

1216131 [2013] RRTA 487 (25 July 2013)

DECISION RECORD

RRT CASE NUMBER: 1216131

DIAC REFERENCE(S): CLF2010/71978 CLF2012/121649

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Ruth Cheetham

DATE: 25 July 2013

PLACE OF DECISION: Sydney

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act). The applicant, who claims to be a citizen of China, applied to the Department of Immigration for the visa [in] June 2012 and the delegate refused to grant the visa [in] September 2012.
2. The applicant appeared before the Tribunal [in] July 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant was represented in relation to the review by her registered migration agent.

THE APPLICANT'S CLAIMS

3. The applicant says that she is at risk of harm by the Chinese government or its agents because she is thought to be a Falun Gong practitioner. She says she is not in fact a practitioner, that she only did the exercises for a couple of months to treat an injury that would not heal, but she was discovered by the police in the company of other Falun Gong practitioners and was detained for 15 days for this reason.
4. The applicant's claims have been advanced in her protection visa application, a written statement of her claims (with English translation), a photocopy of her passport, during an interview with the delegate, the review application, and at the hearing before me. What follows is a summary of the claims and evidence provided in support of those claims which are relevant to the disposition of this matter. It is not a recitation of the claims which I have accepted; my findings are given below, in a separate section.
5. According to the documentation provided by the applicant to the Department, the applicant's passport was issued [in] April 2010. She was granted a class 580 (student guardian) visa [in] September 2010, which was expressed to cease [in] July 2012. She arrived in Australia [in] September 2010 and lodged her protection visa application [in] June 2012.
6. The applicant says that in February 2009 she fell from her bicycle on an icy road and injured herself. Her injury did not respond to standard medical treatment and her mother-in-law, who had come to look after her, taught her a Falun Gong exercise to relieve the pain. The applicant knew that her mother-in-law was a Falun Gong practitioner because she had practised it for some years and had been detained before, in 2005 and 2007. For this reason, the applicant was reluctant to practise the exercises at first but she was told it was just another form of qigong exercise and it helped with the pain. I asked her why she would involve herself if she knew it was banned and that her mother-in-law had twice before been detained. The applicant said that she knew all this but that she was told it was only a physical exercise and she did not think it hurt society, that her mother-in-law is a nice person, and that she just wanted to give it a go. She confirmed that she is not a Falun Gong practitioner, that she has not have any further involvement in Falun Gong since then, that she has not practised in Australia and she is not interested in practising it if she returned to China but that her personal safety was threatened because it is forbidden in China and her mother-in-law is a practitioner.

7. The applicant's mother-in-law thought she had accepted Falun Gong, and [in] May 2009, brought four "aunts" (not biological relatives), all Falun Gong practitioners, to the applicant's house ostensibly to teach her the exercises but, the applicant claims, in reality to persuade her to join the Falun Gong organisation. Coincidentally, two police officers and two community officers came to her home and, because the door was not locked, walked straight in. The police took them all to the police station. Two of the "aunts" were sentenced to two years re-education through labour, her mother-in-law was sentenced to one year re-education through labour, and the applicant was detained for 15 days and released.
8. After her release, her employer imposed some sanctions on her (she called it "probation"), and she had to report to the police every other week and write self-examination reports. If those reports did not satisfy the police, they would abuse and beat her. She tried to explain that she was not Falun Gong, that she only did the exercises for a short time for pain management, but the police would not believe her. She reported to the police once a fortnight from the time of her release in June 2009 until the time she left China in September 2009, the last occasion being about a week before her departure.
9. Because of the restrictions on her freedom, by having to report to the police every fortnight, and fearing that one day she would also be sent for re-education through labour, the applicant decided to leave China. She went to someone to arrange for her student guardian visa and her daughter's student visa. She had to pull strings, through a distant relative who worked for the Public Security Bureau, to obtain her passport. The relative was the brother of her sister's husband, and he worked in in the Public Security Bureau office. She paid him about RMB7,000 or RMB8,000. He also got her an agent to obtain the Australian visas, and she paid that agent RMB11,000 for her daughter's visa and RMB7,000 for her own visa. She said she had to have someone else get her passport because, as she had been detained, she had a "detention certificate" and she could not do it herself. She said that she gave the money for her passport to her brother-in-law, and he gave it to the person who issued the passport.
10. I noted to the applicant that she had obtained her passport less than a year after she had been released from detention, while she was on fortnightly reporting conditions because of suspicion she was Falun Gong, less than a month after her mother-in-law had been released, and for her third period of detention, and while the two "aunts" with whom she had been discovered doing Falun Gong exercises were still in detention. I put to the applicant that the independent information available to me indicates that Falun Gong practitioners who come to the attention of the police in China usually have their identity documents and passports confiscated to prevent them from being able to leave China, and that alert lists are linked to both ID cards and to passports¹ I put to the applicant that the independent information

¹ Department of Foreign Affairs and Trade, 2008 *DFAT Report No.943- China: RRT Information Request CHN34077*, 16 December, which states in part: "In regard to members of Falun Gong, we have been advised by sources within the Ministry of Public Security that only those considered to be Falun Gong leaders are refused passports and hence would be prevented from leaving China legally. However, there is anecdotal evidence to suggest that the Chinese Government does act to prevent identified Falun Gong followers from leaving China in many cases, Chinese citizens who have been identified by the Government as Falun Gong followers have their Chinese identity cards confiscated and hence are unable to obtain a passport and leave the country legally. Those that have not been identified by the Government as Falun Gong followers can obtain passports and leave the country legally".

DIAC Country Information Service, 2006 *Country Information Report N.06/65- China: Passport and exit arrangements* (sourced from DFAT advice 8/11/06), 8 November, which states in part: "Chinese authorities check all outgoing passengers against an 'alert list'; however, DFAT was not aware of how comprehensive the list is. DFAT stated that Chinese citizens subject to arrest warrants would be on the alert lists, and that it was likely that people under investigation (but for whom an arrest warrant is yet to be issued) would also be on the

suggests that even individuals who only practise Falun Gong in private and do not proselytise in any way have been punished severely², yet she had obtained a passport and an exit visa to leave China, and she had been able to leave China on those travel documents, in her own name. I asked the applicant how, in the light of her circumstances, including that she had a “detention” certificate, and the independent information, she was able to obtain her passport and pass through security at the airport when leaving. I put to the applicant that her circumstances would suggest that she was likely to be on an “alert” list. The applicant said that “detention” is different from sentence, that detention is more local. When I asked how this would make a difference, the applicant said that getting passports is through paying money, but getting through Customs she is not sure. She said that in China you spend money and you get things.

11. I asked the applicant why she had not left China until September 2010 although she had been arrested in May 2009, that the lack of urgency could suggest that she was not in fear of harm. The applicant said that it took time to get her passport and to arrange her daughter’s study overseas. I noted that she had obtained her passport in April 2010 but still did not depart China until September that year. The applicant said that after she was released she had to report to the police. When I repeated the question, pointing to the delay between getting her and her daughter’s passports in April and leaving in September, the applicant said she had to wait for news of her daughter’s study arrangements. I asked why she had not obtained a class of visa which was easier and quicker to get, such as a tourist visa and the applicant said she did not know about such a visa, that the agent only told her about the student guardian visa.
12. I put to the applicant that the steps leading up to her departure from China appeared orderly and well-planned, that there was no urgency which might be indicative of fear of harm and fleeing persecution. The applicant said that her daughter got her passport easy because she had to go and study, but that hers was harder to get.
13. The applicant confirmed that her daughter travelled to Australia with her, and stated that she is studying in Australia, that she is [details of daughter’s study deleted]. She stated that her daughter went back to China for two months in February 2011 to visit her father and her paternal grandparents. The applicant did not accompany her because at the time her husband was divorcing her. She said that the reason for the divorce was because the police were continually going to their home after she left for Australia and were harassing her husband about her whereabouts. When I asked why the police would need to ask her husband where she is, when there would be a record of her departure on her own passport, the applicant said that the police were asking him when she was coming back.

lists. DFAT advised that alert lists are connected to Chinese identity cards as well as passports”.

In addition, sources indicate that Falun Gong practitioners are likely to be on the *zhongdian renkou*, a register of people who have been released from prison, re-education through labour and drug detention, and this register is comparable to a “usual suspects” list used to identify people the police should keep tabs on: US Department of State 2011 *2010 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)* 8 April, at 21; Biddulph, S. 2007, ‘State Control in China Seminar’ (presentation to the Refugee Review Tribunal).

² Department of Foreign Affairs and Trade, 2011 *Country Information Report No.11/28: Falun Gong Update Clarification*, 20 May, which stated in part: “... along with many like-minded missions and human rights contacts, we consider that Chinese authorities no longer focus primarily on Falun Gong leaders who promote the movement but also on private practitioners. We are aware of people who only practise Falun Gong in private and do not proselytise in any way, who have been punished severely after their practice has been uncovered or if they are accused of being practitioners ... It is not safe to be a Falun Gong practitioner in China at any stage”.

14. The applicant said that her daughter stayed with her father (the applicant's husband) and his parents when she visited in 2011. She did not have any difficulty entering or departing China, and had no trouble while she was in China.
15. I asked the applicant why she had allowed her daughter to go back to China and stay with her paternal grandmother, the applicant's mother-in-law, who the applicant says had been arrested and detained three times as a Falun Gong practitioner and had been responsible for the applicant's arrest and detention. I also put to her that she had said her husband was being harassed by the police too, which might add to the risk for her daughter. The applicant said that her mother-in-law is [age], and that she missed her granddaughter, and her daughter missed her grandmother, and that her daughter is a student and there is no danger to her, and that her daughter is entitled to see her father and she had not participated in Falun Gong.
16. I put to the applicant that in light of the independent information I had doubts that her claims were true, and that the facility of travel for herself and her daughter were part of the reason why I had such doubts. The applicant responded that her daughter got her passport easily because she was going overseas to study. When I noted that her daughter's passport had been issued before the overseas visa had been granted, the applicant responded that she had told the agent that her daughter was going overseas to study.
17. I asked the applicant why she did not seek protection from return to China until [a date in] June 2012 even though she had arrived [in] September 2010. The applicant said she did not know about this when she arrived, and that she did not speak English. She said that she went to the Department twice. I asked for details, and the applicant said the first time was when she first arrived, to see if she could get a work permit. She spoke with a Chinese-speaking officer at the Department on that occasion. She agreed that not speaking English had not been an impediment. The second time was close to the expiry of her student guardian visa, she asked if she could get another one, but she was told that when her daughter turns 18 years old she (the applicant) would have to return to China. She said that she told the Departmental officer that she had done Falun Gong exercises in China and been persecuted and the officer told her that she could apply as a refugee.
18. I noted that her protection visa application had been lodged [in] June 2012 which was only a short time, relative to its term of validity, before her student guardian visa was about to expire [in] July 2012, and that this might suggest that her motivation in applying for a protection visa was a desire to remain in Australia while her daughter studied rather than from any genuine fear of harm if she returned to China. The applicant said her friend in China told her that while her student guardian visa was valid there was nothing she could do. I put to the applicant that she had twice demonstrated her ability and willingness to go to the Department for advice, and asked why she would accept the advice of a friend in China who did not know about the process. I asked why she did not tell the Department on the first occasion that she was scared to return to China because of persecution. The applicant repeated that she did not know about it at the beginning.
19. I asked the applicant about the "detention certificate" she had mentioned early in the hearing. The applicant confirmed that it had been issued. She said it was in China, that she did not bring it with her because she could not afford for it to be seen when she passed through Customs when leaving. I asked whether she had told the delegate during her interview about this certificate and she said she had. I asked what the delegate had said and she responded that the delegate asked her if she had brought it with her and she said no. I asked the applicant why she has not obtained that certificate in the time since she arrived in Australia, to

corroborate her claim to have been detained. The applicant said that her husband had already started to divorce her so he did not care about her, and her sisters live in a different city so they could not send it to her. I noted that her mother-in-law could have sent it and the applicant said that she would not dare, she is Falun Gong. I asked why her daughter had not been able to obtain it for her when she visited in February 2011 and she said that her daughter was afraid to send it, or to bring it with her in case she was caught.

20. I asked the applicant whether she had any documentary or other evidence which would corroborate her claims. The applicant said she did not. I asked if she could have obtained corroboration of her mother-in-law's arrests and detentions and she said that she does not have her mother-in-law's documents. When I suggested that even a copy of her mother-in-law's documents could support her claims, the applicant said that she is too old to send it to her and too afraid to post it. I asked whether she had asked her mother-in-law to do so and she said she had not because she is over 70 years, she had been arrested more than once and she (the applicant) did not want to cause her a burden. I asked whether she had any evidence about the money she paid for her passport and the applicant said that her brother-in-law would not give any evidence.
21. I put to the applicant that I had read her application for a student guardian visa, and her daughter's application for a student visa. I explained to the applicant that there was information contained in that application which she had provided to the Department which I would now put to her for her comment, because that information would be the reason or part of the reason for affirming the delegate's decision to refuse a protection visa. I told the applicant that that information appeared to contradict evidence she had given in her protection visa application and, for this reason, may cause me to doubt the truth of her evidence. I told the applicant that the information was that she had provided for her student guardian visa application a "notarized police certificate of non-criminality" dated [in] May 2010 issued under the seal of her city's Notary Public Office. That certificate stated that she "had no record of committing any offence against the criminal law during her residence in China up to April [date], 2010".
22. I told the applicant that she could consider the information before commenting, but she indicated she wished to respond immediately. The applicant said that before she left China she had to get a police clearance so she pulled strings, used connections. I asked if she meant that the information in her protection visa application, that she had been arrested and detained and put on reporting conditions, was true and the information in her student guardian visa application was false. The applicant said that it was not false, that without that certificate she could not get her visa. I asked her to explain, and she said that she does not have any criminal record, that she was just accused of being Falun Gong, so the police clearance certificate is accurate. I asked why the "detention certificate" she mentioned had been issued and she said that she had been detained, so it was issued. I asked whether the police clearance certificate was genuinely issued, by the relevant authority and she said that it was, that it was issued by the local police station, through connections.
23. I asked the applicant what she thought would happen to her if she returned to China and she responded that she will not be able to find a job or have a family, that she does not want to go back and that life is like hell there. She said she is not Falun Gong but she was persecuted and there is no way she can go back because she is in danger.

THE ISSUE FOR RESOLUTION

24. The issue which is dispositive of this application for review is whether I am satisfied that the applicant has told the truth about her claim to fear harm in China if she were to return. This is dispositive of both the refugee criterion and the complementary protection criterion for a protection visa because if I am not satisfied that the applicant's claims are true and that her fear is genuine, there is nothing on which to base a finding that there is a real chance, or a real risk, of harm, whether persecution or significant harm, to her if she returns to China.
25. For the reasons which I give below, I am not satisfied that the applicant has a genuine or any fear of harm if she returns to China. I am not satisfied that the applicant is, or is perceived to be, a Falun Gong practitioner now, or was in China, and therefore I am not satisfied that there is any chance of harm if she returns to China.

THE APPLICABLE LAW

26. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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.
27. The mere fact that a person claims fear of persecution for a particular reason does not establish the genuineness of the asserted fear, or that it is "well-founded", or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant herself or himself, in as much detail as is necessary to enable the examiner to establish the relevant facts. The Tribunal is not required to make the applicant's case for her or him. Neither is the Tribunal required to accept uncritically any and all the allegations made by an applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70). As Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for'. However this should not lead to "an uncritical acceptance of any and all allegations made by suppliants".
28. It is legitimate for the Tribunal to take into account any delay in the lodging of a protection visa application by an applicant in assessing the genuineness, or at least the depth, of an applicant's claimed fear of persecution: *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347, per Heerey J.
29. In accordance with Ministerial Direction No. 56 made under s.499 of the Act, the Tribunal is required to take into account policy guidelines prepared by the Department, being PAM3 *Refugee and Humanitarian – Complementary Protection Guidelines* and PAM3 *Refugee and Humanitarian – Refugee Law Guidelines*, to the extent that those guidelines are relevant to the decision under consideration.

MY FINDINGS

30. I find that the applicant is not a truthful witness and that she has fabricated her claims to Australia's protection. I do not accept the applicant's claim to have been perceived to be Falun Gong practitioner in China or to have been detained or otherwise the subject of adverse attention for that reason.
31. None of the applicant's claims have been corroborated by documentary or testimonial evidence. The applicant did not provide any documentary corroboration of her claim to have been arrested and detained as a perceived Falun Gong practitioner, or of the arrests and detentions (three) of her mother-in-law as a Falun Gong practitioner, or of the consequences she claims resulted from that.
32. The applicant stated that she had a "detention certificate" in China, but despite having been put on notice by the delegate at the interview, when she says the delegate asked her about this, and despite its obvious relevance and significance to her protection claims, the applicant has made no attempt to obtain that document from China. Her explanation for not having done so is not persuasive. The age of her mother-in-law, and the fact that she is a Falun Gong practitioner, do not appear to me to be impediment to asking her to send (by whatever method) a copy of that certificate, or of documents which, the applicant said, her mother-in-law had in relation to her own detentions. I also am not persuaded that there was any danger to her daughter bringing back (or sending) that certificate when she visited China in 2011, which she was able to do with no attention whatsoever from the Chinese authorities.
33. I am satisfied that the applicant has fabricated her claim to have been arrested, and that her evidence of a "detention certificate" in China, which she has not made any attempt to provide to the Tribunal, is false and was intended solely to strengthen her protection claims.
34. I am satisfied that the applicant has no fear of returning to China. I am satisfied that the applicant has fabricated her claims to protection in order to extend her stay in Australia and for no other reason.
35. I also base my conclusion on the following findings adverse to the applicant's credibility, and to her claimed fear. I explored these matters with the applicant at the hearing, including the matter of the police clearance provided by her for the student guardian visa, which I put to the applicant pursuant to s.424AA of the Act for comment.
36. The applicant was able to obtain a passport in her own name and to depart China on that passport without difficulty. This is despite, she claims, having been arrested in company with five other Falun Gong practitioners, one of them a close relative and previously arrested and detained twice, serious sentences having been imposed on three of those other practitioners, and the applicant having been placed on strict reporting conditions. The applicant got her passport while the others were all still in detention. She left China on that passport while the "aunts" were still in detention.
37. The applicant's ability to obtain a passport and to depart on it through security at the airport, under these circumstances, is also contrary to the indications in the independent information which was put to her at the hearing. It is, I am satisfied, more likely that her ability to obtain a passport and to leave China was because she was of no adverse interest to the Chinese authorities, which would be consistent with not having her (or her daughter's) identity documentation confiscated at the time of her arrest, or to have been refused a passport while

she was on reporting conditions as a suspected Falun Gong practitioner arrested in company with at least one known Falun Gong practitioner who was a close relative. That the two “aunts” with whom she was arrested were sentenced to even longer periods than her mother-in-law suggests that the applicant was arrested in the company of three known Falun Gong practitioners.

38. There is no evidence other than the applicant’s testimony to support her claim that she obtained her passport through “connections” and the payment of money. This testimony conflicts with all the matters which I have set out here, and I find that the reason for this is because she was not of any interest to the Chinese authorities such that she would have been unable to obtain a passport and depart China without “connections” and the payment of money.
39. I put to the applicant the police clearance she had provided with her student guardian visa as suggestive that she had not been arrested and detained. The applicant stated that it was genuine and was genuinely issued by the local police station, and that detention is different from criminal offences. I do not accept that the police would have issued that certificate if the applicant had been arrested, by the local police, for a matter which is a serious offence in China, that of being a Falun Gong practitioner or involved in Falun Gong activities, and where the person involved had been reporting fortnightly to the local police from the time of her release from detention, and who had a detention certificate issued which caused her to be unable to apply for a passport but have to pay someone to do so and use connections to obtain it. I do not make any conclusion whether the clearance certificate is genuine, but I am satisfied that it would not have been issued if the applicant’s claims were true.
40. The delay which characterised the applicant’s departure from China is also, I find, indicative of a lack of fear. The applicant did not leave China for 15 months after her release from detention, for which period she says she was on rigorous reporting conditions and subjected to abuse in the course of complying with them and was in fear of being detained like her mother-in-law and the “aunts” had been. She obtained her student guardian visa, and her daughter’s student visa, four months before she left China. She left China 11 days after her visa was granted. It would have been open to the applicant, and consistent with her claimed fear, to have applied for a visa of a class more likely to be granted quickly and with less onerous criteria for grant, such as a tourist visa. The steps taken by the applicant in departing China, over that period of time, are orderly and give the appearance of planning and preparation, not haste and fear. I am satisfied that the reason why the applicant applied for a student guardian visa and a student visa for her daughter is the obvious reason: That she wished her daughter to study in Australia and she wished to accompany her and care for her.
41. The applicant’s delay in seeking Australia's protection is inconsistent with a genuine fear of persecution. She first arrived in Australia [in] September 2010. She says that police inquiries to her husband about her (first, her whereabouts but, when I put to her that the police would know of her departure from official records, she changed this to her expected return) continued after she left, to the point where her husband felt so harassed that he commenced divorce proceedings. Her substantive visa (the student guardian visa) was to expire [in] July 2012. Yet the applicant did not lodge her protection visa application until [a date in] June 2012.
42. The applicant’s only explanation for this delay (other than her lack of English, which at the hearing she agreed were not an impediment to her enquiries with the Department) was that she did not know about protection visas when she first arrived, but there is no reason why she

could not have asked about that option, or revealed to the Department her fear of return, at an earlier date than, she says, she did when her substantive visa was about to expire. She also said that she did this because she was told she could not get another student guardian visa. Her daughter's studies continue until at least the end of this year, [details deleted].

43. In all of these circumstances, I find that the applicant only enquired about a protection visa because she wished to remain in Australia while her daughter continued her studies, and she was unable to access any other form of visa. I do not accept that the applicant lodged her protection visa application because she has a fear of harm in China, for any reason.
44. That the applicant would allow her daughter to travel back to China for a two month visit, and stay with her father (whom the applicant says divorced her because of unremitting harassment by the police) and paternal grandmother (a known Falun Gong practitioner three times detained, and the cause of the applicant's trouble with the authorities and her arrest and detention) is inconsistent with the applicant's claims. I do not accept that if the events which the applicant claimed had occurred prior to her departure and, in the case of her former husband, after her departure, she would have allowed her daughter to return to China for such a visit. I am satisfied that the applicant was confident that allowing her daughter to visit those people in China for a two month period would not result in harm.
45. For all these reasons, I am not satisfied that the applicant's claims are true. I do not accept that she was arrested as a Falun Gong practitioner or that she was perceived by the authorities to be a Falun Gong practitioner. I am satisfied that the applicant has fabricated her claims to protection. I do not accept that the applicant has a genuine fear of harm (whether serious harm, for the refugee criterion, or significant harm, for the complementary protection criterion) if she returns to China.
46. I am therefore not satisfied that there is any chance that the applicant will face harm if she returns to China.
47. Having considered all of the applicant's claims, singly and cumulatively, I am not satisfied that the applicant has a well-founded fear of persecution for a Convention reason if she returns to China now or in the reasonably foreseeable future (the refugee criterion).
48. For the same reason, I am not satisfied that there is any risk of significant harm to the applicant if she returns to China (the complementary protection criterion).

CONCLUSIONS

49. For the reasons given above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
50. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa). I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
51. 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

52. I affirm the decision not to grant the applicant a Protection (Class XA) visa.