribunal finds that political opinion is not a motivating factor for the persons seeking to extort money from the applicant and they are not seeking to harm him for reasons of political opinion.

The Tribunal has formed the view that the only reason the applicant is being targeted by the person he fears in China is monetary gain. The Tribunal is not satisfied that the persons seeking to extort money from the applicant are motivated by any other reason. Accordingly, the Tribunal finds that the applicant is not at risk of harm in China, by the policeman he fears or his associates, for a Convention reason. Tribunal does not accept the applicant's claim that he is at risk of harm in China, by the persons he fears, for reasons of his membership of a particular social group or any other Convention reason.

Nevertheless, the Tribunal does accept the applicant's claim that he was harassed and threatened by the persons he fears in China and it accepts that he may suffer similar harm in the future. The Tribunal has considered whether the applicant will have access to real protection by the state if the persons he fears seek to harm him in the reasonably foreseeable future. The Tribunal has considered information from external sources, summarised above and discussed with the applicant at the hearing, regarding state protection in China. It has formed the view from that information that citizens of China do have access to a reasonable level of protection by the state and that the PRC authorities do respond to complaints against persons such as those feared by the applicant, that is policeman, members of the Public Security Bureau, current or previous government officials, gangsters and communist party members. The Tribunal is satisfied that the applicant will have access to real protection by the state if he requires protection from the persons attempting to extort money from him and those threatening to harm him if he does not comply.

The Tribunal considered the applicant's claim that the authorities in China cannot prevent all criminal activity and they will not be able to protect him from the persons he fears. In *MIMA v Respondents S152/2003* Gleeson CJ, Hayne and Heydon JJ, observed that "no country can guarantee that its citizens will at all times and in all circumstances, be safe from violence": [2004] HCA 18; (2004) 205 ALR 487 at [26]. Justice Kirby similarly stated that the Convention does not require or imply the elimination by the State of all risks of harm; rather it "posits a reasonable level of protection, not a perfect one": *ibid* at [117]. The majority judgement suggests that an appropriate standard of protection requires the state to provide its citizens with an appropriate criminal law and the provision of a reasonably effective and impartial police force with a justice system which is consistent with international standards. The Tribunal finds, after considering the above information from external sources, that the state in China provides a reasonable standard of protection for all citizens and is satisfied that if the applicant requires protection, a reasonable level of protection that is consistent with international standards will be available to him.

The Tribunal has considered the applicant's related claim that if he seeks protection from the authorities they will not assist him and may even participate in the harm. The applicant assumes that the authorities will favour the perpetrators rather than him. However, the applicant did not provide evidence to support this view and the Tribunal

finds that it is mere speculation on his part that such a situation will arise. The Tribunal finds that the applicant's fear in this regard is not well-founded.

Accordingly, the Tribunal finds that the applicant does not have a well-founded fear of persecution in China for a Convention reason.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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