

1409771 (Refugee) [2015] AATA 3234 (23 July 2015)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1409771
<b>COUNTRY OF REFERENCE:</b>	China
<b>MEMBER:</b>	James Jolliffe
<b>DATE:</b>	23 July 2015
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 23 July 2015 at 5:12pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## 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 to refuse to grant the applicant a Protection visa under s.65 of the Migration Act 1958 (the Act).
2. The applicant who claims to be a citizen of China , applied for the visa [in] August 2013 and the delegate refused to grant the visa [in] May 2014.
3. The applicant appeared before the Tribunal on 9 April 2015 and 19 May 2015 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicant was represented in relation to the review by her registered migration agent. The agent's registration was cancelled before the Tribunal published its reasons .

### Relevant Law

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration. The Tribunal has taken the guidelines into account in considering the applicant's claim.

#### **CLAIMS AND EVIDENCE**

10. The Tribunal has before it the Departmental and Tribunal files relating to the applicant as well as information from a variety of sources.
11. The issues in this case are the applicant claims to fear harm if she returns to China on the basis of the practice of her Catholic religion in an underground church. The applicant also claims to fear harm should she return to China on the basis that she claims that she has been the victim of previous extortion attempts and harassment and including sexual harassment by Chinese authorities and criminals. The applicant also claimed to fear harm if she returned to China on the basis of being a failed asylum seeker.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
13. The applicant had previously applied for a protection visa [in] February 2009. Her application was refused and she applied to the Refugee Review Tribunal for a review of that decision. The Tribunal published its reasons on 7 August 2009 and affirmed the decision not to grant the applicant a protection visa. The Tribunal notes that Section 48A of the Act imposes a bar on a noncitizen making a further application for a protection Visa while in the migration zone in circumstances with a noncitizen has made an application for a protection Visa which has been refused. The Full Federal Court in *SZGIZ.v.MIAC* (2013) 212 FCR 235 has held at[38] that the operation of s.48A, as it stood at the time of this Visa application, is confined to the making of a further application for a protection Visa which duplicates an earlier unsuccessful application for a protection Visa, in the sense that both applications raise the same essential criterion for the grant of a protection Visa. Applying the reasoning in *SZGIZ.v. MIAC* the Tribunal finds that it does not have power to consider the refugee Convention criterion in s.36(2)(a), and has proceeded on the basis that it can only consider the applicant's claims under the complementary protection provisions in s.36(2)(aa) of the Act.
14. The applicant in her second protection Visa application which was lodged [in] August 2013 claimed that her name is [as stated] and that she was born on [date] in [a] Town, [in a] County in Fujian province in China. The applicant claimed that she is a Roman Catholic and that she was married but had divorced in August 2001. The applicant claimed that she had been educated in China between [stated years]. The applicant claimed that she lived [in] Fuqing City in Fujian province between August 2003 and December 2008 and that between October 2006 and December 2008 she conducted a [business].
15. In the protection Visa application the applicant claimed that if she returned to China she would be at a real risk of significant harm and be subject to torture or inhuman or degrading treatment or punishment. The applicant referred to having conducted her own [business] in China and that she did so since October 2006. The applicant claimed that she and her husband had divorced and that she had [children] who were now looked after by her mother who resides in the applicant's home village which is some distance

from where the applicant lived and conducted her business. The applicant claimed that her business had become successful and as a result she had been “arbitrarily bullied by those corrupt officials or brutal police or the local tyrants from Black Society in [the] area”. The applicant claimed that she had to give money as gifts to local corrupt officials and police and that these gifts of money were provided on traditional Chinese holidays and festivals. She also claimed that she had to pay a “protection fee” to the “local tyrants from Black Society” or otherwise she would be bullied by local ruffians. The applicant claimed that she was also subject to sexual harassment at this time. She claimed that she tolerated “various inhuman or degrading treatments” as she did not want to lose her business or property and she had to make a living for herself and her [children]. The applicant claimed that she could not obtain protection from local authorities and she claimed that she was subject to extortion and harassment from those authorities. The applicant claimed that if she returned to China she would suffer significant harm and is seeking complementary protection in Australia.

16. The applicant also referred to the practice of her Roman Catholic religion in an underground church in China and she claimed that because of the practice of her religion she had been subject to persecution by Chinese authorities and she claimed to have spent three months in detention between March and June 2008 because of her religious activities. The applicant claimed that while she was in detention she was “mistreated and tortured not only by the police but also by the criminals at the detention centre”. She claimed that that was another reason why she feared significant harm if she returned to China. The applicant claimed that she was a “genuine and faithful Roman Catholic” and that because of that she had come to the attention of Chinese authorities and would be subject to persecution on that basis if she returned to China. The applicant claimed that the Chinese authorities would not protect her if she returned to China and she also claimed that the police in China “have never stopped making troubles with my parents” since the applicant has been in Australia.
17. The applicant claimed that she had entered Australia on a passport not in her name. The applicant provided the Department with a People’s Republic of China national identification card in her name. The Department was also provided with a letter from [a church in] April 2014 which stated that the applicant was a member of the [church] and that the applicant claimed she’d been attending mass since early February 2009 at [Church 1].
18. A Department delegate interviewed the applicant in relation to her protection Visa application [in] April 2014. The delegate declined to grant the applicant a protection Visa and was not satisfied that Australia had protection obligations to the applicant under the Refugees Convention or under the complementary protection provisions of the Migration Act. A copy of the delegate’s record of decision was provided to the Tribunal with the application for review.

### **TRIBUNAL HEARING**

19. The applicant appeared before the Tribunal on 9 April 2015 and 19 May 2015 to give evidence and present arguments.
20. The Tribunal also received evidence from [Ms A]. [Ms A] said that she had known the applicant since around March 2009 when she had seen the applicant at [Church 1]. She said the applicant had been kneeling and crying on that occasion. The witness said that she had come to Australia in 2008 and had come from Fujian province. The witness said that she saw the applicant at mass and that the applicant had occasionally visited the witnesses home. She claimed that the applicant did some cleaning work or washed dishes after Church activities and that the applicant also visited sick people and

engaged in meditation. The witness claimed that there were problems in Fujian for people in practising religion. The witness claimed that she had had difficulties in China and she claimed that she had been arrested in 2007 because of her church activities. She claimed that she had been granted refugee status in Australia in 2008. The witness essentially claimed that she had difficulties in practising religion in China and asserted that there was no religious freedom in China, but did not provide any real details about her claims, other than to assert the lack of freedom in China. The applicant then gave evidence to the Tribunal.

21. The applicant told the Tribunal her name and provided other details in relation to her background. She discussed her grounds and claims for seeking protection. The Tribunal told the applicant that it was only considering her protection claim on the basis of the complementary protection provisions in the Migration Act and not under the Refugees convention and the basis for that decision. She told the Tribunal that she had last been in contact with her mother in China in February 2015 during Chinese New Year. She claimed that her mother had been visited by Chinese police in early 2015 and the police had been looking for the applicant. She claimed her mother had been told that if the applicant returned to China she had to report to the police and had also asked for the applicant's telephone number. The applicant said that before the February contact she had spoken to her mother in September or early October 2014. The Tribunal found the applicant to be vague when giving evidence about the details of her contacts with her mother. The applicant referred to her claims that she had been held in detention centre in China between March and June 2008 on the basis of her religious activities.
22. The applicant said she feared harm if she returned to China from the police and the head of the [local] village committee. She claimed the head of the village c/tee had wanted to take over her business. The applicant claimed to have opened her [business] in 2006. The applicant claimed that the village head had caused "hooligans" to smash items in her shop and swear at her and engage in "indecent behaviour" and to take her [tools]. The applicant said she had been hurt by the hooligans who she said had grabbed her and shaved her head and told her to "hand over" her business to the village head. The applicant claimed the business had been successful and made [profit] per month. She claimed after the incident with the hooligans she closed the shop. She claimed this incident occurred in July 2008. She claimed after she closed the business that police had come to her home and said they were monitoring the applicant. She claimed the police were monitoring her because of her religious activities. She told the Tribunal that she had told friends and relatives about religion and that the police were scared of her religious activities. The Tribunal asked the applicant about the fact that no reference had been made in her statement in support of her first protection visa application about anyone seeking to take over the business and her current claims in relation to that issue before the Tribunal. The applicant's response was that she was worried to raise the claim initially and said "if they knew about it (in China)" she would have problems. The Tribunal felt the applicant's answer or explanation did not respond to the question. The Tribunal said, as a matter of fairness to the applicant it was raising the omission from the first statement of any claim about anyone wanting to take over the business. The applicant responded by saying that she was worried about the Chinese government and did not understand the law in relation to refugee claims and she said she knew religion was one of the reasons for seeking protection (in relation to her first protection visa application). She claimed that she then found out about being able to seek protection for wider reasons. She claimed that her current agent had told her about complementary protection and as a result she had raised her current claims.
23. The Tribunal raised the Tribunal's decision and findings of August 2009 with the applicant and asked for the applicant's comments in relation to those findings. The

current Tribunal noted that the findings from the first Tribunal decision included that the Tribunal had not accepted that the applicant was baptised in China as she had claimed and had not accepted that she had regularly attended gatherings of the underground church that she had claimed. The current Tribunal also noted that the earlier decision had not accepted that the applicant was a member of the unofficial Catholic Church in China. The decision had also not accepted that the applicant had been arrested in March 2008 at a church gathering and held for three months she had claimed. The Tribunal also noted that the decision had not accepted that the "released letter" was genuine in relation to the applicant's claim that she had been released after three months of detention in 2008. The Tribunal had not accepted the applicant's claim that she had been harassed after her release by local police in 2008 because of religious activities. The decision also indicated that the Tribunal on that occasion considered that the applicant had left China to come to Australia for economic reasons and that she travelled to Australia on a false passport which she had arranged through "snakeheads" because of the difficulties in obtaining an Australian Visa as a resident of Fujian province. The applicant responded by saying that the Tribunal's findings in the 2009 decision were "unfair" and that the Tribunal had been prejudiced against her.

24. The Tribunal asked the applicant about the circumstances in which she had obtained her false passport. The passport had been obtained in [another name]. She had travelled to Australia on that passport and in that name. The applicant claimed that she had applied to obtain a passport in her name in [2008] but that the Public Security Bureau had told her that she was being monitored and she claimed she was unable to obtain a passport in her name. She claimed she received the false passport [in] 2008 and had obtained it from a "snakehead" and she claimed she travelled to [an Australian city] initially [in] January 2009 and then travelled to [another city in] January 2009. She said she came to Australia because she had heard Australia had religious freedom and human rights and she claimed she had no relatives in Australia. She said she had paid 150,000 RMB for the passport and she had raised money by selling her business and had obtained money from relatives and friends.
25. The Tribunal asked the applicant about her claims in her protection visa application that she had given money as gifts to local corrupt officials and police and also paid a protection fee to the local "tyrants from Black society". The Tribunal found the applicant was initially vague in responding to this question and in providing details about her claims. She told the Tribunal that she paid about 1000 RMB every month as a protection fee but also paid between 500 and 1000 RMB to police and other officials. She claimed that she paid the money because officials would find reasons to close her shop. She told the Tribunal that the police did not actually ask for money but came to her shop and harassed her. She described the police as "brutal" and said that on one occasion the police had smashed a glass mirror and told her not to run her shop. She claimed that all shopkeepers had to pay protection fees. She claimed that she had been sexually harassed by the head of the village, and by other people and when asked about this claim she said that the police and the Black Society had used indecent language when speaking to her. She also claimed that the head of the village committee had physically touched her. She claimed that she had reported these issues to the town government and the PSB but nothing was done. She also claimed that the "hooligans" had touched her chin in July 2008. The Tribunal found it difficult to get details from the applicant about her claims and on occasions believed that the applicant was not engaging with the questions in relation to the details of her claims or was reluctant to give details about some aspects of her claims. In summary, the applicant claimed that in July 2008 the hooligans had touched her and shaved her head and that in June 2008 the police had smashed items in her shop. She said the way she had been treated was the basis for her claim that she had been subject to inhuman and degrading treatment. She claimed that after she had been released from detention in June 2008 that things had become

worse for her. She said that she had closed her shop in July 2008 and that the police were monitoring her and that the head of the village had asked her to give him her property. She said that occurred in November 2008. She said that the hooligans had harassed her at home between September and October 2008 and spoke about a pig's head and dogs blood being left at her home. She claimed that she had difficulties in 2007 when she owed protection money to the Black society and she claimed that on that occasion she had her head pushed against a wall and she was slapped. The Tribunal raised the issue of the release document that the applicant claimed showed that she had been released from detention in June 2008 and the Tribunal's findings in the 2009 decision that it was not a genuine document. The applicant responded by saying that the Tribunal on that occasion was biased against her and the Tribunal had made a mistake in relation to that document.

26. The applicant, told the Tribunal that she also feared harm from her town government in China and other Chinese officials and she feared harm on the basis that she was being discriminated against because she was a divorced woman and this appeared linked to her claim that she had been subject to sexual discrimination.
27. The Tribunal asked the applicant about why she had become a Catholic. She told the Tribunal that "religion can save her soul". The Tribunal referred to the applicant's statement in support of her first protection visa application and her claims regarding one of her customers in her shop, [and] his influence in terms of her becoming involved with religion. She claimed that she had been baptised in China and she claimed that she had attended three or four religious classes a week for about three months prior to being baptised. She was asked about her religious activities in China. The Tribunal found that the applicant was initially vague in providing details in responding to that question. She said that she read the scriptures, prayed and sang songs at night and attended religious sessions or gatherings three or four times a week in other "brothers" homes. She said she would also say 15 sessions of the rosary. She said she attended church in Australia. She said she could not attend a registered church in China as the Vatican does not recognise the registered church in China and she also said that the registered church could not save her soul. She said that the Pope is the leader of the church and represents Jesus and the Pope can free people from sin. She was asked about the role of the bishops in the church in China and she referred to the bishops in the registered church not being approved by the Vatican. The Tribunal raised, country information in relation to China in terms of the Catholic Church contained in a background paper entitled "Catholicism in China" dated December 2012 and which was available to the Tribunal. That background paper indicated that around 90% of the Registered Church's bishops had been subsequently recognised by the Vatican ( see US Department of state 2012, International religious freedom report 2011 China, 30 July). She also told the Tribunal that she had attended Mass in China perhaps three or four times a year, but was vague in providing any further details to the Tribunal about this issue.
28. The applicant said that she had first started attending the church in China at the end of 2006 and nominated December 2006 as her commencement date. She claimed subsequently to have been baptised as indicated.
29. She said she had been arrested in China [in] March 2008 because of her religious activities and she claimed six people had been detained and had been interrogated by the [local] police. She claimed she and the others would not answer questions and that they had been beaten with batons and asked about who was the head of the religious group. She claimed she suffered a knee injury. She claimed that she was detained for three months and also had to pay a fine. She claimed she had been taken to [a] detention centre and kept with [other] prisoners. She claimed that she was bullied and beaten up by other prisoners. She claimed in her statement in her current protection

visa application that she had been tortured. She told the Tribunal that the police had slapped her and stepped on her feet and pulled her hair and threatened to cut her tongue out if she talked about religious issues. The Tribunal asked about her claims in her statement in support of her first protection visa application regarding this incident. She claimed that the police had hurt her. She was asked about her claim about “the court hearing and sentencing” in that statement. She said there had been no court hearing and that she had been dealt with by the PSB.

30. The Tribunal resumed the hearing on 19 May 2015. The Tribunal raised with the applicant the circumstances surrounding her obtaining a false passport in another name which she used to travel to, and enter Australia in January 2009. The Tribunal referred the applicant to the introduction of Section 91WA of the Migration Act dealing with the provision of a bogus identity document and the requirement in those circumstances that a protection visa application must be refused unless the decision maker is satisfied that there is a reasonable excuse for providing that bogus document. The provision had come into effect in relation to all current Visa applications as at 18 April 2015. The Tribunal asked the applicant to explain the reasons for her entering Australia on a false passport in another name.
31. The applicant said that she could not get a passport in her own name because she was on a “watch list” in China. She claimed that was related to her claimed detention from March to June 2008. She claimed that she had gone to the PSB and been told that because of her arrest she could not get a passport. She claimed she first applied in August 2008 at [the] County PSB and that she applied as well on two other occasions to get a passport in her own name but was refused. She then told the Tribunal about obtaining the false named passport [in] 2008 and the circumstances in which she had obtained a passport and her subsequent departure from China to Australia. Some aspects of the applicant’s claims about this issue are referred to elsewhere in these reasons. In essence, that was the applicant’s explanation for having obtained a false name passport and using it to enter Australia in 2009.
32. The applicant produced a number of coloured photographs which she described as photographs that she had downloaded from the Internet and which showed the demolition of two churches by the Chinese government. She did not know the details about why the churches were being demolished and was unable to provide the Tribunal with any background about the demolition. She said the demolition had not occurred in Fujian province and said these were in Zhejiang province. In essence the applicant was producing the photos to support her claims that Chinese officials were involved in demolishing churches and this went to her broad claim that Chinese officials were opposed to religious practices. The applicant subsequently provided the Tribunal after the hearing with a statutory declaration in which she referred to these photographs and the demolition of a Protestant church which she said had been “demobilised by the PRC authorities. Detailed information or report can easily be found on the Internet”. The applicant said in the statutory declaration that the church had been officially sanctioned and government-controlled but had still been bulldozed. The Tribunal will refer further to the statutory declaration and the applicant’s claims in that declaration in these reasons.
33. The Tribunal asked the applicant about her religious activities in Australia. The applicant said that she had been attending [Church 1] since February 2009. The Tribunal notes that the Department had been provided with a letter by the applicant from a Catholic priest [which] said that the applicant had regularly attended Mass at [Church 1] since February 2009, but that this information was based on information provided by the applicant to [the priest].



34. The applicant said that she attends Mass at [Church 1] on Sundays and also attends on Saturday nights at [Church 2] occasionally. The applicant said she attends Mass at [Church 1] and then attends lunch there and helps clean the church and wash dishes after lunch. She said that she had, on a few rare occasions (possibly two or three times) attended Bible studies at [Church 1] church on Friday nights. She said that she had stopped attending the English language mass at [Church 1]. She said that on Sunday mornings at [Church 1] there was a choir and that she usually attended between 10 AM and 5 PM at [Church 1] every Sunday. She said at [Church 2] on Saturday nights that there was a mass at 6 PM and that after that there was dinner and that she was involved in tidying up and including washing dishes and Bible studies were conducted and that she usually went home from the Church about 10 PM. The Tribunal asked her if she was involved in any other religious activities and she talked about having attended at the Pope's "visit" which was clarified as her attending a holy procession conducted in June every year [in a certain city]. She also referred to attending meditation sessions with other parishioners. She told the Tribunal that she was not involved in any church committees.
35. The Tribunal asked if there were any further claims or issues that the applicant wished to raise with the Tribunal in relation to her claims. The applicant claimed that she had called her mother about two weeks ago in secret and that her mother was upset on that occasion and that her mother had referred to the police coming to the family home before Chinese New Year and having hit the applicant's father and that the police were looking for the applicant. The Tribunal asked why the police would be now looking for the applicant given that the applicant had been in Australia since 2009. The applicant claimed that the police were looking for her because she was a member of the Catholic Church and they would want to question her about underground priests in China. The applicant said she was afraid to return to China.
36. The Tribunal referred to country information contained in the background paper on Catholicism in China that has been referred to elsewhere in these reasons. The Tribunal noted that Fujian province (the applicant's home province) was described as a province that was said to have applied regulations on religion more liberally than others. The background paper indicated that there were few recent reports of problems for Catholics in Fujian Province. The Tribunal also referred to the two DFAT reports relevant to China. These are the country report dated March 2015 and the thematic report dated March 2015 in relation to unregistered religious organisations and other groups in China. In relation to the thematic report the Tribunal noted that members of both registered and unregistered religious organisations can face adverse attention by authorities in China when they are perceived to have links with foreign influences or belong to large and potentially influential networks or are operating in provinces or local settings where corruption is prevalent and therefore the potential for extortion exists and that from time to time campaigns can be conducted that cause a crackdown on Christian activities. That report also indicates that house churches can be found across China and that gatherings of 30 to 40 people were generally tolerated although the Department is aware of cases where gatherings of fewer people have attracted negative attention by authorities. The Tribunal also referred to the position regarding unregistered Catholic organisations that are referred to in the thematic report and that Catholicism has grown steadily in China over recent decades and that in the past, local authorities had required priests to submit sermons and prayers in advance for approval but that credible sources had told the Department that was no longer required in areas where the Catholic Church had managed to build trust with local officials. The report also referred to the difficulties for members of the clergy in detention and restrictions on travel by prominent church members or leaders. The report noted that Catholics along with members of other churches can experience officially sanctioned harassment and discrimination when their activities are viewed by authorities to be politically sensitive. However, the report also

indicated that the incidents of societal discrimination and violence against Catholics in China is generally low. The applicant said she disagreed with country information the Tribunal had referred to and including in relation to Fujian province. She also claimed that she had been bullied in China because she had come from another town and referred to her [business] and its location. It did not appear to the Tribunal that this bullying claim had any connection to her religious activities. The applicant after a short adjournment during the later stages of the second hearing informed the Tribunal that she had received information during the adjournment that her father had died in China. The Tribunal offered the applicant an adjournment but the applicant said that she would rather proceed with the Tribunal hearing.

37. The Tribunal again referred to the Tribunal's decision of August 2009 and the Tribunal's findings on that occasion in relation to the applicant's claims and including the applicant's credibility in relation to her claims. The Tribunal referred to paragraphs 98 to 108 of the Tribunal's decision and its adverse findings in those paragraphs in relation to the applicant's claims. The Tribunal referred to that part of the decision relating to its findings in relation to the applicant's claims about her baptism and the production of a baptismal certificate (paragraph 99). The Tribunal on that occasion did not accept that the baptismal certificate was reliable evidence and therefore able to confirm the applicant's claims that she was baptised in April 2007. The applicant in responding basically did not engage with the Tribunal's findings on that occasion
38. The Tribunal referred to the applicant's claims that she was detained from March 2008 and June 2008 and the Tribunal decision of 2009, which did not accept the applicant's claims in relation to that incident. The applicant claimed that she had been detained and essentially disagreed with the Tribunal's finding in its reasons. The Tribunal also referred to other issues in the 2009 decision and the applicant responded by claiming that she had run a successful business and therefore had not left China for economic reasons, and she was also unaware of visa processes in relation to her obtaining a false passport to travel to Australia and the Tribunal's decision in relation to that aspect.
39. The Tribunal referred to concerns it had regarding the applicant's credibility and the credibility of her claims. It referred to the Tribunal decision of 2009 and the various issues that had been raised with the applicant arising out of that decision. It referred to the applicant's statement in support of her first protection visa application and the fact that statement had not included a number of the aspects of the current claims. Some aspects in relation to that issue have been referred to elsewhere in these reasons. The Tribunal also raised its concerns about the vague evidence given by the applicant during the hearing in relation to some aspects of her claims. The Tribunal referred to information in the context of information that would be a reason or part of the reason for affirming the decision under review and raised that information in the context of Section 424AA of the Act. That information was relevant to the applicant's claims and to the Tribunal's assessment of the applicant's credibility in relation to her claims. That information was information contained in the applicant's first protection visa application and in her statement in support of her protection visa application. That statement did not refer to a number of the current claims made by the applicant in relation to her current protection visa application. The Tribunal also referred to the Tribunal's decision of 7 August 2009 and which has been referred to elsewhere in these reasons. The applicant was invited to comment or respond to that information. The applicant told the Tribunal that she was scared to go back to China. The Tribunal allowed until the close of business on 2 June 2015 for the applicant to provide any further submissions or comments or responses in relation to the issues raised by the Tribunal or more generally in relation to the applicant's claims.

40. As indicated elsewhere in these reasons the Tribunal received a statutory declaration dated 2 June 2015 from the applicant after the hearing. Some aspects of the declaration have already been referred to elsewhere in these reasons. The applicant in that declaration commented or responded to the Tribunal's decision dated 7 August 2009. In summary, the applicant said that she was "deeply impressed that the Tribunal acted unreasonably and had never ever taken any genuine attempts to consider my evidence independently and impartially" and referred to her claim that she was a devout Roman Catholic and that she disagreed with country information that had been referred to on that occasion and she also referred to the Tribunal's decision in relation to her baptism certificate. She also referred to her church activities in China and disagreed with the Tribunal's decision in relation to those issues. She also indicated that she disagreed with the Tribunal's findings in its August 2009 decision in relation to wider issues surrounding the practice of her Catholic religion and to evidence in relation to that issue. She disagreed that she had engaged in church activities in Australia in order to strengthen her refugee claims. The applicant also referred to her father's death and her claim that her father had been harmed by the police when they had visited the family home in February 2015 and had been seriously ill since and she claimed that her father's death in those circumstances was the "strongest evidence, that I must have a real risk of being subjected to significant harm if I have to return to China". The applicant in the declaration had also claimed that the demolition of the church in another province that has been referred to elsewhere in these reasons was typical of the way in which Chinese authorities seek to stop or suppress Christians. She suggested that the demolition of the church could be seen to be part of an anti-Christian campaign and in those circumstances the applicant as "a genuine Catholic" who was active in the underground church must have a real risk of significant harm if she returned to China. The Tribunal was invited to consider the "independent evidence" regarding the demolition of the church that the applicant had referred to in the statutory declaration in the context of the applicant's claims.

#### CONSIDERATION OF CLAIMS AND EVIDENCE

41. On the basis of the materials and information provided to the Department and available to the Tribunal, the Tribunal accepts that the applicant is a Chinese citizen and that her identity is as she claims it to be. The Tribunal accepts on the basis of the information and materials provided to the Department and available to the Tribunal that the applicant does not have a right to enter or reside temporarily or permanently in any other country apart from China. The Tribunal accepts that China is the applicant's receiving country for complementary protection purposes.
42. The Tribunal is not satisfied on the basis of the evidence and information before it that the applicant faces a real risk of significant harm should she be returned from Australia to China. The Tribunal is also not satisfied as the applicant's credibility in relation to some aspects of her evidence and to some aspects of her claims.
43. The applicant claims to fear harm if she returned to China on the basis of her claimed practice of the Roman Catholic religion in an underground Catholic Church in China. She also claimed to fear harm from the police and Chinese authorities and Chinese criminals as well as a local village official in that she claimed she would be subject to sexual harassment and physical harassment if she returned to China. She claimed that she would be detained and tortured by authorities. She also claimed to fear harm if she returned to China because she would be a failed asylum seeker and feared harm on that basis.
44. As indicated elsewhere in these reasons the Tribunal on occasions had difficulty in getting clear details from the applicant in relation to some aspects of her evidence.

There were also occasions when the Tribunal found that the applicant did not engage with the Tribunal's questions in relation to certain issues. The Tribunal has considered the applicant's claims that are contained in her protection visa application which was lodged [in] August 2013. The information in that application contains a significant amount of material that was not contained in the applicant's statement in support of her first protection visa application which was received [in] February 2009. As indicated elsewhere in these reasons the Tribunal asked the applicant about the variation in her claims in relation to her current application and her previous application. The statement in support of her previous application contained no detailed suggestion that the applicant had been subject to the extortion or protection fee attempts from local corrupt officials and Chinese criminals that she claimed or that she had been a victim of sexual harassment, or that a local village official had sought to effectively take over her business. She did claim in her statement in support of her first protection visa application that the police had often come to her shop after her claimed release in June 2008 and as a result they scared her customers away from her business. The Tribunal in its decision of August 2009 had referred to a claim by the applicant that local officials and police had continued to visit her shop and demand money after her release from the detention centre (see paragraphs 57, 58, 90 and 107 of the Tribunal's decision in relation to this aspect). There is no suggestion in the Tribunal decision of August 2009 that the applicant had claimed on that occasion that she had been subject to fee protection payments to Chinese criminal elements in terms of the Black society or sexual harassment that she was claiming in relation to her current application for a protection. There is also no suggestion that a local village official had sought to take over the applicant's business and had sent hooligans to harass the applicant. The applicant when pressed for details about payments to the police told the Tribunal that the police had not actually asked for money but had come to the shop and harassed her. She had claimed in her current protection visa application that the "corrupt officials or brutal police were only interested in red bags and tried everything possible to extort the money from me".

45. The applicant in her evidence before the Tribunal in relation to her current application had referred to specific sums of money that she had paid on a monthly basis to the Black society for protection and amounts of money that she claimed she paid to the police and other government officials. The Tribunal decision of August 2009 at paragraph 57 refers to the applicant having told the Tribunal on that occasion that she could not give the police any money because she had to support her children and pay for their schooling but kept coming to the shop and frightening customers away. The applicant's evidence in relation to her current protection visa application contains significant variations in relation to her claims about what she said happened in relation to the conduct of her business and to the harassment that she claimed she faced.
46. The Tribunal has considered the applicant's evidence in relation to her current claims and her claims that she was forced to pay protection fees to Chinese criminal elements and other monies to police and corrupt local officials and that she was subject to sexual and physical harassment by hooligans and police. The applicant claimed before the Tribunal in relation to her current application that she had been physically assaulted and harmed. The Tribunal has also considered her claim that the local village committee head wanted to obtain possession of the applicant's business. The Tribunal has considered these claims and the evidence and had regard to the Tribunal's assessment of the applicant's credibility in relation to her claims and her evidence. The Tribunal had asked the applicant about the variations in her claims and the fact that her statement in support of her first protection visa application lacked references to issues such as her claim that the local village committee head had wanted to take over her business. The applicant had responded by claiming that if the authorities in China knew about this she would have problems and in the Tribunal's view she did not really engage with the

Tribunal's question and did not provide any meaningful or relevant response or comment or explanation in relation to the issue. The Tribunal has referred elsewhere in these reasons to the significant variations in relation to the applicant's claims between her first and current protection visa application. The Tribunal, as indicated elsewhere in these reasons referred the applicant to the information contained in the statement in support of her first protection visa application. The Tribunal has referred to the applicant's responses and comments in relation to that information. The applicant told the Tribunal that she believed the Tribunal in relation to the August 2009 decision had been unfair and disagreed with its findings on key issues of her claims.

47. The Tribunal after having considered all these issues does not accept that the applicant is a credible witness. The Tribunal believes that it would have been reasonable in all the circumstances to have expected the applicant to have provided information about her current claims during her first protection visa application. The applicant told the Tribunal during the current hearing that she had claimed religion as the basis for her protection visa application on the first occasion and had not been aware of other grounds. However, she did claim at the Tribunal hearing in relation to her first protection visa application that there had been harassment and demands for money from police and local officials. . The Tribunal, for example, believes in all the circumstances of the applicant's claims that it would have been reasonable to have assumed that the applicant would have raised in her first protection visa application that she had been assaulted and threatened by hooligans and that her head had been shaved as part of that physical assault upon her. There is no suggestion that claim was ever raised by the applicant in relation to her first protection visa application.
48. The Tribunal has considered these issues and believes that the applicant has inflated or exaggerated her claims in relation to the payment of protection fees and sexual and physical harassment and assault and in relation to her claims that a local village committee head was seeking to take over her business. The Tribunal does not accept that these events and issues occurred as claimed by the applicant. The Tribunal is not able to be satisfied on the evidence and its assessment of the applicant's credibility as to the applicant's claims that she was subject to extortion attempts, or that she was sexually and physically harassed or assaulted as she claims, or that she paid protection fees to Chinese criminal gangs or that they physically mistreated her or made payments to police or other officials. The Tribunal asked the applicant for details about her claims of being sexually and physically harassed and about her claims that hooligans and the police had damaged her shop and/or threatened her. The Tribunal has referred elsewhere in these reasons to the difficulty in getting clear details from the applicant in relation to these claims. The Tribunal does not believe that the difficulty it had in getting the details was caused by any embarrassment by the applicant about the claimed incidents but rather it seemed to be a combination of reluctance on the part of the applicant to engage with the Tribunal's questions or an inability to provide clear details in relation to claimed incidents. She told the Tribunal that apart from the head of the village committee having physically touched her ( but she gave no details about when this occurred) and the hooligans having touched her chin and the police and members of the Black society had used indecent language. In essence that was the applicant's evidence in relation to the claimed sexual harassment The Tribunal's overall assessment is that these incidents did not occur as claimed by the applicant and that is why the applicant struggled to provide the Tribunal with relevant and detailed evidence in relation to these claims. The Tribunal is also unable to be satisfied as to the applicant's claims that her business had been financially successful. She told the Tribunal that she closed the business because of the difficulties with the hooligans and others. The Tribunal in its decision of August 2009 at paragraph 58 refers to the applicant, saying on that occasion that if the police had not come to her shop to make trouble she would have been able to continue with her business. That claim is

inconsistent with what she told the Tribunal in terms of it being the hooligans grabbing her and shaving her head and telling her to hand over her business to the local village head that caused her to close the shop. The Tribunal is not able to be satisfied on the applicant's evidence that her business was financially successful as she claimed.

49. The Tribunal has considered the applicant's claims that she fears harm on the basis of the practice of her Catholic religion and that if she returned to China she would be harmed if she practiced that religion in an underground Catholic Church. The Tribunal accepts that since the applicant has been in Australia she has been involved in attending church activities in terms of attending mass on Sundays at [Church 1]. The applicant claims she also attended at [Church 2] on Saturday nights to attend Mass and that she had very rarely attended Friday night Bible studies at [Church 1]. The Tribunal also accepts that she has been involved in some other religious activities including the June parade in [an Australian city] that she referred to and the other activities that were referred to by her in her evidence. The Tribunal also notes, and had regard to, the evidence of [Ms A] and other evidence provided to the Department in relation to the applicant's religious activities in Australia. The Tribunal also on the evidence accepts that the applicant has essentially engaged in no church leadership or church organisational roles in her activities in Australia. The evidence indicates the applicant is a parishioner who mainly attends religious activities on Sundays and Saturday nights. The Tribunal believes that the evidence indicates that the applicant became interested in participating in the Catholic religion after she arrived in Australia.
50. The Tribunal, as indicated, had asked the applicant about her religious activities in China and had raised with the applicant the Tribunal decision of August 2009 where significant aspects of the applicant's claims about her religious activities in China had not been accepted by the Tribunal on that occasion. The applicant, when asked about her religious activities in China in relation to her current protection application had referred to reading the scriptures and praying and singing songs at night and saying the rosary and attending, she claimed, at other religious brothers homes several times a week. The Tribunal found the applicant had been initially, vague in responding to the Tribunal's questions about her church activities in China. She had said she had attended Mass three or four times a year when she had been in China. She had started attending the church in China she said at the end of 2006 and claimed to have been baptised in April 2007. She claimed to have been detained in March 2008 and arrested with six other people while attending a church gathering at her shop. The Tribunal has also referred to the applicant's evidence about her claims surrounding her treatment when she said she was detained for three months between March and June 2008. As indicated the Tribunal had raised with the applicant during the hearing the findings by the Tribunal in its August 2009 decision in relation to her first protection visa application. The Tribunal has referred elsewhere in these reasons to the applicant's evidence in terms of her responses and comments in relation to those issues. The Tribunal has considered the applicant's evidence about her religious practices in China and its assessment of the applicant's credibility in relation to these issues.
51. The Tribunal is not satisfied that the applicant was baptised in China in April 2007 as she claimed. The Tribunal during the current hearing asked the applicant if she had undertaken any preparation for baptism and she said she had attended classes three or four times a week for about three months before she was baptised. The Tribunal in its August 2009 decision had noted (paragraphs 44 and 98) that the applicant's evidence on that occasion was that she had been baptised after she'd decided that she wished to be baptised in April 2007 and that she had only attended a few gatherings, with some other believers and was then baptised. The Tribunal is not satisfied on the applicant's evidence as to her claim that she was baptised into the Catholic Church in April 2007. The Tribunal has also considered the applicant's claim that she participated in

underground Catholic Church activities in China. The Tribunal found the applicant's evidence about the activities that she said she participated in to be very general in nature, and lacking in any particular detail in terms of discussing the religious activities that she said she had participated in. The applicant's evidence is suggestive of someone who has some limited knowledge of underground church activities but does not satisfy the Tribunal that the applicant was involved in underground church activities in any active or on going way that would be consistent with the applicant's claims that she was a Catholic in China and a member of the underground church in China. The Tribunal believes that the applicant became interested in Catholicism in a developed way after she arrived in Australia.

52. The Tribunal has also considered the applicant's claims that she was arrested in March 2008 at her shop with several other underground Catholic parishioners while they were conducting a religious gathering. The Tribunal does not accept that the applicant was a member of an underground Catholic Church when she lived in China. Her evidence about her religious activities in China was initially vague in terms of providing details and as indicated, was also general in nature in terms of discussing those activities. The Tribunal does also not accept on the applicant's evidence that she was arrested in March 2008 at a religious gathering at her shop along with several other people. The Tribunal in those circumstances also does not accept the applicant's evidence that she was detained and mistreated for a three month period from March to June 2008 because of her religious activities. The Tribunal is not satisfied on the evidence that the applicant was engaged in any religious activities that would have caused her to be arrested and detained and mistreated as she claims. The applicant in her statement in support of her first protection visa application had claimed that she had been interrogated by a police officer after she was detained and hit with a baton. She claimed that she had been perceived to be the leader of the religious group. She referred to having a "court hearing and sentencing, all the procedures were improper" and that she was detained for three months and fined 5000 RMB. She claimed she was abused by other criminals "inside because I was detained for my religion". She told the Tribunal in relation to her current application that she had been hit with a baton by a police officer and asked questions about the head of the religious group. She claimed that she had been slapped and her feet stepped on and her hair pulled and that she had been threatened that her tongue would be cut out if she talked about religion. She claimed that she was kept by herself by the police. She claimed that when she was taken to the detention centre that she was initially kept with [other] prisoners and that she was bullied and initially beaten up by the other prisoners. She was asked about her claim in her statement about the court hearing and sentencing and the improper procedures. She told the Tribunal that there had not been any court hearing and it was just the PSB who had decided that she was detained and fined. All of this was said to have occurred in Fujian province which has been described in the background paper on Catholicism in China dated December 2012, which has been referred to elsewhere in these reasons, as a province that is said to have applied regulations on religion more liberally than others ( see Lambert, T. 2006, China's Christian Millions, Monarch Books, Oxford, pp.240-1). The Tribunal believes after having considered the applicant's claims and evidence about this issue that the applicant has both invented and exaggerated her claims in relation to having been arrested and detained and mistreated in an effort to strengthen her protection visa application.
53. The Tribunal has considered the applicant's explanation in her evidence for her having entered Australia on a passport in a false name. That evidence has been referred to elsewhere in these reasons. The Tribunal has considered that issue in the context of the applicant's claim that she was on a watchlist because she had been arrested and detained for her claimed religious activities. As indicated the Tribunal does not accept the applicant's claims that she was arrested and detained in relation to that issue and in

those circumstances the Tribunal is not satisfied that the applicant has provided a reasonable excuse for having entered Australia on a passport in a false name in January 2009. The Tribunal accepts that the false passport used by the applicant to enter Australia satisfies the definition of a bogus document as defined in s.5(1) of the Act. The Tribunal however, also considers that there may be an issue in relation to s.91WA of the Act as to whether the applicant having arrived in Australia in January 2009 and subsequently disclosed her real identity and then subsequently bringing her second protection visa application has provided that bogus document in relation to her current protection visa. In those circumstances the Tribunal has assessed the applicant's claims in terms of her current protection visa application, notwithstanding that it does not accept the applicant's explanation for having entered Australia on a false name passport or bogus document is reasonable in all the circumstances.

54. The Tribunal has considered the applicant's claims that the Chinese police had attended at her parent's home in February 2015 and had been looking for the applicant. She claimed that her father was physically harmed on that occasion. She claimed that her parents had been told by the police that the applicant had to report to the police and had also asked for the applicant's telephone number. The Tribunal had found the applicant's evidence about this claim to be unconvincing in terms of the way in which she presented her evidence and spoke about her claims in relation to this incident. She claimed that the police were interested in her because she was a member of the Catholic Church and she claimed that the police would want to question her about underground church priests. The applicant has been in Australia since January 2009. The applicant claimed in her statutory declaration dated June 2015 that her father had been seriously ill since the February 2015 incident. The Tribunal does not accept that the applicant was a member of the underground Catholic Church in China and in those circumstances does not accept that the Chinese police were looking for the applicant in relation to her religious activities in February 2015. The Tribunal does not accept the applicant's claims that the Chinese police attended at her parent's home in February 2015 and in those circumstances does not accept that the applicant's father was harmed by the Chinese police on that occasion. The Tribunal is prepared to accept the applicant's father has died but is not in a position on the evidence to comment in relation to the cause of his death.
55. The Tribunal has considered the applicant's claims that she would be at risk of harm if she returned to China on the basis that she would be a failed asylum seeker. The Tribunal notes that this claim was considered and discussed by the Department delegate and is referred to in the delegate's decision record. The applicant confirmed to the Tribunal, this was one of her claims for seeking protection in Australia. The Tribunal notes that the Department delegate referred to country information relevant to the applicant's claim. The Tribunal has considered the delegate's comments on country information in relation to that claim. The Tribunal notes the country information referred to by the delegate (page 10) and contained in CHN31786 "that the Chinese authorities are not interested in failed asylum seekers, even if they know that this person asked for political asylum in foreign countries, because the authorities expect that they left China for economic reasons .the Chinese authorities view seeking to remain in Australia through a protection visa application, is commonplace rather than a sign of political disloyalty." The Tribunal has also had regard to country information in terms of a DFAT advice of March 2007 in terms of action the Chinese authorities may take against a returnee who may be imputed to be a Falun Gong practitioner or an underground Christian or a political dissident and indicated that the authorities would be likely to interview the individual, and keep them under surveillance or detained for a short time and that someone considered to be a high profile activist would likely be treated more severely through longer term surveillance or administrative detention ( DFAT 2007 CHN8980 ). The Tribunal has found that the applicant was not an underground church



member in China, and on that basis does not accept that the applicant would be questioned or detained or subject to short-term surveillance on that basis. The Tribunal has also found that the applicant has engaged in Catholic Church activities in Australia but that those activities do not involve any leadership or organisational role in Catholic Church activities. The Tribunal believes that the applicant may continue to be involved in Catholic Church activities if she returned to China, either in the registered or underground Catholic Church. The Tribunal will consider that aspect further in these reasons. The Tribunal has considered the applicant's claim that she would be at risk of harm if she returned to China as a failed asylum seeker. The Tribunal is not satisfied on the basis of the available country information and the evidence and after having considered the applicant's claims that the applicant is at a real risk of significant harm on that basis.

56. The applicant's situation should she return to China may be complicated by the fact that she left China on a passport in a false name. She obtained that passport on her evidence from a Chinese criminal. In those circumstances the applicant appears to have committed an offence against the Exit and Entry Administration law of the People's Republic of China (article 71 and article 73) in that she exited China on either a forged, altered or fraudulently obtained document. The penalty for that offence is a fine of between 1000 and 5000 RMB and where there are serious circumstances, the person shall be detained for between five and 10 days and also fined between 2000 and 10,000 RMB. The Tribunal notes that the DFAT country report for China dated March 2015 (see page 19) indicates that Chinese law provides for prison conditions to be ventilated, clean and warm with natural light. The report also indicates that the lack of transparency into China's legal system makes it difficult to comment on prison conditions and that prison conditions can vary depending on the location and the available resources and a number of other factors. The Tribunal accepts on the basis of the DFAT country report that prisoners may be held in poor physical conditions in some Chinese prisons. The Tribunal has considered this issue in the context of the possibility that the applicant may apart from a likely fine be required to spend a short time in jail conditions for having left China on a false passport. The Tribunal has had regard to the DFAT country information in relation to possible jail conditions in which the applicant may be held, but is not satisfied that these conditions would constitute significant harm within the meaning of the Migration Act. The Tribunal considers that the conditions in which the applicant might be held in jail for a short period and referred to in the DFAT country report may be poor but is not satisfied that these conditions would constitute significant harm. The Tribunal accepts that there are circumstances in which an incident of imprisonment and the circumstances of the particular imprisonment may constitute degrading treatment or punishment. Under the definitions in s.5(1) of the Act torture, cruel or inhuman treatment or punishment and degrading treatment or punishment do not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the articles of the covenant. The complementary protection guidelines (section 29) provide that if the claimed lawful sanctions meets the requisite level of severity necessary to constitute torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment within the meaning of the Act, it will necessarily be inconsistent with the ICCPR and that in such a case there is no need for decision makers to determine whether the sanction is lawful (PAM 3 complementary protection guidelines reissued 1 January 2014). The guidelines state that detention itself is not a breach of article 7, although particularly harsh treatment in detention may be. The guidelines indicate that the assessment of whether lawful sanctions breach article 7 is subjective and depends upon the particular characteristics of the victim. The Tribunal is not satisfied in relation to the applicant that a short period in detention in poor physical conditions in jail would involve significant harm to the applicant, or that there are substantial grounds for believing that, in the course of a short period in detention there is a real risk that the applicant will suffer significant harm or that the imposition of a fine on

the applicant would constitute a real risk of significant harm within the meaning of the Migration Act.

57. The Tribunal has considered the applicant's claims in her statutory declaration surrounding the demolition of a church in China and that this demolition indicates that there is no freedom of religious beliefs in China. The Tribunal notes that the demolition of the church occurred in Zhejiang province. The applicant in her statutory declaration did not provide any significant background as to the cause of the demolition of the church. The Tribunal has considered country information in terms of a Wikipedia entry for Sanjiang Church and the demolition of the church. That entry indicates that the church had only been approved for construction for a size of around 20,000 ft.<sup>2</sup>, but that the church complex occupied more than 100,000 ft.<sup>2</sup>. The entry also indicates that government officials claimed that the building was structurally unsound. The entry also indicates that there were protests by thousands of Chinese Christians to prevent it from being demolished after several crosses had been torn down. The incident surrounding the church and its demolition occurred in April 2014. The Tribunal has also noted a media report in the Guardian online dated 29 April 2014 which referred to the clash between Church worshippers and the local government in relation to the demolition of the church. That article also refers to the church building being "roughly 4 times" the size of what had been approved for construction. The articles referred to by the Tribunal indicate that there was a clash between Church worshippers and the local government about the demolition of the church. The Tribunal is not satisfied on the basis of the available information that the church was solely demolished, as inferred by the applicant, on the basis of an anti-Christian campaign by Chinese government officials.
58. The Tribunal has considered the applicant's church activities in Australia and in the context of what the applicant would do in terms of religious activities if she returned to China. As indicated the Tribunal accepts that the applicant attends Roman Catholic church services in Australia. The Tribunal accepts that the applicant is a parishioner, and is not a church leader or a person who has any Church organisational role or responsibility. The Tribunal accepts that it is likely that the applicant if she returned to China, would seek to continue to practice her religious activities in the Catholic Church. The applicant told the Tribunal that she would not participate in the registered church in China because she said she did not recognise the registered church and it was not recognised by the Vatican and she did not believe that the registered church could save her soul. In those circumstances the Tribunal believes that it is likely that the applicant would seek to practice her Catholic religion in an underground Catholic Church. The Tribunal believes that the applicant would return to Fujian province and there is no evidence before the Tribunal to indicate that the applicant would not return to Fujian province. As indicated elsewhere in these reasons that province is said to have a more liberal attitude towards religion than some other provinces of China. The available country information that has been referred to elsewhere in these reasons suggests, in summary, that people at risk for religious practices include members of the clergy and people who might be prominent church members or church leaders or people who in carrying out religious activities might in some way be seen to be engaging in activities that are regarded as politically sensitive. The evidence and information before the Tribunal does not indicate that the applicant would be at a real risk of significant harm for any of these reasons if she returned to China and she engaged in the same type of religious activities which she has engaged in Australia and she carried out those religious activities in an underground church. The evidence about the applicant's religious activities in Australia have been referred to elsewhere in these reasons. The Tribunal is also not satisfied that there are reasonable grounds for believing that, if the applicant returned to China that she would be at a real risk of significant harm in terms of being subject to extortion or bribe attempts or will face a real risk of significant harm because she is a divorced woman or that she would be subject to sexual harassment

because she is a divorced woman. The claims arose out of the applicant's claims that she was conducting a successful business. The evidence is that the applicant no longer conducted that business before she left China. As indicated elsewhere in these reasons the Tribunal did not accept the applicant's claims that these events had happened to her as she claimed in China. The Tribunal also considers that if the applicant was subject to any of these events in the future then they would be risks faced by the population of the country generally and not faced by the applicant personally. The Tribunal is not satisfied in those circumstances that the applicant faces a real risk of significant harm in relation to these claims should she return to China.

59. The Tribunal has considered the applicant's claims in terms of s.36(2)(aa) of the Act. The Tribunal is not satisfied that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to China, that there is a real risk that she will be subjected to any form of harm that would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs (a) to (e) of the definition of torture in s.5(1) of the Act. The tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm that would involve the intentional infliction of severe pain or suffering, either physical or mental, or pain or suffering, whether physical or mental, intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature, such as that would meet the definition of cruel and inhuman treatment or punishment in s.5(1). The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant would suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) of the Act which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of her life or the death penalty.

#### Overall Summary

60. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
61. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

#### **DECISION**

The Tribunal affirms the decision not to grant the applicant a Protection visa.

James Jolliffe  
Member



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