

1305602 [2013] RRTA 818 (6 December 2013)

DECISION RECORD

RRT CASE NUMBER: 1305602
DIBP REFERENCE(S): CLF2012/226002
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Andrew Jacovides
DATE: 6 December 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 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied to the Department of Immigration for the visa [in] November 2012 and the delegate refused to grant the visa [in] March 2013. The applicant applied for review of the decision [in] April 2013.

THE APPLICANT'S CLAIMS

Evidence to the Department

3. The applicant stated in her protection visa application that she was a citizen of China. She indicated that she was born in Fujian [and] was married; she lived at the same Fujian address for ten years before she came to Australia; she had five years of education; she was a business woman and she owned a [business in] China; she visited [another country] in 2011 and 2012; and she had [children]. The applicant provided a partial copy of her PRC passport.
4. The applicant stated that she came to Australia [in] August 2012, to assist her daughter buy property. She stated that she intended to return to China but she found that she was at risk of being "subjected to persecution by the Chinese government". She stated that one of her employees in China, [Ms A], told her in October 2011, that her boyfriend, [Mr B], had been arrested because he was a devout Christian and a member of an "underground church". The applicant stated that [Mr B], a teacher, had been suspected of evangelizing to his students and of setting up "secret Bible study groups among his students".
5. The applicant claimed that she used her connections at the Public Security Bureau (PSB) to secure [Mr B]'s release. She stated that she was assisted by a PSB doctor, [Dr C], and she bribed the police. She claimed that she assisted [Mr B and Ms A] to flee to Shaanxi province. The applicant stated that everyone associated with [Mr B] was investigated by the PSB, including the applicant, but she denied knowing his location. She stated that she paid bribes and the "investigation against" her "was terminated later on". The applicant stated that she continued to provide financial support to [Mr B and Ms A] during 2012.
6. The applicant claimed that after she arrived in Australia she found that her circumstances had changed and she was forced to lodge a protection visa application. The applicant stated that in October 2012, [Mr B and Ms A] were detained by the authorities in Shaanxi province and the police discovered that she had been providing financial support to them. She stated that she was accused of providing financial support for "illegal religious activities". The applicant claimed that her husband was detained and he was still in detention. She claimed that [Dr C] and the police officer who received bribes were investigated by the PSB, and [Dr C] told her that she should "never ever return to China, otherwise, [she] must be arrested by the PSB immediately". She claimed that she will be detained and tortured by the PRC authorities with no chance of survival. She indicated that since arriving in Australia she began to "actively attend the Christian church".

7. The applicant was interviewed by an officer of the Department [in] March 2013. The Tribunal has listened to the interview. The applicant stated that she had no involvement in religious activities in China or any interest in religion. She stated that she had difficulties with the PSB because she assisted someone who was involved in religious activities. The applicant stated that the PSB were looking for her everywhere; her husband had been detained; and her two businesses and all her assets had been seized by the authorities. The applicant stated that her husband was detained [in] 2012. She stated that it was on that date that she realised that she was in trouble with the authorities in China and she could not return there. The applicant repeated her written claims regarding her involvement with [Mr B and Ms A]. The delegate commented that the applicant was breaking the law with her activities. The applicant stated that she wanted to assist them but she did not know she was breaking the law. She stated that she will be charged with funding illegal religious activities in China.
8. The delegate asked the applicant regarding her claim that she was actively attending a church in Australia. The applicant stated that she had been to a church two or three times. She stated that she did not fear harm in China for her involvement in religion.
9. The applicant provided documents relating to her business activities in China.

Evidence to the Tribunal

10. The applicant attended a hearing with the Tribunal [in] December 2013. Her daughter attended as a witness. The hearing was conducted with the assistance of an interpreter and the applicant's migration agent was present.
11. The applicant repeated the claims she provided to the Department regarding her involvement with [Mr B and Ms A]. The applicant's daughter provided the same information. The Tribunal commented that applicant and the witness were providing virtually identical evidence. The applicant's daughter stated that she knew nothing about her parents' difficulties with the PSB until her father was arrested [in] November 2012, and it was then that her mother told her what was happening. She stated that her evidence was very similar to her mother's evidence because all the information came from her mother. She indicated that she was repeating what her mother had told her.
12. The Tribunal asked the applicant why she assisted [Mr B and Ms A]. She stated that [Ms A] had worked for her for about a year and she had met [Mr B] and liked him. She stated that she was not an educated person, and he was a teacher, so she respected him. She stated that she was also indebted to him because in April 2011, during a robbery, [Mr B] came to her rescue and suffered a stab wound from the thief. She stated that he was seriously injured and she was indebted to him because he had saved her life. She was asked how much she spent on bribes and support for [Mr B and Ms A]. The applicant stated that it was approximately \$20,000.
13. The applicant stated that her husband was released [in] 2013, after seven months in prison, but her two businesses remained sealed, her house was confiscated, and all her other assets were seized. The Tribunal commented that the response of the authorities was excessive given the nature of her crime. The applicant stated that she was funding illegal religious activities and the authorities did not tolerate such activities. The Tribunal commented that often the PRC authorities do tolerate unregistered religious groups and activities.

14. The Tribunal referred to information from external sources dealing with religious activities in China and how the authorities respond to those activities: US Department of State, *China 2012 International Religious Freedom Report*, accessed 29 August 2013; China Aid Association 2013, *Religious Persecution in China Annual Reports, 2012 Annual Report*, February. The Tribunal commented that these reports indicate that there are thousands of house churches and unregistered religious groups in China; and that millions of PRC Christians are attending those churches and groups. It commented that some churches operate without apparent interest from the authorities while others had difficulties. The Tribunal commented that it had formed the view from the above reports that religious activists, priests and leaders in the unregistered church movement, and persons who organised illegal religious activities, were at risk of attracting the adverse interest of the authorities. It commented however, that persons such as her, who had no real involvement with religion, were not subjected to the extreme targeting she was describing. The Tribunal commented that even persons who were implicated in illegal religious activities did not face the kind of excessive harm she was claiming to have suffered. The Tribunal asked the applicant if there were any other possible reasons which could have led to the adverse interest of the authorities in China. She was asked if in her business dealings she had conflict with the authorities or anyone else. The applicant stated that there was nothing else and she had never broken the law. She stated that she was a successful wealthy business person.
15. The Tribunal asked the applicant if she had any involvement in religious activities in China. She stated that she had no involvement in religion or any interest in it. She was asked about her involvement with religion in Australia. She stated that she went to a church two or three times but she abandoned those activities because she was too upset to concentrate on religion.
16. The Tribunal commented that it had doubts as to whether the applicant was providing a credible account of her circumstances. It commented that the PRC authorities do sometimes target persons who are implicated in illegal religious activities; but the Tribunal found it difficult to believe that she was targeted in the way she described for the reasons she provided. The applicant stated that the Tribunal had to accept her claims because it was the truth.
17. The Tribunal asked the applicant if there was anyone else who could confirm her claims. The Tribunal asked if she was in touch with [Dr C] and whether she could be a witness. The applicant stated that [Dr C] telephoned her from [a particular location], told her never to return to China, and then disappeared. The Tribunal noted the applicant's evidence that [Dr C] was like a sister to her. She was asked why they did not keep in touch. She stated that they did not. The Tribunal asked the applicant if the Tribunal could talk to her husband. The applicant stated that her husband did not have a telephone and he was homeless. The applicant's daughter stated that her father was living with her aunt, and her aunt had a telephone, but her father used a public telephone to contact them because he was afraid that the authorities were monitoring him. The Tribunal asked the applicant's daughter if there was anyone else who knew what had happened to her family. She stated that her uncle, the applicant's brother, knew what happened. The Tribunal asked the applicant if her brother knew what had happened to her. She stated that he did know but he had moved to [another country] without giving her his contact details. The Tribunal asked the applicant if her son in China could provide information about the situation he was facing. The applicant stated that he was too busy studying. The Tribunal commented that there appeared to be nobody who could assist in this regard. The applicant stated that this was correct and the Tribunal had to rely on her evidence alone.

18. The applicant stated that she was afraid to return to China. She stated that the authorities will kill her. The Tribunal commented that it had doubts as to whether she was at risk of suffering life-threatening harm for the reasons provided. The applicant stated that there were no other reasons and the Tribunal had to accept her claims. The Tribunal commented that it would consider the applicant's claims but may not accept them. The applicant stated that the Tribunal had to believe every word she said because it was the truth. She stated that she was a wealthy successful business person in China and she would not have come to Australia seeking asylum if she did not face persecution.

THE DELEGATE'S DECISION

19. The delegate found that the applicant may be prosecuted in China for her involvement in illegal activities.

THE TRIBUNAL'S FINDINGS

20. 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.

Refugee criterion

21. 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).
22. 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.
23. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
24. The applicant claims to be a citizen of China. The Tribunal has considered the evidence she provided regarding her nationality, including her PRC passport, and it accepts that she is a citizen of China.
25. The applicant claims that she will be subjected to persecution by the authorities in China because she has been implicated in the funding of illegal religious activities. The Tribunal has considered these claims, and the evidence provided in support of the claims, and it is not

satisfied that the applicant has provided a truthful account of her circumstances in China or that the claims she provided in support of her protection visa application are credible.

26. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.¹ The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts”.²
27. The Tribunal has considered information from external sources regarding illegal religious activities in China, and the response of the PRC authorities to those activities, and it is not satisfied that the authorities in China do subject individuals such as the applicant to such severe punishment under the circumstances she is describing. The Tribunal accepts that religious activists, and other persons implicated in illegal religious activities, have been targeted by the PRC authorities. However, it is not satisfied by the information it has that persons who have no direct involvement in religious activities suffer the excessive punishment which the applicant is claiming to have suffered.
28. The Tribunal finds that the applicant’s claims were contrived to enhance her protection visa application. It is not satisfied that the applicant’s husband was detained for seven months for the reasons provided, or that her businesses have been sealed, or that her house and other assets have been confiscated, or that she now faces life-threatening harm by the authorities in China, because she used connections and bribes to assist persons implicated in illegal religious activities. The Tribunal finds that the applicant fabricated all these claims and it does not accept as credible the applicant’s claim that she is a person of interest to the authorities in China for the reasons provided.
29. The Tribunal has considered the applicant’s initial claim that she had become a Christian. She indicated at the hearing that she went to a church two or three times but has since abandoned religious activities. The Tribunal finds that the applicant is not implicated in religious activities which will place her at risk of harm by the authorities in China.
30. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to persecution in China for a Convention reason.

Complementary protection criterion

31. 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

¹ *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70.

² United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

32. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
33. The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that the applicant will suffer significant harm under the complementary protection criterion. The applicant claims that she will be subjected to significant harm for the same reasons she faces persecution in China. However, in view of the above findings regarding the applicant's claims, the Tribunal is not satisfied that the applicant is at risk of significant harm in China.
34. The applicant claims that she faces significant harm by the authorities in China for assisting persons implicated in illegal religious activities. The Tribunal has already rejected this claim for the reasons provided and it finds that for the same reasons the applicant is not at risk of being subjected to significant harm in China.
35. Accordingly, it finds that there is no real risk that the applicant will suffer significant harm in China under the complementary protection criterion for the reasons provided.

CONCLUSIONS

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

DECISION

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

Andrew Jacovides
Member