

**1312382 [2014] RRTA 192 (13 January 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1312382  
**COUNTRY OF REFERENCE:** China (PRC)  
**TRIBUNAL MEMBER:** Bruce MacCarthy  
**DATE:** 13 January 2014  
**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 who claims to be a citizen of China (PRC), applied to the Department of Immigration for the visa [in] November 2012. The delegate refused to grant the visa [in] July 2013.
3. The applicant appeared before the Tribunal on 7 January 2014 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 his registered migration agent.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

4. 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.
5. 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).
6. If a person is found not to meet the refugee criterion in s.36(2)(a), he may nevertheless meet the criteria for the grant of a protection visa if he 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 will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
7. 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.
8. The issue in this case is whether the applicant has become a Christian and, if so whether he would face harm for that reason if he were to return to the PRC. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

*The applicant's claims*

9. According to the applicant, he came to Australia in March 2008 with a student visa. At the time of his arrival, his visa was valid [until] March 2011. The applicant discontinued his studies in early 2009 and quarrelled with his parents. He later stopped asking them for financial support and started work on a construction site. Realising that the expiry date of his visa was approaching, he approached a migration agent in February 2011 to help him renew the visa only to find out that his visa had been cancelled. [The decision under review states that the visa was cancelled [in] September 2010 but it was not cancelled [until] January 2011 ([Reference deleted]). The applicant attempted to lodge an application for a further student visa [in] October 2012, but that application was invalid because of a bar under s.48A of the Act, and he was advised accordingly [in] October 2012 ([Reference deleted]).]
10. In 2011, he became interested in Christianity, having been influenced by some friends who are Christians. This angered his parents in China, who are Buddhists. He changed his phone number because they kept ringing him. He said he was afraid his parents would punish him if he returned to China. In addition, he had been told the Chinese government persecutes Christians who do not attend approved churches.
11. The applicant was interviewed by the delegate [in] March 2013. A summary of the interview is set out in the delegate's decision record (on pages 6-8), and a CD recording of the interview is at folio 47 of the Department's file. The Tribunal has listened to that recording and is satisfied that the delegate's summary generally presents a fair account of the matters discussed.
12. At the hearing on 7 January 2014, the applicant told the Tribunal that he did not wish to make any amendments to his written claims as set out in his application. He said he had no documents or other supporting evidence he wished to submit. Later in the hearing, the applicant confirmed that there were no reasons for his unwillingness to return to China beyond those relating to his religion and his consequent fears about harm at the hands of his family and the government.
13. The Tribunal said it understood that the applicant disagreed with the delegate's decision, but wanted to know if the applicant took issue with the delegate's summary of the evidence, particularly his oral evidence at the interview [in] March 2013 [as set out in the decision record]. He indicated that he did not take issue with the accuracy of that summary.
14. At the hearing, the applicant was unable to demonstrate anything more than an extremely superficial knowledge of Christianity. When the Tribunal asked the applicant to articulate any beliefs which distinguished him, as a Christian, from followers of other world religions, he said that he believed in Jesus Christ. However, when asked to expand on this, he said only that he had the same beliefs as other Christians but he did not say what those "same beliefs" were.
15. The Tribunal then asked the applicant to explain what it means to him personally to be a Christian. Again, he responded that he believed in Jesus Christ, but did not elaborate. The Tribunal asked him to say more about his beliefs but he said he did not know how to respond. The Tribunal asked what he might say to a friend about why that friend should become a Christian. He said that it was a personal issue, and that "something" happened to him when he first went to church, but he was unable to explain what that "something" was, other than to say the people at the church told him a lot of things that he previously had not known.

16. Though he said he read the Bible when he had the time to do so, he was unable to name the fifth book of the New Testament, saying that he “forgot.” He said he could not remember what that book was about. Similarly, when the Tribunal asked the applicant to recount any one of the parables of Jesus and to explain his understanding of its meaning, he said he could not remember.
17. The Tribunal pointed out that the various books of the Bible were in a variety of forms. Some were histories, setting out accounts of what individuals or groups of people did and said, and of their relationship with God. Some contained prophecies, Some contained collections of wise sayings, while others contained songs or poems of praise. The first few books of the New Testament were in the first category, in that they set out accounts of what people did and said. However, the majority of the books of the New Testament were of a different kind. It asked the applicant to explain the nature of these books.
18. He said that those books told people what benefits they would achieve if they believed in Jesus. While the Tribunal acknowledged that that was true, it said that that could be said of almost all the books of the new Testament and said it was looking for him to explain what was unique about the majority of the books of the New Testament. He was unable to respond and, after a period of silence the Tribunal elected to move on to other issues.
19. The Tribunal commented that the applicant’s level of knowledge was superficial and did not appear to be consistent with him having a genuine commitment to Christianity. It is against this background of a very limited knowledge of Christianity that the Tribunal has examined other aspects of the applicant’s evidence and claims.
20. The applicant’s oral evidence to the Tribunal was, at times contradictory. For example, when the Tribunal spoke about the applicant’s evidence to the delegate about “the breaking of bread,” the applicant gave inconsistent evidence. At one stage, he denied having said he took part in Communion. However, when asked directly if he did take part in Communion, he said he did. He then confirmed that answer, twice. However, when the Tribunal asked the nature of the activities in which he was unable to participate because he had not been baptised, his answer was that he was unable to “go forward to share the food” which the Tribunal understands to be a reference to sharing in Communion.
21. Another inconsistency arose when the Tribunal discussed the applicant’s attendance at a church in Australia. The applicant initially told the Tribunal that, after a break in his attendance of about three months, he resumed attending church in October 2011 and that, since then he attended nearly every Sunday. However, later in the hearing, when the Tribunal asked whether he had been baptised yet, he said he had not been baptised because he had not been attending church for some time, his last attendance having been some two months previously.
22. A third inconsistency arose when the Tribunal discussed the nature of the Bible he claimed to have read, it asked him the name of the person who had given it to him. He said it was the mother of his friend, [Ms A], but said he did not know her name. The Tribunal pointed out that, when he had given evidence to the delegate, he had provided a specific name for the woman but he was now saying he did not know her name. The applicant responded that he had given the delegate his friend’s name. The Tribunal said that he recalled he had told the delegate that the mother of his friend was named [Ms B]. The applicant then responded that his friend’s mother’s surname was [Ms B]. The Tribunal pointed out that a few minutes earlier he had said he had not known her name, but was now saying he knew her surname. He replied that he simply addressed her as “Auntie” and had not inquired about her name.

23. The name of the person who gave her a Bible to read is not, in the Tribunal's opinion, an important issue. However it regards it as significant that the applicant gave inconsistent evidence on the point. He first told the Tribunal he did not know the woman's name but soon after said he knew her surname. The Tribunal also notes that the applicant gave inconsistent evidence to the delegate and to the Tribunal regarding the woman's surname. These inconsistencies call into question the applicant's credibility.
24. The applicant's oral evidence to the Tribunal was not consistent with his oral evidence to the delegate on some points. The Tribunal raise these contradictions with the applicant pursuant to s.424AA of the Act.
25. First, he told the Tribunal that he had never attended a Christian church service or gathering in China. The Tribunal pointed out that, while he had later denied having attended a church gathering in China, he had initially said that he had attended a church gathering with his uncle and had been caught by Chinese authorities. This information would be part of the reason for affirming the decision under review because it suggested that he was prepared to give false information about his experiences in China and only corrected that information when he was quizzed in greater detail. This could lead the Tribunal to doubt the truth of other statements made by him.
26. The applicant did not seek further time in which to comment when invited to do so. He said that his comments at an interview had been misinterpreted. He said that he had told the delegate his uncle's son was arrested at such a gathering, not he. The Tribunal does not accept this explanation. As discussed with the applicant at the hearing, he had previously told the Tribunal that he did not take issue with the delegate's summary of his oral evidence, which included a statement that he originally claimed to have been arrested.
27. Second, the applicant told the Tribunal that he first attended Christian church gathering in Australia in the middle of 2011. He said he had attended more than 10 times in that year although there was a period when he did not attend. He said that he had attended once or twice and then his parents became angry with him and told him to stop attending so he stopped for about three months and then resumed his attendance in October 2011. Since October 2011 he had attended nearly every Sunday.
28. The Tribunal pointed out that his oral evidence to the delegate contradicted what he had just said. He had told the delegate that he first attended the church in 2010, having attended once or twice, and then attended for a few times in 2011. He told the delegate that it was only in the latter half of 2012 that he started attending the church on a regular basis. The Tribunal said that the contradictions in his evidence regarding his attendance patterns could lead the Tribunal to doubt that he had presented a true picture of his involvement in a Christian church. Again, the applicant did not seek more time to respond to the information put to him.
29. He attributed the contradiction two errors on the part of the interpreter at the interview with the delegate. The Tribunal said it found it difficult to accept this given that he had said earlier that he did not take issue with the summary of his oral evidence to the delegate, which explicitly mentioned what he had said about his pattern of attendance. He had the delegate's decision record containing that summary, and he had the services of a migration agent to assist him identify any problems with the delegate's decision.
30. The applicant said he had not yet been baptised because he had not attended church for a long time. The last time was more than two months previously. He said he had stopped attending

because of “family issues.” He had not been in contact with his family throughout 2012, but resumed contact around the time of the Spring Festival in early 2013. Pressure from his family to abandon Christianity recommenced and he again broke off contact with them. Because of this, he stopped going to church.

31. This appears to be to be counterintuitive. If he had broken contact with his family because of his wish to attend church, there would be no reason for him to discontinue his attendance. Alternatively, if he chose to discontinue his attendance at church that would seem to have provided a reason for him to reconcile with his family. When the Tribunal put this point to him, he said that there had been no reconciliation and he had simply stopped attending church because of the pressure. He said that what he had said did not mean that he might not start attending the church again in the future.
32. The Student visa with which the applicant came to Australia was initially valid [until] March 2013. The visa document in his passport indicates that the visa was subject to condition 8202, which required that the applicant met the requirements of his course of study. The applicant would have known that, by suspending study in early 2009 (as he stated in his application) he was in violation of one of the conditions of his visa and placing himself at risk of having his visa cancelled. Even if he had not been aware that his visa had been officially cancelled, he would have known that was a possibility. In any event, he would have known that the visa expired in March 2011 and that, after that date he was illegally in Australia, without any valid visa.
33. At the hearing, the Tribunal asked why, if the applicant was genuinely a Christian and feared returning to China for that reason, he had not sought protection much earlier than November 2012. The applicant said he had been cheated by a migration agent in 2011 and had applied for a new visa in 2012 only to find out that his original visa had been cancelled. The Tribunal does not regard this as a satisfactory explanation, as it ignores the point that his original visa would have expired in March 2011 even if it had not been cancelled before that date.
34. Had the applicant become active in a Christian church before late 2012, and had he believed that would cause him difficulties in China the Tribunal would have expected him to have sought protection much earlier. The Tribunal told the applicant at the hearing that it could conclude that he did not start attending church regularly until late 2012 and that it could regard it as significant that he did not start attending church regularly until around the time he sought protection. It could conclude that he only attended church in Australia in order to strengthen his claims for protection. If it reached such a conclusion, it would be obliged to disregard the conduct in Australia of attending church, pursuant to s.91R(3) of the Act. The applicant denied that his attendance at church was to strengthen his claims for protection.
35. At the hearing, the applicant said that, if he were to return to China he would wish to give effect to his religion by worshipping in a small house church, of around 10 people. The Tribunal said that there were hundreds of thousands of Christians in Fujian who attended officially -recognised churches, and asked why he believed he would not be able to worship in one of those churches. In response, the applicant said that he did not know what the situation was like in other areas, but in his own village, different kinds of people attend government churches. All those who do believe in the government. The Tribunal said that may be so but suggested that those who attend such churches can also give effect to a belief in Jesus. The applicant asserted that whereas the government has only one sort of approved church to which Catholics, other Christians and even other people go, genuine Christians only attended house churches.

36. He confirmed that he was saying that he believed there was only one sort of government-approved church for Christians. This is not the case. The Tribunal pointed out to him that there are two separate entities, one for Catholics and one for Protestants. The applicant said that he had never attended such churches because genuine Christians in his village attend family gatherings.
37. Country research discussed with the applicant indicates that, although the policy is not always honoured, the State Administration of Religious Affairs (SARA) has acknowledged that family and friends have the right since 2005, to meet at home for worship, prayer and Bible study, without registering with the government. Some house churches meet ‘openly and regularly with memberships of several hundred to a thousand.’ Further, religious policy has been applied relatively liberally in the applicant’s home province of Fujian and there have been no recent reports of members of small unregistered house churches being harassed in Fuqing city (where the applicant lived) or in Fujian province generally. Fujian is rarely mentioned in reports on breaches of religious freedom by the US Department of State, the United States Commission on International Religious Freedom, Amnesty International, Human Rights Watch or the various Christian NGOs that report on China. (See US Department of State 2013, *International Religious Freedom Report 2012 China*, 27 May, Executive Summary <<http://www.state.gov/documents/organization/208434.pdf>> Accessed 11 December 2013. US Commission on International Religious Freedom 2012, *US Commission on International Religious Freedom 2012 Annual Report*, March, p.145 <[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 11 December 2013. Lambert, T 2006, *China’s Christian Millions*, Monarch Books, Attachment 3 A survey of church growth, province by province, Fujian province, pp240-241.)
38. A simple Google search revealed that there were numerous churches operating in Fuqing, which tends to support country information that Fujian authorities were relatively tolerant of the activities of small unregistered churches. This would suggest that, even if the applicant were to return to his home province and join a small house church of around 10 people, the chance that he would face harm for such a reason would be extremely remote.
39. In response to this information, the applicant said that the majority of people in his village were Buddhists and believe that Christian gatherings are illegal. He said that if these people reported Christians they would be arrested. Members of his family had been arrested in 2011. However, when the Tribunal pointed out that this seemed to be inconsistent with his written claims, as he was in Australia in 2011, he changed his evidence and said that these arrests took place in 2007.
40. The applicant has an extremely superficial knowledge of Christianity (see paragraphs 14-18 above). While the Tribunal accepts that the applicant is not claiming to have been involved in a Christian church for a lengthy period of time, it would still expect a person who came to embrace Christianity more than a year ago (more than two years ago according to his written claims) to have been able to articulate much more about the nature of that religion. Against the background of this limited knowledge of the religion, the Tribunal has considered the internal contradictions in his evidence to the Tribunal (paragraphs 20-23 above) the inconsistencies between his oral evidence to the Tribunal and that given to the delegate (paragraphs 24-29 above), his failure to be baptised and the fact that he is not currently attending church (paragraphs 30-31 above) and his failure to seek protection before late 2012 (paragraphs 32-34 above).
41. Taking all of these factors into account, the Tribunal finds that the applicant has no genuine commitment to Christianity. While the Tribunal is prepared to accept that the applicant has attended a church in [Australia], it does not accept that he did so before 2012. It is not satisfied

that the applicant engaged in the conduct of attending church in Australia otherwise than for the purpose of strengthening his claims to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol. Therefore, pursuant to the provisions of s.91R(3) of the Act, the Tribunal disregard that conduct.

42. It follows from the Tribunal's finding that the applicant has no genuine commitment to Christianity that the Tribunal does not accept that the applicant is in any way in conflict with his family because of any matter related to religion. It also follows that the Tribunal finds that, if the applicant were to return to China in the reasonably foreseeable future, he would not seek to join a Christian church, whether registered or not, and would not engage in religious conduct which would lead to him facing a real chance of harm, whether from the government or from his family or indeed from anyone else.
43. The applicant has claimed that his uncle and members of that man's immediate family are Christians, and had been arrested for that reason. However, he has made no claim that any non-Christian relatives outside his uncle's immediate family unit (such as the applicant's parents) are at risk of harm because of their relationship to his uncle. There is therefore nothing to suggest that the applicant himself would be at risk of harm because of his relationship with his uncle. Given this, and given the findings above, it is not necessary for the Tribunal to decide whether the applicant's uncle and members of that man's immediate family are Christians who have been arrested or faced harm for such a reason.
44. For the reasons given above, and given that the applicant has raised no claims relating to any ground other than religion, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a).
45. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). It has considered the fact that the applicant attended a church in Australia. However, while he has claimed he would be at risk if he attended a church in China (which possibility the Tribunal has rejected above) he has made no claim that the PRC authorities are aware that he attended a church in Australia, or that he would be at risk of harm for that reason. There is no evidence before the Tribunal to suggest that Chinese citizens who have attended church services in Australia are at risk of harm on return to China. The Tribunal has found (see paragraph 42 above) that if the applicant were to return to China in the reasonably foreseeable future, he would not seek to join a Christian church and would not engage in religious conduct which would lead to him facing a real chance of harm. Having rejected the applicant's claim he is in conflict with his family because of any matter related to religion, the Tribunal does not accept that there is any real risk of him suffering harm at the hands of his family because of his having attended church services in Australia.
46. Given that the applicant's only claims relate to his assertion that he is a Christian, and given that the Tribunal has rejected those claims, it follows that the Tribunal does not have 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 he will suffer significant harm. The Tribunal is therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
47. 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**

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

**Bruce MacCarthy**  
Member