

0903995 [2009] RRTA 737 (26 August 2009)

DECISION RECORD

RRT CASE NUMBER: 0903995

DIAC REFERENCE(S): CLF2009/24422

COUNTRY OF REFERENCE: Korea, Republic Of

TRIBUNAL MEMBER: Gabrielle Cullen

DATE: 26 August 2009

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

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 Korea, arrived in Australia [in] August 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2009. The delegate decided to refuse to grant the visa [in] May 2009 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] May 2009 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.

Primary visa Application

20. Information in the protection visa application indicates that the applicant is a thirty eight year old married man, born in Korea His application indicates he has a wife in Australia and an eight year old daughter in Australia. He has had 16 years education, graduating in [course and education provider deleted in accordance with s431(2) of the Migration Act as this information could identify the applicant] University in 1994. He claims to have lived in [location deleted: s431(2)] South Korea from 1999 to August 2007. His employment record indicates that from 1998 to August 2006 he was employed [profession, company and address deleted: s431(2)] South Korea.
21. The applicant arrived in Australia on a visitor visa [in] August 2007 on a passport issued [in] October 2005 by the Republic of Korea. He previously travelled to Australia from [a date in] November 2000 to [a date in] November 2003 and again arrived [in] November 2003 and departed on the same day.
22. He indicated at question 49 that he had no difficulties in obtaining his travel document.
23. His claims outlined in answer to questions 41 to 45 in his protection visa application are summarized as follows:
 - He claims he worked for [school deleted: s431(2)], which is a seminary school of Shinchunji. He claims this group is a Christian sect with heretical views.
 - He claims he worked in one of the colleges for seven years and while he worked there he witnessed many incidents of injustice, pseudo –religion and immoral activities.
 - He claims he decided to leave his job in 2006 and after he left he revealed the matters of the group to a few reporters of the media.
 - He claims as a result he and his family have been threatened to be killed, attacked and confined from the group.
 - He claims the group has 45,000 members in Korea and 6,000 in USA and about 100 church branches and most of the people know him and he was [description and nature of position deleted: s.431(2)] for their group.

- He claims sometimes he has worked on behalf of Lee Man Hee, who is the leader of the group. He claims Lee Man Hee is an influential man and has connections with government and politicians.
- He claims if he returns to Korea his life will be in danger as they have done before, back in 2006 and 2007.
- He claims if he goes back he will be mistreated by Shinchunji fanatics and the group leader, Lee Man Hee as they believe that all the prejudice and criticisms of their organization originated from him and his interview.
- He claims in October 2006 his family were tortured by Shinchunji believers after it became known he was interviewed by the daily newspaper, [newspaper deleted: s431(2)].
- He claims the Shinchunji believers called his home and threatened he would be killed He claims they know their home as he was a staff member of the group.
- He claims if he goes back they will find him and will confine him to one of their secret halls as they did to his family.
- He claims the authorities did not protect him and his family and failed to enforce the witness protection program for his family. He claims this program is only for people of high society. He claims quite often they reveal the private information which should not be disclosed.
- He claims that he believes the group's leader, Lee Man Hee has strong connections with some politicians and many government sectors.

Tribunal Hearing

24. The applicant appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and English languages.
25. The Tribunal asked what was said in the untranslated document he submitted today. He said the document refers to persecution of practices of Shinchunji. The Tribunal asked whether he was saying those who practise Shinchunji are persecuted. He said yes, past practitioners are undergoing persecution. He said he did not write the document and it was written by an ex-member and that the author is saying that Shinchunji is a heretical religion. The Tribunal asked that he translate the documents and he agreed.
26. The applicant indicated that he prepared his protection visa application with the help of a friend and that it was read back to him in Korean. He confirmed that the claims he had made in his protection visa application had been read back to him in Korean and that they are all correct and true.
27. With regard to his employment in Korea, he said for the seven years prior to his departure he worked as a [occupation deleted: s431(2)] in Seoul. He said he worked full time in this employment, approximately 6 days per week, although his work days were flexible. He said

he did not have any other work in that period while working as a [occupation deleted: s431(2)] He said he did not undertake any non paid work in that period.

28. He said prior to his departure, from 2005 to 2007 he lived at [address deleted: s431(2)]. He said prior to that he lived in Sydney. He confirmed that immediately prior to leaving Korea in 2007 he lived at the above address and he lived there from 2005 to 2007. He said he only lived at that address.
29. He said with regard to his religion he is currently a Presbyterian Christian and prior to that he was a member of the Shinchunji religion. He said he left Shinchunji in March /April 2007 and was a member from 2005 to 2007. He said prior to that he was an occasional member and he became an occasional member in 2005 when an evangelist visited his home and he became interested in Shinchunji.
30. The Tribunal asked him how he became a member of Shinchunji and to describe the process of being a member. He said the process is similar to other Christian churches. He said to become a member one has to take a course and do six months study. He said in the course one faces many different ideas and claims and at the end an exam is taken. He confirmed there were 12 tribes in Shinchunji.
31. He said his wife was not a member of Shinchunji.
32. The applicant said he came to Australia because of the Shinchunji religion.
33. The Tribunal asked why he fears return to Korea. He said he fears religious persecution. He said because once one becomes a member of Shinchunji and leaves, there will be duress. The Tribunal asked whether he only began to face difficulties in April/March 2007 when he left Shinchunji and he said yes. The Tribunal asked whether he is claiming that he feared persecution in Korea because he left Shinchunji and he said yes. The Tribunal asked whether he is saying he left Korea to travel to Australia because he faced difficulties from Shinchunji members as he had left and he said yes.
34. The Tribunal asked what difficulties he faced. He said once you leave them you face difficulties. He said they make you believe that Man Hee Lee is Jesus who has come the second time to Earth.
35. The Tribunal asked him to outline the particular difficulties he faced, and the particular incidents he was subjected to in Korea as a result of leaving the Shinchunji church. He said after he left them they inflicted mental pain on him. He said the reason he left is that he posted an article on the internet criticising them. He said they saw the article and came to his place and gave him enormous mental persecution.
36. He said he posted the article in May 2007 on two different search engines, [details deleted: s.431(2)].
37. The Tribunal asked whether he had a copy of the article and he said it was taken down by the internet company 15 days after the day it went up. He said it was posted in May 2007 and deleted by the authorities.
38. The Tribunal asked when he knew it had been deleted and he said he knew in Korea He said he also chats in sort of chat rooms with anyone interested in this religion.

39. The Tribunal asked why he told the Department at interview in April 2009 that this article was still available on the internet and that he would produce it as soon as possible within one week of the interview, whereas now he said he knew it was not on the internet before he left Korea in 2007. He said he was referring to Wikipedia and writings of religion when talking to the delegate. The Tribunal indicated that he had said to the Department delegate that the section he wrote on [website deleted: s.431(2)] on Shinchunji he would be able to send to the delegate after the interview, whereas this is in contrast to what he is saying now, that it was taken down.
40. He said that article was deleted and other articles were posted and if he looks they would still be there.
41. The Tribunal asked if that is the case, why he had not provided these articles to the Department as he said he would within one to two weeks of the interview. He said at the time he was given a week to submit the articles but within the week the letter and decision indicating his rejection had already arrived so he did not bother. The Tribunal said that this is inconsistent with the information it had. The Tribunal said that this information indicates the interview was held [in] April 2009 and the letter with the decision was not sent until [in] May 2009 which is more than a week. He said at that time he was required to provide the article with proper translation.
42. The Tribunal asked him to outline the difficulties he faces for posting the article and leaving Shinchunji. He said the persecution for his case is not physical violence but the head of one of the 12 tribes came to his place three or four times per week, asking him not to leave and to believe in their ideas.
43. The Tribunal asked for further detail about the difficulties he faced.
44. He said he did not know how they knew he had written and posted the article on the web. He said they came to his place and tried to stop him from leaving Shinchunji and they asked him to stay with them. He said one time they were verbally abusive and physically abusive to him. He said they did not hit him, it was not severe, but there was still abusive language and violence of pushing and shoving.
45. The Tribunal asked whether the Shinchunji followers ever did anything to his wife and daughter and he said no.
46. The Tribunal asked whether he went to the police. He said he talked to a friend of his who is a Senior Constable and he said as it was not serious assault, only pushing and shoving with no blow, and in the Korean mindset this is not enough.
47. The Tribunal asked whether his life or liberty was at risk and he said in part as they came to his house three to four times a week day or night.
48. The Tribunal asked whether they made threats to his life and he said they did not but that they harassed him mentally and said he was evil and possessed.
49. The applicant confirmed he was able to go to work throughout this period.
50. The Tribunal asked whether they significantly physically harassed him and he said just simple minor shoving and pushing.

51. The Tribunal asked whether there was any physical ill treatment and he said no.
52. The Tribunal asked when they came how long would they stay and he said they would come two to three times per week and if they could not catch him they would wait for him at lunchtime or after work.
53. The Tribunal indicated to him that it had been two years since he had left Korea and suggested that they may not be interested in him now. He said this is not so as many people had left the Shinchunji religion, and they are watching and monitoring the web and he has been placing messages on the web. The applicant said there is evidence of him placing messages on the web if the Tribunal goes to the chat room. He said he has been doing this from two years ago. He said he goes to the [website deleted: s431(2)] and looks for any information on groups interested in the religion. He said he puts notices on the website to warn people that the religion is heretical and once in it is hard to get out. He said he wants to tell them what is wrong with it.
54. The Tribunal asked when the Shinchunji followers came to the house after he left what they said, and he said that they said their whole household and family is possessed by Satan and only they can offer salvation. He said then they waited outside and prayed.
55. The Tribunal suggested that if they were threatening his life, physically harassing him or physically ill treating him the police would get involved. He said his friend, the police officer told him that unless it is a serious offence where the person is harmed, with a doctor's certificate and unless it is serious the police will not get involved.
56. He said in his case he was not beaten and was not hospitalised.
57. The Tribunal indicated the Migration Act defines persecution as serious harm and provides a list of examples of serious harm in s.91R(2). The Tribunal suggested that in his case his claims may not be analogous with any of the examples of serious harm outlined in s.91R(2). The Tribunal then read the examples in s.91R(2). The applicant said he was never seriously assaulted, confined and never hospitalised and there was no violence. He said as a person he needs mental strength to support his family. He said he fears if he goes back they will again come after him. He said the mental treatment he faced is just as important as physical ill treatment.
58. The Tribunal indicated that he claimed he left Korea as he feared persecution. The Tribunal indicated that he arrived [in] August 2007 and applied for a protection visa [in] March 2009 It indicated that he had taken over 18 months to apply which makes the Tribunal question whether his fear of persecution is genuine and whether his claims are credible. The Tribunal asked why it took him over 18 months to apply when he claims he left Korea seeking protection. He said he arrived in August 2007 and he had sent his wife and daughter first. He said once he arrived there was no fear they would come to his work or home and he thinks that is why he did not apply for a protection visa at the time. He said he only came to know of being able to apply for a protection visa very recently.
59. The Tribunal suggested that independent country information indicates that the police and judiciary provide effective protection to those threatened with serious harm or at risk of serious harm in Korea. It referred to Korea's ranking with regard to the rule of law to be high and the US State Department Report on the effectiveness of the police and judiciary. It also referred to information that the government sought to protect freedom of religion and did not

tolerate its abuse, either by Government or private actors. It also referred to an incident where church officials from the Manmin Chungan Sungkyol Church had been imprisoned after their disruption of broadcasting of a show criticising their religion.

60. The Tribunal indicated it has difficulty believing that if he was at risk of serious harm and went to the police they would not protect him. It said it had difficulty believing that if he feared persecution he would not go to the police and only see a friend.
61. He said in Korea there are more than 10 heretic religions He said Shinchunji does not do physical damage or violence, but they make their members suffer mentally – it is like mental imprisonment.
62. The Tribunal asked whether there was anything about him personally that is different to other citizens of Korea, which would be a reason why the police would not protect him. He said unless he obtained a Doctor's certificate to prove injury the police will not help. He said if one says it is verbal abuse, they will not help.
63. The Tribunal asked whether they have the law of trespass in Korea and he said yes. He said the people stayed on the street and did not come into his home.
64. The Tribunal indicated it wanted to outline a number of inconsistencies in his claims which may lead it to question his credibility and whether his claims are true.
65. It indicated that in his statement in his protection visa application he indicated that he had worked in the seminary of Shinchunji as [profession deleted: s.431(2)] for 7 years until he left in 2006, whereas in contrast when asked of his employment in Korea at hearing he did not mention this. He said the statement is not true and he did not work there.
66. The Tribunal indicated that in his statement he indicated the Shinchunji followers threatened to kill him, attacked and confined him whereas at the hearing he indicated there was only verbal abuse with a bit of pushing and shoving. He said there is something he needs to tell the Tribunal. He said confinement does not necessarily mean being locked up. He indicated that they said he and his family were under the influence of Satan and they kept asking him to come to their church and pray. He said after he told them he would leave they asked him to come with them and he did, but he was forced to stay for 5 to 6 hours. The Tribunal asked why he did not mention this when asked repeatedly what difficulties he faced. He said he did not mention it as he thought it was not persecution.
67. The Tribunal indicated that forcing someone to stay where they could not leave is an offence and is analogous with kidnapping, and therefore why did he not go to the police. He said as there was no violence involved.
68. The Tribunal referred to his statement in his protection visa application and in particular where it says

If I go back my life will be endangered, as they have done before back at 2006 and 2007.
69. The Tribunal indicated this was in contrast to what he had said at hearing that difficulties arose after he left Shinchunji in 2007. He said he left Shinchunji in 2007 and even though he left then, before he was having doubts in 2006 that it was a heretic organisation.

70. The Tribunal indicated that in his statement he indicated that in October 2006 his family were tortured, whereas at hearing he said that difficulties began after he left in 2007. He said it was not torture in 2006. He said he went to Shinchunji with his family.
71. The Tribunal asked whether he only criticised Shinchunji via the computer and the website and he said yes. It then asked why in his statement he said that he gave an interview with the daily newspaper [newspaper deleted: s431(2)]. He said the reporters from the [newspaper deleted: s431(2)] saw what he had written on the website and asked for an interview.
72. The Tribunal said that this was in contrast to what he had written in his statement in his protection visa application which was
- Oct 2006 my family was in torture from the Shinchunji believers, after known I have interviewed with the daily newspaper, [newspaper].
73. The Tribunal asked how this could be so if he did not do the internet article until after he left the organisation in April/March 2007. He said even though he officially left Shinchunji in 2007 he was in doubt in 2006.
74. The Tribunal also indicated that he had said earlier in the hearing that nothing happened to his wife and daughter which is in contrast to what he said in the statement quoted above. He said he cannot say torture. He said his wife is a Christian and at times the Shinchunji followers were asking his wife to accept their theology and that it is the true religion and were pressuring her mentally.
75. The Tribunal indicated that it will put to him a number of concerns it has with his evidence under s.424AA of the Act. The Tribunal then said it was going to give the applicant information which it considered could be the reason, or part of the reason, for affirming the decision under review. It indicated that it would explain the information to him and would explain the consequences of relying on the information and would invite him to comment or respond to that information. It indicated that he could respond to that information orally or in writing and could seek additional time to comment on or respond to the information. At all instances the applicant chose to respond orally at hearing, when the options referred to above were repeated to him.
76. The Tribunal indicated that he had said at hearing that he wrote an article on the internet after he left Shinchunji and this was destroyed 15 days after it was posted. It indicated that he had also said that he knew it was deleted before he left Korea. It indicated that in contrast at the Department interview he indicated that the article was still available on the internet and that he could provide it and it was agreed he would supply it to the Department within one week. It noted the article had never been provided to the Department. It indicated that this information is relevant as it may indicate that he never wrote the article criticising Shinchunji, and he did not face difficulties as a result of criticising Shinchunji and that he may not be credible and may not be found to be a refugee.
77. He said he told the Tribunal he placed it on the internet sites and some articles were deleted but some still remain.
78. The Tribunal asked then why he did not send these other articles to the Department within the one week given he claims some articles remain. He said he asked for two weeks and the delegate said one week and as far as knew he received the letter of rejection the following week after the interview.

79. The Tribunal indicated that the interview with the Department was held [in] April 2009 and the letter and decision was sent [in] May 2009 and could not have got to him until, at the minimum, [the following day] which is a period of 11 days. It indicated that this is relevant as he had sufficient time to provide the article(s) and the fact that he did not may indicate that he did not have them or write any. It said it may indicate he is not credible.
80. The applicant asked for two weeks to provide the articles which the Tribunal agreed to. It indicated that it needed them translated, and the Korean version, and the web address with the date they were posted on.
81. The Tribunal referred to the Department interview in which he said that his wife and daughter were taken by the Shinchunji followers whereas he said at hearing that the difficulties occurred after he left in March April 2007 and his wife and daughter were not harmed. It also indicated that the Department Movement records indicate his wife and daughter left Korea in January 2007. It outlined the relevance and the applicant said that Shinchunji followers kept coming and his wife and daughter received much stress. The Tribunal said that this is in contrast to what he said at hearing that he faced difficulties when he left Shinchunji in March/April 2007. He said it was after he left them officially that they started coming three to four times per week. He said but in 2006 he did not go to meetings as regularly as before and so at times Shinchunji followers came to his place one or two times per week. He said in 2006 he started to question Shinchunji in his heart so did not attend as many meetings so they came to persuade him, so pressuring started from then. He said the mental persecution started after he left in March/ April 2007.
82. The Tribunal asked whether there was anything further he wished to add and he asked for the address to send the additional documents.
83. No further documents were received by the Tribunal at the time of decision.

FINDINGS AND REASONS

84. On the basis of the Korean passport sighted by the Tribunal, the Tribunal finds that the applicant is a citizen of the Republic of Korea and assesses his claims against that country.
85. The applicant claims that he fears persecution in Korea because he was a member of the Shinchunji religion and as he was in charge of [profession and job description deleted: s.431(2)]. He claims due to his departure from Shinchunji, writing articles on the internet, talking in chat rooms and being interviewed by a reporter from the daily newspaper criticizing Shinchunji he has been subjected to verbal abuse amounting to mental torture by Shinchunji followers who visited his home or work three to four times per week. He claims they also pushed and shoved him. In his statement he claims as a result of his membership and activities with Shinchunji and criticism of Shinchunji, the Shinchunji followers have threatened to kill him and his family, torture them and confine them. He claims if he returns to Korea his life will be in danger which had happened before in 2006 and 2007 and he will be confined to a secret hall which had happened to his family. He claims in October 2006 his family was tortured by the Shinchunji followers. He claims the authorities cannot protect him as they failed to enforce the witness protection program for him and his family.
86. The Tribunal has considered his claims and the evidence he has submitted in support of his claims, in particular his summary of the untranslated articles he submitted at hearing. However, for the reason set out below, it does not accept the applicant suffered the harm in

his country that he claims for the reasons that he claims. The Tribunal does not accept as true that the applicant left his country because of the harm that he claims or that he fears return there because he fears persecution or harm in Korea. It finds the applicant's testimony internally inconsistent amounting to a fabrication for the reasons set out below. This leads the Tribunal to find that the applicant was not targeted in Korea in the manner he claims, does not hold a genuine fear of persecution in relation to Korea because of any involvement or activities associated with the Shinchunji religion, now or previously, or as a result of any criticism of Shinchunji via the media or on the internet and it does not accept he is a witness of truth.

Difficulties faced by the applicant and his family from Shinchunji followers

87. The applicant provided inconsistent evidence between his claims made in his protection visa application and those made at hearing, as outlined below, as to the difficulties he faced in Korea due to his departure from Shinchunji and his criticism of it on the internet and after being interviewed by reporters from [newspaper deleted: s431(2)]. This leads the Tribunal to find he is not a witness of truth in this regard and that he did not face the difficulties he claims as a result of leaving Shinchunji or his membership and activities with Shinchunji or criticizing it on the internet or through the media. The Tribunal notes that at hearing he confirmed that he had prepared his own application, with the help of a friend, and that the claims made in it were correct and true and were read back to him in Korean.
88. In answer to questions in his protection visa application, the applicant claims that the Shinchunji followers threatened to kill him, attacked and confined him whereas he indicated at the Tribunal hearing there was only verbal abuse with a bit of pushing and shoving, when they came to his house three to four times per week. It notes at hearing that when directly asked he indicated that no threats to his life were made. When this inconsistency was suggested to the applicant he recounted an incident when he had gone willingly with the Shinchunji followers but had been forced to stay with them for five to six hours. The Tribunal does not accept this explanation for the inconsistency and would expect a person who had suffered harm in Korea as a result of leaving Shinchunji and criticism of it to be consistent in his claims made in his protection visa application and at hearing, as to the details of such difficulties faced. Further although the Tribunal asked on several occasions at hearing of the difficulties he faced as a result of leaving Shinchunji he did not relate the story of the "confinement" until the inconsistency was suggested to him by the Tribunal, which leads the Tribunal to doubt its occurrence. The Tribunal would expect that if he had been confined he would have raised it when it asked what difficulties he faced from Shinchunji followers, not only after the inconsistency was raised. It finds him not to be a witness of truth in this regard.
89. Further in his claims outlined in his protection visa application he indicated that his life will be in danger as was done before to him back in 2006 and 2007, whereas he indicated to the Tribunal at hearing that difficulties arose for him when he left Shinchunji in March/April 2007 and after he criticized Shinchunji on the internet in 2007. The Tribunal does not accept his explanation for the inconsistency, that while he left in 2007 he was having doubt in 2006 that it was a heretic organization. The Tribunal would expect a person who had suffered as he claimed to be consistent as to when he first faced difficulties in his claims made in his protection visa application and at hearing.
90. Further the applicant indicated at hearing that nothing happened to his wife and daughter at the hand of Shinchunji followers, whereas in contrast in his protection visa application he claims that in October 2006 his family was in torture from Shinchunji followers, after it

became known he had been interviewed by the daily newspaper, [newspaper deleted: s431(2)]. He also claims in contrast in his protection visa application that his family were threatened to be killed, attacked and confined by this group. In answer to these inconsistencies he indicated his wife is a Christian and at times they were asking her to accept their theology and pressuring her mentally. The Tribunal does not accept this explanation as in the protection visa application he claims it was as a result of him being interviewed by the reporters. Further it would expect him to be consistent as to what harm his family faced. It finds him not to be a witness of truth in this regard and does not accept that his family were harmed in the manner he claims.

91. Further the timing of the interview by reporters from [newspaper deleted: s431(2)] is also internally inconsistent as he indicated to the Tribunal at hearing that the reporters came to interview him after they saw what he had written on the internet and he claimed at hearing that article was written and posted after he left Shinchunji in March/April 2007. Further in his statement in contrast he claims his family was tortured as a result of this interview in October 2006. His explanation for these inconsistencies, that even though he officially left in 2007 he had doubt in 2006 is not accepted. The Tribunal would expect a person to be consistent as to whether his family was attacked, when it occurred, and the reason it occurred in his claims made in his protection visa application and subsequently at hearing. It finds him not to be a witness of truth in this regard.

Internet Article and Article written by reporters from the daily newspaper

92. The applicant claimed at hearing that he wrote an article on the internet criticizing the Shinchunji religion after he left the church in March/April 2007. He said it was deleted from the internet 15 days after it went up because it criticized religion, and it was deleted before he left Korea. However in contrast as was suggested to him via the method outlined in s.424AA he indicated to the Department at interview that the article was still available on the internet and that he could provide it and send it in one to two weeks. The Tribunal notes no such article had ever been provided to the Department or the Tribunal and the applicant claimed that this was because he received the rejection letter and decision the following week after the interview, and he had said he wanted one to two weeks to provide it. The Tribunal noted to him that the interview was held [in] April 2009 and the letter and decision were not sent until [in] May 2009. It noted at the earliest the decision would have been received by him was [the following day], 11 days after the hearing and that it was agreed he send the article within one week.
93. His explanation for the inconsistency was that some of the articles were deleted and some articles remain, that he had to provide a translation and that he received the decision from the Department within the week. The Tribunal does not accept this explanation as the decision would not have been received until at the minimum 11 days after the Department hearing. Further the Tribunal would expect he would provide these articles to the Tribunal as he advised he would, which he has not at the date of this decision – over one month after the Tribunal hearing. The Tribunal does not find him to be a witness of truth in this regard and does not accept his claims that he wrote any articles which were posted on the internet criticizing Shinchunji.
94. Further the Tribunal does not accept that the applicant was ever interviewed by reporters of [newspaper deleted: s431(2)] as he claimed which caused difficulties for him and his family from Shinchunji followers. As indicated above he claimed at hearing that reporters from [newspaper deleted: s431(2)] interviewed him after seeing his internet articles he posted after

he left Shinchunji in March/April 2007. However in contrast in his claims outlined in his protection visa application he indicated that his family was tortured in October 2006 after he was interviewed by [newspaper deleted: s431(2)]. If he was interviewed by [newspaper deleted: s.431(2)] reporters as claimed the Tribunal would expect him to be consistent as to when this occurred. It finds him not to be a witness of truth in this regard and not to have been interviewed by [newspaper deleted: s431(2)] as he claims.

95. The applicant has also claimed that he posted warning messages regarding Shinchunji on chat rooms since leaving Korea. As the Tribunal does not accept that he was ever interviewed by [newspaper deleted: s.431(2)] or that he ever wrote any articles criticizing Shinchunji which were posted on the internet, it does not accept that he posted warning messages regarding Shinchunji in chat rooms. It finds that he was not ever involved in this conduct and this conduct never occurred.

Work in the Seminary as [profession deleted: s.431(2)]

96. The applicant in his protection visa application indicated that difficulties also arose for him as he had been in charge of [profession and duties deleted: s.431(2)] for seven years with a sect of the Shinchunji. He also indicated that this work led him into contact with Lee Man Hee and he faced difficulties as a result. The applicant indicated at hearing that this was not true and the Tribunal finds that the applicant did not face any difficulties associated with any such work he undertook with the sect of Shinchunji, from Shinchunji followers or work undertaken for the seminary which brought him into contact with Lee Man Hee as claimed in his protection visa application.

Delay in Applying for a Protection Visa

97. As evidenced by the applicant's passport submitted to the Tribunal at hearing and oral evidence at hearing, the applicant arrived in Australia [in] August 2007 on a three month visitor visa. His application indicates that he applied for a protection visa [in] March 2009. The Tribunal finds that there was a delay of approximately eighteen months between the applicant's initial arrival in Australia and his lodgment of a protection visa application.
98. The applicant's oral evidence as to the reason for this delay was that he did not know he could apply for asylum until recently and that there was no fear in Australia as they could not come to his work or home.
99. An applicant's delay in applying for refugee status is a relevant consideration in the assessment of credibility of an applicant's claims for refugee status. The period of time that has elapsed between an applicant's arrival in Australia and the time when he or she claims refugee status may be considered when assessing the genuineness, or at least the depth, of an applicant's subjective fear of persecution.
100. As was suggested to the applicant by the Tribunal at hearing such a delay may lead the Tribunal to conclude that the applicant is not genuine in his fear of persecution, in that if he genuinely feared persecution he would have made a protection visa application at the earliest possibility, not over eighteen months later.
101. With regard to his reason for the delay in applying for refugee status, he indicated that he only knew recently that he could apply for asylum. The Tribunal does not accept this reason as it would expect a person fleeing for his life who only came to Australia with a three month

visa, and who had been in Australia previously and whose wife and daughter is in Australia to ascertain at an earlier opportunity the possibility of applying for asylum.

102. The Tribunal finds that this adds to its finding that the applicant is not credible and not a witness of truth.

Summary of Credibility

103. On the basis of the above the Tribunal does not find the applicant to be credible or a witness of truth due to his conflicting evidence. It does not accept that the first named applicant or his family were targeted by Shinchunji followers in the manner he claims as a result of his leaving the religion or criticising it on the internet or in [newspaper deleted: s431(2)]. It does not accept he or his family was threatened, tortured physically or mentally, confined, kidnapped, or harassed or suffered any difficulties in the manner he claims. As a result it does not accept that he left Korea in August 2007 because he feared persecution there. It further does not accept that as a result of the difficulties he claims he faced, he ever approached the authorities and they refused assistance, including failing to enforce the witness protection program.
104. It further does not accept he faced any difficulties in Korea as a result of being in charge [profession and job description deleted: s.431(2)] from Shinchunji followers or its leader Lee Man Hee.
105. The Tribunal notes the applicant submitted at hearing some information, not translated which he claims indicated that practitioners of Shinchunji who leave faced difficulties. As indicated to the applicant at hearing the Tribunal was unable to read the information and the Tribunal requested he organize for their translation. At the date of this decision no translation has been received by the Tribunal.
106. Notwithstanding the Tribunal is prepared to accept that some former members of Shinchunji with a certain profile may face difficulties once they leave the religion. However based on the applicant's internal inconsistencies outlined above as to the difficulties he faced and when they occurred and its findings above the Tribunal does not accept that the applicant ever faced any difficulties at the hands of Shinchunji followers and was not a person of interest to Shinchunji before he left Korea.
107. As a result it does not accept that he will be targeted in the reasonably foreseeable future by Shinchunji followers or anyone else as a result of leaving Shinchunji and criticising the sect, as he claims if he returns to Korea in the reasonably foreseeable future. Further the Tribunal does not accept him to be a witness of truth and has not accepted his claims.
108. The Tribunal does not accept that there is a real chance of the applicant being persecuted if he returns to Korea The Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution within the meaning of the Convention qualified by the Act.

CONCLUSIONS

109. 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

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

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

Sealing Officer: PRMHSE