

**1005140 [2010] RRTA 633 (21 July 2010)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1005140
<b>DIAC REFERENCE(S):</b>	CLF2010/69426
<b>COUNTRY OF REFERENCE:</b>	China (PRC)
<b>TRIBUNAL MEMBER:</b>	Brook Hely
<b>DATE:</b>	21 July 2010
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship 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] December 1997. He subsequently departed Australia [in] March 1998 and returned again [in] April 1998. He applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] May 2010. The delegate decided to refuse to grant the visa [in] June 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
3. 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.
4. The applicant applied to the Tribunal [in] June 2010 for review of the delegate's decision.
5. 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**

6. 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.
7. 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).
8. 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'**

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

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

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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**

19. 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.

### **Background**

20. The decision record of the delegate, which was provided to the Tribunal by the applicant when lodging this review application, provides a useful summary of the background to the present application, as follows:

On [date] November 1997 the applicant was granted a Class UC Subclass 457(Business (Long stay)) visa. He arrived in Australia on [date] December 1997 and was, on entry, permitted to remain till [date] November 1998.

On [date] March 1998, the applicant departed Australia, returning 42 days later on [date] April 1998.

On [date] November 1998 the applicant applied for a further Class UC Subclass 457(Business (Long stay)) visa; however this application was refused on [date] January 1999.

This decision was affirmed by the Migration Internal Review Office on [date] May 1999.

On [date] May 1999 the applicant lodged an application for review and on [date] April 2001, the Migration Review Tribunal affirmed the decision to refuse the applicant a visa.

On [date] May 2010 the applicant was located, detained and placed in Immigration Detention.

The applicant has not departed Australia since his last arrival.

On [date] May 2010 the applicant lodged the current application for a Protection (Class XA) visa and remains in Immigration Detention.

21. The applicant submitted to the Department a written statement as part of his protection visa application, outlining his claims for protection. According to that statement:
  - a. The applicant is a Chinese citizen of Han ethnicity. His parents live in China, although he has not had any contact with them since he left China in 1997 and does not even know if they are still alive. He has two sisters who both live in Australia but he has lost all contact with them both.

- b. The applicant came to Australia on a subclass 457 visa because he wanted to better himself and improve his prospects. He stated that it was not possible for him to improve his prospects in China due to his family being capitalist. He also stated that his grandfather was killed for being a capitalist and the applicant was not able to be promoted in China because of the communist system which keeps everyone at one level.
  - c. When his 457 visa expired, the applicant applied for another visa but was refused.
  - d. The applicant met his wife and they were married in 2000, although she left him six months later and they did not have time to lodge a spouse visa application.
  - e. The applicant is no longer in contact with his sister who sponsored his application, because she wanted half of his profits without any contribution. The applicant refused and his sister then refused to sponsor him.
  - f. The applicant has been settled in Australia for over ten years and considers it his home. If he were to be returned to China he would be homeless and unemployable. He does not have any contacts in China and his parents have not wanted any contact with him since his relations with his sisters broke down.
  - g. In relation to who he thought might harm or mistreat him if returned to China, the applicant stated 'I do not know what will happen and who will harm me.' In relation to why he believed he would be harmed or mistreated if returned to China, the applicant stated 'I do not know, I believe that due to my family's class I will be discriminated against.' He also stated that the government in China is communist and do not accept capitalists. He stated that the government will not assist him, he has no money and is too old to get work and he has 'no idea with the Chinese environment'.
22. [In] June 2010, a delegate of the Minister refused the application. The delegate found that there was nothing to indicate that the applicant's fear of harm had anything to do with a Convention ground. The delegate noted that the applicant stated during the Departmental interview that he had not suffered any harm or discrimination in China prior to coming to Australia and was unable to state who would harm or mistreat him if he were to return. Whilst he claimed that he would be discriminated against because of his family class, the delegate found that there was no evidence to support this. The delegate concluded that there was nothing to suggest that the applicant has been or would be specifically targeted for a Convention reason. The delegate also did not accept that the applicant would be denied adequate state protection against his claimed fears if returned to China.
23. [On a further date in] June 2010, the applicant applied to the Tribunal for review of the delegate's decision.

### **Tribunal hearing**

24. The applicant appeared before the Tribunal [in] July 2010 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, although his agent did not attend the hearing. The following is a summary of the evidence given at the hearing.

25. The Tribunal asked the applicant about his work history in China and Australia. He stated that he worked in China for approximately 20 years for the [company deleted: s.431(2)], a state owned company. He worked as an electrician for the company, working primarily for the Xinjiang subsidiary and then he was transferred in [year deleted: s.431(2)] to the Nanjing subsidiary. He came to Australia in December 1997 and set up an import/export company, trading in products to and from China, including selling products to the company he previously worked for in China. The Tribunal asked the applicant whether he had ever left Australia since his initial arrival in December 1997. He stated that he had not. The Tribunal noted that, according to the movement records held by the Department, he was outside Australia for approximately six weeks in March/April 1998. The applicant recalled this occasion, stating that he travelled to China in connection with his import/export business to arrange some goods and then he returned to Australia. When asked by the Tribunal, he confirmed that he did not experience any problems with the Chinese authorities in connection with that trip and was not arrested.
26. The Tribunal noted the applicant's migration history since arriving in Australia, as summarised in the decision record of the delegate. The Tribunal asked the applicant whether he reported to the Department following the outcome of his unsuccessful application to the Migration Review Tribunal (MRT) in April 2001. The applicant stated that he married an Australian citizen in 1999. However, in April 2000 she cheated money from him and then ran away to New Zealand. He moved out of her address and no longer received any correspondence from the Department. It was only after his recent detention by the Department that he became aware of the correspondence relating to these matters. The Tribunal noted that he was located and detained in May 2010 and asked why he made no contact with the Department in the nine year period following the outcome of his MRT application. The applicant said that he wanted to contact the Department but he did not because of the language barrier, as well as a work injury that he sustained. He stated that at that time he was giving up on life and thought that he would just live as long as his life would last.
27. The Tribunal asked the applicant about why he feared being returned to China. He stated that he suffered political discrimination in China due to his family's background. His grandfather was an anti-communist member before the founding of the Chinese State in 1949. In approximately 1950-51, his grandfather was arrested but escaped to the mountains. He was in hiding for a year before he was arrested and then publicly sentenced and shot. He stated that his grandfather was also an influential capitalist who established a significant textile factory in China. The Tribunal asked the applicant his grandfather's name. The applicant stated that his grandfather passed away very early so he has forgotten his name. He stated that there was a celebration held on the anniversary of his textile factory and his name was mentioned in connection with the history of that factory, but the applicant did not have a chance to check his name and does not know it now. The applicant added that, because his grandfather was shot by the Communist Party, his assets were not returned to the applicant's family in the 1980s when the Chinese government returned the assets of other capitalists to their families. The Tribunal asked the applicant what all of this had to do with the fears that he faces if he returns to China now. He stated that, because he has a bad political background, it makes it very difficult for him to do things back in China. He stated that he

wanted to make clear that he was talking about the situation before he left China, not presently.

28. The Tribunal asked the applicant about the problems he experienced in China prior to coming to Australia. He stated that he was discriminated against in the factory where he had worked. He gave as an example of this a skills competition that was held in his workplace in the early 1980s in which he finished number one. However, the management of the company spoke with him and asked him to vacate his first prize and he only got the second prize. He stated that this was because of his family background. The Tribunal asked about any other examples of problems or discrimination he experienced in China. He stated that many of the people working with him got pay rises but he did not because of his family background. He also stated that, when employees were allocated property he got the bad ones and was always the last one on the list. The Tribunal asked how he knew that these problems were due to his family background and not some other reason. He stated that he believes that it could only be because of his family background. He believed that he was a number one employee of the company and there were no other reasons given to him and people with lesser working experience than him got these benefits. The Tribunal asked whether anyone in the company ever told him that it was because of his family background. He stated that it was obvious and everyone was aware of it. He noted that it was a different social environment back then and maybe things have now changed. However, back then your family background or family political denomination was a key factor in your life.
29. The Tribunal asked whether, aside from discrimination at work, he had experienced any other problems in China prior to coming to Australia. The applicant stated that the other issue was religion. He stated that his aunt was a Christian missionary who travelled around China spreading the gospel. In 1983 or 1984, she visited him and gave him a religious calendar and a copy of the Old and New Testament. He kept these in his dorm room where he lived at work and was reported to his employer. He stated that he received an administrative penalty for this. The Tribunal asked about the nature of this penalty and he stated that there were different categories of administrative penalty, such as the big penalty or the normal penalty. The big penalty can last for one year or two years and he got the big penalty that lasted for two years. The Tribunal asked what happened during this two year period and he stated that he was not allowed any beneficial activities in the corporation, such as promotion, awards or property distribution. The Tribunal asked whether he was ever kept in administrative detention and he stated that he was not. Under the Chinese system, he stated, there was a difference between a legal penalty and an administrative penalty. An administrative penalty meant that you were still a free person but had all of your rights taken away. The Tribunal asked whether he continued working for the company and he stated that he did. The applicant added that he then received a second administrative penalty for listening to Voice of America, BBC and an Australian broadcast on his radio whilst he was at work. The Tribunal asked when these penalties were imposed. He stated that the first was in around 1982 or 1983 and the second was in around 1989 or 1990.
30. The Tribunal asked whether there were any other problems he experienced in China prior to coming to Australia. He stated that there were many problems but he could not think of any others. He stated that his father was beaten quite badly by the Chinese Communist Party during the Cultural Revolution, in around 1968 or 1969. His father was locked up for six months for no reason and when he returned home he had marks on his back from being whipped.

31. The Tribunal noted to the applicant that many of the problems he had been talking about had happened a long time ago and asked why he still feared returning to China. He stated that, before coming to Australia, he was an employee of a state owned company and had all of his entitlements. If he were to return to China he would not have a job and would not be able to support himself. He has been away from China for a long time and China has undergone tremendous change and he would be unfamiliar with the new environment. He also stated that China has a huge population and someone of his age would be unable to compete with young people in their twenties.
32. The Tribunal asked whether, aside from difficulties in supporting himself, he faced any other harm in being returned to China. He stated that the government would treat him differently because they would know that he does not like the Chinese Communist Party. The Tribunal asked how the government would know this. He stated that, when he first came to Australia, he maintained contact with people from his former company and he told them what he thought about the Communist Party. He added that he also published articles. The Tribunal asked when he published these articles and he stated that it was in around 2002 or 2003 but he could not remember exactly. The Tribunal asked where he published these articles. He stated that it was on the internet. He believed that the website stopped existing a long time ago. He also referred to the 'sina' website where he had published articles, although he believed that they were no longer online. The articles criticised the Chinese Communist Party and its one party system. He also stated that he broadcast a speech against the Communist Party, but it was blocked. The applicant stated that he no longer has a copy of these articles and was unable to provide the specific web address where the Tribunal could find these articles, aside from stating that he believed that they were on the 'sina' website. The Tribunal asked what he thought the government would do to him on account of these articles and broadcasts. He stated that China is still a very autocratic country and he believed that they would limit his freedoms, such as his freedom of speech and freedom of movement. He stated that, when someone returns to China, they are closely monitored, particularly if they have a bad family background.
33. The Tribunal noted that his statement to the Department outlining his claims for protection made no reference to him publishing speeches or broadcasts against the Chinese Communist Party. The Tribunal noted that there was also no mention of him suffering administrative penalties in connection with his employment. The applicant stated that people from the Department were not very helpful so he did not tell them a lot of things, but he was speaking freely today. The Tribunal asked whether he told the Department about these matters during his interview. He stated that, when he was detained, he asked to see a solicitor and was told that he could not. He was later given a solicitor, but it was not a solicitor he wanted. The solicitor told him that it would not be possible to stay in Australia so he did not trust the solicitor or tell him everything. He stated that he has been in Australia for 10 years and does not trust solicitors because they only have money in their minds. The Tribunal put the applicant on notice that it was having difficulty accepting the aspects of his claims raised for the first time before the Tribunal, noting that it was concerned that he had fabricated these claims to strengthen his overall protection application given that he did not raise these matters when given an earlier opportunity to do so when lodging his application or during his interview. The applicant stated that he could not recall what was said during the interview. He felt that it was just a formality and not a proper interview so he did not take it seriously. The Tribunal asked whether the Department officer questioned him about his reasons for not wanting to go back to China during his interview. He stated that he probably was asked, but he did not tell them about his anti-Communist Party articles or broadcasts. When the



Tribunal asked why not, he stated that they probably did not ask him that question. The Tribunal asked why he did not tell the officer what he had done in the past whilst explaining his reasons for fearing persecution. The applicant stated that his solicitor has misled him. He stated that he had told the solicitor about these things but the solicitor said that it would not help his case because he could only apply on religious grounds. He therefore did not mention these things. The Tribunal asked whether he told the Department about his religious grounds for fearing persecution during his interview. He stated that he did. The Tribunal asked what he said and he said that he told them that he was not a devout believer, but his aunt is a missionary who travels around the country spreading the gospel.

34. The Tribunal asked the applicant about his fears of returning to China for reasons of religion. He stated that he won't dare to believe in his religion after the penalties he experienced at his work in China. He noted on a number of occasions that he is not a devout Christian, but he has read the Bible. The Tribunal asked whether he had gone to church and he stated that he had been to quite a few churches in Australia and also had been to Bible studies groups in people's homes. He stated that he attended church in [suburb deleted: s.431(2)] where the service was conducted in Mandarin. That service was conducted at approximately 2pm. He has also been to a church in [suburb deleted: s.431(2)] and has been to the home of a friend in [suburb deleted: s.431(2)] for Bible studies. The Tribunal asked what his denomination of Christianity was. He stated that he does not really believe in the religion very deeply; he just listens to the sermon and discusses with people in the Bible studies groups because he is interested in history and enjoys the discussions. The Tribunal clarified that he did not know what denomination of Christianity he was. He stated that he was definitely not a Mormon. He stated that, whilst in detention, church people come once a fortnight and they enjoy talking to him because he knows more Bible stories than they do. The Tribunal asked the applicant to tell it some of those stories. He stated that there are historical stories relating to the Bible, such as things that happened during World War II as well as the expedition of the Crusades. The Tribunal put to the applicant that there was nothing in the Bible about World War II or the Crusades. The applicant stated that he has read this from other books and he comes across these stories when he talks about how the religion has originated. The Tribunal asked the applicant if there were any other stories from the Bible that he could talk about. The applicant thought for a moment and then stated that there was a story about the Last Supper. He stated that this is the most famous story. He stated that he has read many of the stories but he has now forgotten them. The Tribunal asked the applicant to tell it more about the story of the Last Supper. He stated that he has definitely read this story, but has now forgotten it. The Tribunal asked for how long he has been a practising Christian. He stated that, not long after coming to Australia, he started going to church. He stated that he was not a practising Christian in China because he was too afraid. The Tribunal put the applicant on notice that it was having difficulty accepting that he was a genuine Christian, given his lack of familiarity with the religion and given that he had not raised this as part of his claim with the Department. The applicant stated that he is not a devout religious person and 'I haven't actually believed in a religion' The Tribunal clarified whether this meant that he does not actually believe in Christianity. He stated that he was not saying this; he was just saying that because his status issue is not settled, psychologically he is not settled so he can't take part in all the activities.
35. The Tribunal put to the applicant that it had listened to the recording of his interview with the Department and did not recall him mentioning his religion in connection with his claims for protection. The Tribunal noted that it was concerned about this because he had claimed in his evidence before the Tribunal that he did raise his religion. The Tribunal also noted that it was

concerned that it appeared that he was only now raising his religion before the Tribunal as part of his claim. The applicant stated that he knows more about religion than an ordinary person walking down the street, but not as much as someone who is studying it every day. He stated that he is also quite unsettled at the moment so he is not very religious. The Tribunal noted that this did not answer why he had not raised his religion with the Department as part of his application. He stated that he could not recall what he discussed with the Department.

36. The Tribunal asked the applicant about the difference between the underground church and state-sanctioned form of Christianity in China that can be practised lawfully. He stated that his aunt belongs to the underground church in China. Under the state-sanctioned church, they have a bishop approved by the government. In an underground church, however, the bishop was not recognised by the Chinese government but was recognised by the cardinal. He stated that the underground church is more authentic than the church recognised by the state. The Tribunal asked about the central beliefs of this church. He stated that they believe in God and their minds are peaceful. The Tribunal asked if they believe in Jesus Christ and he stated that they believe in him greatly. The Tribunal asked what the difference was between God and Jesus Christ and the applicant stated that he did not know. The Tribunal asked the applicant if there was anything else he wanted to say to demonstrate that he was a genuine Christian and/or believer in the underground church in China. He stated that the underground church means that it has not been sanctioned by the state but it is more authentic.
37. The Tribunal asked the applicant why he had delayed making a claim for protection after his initial arrival in Australia. He stated that he was married in 1999 and his wife left him in 2000 and he no longer received letters from the Department. The Tribunal asked why he nevertheless did not contact the Department to make a claim. He stated that this was due to the language barrier and because he was feeling very hopeless about life at the time. He stated that he did not come to Australia for money, because his living standard in China was actually better than it is here. He stated that he used to be a man of ambition, but now that has all gone.
38. The Tribunal explained to the applicant that there was potentially adverse information contained on the Department file that it wanted to formally put to him and invite his response. The Tribunal stated that it would explain what the particular information was and how it was relevant to its decision. It would then invite the applicant to comment on or respond to that information, but it advised the applicant that he did not have to respond immediately but could request additional time to do so.
39. The Tribunal stated the first piece of relevant information was that there was information on the Department file that he was detained [in] May 2010 after being located during a field visit in [suburb deleted: s.431(2)] by the Department's compliance section. On that day he was interviewed by Department staff and asked if there were any reasons why he could not return to his home country. The notes of that interview record that the 'no' box was ticked, with a written note indicating that he had answered 'Besides the fact that I have no home, job and I have lived in Australia for the past 10 years'. The Tribunal explained that the information was relevant to the review because it could raise doubts in the mind of the Tribunal about the genuineness of the claims that he had made at the hearing. The Tribunal noted that it could regard the evidence given at the hearing regarding his claimed religious reasons for fearing persecution, as well as his claimed anti-Communist Party views, as not genuine reasons for his fear of returning to China. The Tribunal stated that the apparent inconsistencies between the answers given in that interview and the evidence given at the hearing could lead the

Tribunal to question his credibility. The Tribunal stated that, if so, the Tribunal may then question whether he was telling the truth about his claimed fears of returning to China. The Tribunal stated that this could be the reason or part of the reason for affirming the decision under review. The Tribunal confirmed with the applicant that he understood the information and how it was relevant to the Tribunal's decision. The Tribunal then invited the applicant to comment on or respond to the information, advising him that he could request additional time to do so. The applicant indicated that he wanted to respond immediately.

40. The applicant stated that he did not believe that it was reasonable for the Tribunal to rely on what he said during that first conversation. At the time he was in a state of shock because he had been arrested and he didn't think of anything else. He stated again that his life in China was more comfortable than his life in Australia and his purpose in coming to Australia was definitely not for lifestyle reasons, but political reasons.
41. The Tribunal explained that the second piece of relevant information was that he was interviewed by an officer of the Department [in] June 2010 in relation to his claims for protection. The Tribunal stated that the recording of that interview indicates that he was asked about previous problems he had experienced in China. Whilst he referred to experiencing discrimination in employment, he made no mention of having administrative penalties imposed, either for reasons of his religion or religious items, or for listening to an overseas radio broadcast. The Tribunal stated that the recording also indicated that he was asked the reasons why he feared being returned to China. The Tribunal stated that the recording indicated that he made no mention of fearing persecution for having published or broadcast anti-Communist Party views. The Tribunal stated that the recording also indicated that he made no mention of his religion as a reason for his fear of returning to China. The Tribunal stated that the information was relevant to the review because it could, subject to his comments, raise doubts in the mind of the Tribunal with regard to his evidence at the hearing. The Tribunal stated that this was because he did not appear to have raised these matters when given an opportunity to do so during his Department interview. As a result, the Tribunal may have concerns that he had invented these claims for the purposes of the hearing. The Tribunal stated that, if it were to take that view, it may affect how the Tribunal viewed his credibility generally and may lead the Tribunal to question whether he had been truthful in his claims regarding his fears of persecution if returned to China. The Tribunal stated that that could be the reason or part of the reason for affirming the decision under review. The Tribunal confirmed with the applicant that he understood the information and how it was relevant to the Tribunal's decision. The Tribunal then invited the applicant to comment on or respond to the information, advising him that he could request additional time to do so. The applicant indicated that he wanted to respond immediately.
42. The applicant stated that the previous interview was rather casual, but he was taking it seriously today. The Tribunal noted that it may not accept that and may form the view that he would have appreciated at the time that it was an opportunity to explain his Protection Visa claims. The applicant stated that he was not sure what he wanted to say.
43. The Tribunal stated that there was another piece of potentially adverse information that it wanted to put to him to invite his response. It stated that, according to the recording of his Department interview, he was asked the question 'If you were to go back to China, what do you fear may happen to you?' The Tribunal stated that, according to the recording, as part of his answer he stated 'May be because China has changed they probably wouldn't hurt me or anything but I just wouldn't have a promising future.' The Tribunal explained that the information was relevant to its decision because it could, subject to his comments, indicate

that his claimed fears do not amount to serious harm. The Tribunal explained that, under the Act, the definition of persecution is qualified to require that the person fears serious harm, as opposed to a lesser form of harm. The Tribunal noted that, based on the above answer he gave during his Department interview, the Tribunal may conclude that the harm he fears does not amount to serious harm, but rather something more minor. The Tribunal stated that, if so, it may conclude that he did not meet the definition for a refugee under the Refugee Convention in light of the qualifications to that definition under the Act. The Tribunal stated that this may be the reason or part of the reason for affirming the decision under review. The Tribunal stated that the information was also relevant to the review because it could lead the Tribunal to conclude that he does not subjectively fear persecution or serious harm. The Tribunal explained that it was part of the definition of a refugee that the person subjectively has a well-founded fear of harm. The Tribunal stated that this could be the reason or part of the reason for affirming the decision under review. The Tribunal then clarified with the applicant that he understood the information and how it was relevant to the review. Following some further clarification from the Tribunal, the applicant confirmed that he did so understand. The Tribunal then invited the applicant to respond to or comment on the information, advising him that he could request additional time to do so. The applicant indicated that he wanted to respond immediately.

44. The applicant stated that he has been living in Australia for 13 years and he now has no house, work or anything else in China so he will not be able to survive in China. He stated that China is a populous country and he will not be able to compete with people of a younger age so he would face death or starvation. He stated that China does not have a social security system and people like him could not get property or a job. The Tribunal noted that he had earlier stated that he had been running an import/export business in Australia with links to China. The Tribunal asked why he would not be able to pursue a similar line of work in China. The applicant stated that his company was registered in Australia and he does not have a company registered in China. The Tribunal asked why he was not able to set up a company of his own in China or work for such a company in China. He said that in China new graduates are churned out every day and people like him would not be able to get a job. He also stated that it would be too expensive for him to set up a company of his own in China.
45. The Tribunal asked the applicant whether there were any additional things that he wanted to say in support of his application. He indicated that he may have some additional things to say, but he could not think of any at the time. The Tribunal offered to adjourn the hearing for 10 minutes to enable him to collect his thoughts but the applicant declined. The applicant indicated that he was due to undergo cardiac surgery [on a date in] July 2010. The Tribunal stated that it was happy to receive any further written submissions from the applicant that he could prepare prior to his surgery. The Tribunal also explained that, if he required more time to make supplementary written submissions, he should submit to the Tribunal a written request for more time before [that date in] July 2010. The Tribunal said that he should explain his reasons for requiring more time and the Tribunal would consider any such request.
46. As at the time of this decision, no further documents had been provided to the Tribunal by or on behalf of the applicant.

## FINDINGS AND REASONS

47. The Tribunal accepts that ‘applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.’ The Tribunal also accepts that ‘if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

48. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
49. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
50. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (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.)
51. Bearing the above matters in mind, the Tribunal makes the following findings.

### **Nationality**

52. The Tribunal accepts that the applicant is a national of China (PRC). The Tribunal accepts as evidence of this the fact that he travelled to Australia on a valid Chinese passport and his identity and nationality was positively confirmed by the Department based on its records, notwithstanding that the applicant has since lost his Chinese passport. The Tribunal has assessed his claims against China as his country of nationality.

### **Destitution in China**

53. The applicant claimed that, if returned to China, he would have no work prospects because he has been out of China for so long and because of his age. He claimed that he would not be able to compete with younger workers and would not be able to support himself in China, resulting in his starvation and death.
54. The Tribunal accepts that the applicant is genuinely apprehensive about returning to China due to his limited work prospects. However, the Tribunal considers that he has greatly

exaggerated these concerns. The Tribunal notes that, according to the applicant's evidence, he has been running an import/export business between Australia and China for a significant period. Notwithstanding the applicant's remonstrations to the contrary, the Tribunal is satisfied that he would have a reasonable prospect of obtaining this or similar work back in China, either by establishing his own company or working for someone else.

55. Further, even accepting that the applicant would face great difficulty finding work back in China, the Tribunal does not accept that this would amount to 'serious harm' for the purposes of s 91R(1)(b) of the Act. Having regard to the non-exhaustive list in s 91R(2) of the type and level of harm that will meet the 'serious harm' test, the Tribunal does not accept that there is a real chance that any difficulties the applicant may face if returned to China relating to his limited work prospects would amount to a significant economic hardship that would affect his capacity to subsist. The Tribunal also does not accept that any such difficulties would otherwise fall within one of the categories listed in s 91R(2) or would otherwise amount to serious harm.
56. Further, the Tribunal does not accept that any such difficulties the applicant may experience in connection with his limited work opportunities would be for a Convention reason, rather than simply his limited work experience and contacts in China. In making this finding, the Tribunal finds that ageing workers with limited employment prospects (or any other such categorisation of the applicant's predicament relating to his limited work prospects) lack the requisite characteristics to constitute a particular social group. The Tribunal considers that any such group is not sufficiently identifiable or distinguishable from society at large and, moreover, lacks any unifying features or elements other than a shared fear of the claimed persecution. Further, the Tribunal does not consider that any claimed harm relating to the applicant's poor work prospects would involve a persecutory element so as to amount to a form of persecution, as opposed to simply the exigencies of life for an aging worker with limited skills seeking to find work in an unfamiliar job market. The Tribunal does not accept that this is sufficient to fall within the definition of a refugee under the Convention.
57. Having regard to the above, whilst the Tribunal accepts that the applicant may face some difficulty adjusting to life back in China, including difficulty finding work due to his age and limited work history and contacts in China, the Tribunal does not accept that this is sufficient to constitute a well-founded fear of persecution for a Convention reason.

#### **Claims relating to persecution due to family political background / class**

58. The applicant claimed that he experienced problems in China due to his family's class and/or being known to be opposed to the Chinese Communist Party (CCP) and/or pro-capitalist. He claimed that his grandfather was shot by the CCP in around 1952 for his anti-communist / pro-capitalist activities and his father was arrested, detained and mistreated in around 1968 or 1969 because of his family's political background. He claimed that he himself experienced various forms of discrimination at his workplace due to his family background, such as missing out on awards, promotions and distributions of property.
59. Given the Tribunal's credibility concerns with the applicant generally, as discussed further below, it does not accept his evidence relating to past harm experienced by his grandfather and father, or his claimed discrimination in the workplace. As discussed further below, there was some inconsistency in the applicant's evidence regarding his workplace discrimination, claiming on the one hand that the only possible reason for his discrimination was his family background, yet claiming elsewhere in his evidence that he was subjected to two separate

administrative penalties of a serious kind relating to the possession of religious items and listening to overseas radio broadcasts. He also claimed later in his evidence that he was not coming to Australia for lifestyle reasons as his standard of living in China was better than here in Australia, despite claiming earlier in his evidence that he was the victim of discrimination and serious hardship in China on account of his family background. In addition, the Tribunal finds it incongruous with the applicant's claims to fear persecution on account of his grandfather's past conduct that he was unable to recall his grandfather's name. The Tribunal considers that this lends further weight to its overall credibility concerns with the applicant generally, as well as to its rejection of the applicant's specific evidence regarding his fear of persecution owing to his family background / class.

60. Further, even accepting the applicant's evidence regarding the execution of his grandfather, the mistreatment of his father and the discrimination he experienced in his workplace in China (which the Tribunal does not accept), the Tribunal nevertheless would not accept that this evidence gives rise to an objectively well-founded fear of persecution, for the following reasons.
61. The applicant acknowledged in his evidence that things had changed significantly since his time in China and he was unable to give a clear answer as to how his family background would result in mistreatment if he were to return to China now. Rather, he claimed that he would be left without a job or work prospects. As discussed above, the Tribunal is not satisfied that these hardships anticipated by the applicant are sufficient to meet the definition of a refugee.
62. The Tribunal finds that the applicant was asked during his Department interview [in] June 2010 what he feared may happen to him if he were to return to China. The Tribunal finds on the basis of the recording of that interview that, as part of his answer, he stated: 'Maybe because China has changed they probably wouldn't hurt me or anything but I just wouldn't have a promising future.' This is also consistent with the claim made in the applicant's statement to the Department as part of his protection visa application where, in response to the question 'What I fear might happen if I go back to my country', he stated:

I would be homeless and unemployable, I have no contacts and do not know if my parents are alive. My parents have not wanted any contact with me since my relations with my sisters broke down. I have been in Australia for nearly 14 years, I am not familiar with China and consider Australia as my home and place to stay.
63. Even accepting the applicant's evidence regarding his grandfather, father and past discrimination in the workplace in China, the Tribunal nevertheless finds that this evidence does not objectively give rise to a well-founded fear of persecution. There has been a significant lapse of time since the relevant events involving the applicant's father and grandfather. The Tribunal also considers that the workplace discrimination he allegedly experienced in the past was relatively minor and would not amount to serious harm for the purposes of s 91R(1)(b). Moreover, as discussed further below and in light of the Tribunal's overall credibility concerns with the applicant generally, the Tribunal does not accept that he was ever subjected to an administrative penalty in connection with his workplace. The Tribunal acknowledges that past experiences of harm, or a lack thereof, do not necessarily provide a reliable basis for predicting the harm that a person may experience in the future. However, in the circumstances of this particular case and noting again the significant efflux of time and the applicant's own acknowledgement at different times that things have changed significantly since he left China and the main basis of his fear in returning to China relates to

his limited work prospects, the Tribunal considers that any chance of the applicant being persecuted in connection with his family background or class is sufficiently remote so as not to be objectively well-founded. In making this finding, the Tribunal has considered the applicant's claims relating to his family on a number of possible Convention grounds, including an imputed political opinion (such as pro-capitalist, anti-communist or anti-CCP), membership of his family as a particular social group or membership of his class (including being capitalist) as a particular social group. However, the Tribunal is satisfied that the applicant does not have a well-founded fear of persecution on any of these grounds.

### **Claims relating to religion**

64. In the course of his evidence the applicant raised his religion (actual and/or imputed) as a potential ground for fearing persecution if returned to China. He claimed that his aunt is a member of the underground church in China and has been doing missionary work in various parts of China spreading the gospel. He claims that he was subjected to administrative penalties in around 1983 or 1984 when he was found with a religious calendar and literature in his dorm room at work which had been given to him by his aunt. He claims that this penalty did not result in any form of detention, but for a two year period he was denied various work-related benefits and opportunities, such as promotions, awards and property distributions. He also claims that he has been attending Christian churches and Bible study groups in Australia, but would be fearful of practising his religion if returned to China.
65. The Tribunal does not accept any of the applicant's claims relating to religion, for the following reasons.
66. First, the Tribunal has serious concerns arising from the fact that the applicant first raised religion as a possible ground for fearing persecution during the Tribunal hearing. As foreshadowed with the applicant during the hearing, the Tribunal is satisfied that he was interviewed by the Department [in] May 2010 after he was located and detained by the Department's compliance unit. The Tribunal is satisfied from the notes of that interview that the applicant was asked whether there was any reason he could not return to his home country. The Tribunal is satisfied that he indicated that there was not and stated words to the following effect: 'Besides the fact I have no home, job and I have lived in Australia for the past 10 years.'
67. [In] May 2010 the applicant lodged with the Department the application under review. As part of that application the applicant provided a written statement outlining the basis of his claims for protection. The Tribunal is satisfied that the applicant made no mention in that statement, or otherwise in his written application, of religion as a possible reason for fearing persecution if returned to China.
68. As foreshadowed with the applicant at the hearing, the Tribunal finds that the applicant was interviewed by the Department [in] June 2010 in connection with his protection visa application. The Tribunal finds that he was asked about any problems he had experienced in China prior to coming to Australia. The Tribunal finds that he was also asked various questions about why he feared returning to China. The Tribunal is satisfied from the recording of that interview that the applicant made no reference to religion as a possible reason for his fear of returning to China.
69. [In] July 2010, the applicant's representative wrote to the Tribunal confirming that the applicant would attend the Tribunal hearing scheduled [for a date in] July 2010. In that letter,



the applicant's representative confirmed that the applicant had had the refugee definition explained to him and continued to rely on his claims put forward [in] May 2010. The letter closed by stating 'Our client instructs that he cannot return to China as he has been living in Australia for a long time and has no family ties or links back in China.' No mention was made in that letter of religion being a possible aspect of the applicant's claims for protection.

70. The applicant gave evidence that he did raise his religion during his Department interview. When the Tribunal put to him that the recording of that interview indicated otherwise, the applicant indicated that he did not mention all of the things that he had talked about at the Tribunal hearing because he did not take the Department interview seriously. He also claimed that he did not trust his solicitor because he considers solicitors to be generally untrustworthy. The Tribunal does not accept these explanations put forward by the applicant. To the extent that the applicant claimed that he did not take the Department interview seriously, the Tribunal is satisfied that the applicant ought reasonably to have appreciated the importance of the Department interview as an opportunity to explain his protection visa claims. The applicant's explanation also does not explain why he omitted to mention religion in either his post-location interview or his written statement as part of his application to the Department, despite mentioning other aspects of his claims. In relation to his alleged distrust of solicitors, the Tribunal found the applicant's evidence on this matter vague and, at times, inconsistent. For example, the applicant initially claimed that he did not earlier raise his articles or internet broadcasts criticising the Chinese Communist Part (CCP) as part of his claim because his solicitor advised him that they would not help his case and he could only apply for protection on religious grounds. However, when the Tribunal put to the applicant that he had not raised his religion during the interview either, his responses became difficult to follow. He then claimed that he could not recall what he said at the interview. If the applicant had been told by his solicitor that his only possible claim for protection related to his religion, as claimed by the applicant in his evidence, this raises doubts as to why he then made no mention of religion in his interview.
71. In addition to his failure to raise religion as part of his claim for protection prior to the Tribunal hearing, the Tribunal does not accept the applicant's evidence regarding his religious beliefs and/or activities in the past. During the hearing the Tribunal asked the applicant a number of questions about his religion. The applicant was unable to say what denomination of Christianity he was, aside from saying that he was not a Mormon. He claimed that he knew more Bible stories than the people who visit the detention centre from the Church. He also claimed that he knows more about the religion than an average person walking down the street, albeit less than a person who studies the religion. He also claimed to have attended services at various churches since coming to Australia, as well as private Bible study groups in people's homes, and also claimed to have read the Bible. However, when the Tribunal invited him to recount a story from the Bible he made vague references to stories relating to World War II and the Crusades. When the Tribunal put to him that there were no stories in the Bible about these things, he then claimed to have learned about them as part of learning about the history of the religion. When the Tribunal asked him to recount one story from the Bible, the only story he could think of was the story of the Last Supper. However, when the Tribunal asked for some details about this story he stated that he could not recall any. When asked about the beliefs of the underground church in China, the applicant stated that it was different from the state-sanctioned Christian church in China because the underground church has bishops that are not recognised by the Chinese government. He also stated that the underground church was more authentic. However, he was unable to elaborate

further or provide any other details about the beliefs of this group. He also stated that they believe in God and Jesus Christ, but was unable to explain the difference between the two.

72. The Tribunal has had regard to the applicant's claims that he is not particularly devout or religious and has, on his evidence, only been practising the religion on and off since coming to Australia. Nevertheless, even taking these matters into consideration, the Tribunal considers that he did not display the level of knowledge about his religion that the Tribunal would reasonably expect of a genuine believer with his claimed history of religious activities, including regular attendance at church and Bible study groups, as well as having read the Bible. The Tribunal rejects the applicant's explanations for his lack of knowledge about his claimed religion and finds that his lack of such knowledge is inconsistent with his claimed religious beliefs and activities.
73. The Tribunal also places some weight, in the circumstances of this case, on the applicant's delay in lodging his claim for protection. The Tribunal notes that the applicant has been in Australia since 1997. The Tribunal acknowledges that it is not uncommon for persons from other countries to remain ignorant that they may apply for a protection visa, even after living in Australia for an extended period. The Tribunal has also considered the evidence of the applicant that he did not receive any correspondence from the Department after moving out of his ex-wife's home in around 2000. However, the applicant was unable to provide a convincing explanation as to why he nevertheless did not approach the Department himself about either his immigration status or to make an application for protection. To the extent that he referred to a language barrier and the disillusionment with life that he was experiencing at the time, the Tribunal did not regard these explanations as convincing. Given the Tribunal's other credibility concerns with the applicant in this matter, the Tribunal does not accept the applicant's reasons for not lodging a protection application sooner. The Tribunal finds that his delay in seeking protection adds further doubts as to the genuineness of his claims to fear persecution if returned to China.
74. Having regard to the above and the Tribunal's credibility concerns with the applicant generally, the Tribunal also does not accept the applicant's claims regarding administrative penalties imposed on him arising from being found with religious items in his workplace dormitory or otherwise. This was also a matter that the applicant raised for the first time at the Tribunal hearing which, for the reasons discussed above, raises serious doubts in the mind of the Tribunal. The Tribunal also found the applicant's evidence on this matter vague and confused, as well as at times inconsistent. For example, the applicant claimed earlier in his evidence that the only possible reason for him experiencing discrimination in the workplace was due to his family background, as he was one of the best workers and there was therefore no other reason for him missing out on promotions etc. However, he later claimed that he was subjected to two periods of administrative penalty, including for reasons relating to religion, yet he did not refer to this earlier in his evidence as a possible reason for his less favourable treatment in the workforce. Having regard to the Tribunal's rejection of the applicant's claims regarding his religious beliefs, as well as the Tribunal's credibility concerns with the applicant generally, the Tribunal does not accept that he experienced any form of administrative penalty in China, either for reasons of religion, possession of religious items, listening to overseas radio broadcasts or otherwise.
75. For the above reasons, the Tribunal does not accept the applicant as a credible witness regarding his claimed religious beliefs or activity or regarding his claimed reasons for fearing persecution on the ground of religion. In particular, the Tribunal does not accept that the applicant is Christian or that he has ever been a member of the Christian church or has any

genuine desire to do so in the foreseeable future. The Tribunal does not accept that the applicant has any genuine interest in Christian beliefs. Likewise, the Tribunal does not accept that the applicant is or has ever been a member of the underground church in China or has any genuine desire to do so in the foreseeable future. The Tribunal also does not accept that the applicant has any genuine interest in underground church beliefs. It follows that the Tribunal also does not accept that the applicant will engage in Christian or underground church practises or associate with other Christian or underground church practitioners in the future if returned to China.

76. Given the above findings, and the Tribunal's credibility concerns with the applicant generally, it follows that the Tribunal also does not accept that the applicant has an aunt in China who is a member of the underground church or who engages in missionary work in China. It also follows that the Tribunal does not accept that the applicant faces a well-founded fear of persecution for reasons of religion in connection with the religion of his aunt.
77. In making the above findings, the Tribunal has had regard to the operation of s 91R(3) of the Act when assessing the evidence of the applicant regarding his alleged religious conduct in Australia. However, for the reasons given above, the Tribunal does not accept that he has in fact participated in any Christian activities or services in Australia. It follows that he has not engaged in such conduct for the purposes of strengthening his claim for protection and the operation of s 91R(3) therefore does not arise. However, the Tribunal notes that, in rejecting the applicant's evidence as false in relation to alleged religious conduct in Australia, the Tribunal considers that this reflects poorly on his credibility generally and has taken that into account when assessing other aspects of his claims.

**Anti-CCP views / political opinions (actual and imputed)**

78. The applicant claimed at the hearing that he also feared persecution on account of his actual and/or imputed political opinion. He claimed that, after coming to Australia he maintained contact with some of his work colleagues and revealed to them his anti-CCP views. He also claimed to have published anti-CCP, pro-capitalist and pro-democratic articles and broadcasts online, which were known to his former colleagues and employer in China. The applicant indicated that he would be mistreated by the authorities if returned to China on account of these views and activities, such as by being closely monitored upon his return and having his freedoms curtailed.
79. Given the Tribunal's credibility concerns with the applicant generally, the Tribunal does not accept any of the applicant's claims regarding his actual or imputed political opinions or activities, or that he otherwise has a well-founded fear of persecution for reasons of political opinion. As with the applicant's claims relating to religion, the Tribunal has serious concerns with the applicant's credibility arising from his failure to squarely raise any claims relating to publishing anti-CCP, pro-capitalist or pro-democratic articles or broadcasting such views via an internet broadcast prior to the Tribunal hearing. The Tribunal finds that he did not squarely raise any such claims either when interviewed as part of his post-location interview [in] May 2010 or during his Department interview [in] June 2010 in relation to his protection visa claims. Nor did he raise these matters in his written statement to the Department as part of his protection visa application or in his agent's letter to the Tribunal [in] July 2010.
80. The Tribunal also found the applicant's evidence regarding his past political activities in Australia vague and unconvincing. For example, when asked to provide details of the web address where his articles and/or broadcasts were published online, he became evasive,

stating only that they were on the 'sina' website and he believed that they had since been taken down from the site. He also has not provided a copy of any such articles to the Tribunal. The Tribunal acknowledges that a refugee may not always be able to produce documents to support their claim, given that a refugee may not have an opportunity to collate relevant evidence prior to fleeing their home country and indeed may arrive in Australia with nothing but the clothes on their back. The Tribunal has also had regard to the fact that the applicant has been in detention since [a date in] May 2010.

81. However, the applicant in this case claims that he published the relevant articles and broadcasts in around 2002 or 2003, long after his departure from China. Given the applicant's failure to produce either the relevant web address(s) relating to this articles or broadcasts and his failure to produce a copy of his articles to the Tribunal, and given also the Tribunal's concerns with the applicant's credibility generally, the Tribunal does not accept that he has ever published or broadcast anti-CCP, pro-capitalist, pro-democratic or other political views in the past. The Tribunal also does not accept that he has ever voiced anti-CCP, pro-capitalist, pro-democratic or other political views to former acquaintances in China or that his political views have otherwise become known to the Chinese authorities. The Tribunal also does not accept that he holds any such views or has any desire to publish, display or act upon such views if returned to China in the future. It follows that the Tribunal does not accept that the applicant has a well-founded fear of persecution for reasons of his political opinion (actual or imputed).

### **Summary of findings**

82. To the extent that the applicant claims to fear destitution due to his lack of work prospects in China on account of his long period of living in Australia, the Tribunal considers that the applicant has exaggerated these claims, although accepts that he is genuinely apprehensive about his future prospects in China. However, the Tribunal does not accept that this is sufficient to bring the applicant within the definition of a refugee under the Convention. In particular, the Tribunal considers that the harm feared does not amount to 'serious harm' and, moreover, would not otherwise amount to persecution for a Convention reason.
83. The Tribunal does not accept that the applicant has experienced problems in the past on account of his family's political background or class. In particular, the Tribunal does not accept that the applicant's grandfather was executed by the CCP or that the applicant's father was arrested, detained or mistreated by the CCP. The Tribunal also does not accept that the applicant was discriminated against in his employment in connection with his family background or class. In any event, even if the Tribunal were to accept the applicant's evidence on these matters (which it does not), the Tribunal finds that these do not, either separately or cumulatively, give rise to an objectively well-founded fear of persecution.
84. The Tribunal does not accept any of the applicant's claims relating to religion. It does not accept that the applicant is Christian or a member of the underground church in China, or that he or any member of his family has any history of involvement with the Christian or underground church. The Tribunal also does not accept that the applicant has been subjected to any form of harm or administrative penalty in connection with his religious beliefs (actual or imputed) or his possession of religious items. It follows that the Tribunal does not accept his claims regarding his future fears if returned to China in connection with religion. In particular, the Tribunal does not accept that there is a real chance that the authorities (or anyone else) will seek to harm him or any member of his family in relation to his religion or the religion of his family (real or perceived). The Tribunal also does not accept that he will

hold any Christian or underground church beliefs or engage in any Christian or underground Christian activities or practices if returned to China or that he has any genuine desire to do so.

85. The Tribunal also does not accept any of the applicant's claims relating to political opinion (actual or imputed). The Tribunal does not accept that the applicant has manifested any anti-CCP, pro-capitalist or pro-democratic political opinions, or any other political opinion that might bring him to the adverse attention of the authorities, either in China or since coming to Australia. The Tribunal also does not accept that he would be imputed with any such political opinions on account of his family background, class or activities in Australia generally. The Tribunal also does not accept that the applicant has been subjected to any form of administrative penalty in connection with listening to an overseas radio broadcast, or for any other reason. It follows that the Tribunal does not accept his claims regarding his future fears if returned to China in connection with his political opinion (actual or imputed). In particular, the Tribunal does not accept that there is a real chance that the authorities (or anyone else) will seek to harm him or any member of his family in relation to his political opinions (real or perceived) or activities. The Tribunal also does not accept that he will seek to engage in any anti-CCP, pro-capitalist or pro-democratic activities if returned to China or that he has any genuine desire to do so.
86. The Tribunal has assessed all of the applicant's claims, both singularly and cumulatively. The Tribunal finds that there is no real chance that the applicant will face persecution if he were to return to China now or in the reasonably foreseeable future because of his religion, political opinion, family background or class or for any other Convention reason. The Tribunal therefore finds that the applicant's claim that he will be persecuted if he returned to China, now or in the reasonably foreseeable future, is not well-founded.

## **CONCLUSIONS**

87. 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**

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