

**071555521 [2007] RRTA 204 (18 September 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071555521

**DIAC REFERENCE(S):** CLF2007/149082

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Catherine Carney

**DATE DECISION SIGNED:** 18 September 2007

**PLACE OF DECISION:** Sydney

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

**STATEMENT OF DECISION AND REASONS  
APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of China (PRC), arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

**RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### Definition of 'refugee'

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

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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be

enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, and nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

### **Application for Protection Visa**

The applicant filed an Application for a Protection Visa. Attached to that application was a Statement as follows:-

### **My Reasons for claiming to be a Refugee**

*Together with my other fellow villager, I have to leave my hometown, my young children and my wife to stay in Australia all due to no other options. I not only lost the farming land and job which all my families relied upon for living but also faced detention, jail and persecution because my fighting for protecting of our peasants' rights.*

*I had been being a peasant at [details deleted] in China since my graduation from junior secondary school in [the early 1990's]. In [the mid 2000's], the village government officials spoke to my father claiming that a real estate developer wanted to acquire our farming land. My father was reluctant to agree because there was not enough farming land and we families were living on the limited farming land over [many] years with relative good income. My father agreed to consider if there are substantial payments.*

*A day after, the village Chief spoke to my father that the village will pay [a monetary amount] lump sum to every one removed as a resettlement fee and [a monetary amount] Yuan every month to those over [a certain age] as living support. We did not agree the proposals.*

*[Some time later], the village Chief noticed us to weed out all fruit trees, vegetables and all the crops. We were so angry and scare. We contacted some other peasants to set up roadblocks in order to stop outsiders to come to remove our belongings in the land. Tens of uniformed people and three bulldozers forced their way into the orchard and other farming land without showing any thing in paper or any condition for compensation. The people who blocked their way were severely beaten by the uniformed people those including police, security guards and government officials. Some of the villagers were badly wounded. I was also hit by the electric stick from one policeman. All the peasants were agony seeing the fruit trees, vegetables and crops those contained their generations' hard efforts were removed in one day. My father nearly committed suicide by drinking pesticide.*

*All our farmers in the village who lost land were angry and sorrow. We decided to be united and fight for right to live. [Name deleted] and I were responsible for collection of evidences, drafting of petition and collection of signatures in order to sue the village government, resume land condition or reasonable compensation.*

*In [mid 2000's, name deleted], two other elders and I were preparing to lodge our petitions in front of the gate of the government. We came across villagers from other villages with similar unfortunates. They joined us to see the Town Government officials.*

*There was no one in the government willing to speak to us and taking the petitions for a quite long time. In about half an hour later, [a number of] policemen surrounded us in front of the government building. They ordered us to go away otherwise facing arrest in the name of blocking public affairs. We were scattered.*

*We did not give up though. We contacted more than a hundred villagers from [details deleted] to fill in petitions. We wrote letters to [details deleted] Government and provincial Government to disclose the dirty deals between village government officials and real estate developers. We disclosed the village government officials who*

*forced us to leave land, sold our land to make profits for themselves and disregarded our peasants' livelihood.*

*[A period of time] passed with no news and reply from any government bodies. We organized another gathering of [a number of] peasants to seek an answer from the City Government.*

*An hour later, many policemen arrived. They scattered us using water cannon and electric sticks. [Two people] were detained namely causing disorder to the social security. All our peasants who attended the gathering in front of city government were warned to scrutinized and supervised. We were not allowed to do any further appeal to the higher class government. We were not allowed to get. Out of the village. We were not allowed!to go to the city government. We were told that our house would be demolished if there are any further actions take by us. There were many police cars patrolled on exit way in the village. All villagers were frightened.*

*We still not like to give up. But looks we can not do anything about it. We need to eat and live although land and crops were lost. In thinking of rescuing [the two people], in thinking of continuing to struggle for better life, we could not afford to give up. [Name deleted] and I decided to go to other city to work and wait opportunity to fight back the corrupted government officials.*

*We escaped from the village and arrived in [details deleted]. We started to be [details deleted]. Once, we were [details deleted] for a government official named [details deleted]. By some chance ofte,[some equipment] was broken, but we managed to do the job in triple the time, without asking for extra pay. The official was very thankful to us, he then started and struck up a conversationwith us.*

*He gave us advice, and advised us not to sue the government. He said the most probable result was that we would lose our lives, or go into prison. After that, [name deleted] introduced us to more [details deleted] work. As well, he helped us find some information regarding our leaders, [names deleted].*

*[In the mid 2000's, name deleted] told us to quickly escape, because the two people we asked about had been sentenced to [a period] in prison. He said that if we continued to harass the government, or tried to rescue these two people, our lives would also be in danger. He told us that now, while there was still time, it would be a good idea to escape overseas.*

*So we decided to escape, and borrowed money from friends and relatives and sold our houses to raise enough money [a monetary sum]. [Some time later], a man named [name deleted] sent us past the custom officials in [details deleted] Airport. We arrived in Australia on [details deleted].*

*Being one of the particular social group with land deprived, I would like to take this opportunity to apply for a protection from Australian Government. Your kindly consideration of my circumstances is appreciated.*

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

A summary of the evidence given at hearing is as follows:-

The Tribunal went through the procedure with the applicant. The Tribunal asked the applicant whether he understood the interpreter and had any problems with the interpreting. The applicant replied that he had no problems. The Tribunal then read the definition of refugee to the applicant and asked if he understood the definition. The applicant said that he had some problems understanding the definition. The Tribunal asked if there was any problem with the interpreting. The Tribunal asked what language the applicant spoke. The applicant's evidence is that he spoke Mandarin and he understood the interpreter. The applicant's evidence is that he might have some trouble understanding the definition as he was not educated to a high level. The Tribunal then asked the applicant to notify the Tribunal immediately if he had any problems with the interpreter the applicant said he did not have any objections. The Tribunal then sighted the applicant's original passport and pointed out to the applicant that he had a valid exit stamp from China. The applicant replied that yes he did. The Tribunal then asked the applicant about his Application for a Protection Visa. The applicant's evidence is that the application was prepared by a relative of a friend. The applicant's evidence is that he spoke to the friend in Mandarin and the friend then filled out the form in English. The applicant's evidence is that the information and statement were read back to him before he signed the form and that the information was correct and still his claims.

The Tribunal then asked the applicant to go through his claims for the Tribunal. The applicant's evidence is that in China he is suffering psychological pressure and financial loss, in the mid 2000's some relatives were put in gaol; he lost his job, land and family and is worried and scared. The Tribunal asked what date they went to gaol, the applicant replied he could not remember. The Tribunal asked what were the names of his relatives and when were they born; the applicant's evidence is that they were born in the 1970's. The Tribunal asked how long they have been in gaol; the applicant's evidence is that they have been in gaol for a period of years. The Tribunal asked, why they are in gaol, the applicant's evidence is that his land was taken by local government with compensation. The local head of the village told us that a sum of money was offered and then a further sum per month for a fixed number of years but that this is not enough. The applicant's evidence is that he could not make enough to live on. The applicant's evidence is that he has suffered great loss of financial interest and his family is damaged. The applicant's evidence is that his wife is in another county. The applicant's evidence is that the village had disputes and the head of the village came to tell them about compensation and said they have to agree, a number of days later we decided we cannot fight and signed a joint statement to sue the government. The Tribunal asked who signed the statement. The applicant's evidence is that his relatives signed it. The Tribunal asked how many, the applicant replied that it was quite a large number. The applicant's evidence is that there was no reaction from the government and the government then moved in to remove the crops and he took photos and tried to get more time. The Tribunal asked what authorities you went to; the applicant's evidence is that he went to the town government, which is a number of kilometres outside his village. The applicant's evidence is that he

organised a demonstration and a number of people turned up. The applicant's evidence is that they were all his relatives and other villages come and joined us. The Tribunal asked what the address was where you all met, the applicant replied with the name of the city. The Tribunal asked how it was organised; the applicant's evidence is that some people worked in the city and others in the village. The Tribunal again asked how it was organised for such a large demonstration. The applicant's reply was it was organised and they got there. The Tribunal asked who the organiser was; the applicant's evidence is that he was the organiser. The Tribunal again asked about the organisation of such a large event, how did you communicate, the applicant's evidence was that all relatives stand up for each other and their loss of interest. The Tribunal said that the applicant was not answering the question. The Tribunal tried to rephrase the question and asked how the applicant managed to get the villagers to the demonstration. The applicant gave no answer. The Tribunal again persisted. The applicant's evidence is that he was the organiser and the first time he had the young people in the town and the old people came to the town to protest, the local government officials tried to stop us going to the city for the protest. The applicant's evidence is that young people in the city organised the demonstration and organised what we should do. The applicant's evidence is that at the demonstration he met a government official who talked to him, the applicant's evidence is that he looked familiar so he spoke to him. The applicant's evidence is that the official asked him why there were so many people present. The applicant's evidence is that he explained that they were there to protest the land confiscation and sue the government. The applicant's evidence is that the government official said to him you will not gain from fighting the government let them compensate you and it will be ok. The applicant's evidence is that he then asked the government official for information about his relatives who are still in gaol. The Tribunal then asked why they were in gaol. The applicant's evidence is that because they demonstrated to get proper compensation and were asking for fairness that were beaten by police officers and put in gaol. The Tribunal asked when this happened; the applicant's evidence is that it happened in the mid 2000's when all the relatives met each other. The Tribunal then said that earlier the applicant had given oral evidence that they were arrested at the demonstration how could they be in gaol. The applicant's evidence is that they looked for them for some time and had no information so they were very worried. The Tribunal again pointed out to the applicant that the oral evidence was inconsistent from what he had earlier said at the hearing, it does not follow a logical time line, can he explain. The applicant's evidence is that when we went to town the government and local police arrested my relatives and we suffered a financial loss of interest. The Tribunal then asked who was the organiser the applicant's evidence is that he was the organiser. The applicant's evidence is that he is the organiser of the town demonstrations as he was better educated than his relatives. The Tribunal asked what level he was educated to; the applicant's evidence is that he was educated to a particular level. The Tribunal pointed out to the applicant that earlier he had said he only had a lesser level of education. The applicant did not reply. The Tribunal again asked how he could organise such large numbers of people from different areas. The applicant replied that it was a tradition if a family member suffered the whole family will stand up, and he sold his house and it was never too late for revenge. The Tribunal asked what relevance the above answer had to the question. The applicant's evidence is that it is relevant as he went to a higher government and was stopped. The Tribunal asked how the applicant got the demonstrators to the city. The applicant's evidence is that the roads were blocked and the people all spoke to each other. The applicant's evidence is

that the young people were in the city and the old people at home. The Tribunal asked the applicant to tell the Tribunal how the local government had tried to stop them going to the city. The applicant's evidence is that when they were outside why could not do anything. The Tribunal then said, so they did not try to stop you. The applicant's evidence is that of course they tried but could not, all government officials are connected, the higher tell the lower and the lower tell the higher, there was only one road and they had police officers to try to stop us so we could not get out. The Tribunal then asked, so you could not get out, the applicant's evidence is that they had electric sticks and they would arrest us, so we told the old people we can manage it, we were then enclosed and beaten. The applicant's evidence is that he was an organiser in the city as he worked for a few years in a particular job there. The Tribunal then pointed out that earlier in the hearing he had said he was in the village was this not correct. The applicant's evidence is that when he graduated he went to the city as there was no job; he started to help his family but in the early 2000's he went to the city. The applicant's evidence is that he is not a farmer and doesn't intend to do farming he wants to make money. The Tribunal then asked, so you live and work in the city, the applicant's evidence is that yes he does and every weekend he goes back to the village. The applicant's evidence is that he then lost his job because of his family's circumstances. The Tribunal asked how he lost his job, the applicant replied that because his company was government owned everybody was connected and they found out what he did. The Tribunal then asked how he had managed to organise the three villages to come to the organisation. The applicant replied because they are all relatives and help us. The Tribunal then noted that the applicant came to the attention of the authorities through demonstrating and met government officials. The applicant's reply was that the government officials could see him but he never met them. The Tribunal said that earlier you gave evidence that you met a government official at the demonstration. The applicant's evidence is that he only met the government official at the gate and that he worked for a company nearby and he discussed all the issues with him. The applicant's evidence is that his personal relationship is very complicated. The Tribunal pointed out that the applicant entered Australia on valid exit documents through customs and airports. The applicant's evidence is that the government official helped him. The government official said this is very complicated and you should flee as the government is trying to arrest leaders. The Tribunal again noted that the applicant was a leader and the government knew you as a leader. The applicant's evidence is that we were all together and the government might not know him but that the local authorities would know him. The Tribunal asked if there was anything further the applicant might like to say. The Tribunal then discussed country information that states that if the authorities are interested in the applicant it would be difficult to leave China on a valid travel document through an international airport. The Tribunal asked the applicant to explain how he exited China on valid travel documents. The applicant's evidence is that he used a disguise and departed from another province. The Tribunal said it was concerned about the substantial inconsistencies through out the hearing. The applicant replied that he has told the truth.

Independent Country Information

### **Exit Control in PRC**



An October 2005 response from the Immigration and Refugee Board of Canada provides information about security and exit control procedures and lists the categories of persons who are not allowed to leave the country:

...to an official at the Embassy of the People's Republic of China in Ottawa, Chinese citizens travelling overseas must present a valid passport and visa for the country of destination to an immigration official, before being allowed to exit China (11 Oct. 2005). Without elaborating, the official noted that this procedure is standard at all international airports in the country. A representative of the Canadian Embassy in Beijing provided the following observations on exit controls at Chinese airports in 4 October 2005 correspondence to the Research Directorate. Separate inspection barriers at airports are designated for Chinese citizens, foreign travellers, diplomatic staff, and airline personnel. The Frontier Defence Inspection Bureau (FDIB) is in charge of the inspection barriers, and FDIB officers examine the passports and immigration departure cards of Chinese travellers. The officers also verify the identity of the person through a "computerised record system." Chinese travellers do not need to present their resident identity card during the inspection. According to information contained on the Website of Air China, there is a Frontier Defence Inspection station at each of the 115 Chinese ports currently open for international departures and arrivals (n.d.)...

Law of the People's Republic of China on the Control of Exit and Entry of Citizens stipulates that the following categories of persons will not be granted permission to leave the country:

...in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court; persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; convicted persons serving their sentences; persons undergoing rehabilitation through labour; and persons whose exit from the country will, in the opinion of the competent department of the State Council, be harmful to state security or cause a major loss to national interests (PRC 22 Nov. 1985, Art. 8)....<sup>[1]</sup>

## **FINDINGS AND REASONS**

The Tribunal accepts that the applicant is a citizen of China. The Tribunal sighted the applicant's original passport and a copy of the passport is on the Tribunal file. The Tribunal finds that the applicant is a citizen of China and has assessed his claims against PRC accordingly.

The applicant's oral evidence differed in aspects from the statement provided with the Application for Protection Visa and his oral evidence. His oral evidence also varied and was inconsistent during the hearing. When the Tribunal put to the applicant that it was concerned with the inconsistencies the applicant replied he told the truth.

The applicant claims that he is at risk of persecution as he belongs to a particular social group of Chinese who have been deprived of their land by Chinese authorities.

The applicant further claims that he is at risk of persecution as he was an organizer of demonstrations and protests in China against the governments compulsory acquisition of land. The applicant claims he is at risk through his political activities and opinions. The applicant claims he has lost his job and his family has suffered financial loss.

The Tribunal finds that the applicant was not a witness of credit. The applicant's evidence was confused, implausible and inconsistent.

During the hearing the applicant changed his evidence on several occasions. Earlier in the hearing the applicant said he had trouble understanding as he was only educated to a low level. Later in the hearing he said he was the organizer of the villagers as he was the most educated and had attended a higher level of schooling. The applicant said he was a village land owner who had lost his land rights. Later in the hearing he stated he worked in the city, he was not a farmer, and he only wanted to make money. The applicant despite several requests from the Tribunal could not explain in any adequate way how he had communicated and organized three villages to participate in demonstrations in a regional town and city. The applicant's evidence changed throughout the hearing.

The applicant's evidence was inconsistent in relation to the imprisonment of his relatives. The applicant's evidence changed during the hearing. When the Tribunal pointed out the inconsistencies and implausibility of his evidence the applicant could give no adequate reply. The applicant had stated his relatives were arrested at the demonstrations and then that at the demonstrations he met a government official and enquired about his relatives in goal. Even allowing for nervousness the Tribunal does not accept that such fundamental lapses and conflicting versions can be given in a short space of time.

The Tribunal does not accept that the applicant was ever in any demonstrations in relation to any land confiscation. The applicant could provide little detail despite the Tribunal giving several opportunities for the applicant to do so. The Tribunal even rephrased the question and asked the applicant to explain how he had facilitated communication between the different groups of people. The applicant was unable to describe any organization of such a large demonstration. The Tribunal would expect that the applicant would have been able to provide some information on how he had organized such a large group of people from different areas to demonstrate against the government.

Considering all the evidence the Tribunal is not satisfied that the applicant is at risk due to his belonging to a particular social group.

The Tribunal is not satisfied that the applicant is at risk due to his being part of any political movement or holding any political opinions either his own or implied.

applicant stated he was the organizer of all the demonstrations and that the Chinese authorities were interested in him, however when the Tribunal asked how he had been able to exit China on valid travel documents from an international airport his evidence changed and he stated he was only known locally and put on a disguise in order to leave. The Tribunal asked the applicant to explain how he could have left China legally in such a disguise. The Tribunal also put to the applicant its concerns about the

inconsistencies. The applicant replied that he had nothing further to add and had told the truth. The applicant left China on a valid passport that shows his photograph the Tribunal does not accept that he would have been able to leave China on his passport if he was disguised or if he was wanted or known as a person of interest to the Chinese authorities. The applicant left China legally and on valid travel documents. Independent Country Information indicates that any person of interest to the authorities in China could not leave the country on a valid exit document. DFAT Country Information Report (CIR) 397/995 November 1999. Indicates Chinese authorities may not restrict the departure of all those who have an adverse criminal or political profile. However the Tribunal has considered the country information and is satisfied the evidence indicates that, in general, a Chinese citizen who exits China lawfully via a major international airport usually does not have an adverse profile with the Chinese authorities.

Country information generally supports a finding that he would not have been able to leave the country legally with a passport issued in his own name if he was sought by the authorities. The Tribunal does not accept that he is of any adverse interest to the authorities in China. The Tribunal does not accept that he would have been able to leave China in “disguise” on his own passport.

The Tribunal does not accept that the applicant was or is of any interest to authorities in China. Therefore the Tribunal does not accept that he would have trouble getting work or his family will suffer due to his being of interest to Chinese authorities.

The Tribunal does not accept that the applicant has had or is perceived to have had any association with demonstrations against land confiscation, or has suffered serious harm in China as a result of being a leader and organiser of demonstrations against the authorities confiscation of land or because of any implied political opinion or being a particular social group of villagers who have had their land confiscated. Nor does the Tribunal accept that if the applicant returns to China now or in the reasonably foreseeable future, there is a real chance that the applicant will be perceived to be a leader or demonstrator against land confiscation or that he will be persecuted for reasons of any real or imputed political opinions or membership of any particular social group for the purposes of the Convention on the basis of his claimed involvement demonstrations against compulsory acquisition of land in China. The Tribunal does not accept that the applicant has a genuine fear of returning to China. The applicant’s evidence at the hearing was that his passport was issued in the early 2000’s that he was only of interest to the police some years later. Despite having a valid passport the applicant did not leave China until some time later. As the applicant has not claimed any other reason for fearing to return to China, the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason if he returns to China.

## **CONCLUSIONS**

Having considered the evidence as a whole, 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) for a protection visa.

## **DECISION**

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