

0900266 [2009] RRTA 925 (29 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0900266

DIAC REFERENCE(S): CLF2008/137735

COUNTRY OF REFERENCE: Vietnam

TRIBUNAL MEMBER: Tim Connellan

DATE: 29 October 2009

PLACE OF DECISION: Melbourne

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

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 and Citizenship 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 Vietnam arrived in Australia [in] August 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2008. The delegate decided to refuse to grant the visa [in] December 2008 and notified the applicant of the decision and his review rights by letter [on the same date].
3. 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
4. The applicant applied to the Tribunal [in] January 2009 for review of the delegate's decision.
5. 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

6. 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.
7. 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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:

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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, 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.
16. 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.

17. 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.
18. 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

19. 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.
20. in his application for a protection Visa, the applicant claimed he had left Vietnam because of discrimination on religious grounds by the Vietnamese government and its officials. He claimed his membership of the Alliance of Christian Churches (the Alliance) meant that he had been subjected to a range of "harsh measures that the Vietnamese government has imposed upon the Alliance".
21. He claimed his fear was that if he were to return to Vietnam he would be summons to the local security office for questioning, arrested and detained and then brought before People's Court and sentenced to a "harsh imprisonment in order to prevent me from partaking in religious activities and to terrify other church members".
22. In support of his application lodged [in] October 2008, the applicant provided a number of documents (with translations where appropriate) including:
 - A certified copy of the applicant's passport [number deleted: s431(2)], issued by the Socialist Republic of Vietnam.
 - A report by the applicant's wife, dated [in] September 2008 detailing a police visit to their home [in] August 2008
 - A summons to the applicant from the PSB to present himself to the local police station [in] December 2007.
 - A copy of the decision dated [in] August 2008 to terminate his employment in Vietnam [in] September 2008.
 - Identification documents including Birth and Marriage Certificate for the applicant and his wife.
23. [In] March 2009, the Tribunal received a further submission which included:
 - a. A statutory declaration from the applicant dated [in] February 2009.
 - b. A statement by the applicant's wife that police had visited their home [in] November 2008 with an "Order of Arrest" for the applicant.

- c. An 'Urgent Order of Arrest' document dated [in] November 2008 calling for the applicant to be arrested and turned over to the district police.
- d. Extracts from the Vietnamese Penal Code.
- e. A reference from [Pastor 1], Minister of the Vietnamese Uniting Church in [suburb deleted: s431(2)].
- f. A Certificate of Baptism dated [in] March 1991 stating the applicant had been baptised into the Vietnamese Evangelical Church.

24. In the Statutory Declaration, referred to in (a) above, the applicant stated:

I, [applicant] of [address] in the state of Victoria,

Electrician, do solemnly and sincerely declare as follows:

1. *I make this Statutory Declaration in support of my Refugee Review Tribunal hearing in relation to my application for a Protection (Class XA) visa.*
2. *There are some events that happened in my life that I do not know the exact date of. I have talked about these events with reference to other events taking place at that time.*
3. *I Arrived in Australia on [date] August 2008 on a valid Vietnamese passport and an Australian Tourist Short Stay (subclass 676) visa.*
4. *I applied for a protection (class XA) visa on [date] October 2008.*
5. *I was born on [date] in Hai Phong, Vietnam. I am from the Kinh ethnic group and am Protestant Christian.*
6. *I was married in 2004. My wife's name is [name] and she is living in Hai Phong, Vietnam. She is a high school teacher working for a public school. We have one daughter called [name] who was born in 2004.*
7. *My father worked as an employee for an export/import company. My mother was a farmer. I have one older sister and three older brothers. One of my brothers lives in Australia, he migrated to Australia after living in refugee camps in Hong Kong. He works in a factory in [suburb].*
8. *My father died in 1999 of complications related to the flu. All other family members are alive and living in Hai Phong.*
9. *I attended primary school in a town called or [location], Thuy Nguyen District, city of Hai Phong. I attended secondary school and [location] between 1984 and 1987.*
10. *On or around [date] May 1989 I left Vietnam as a refugee on a boat together with my elder brother. We lived in a refugee camp in Hong Kong until [date] December 1993. Thereafter I returned to Vietnam.*
11. *I became a Christian when I was living in Hong Kong in a refugee camp. Before going to Hong Kong I was young and I didn't follow any particular religion. When I was growing up my family was not religious. Pastor [name] came to the refugee camp to spread Christianity and teach people about Jesus Christ. Christianity appeals to me because I believe in the salvation offered by Jesus Christ.*
12. *I converted to Christianity because I believe that if I follow Jesus I will have eternal life. I believe Jesus came to this world to live and die for people. I was baptised as a Christian in*

the refugee camp in Hong Kong. I was baptised to wash away my errors and sins. I was baptised in a timber container lined with plastic in the refugee camp in Hong Kong. Thirty other people were baptised at the same time as me. I was baptised by Pastor [name].

13. *Whilst at the refugee camp I did a course in Christian theory. It went for three months. Pastor [name] ran the course. I have a paper to demonstrate that I completed this course.*
14. *As there was no church at the refugee camp in Hong Kong we held Mass in the auditorium. I went to Mass every week, approximately 70 people attended these services.*
15. *My siblings living in Hai Phong have not accepted Christianity because they are afraid that they would be persecuted by the government. Only my brother, my mother, my wife and I became Christians.*
16. *After I returned to Vietnam between 1994 and 2002 I worked as a delivery/logistics operator for a private company. From November 2002 and August 2008 I worked for a government irrigation company.*
17. *I would occasionally attend services at a local church in [location] in Hai Phong. It is an official church that is registered with the government. During this time I travelled a lot for work and due to my work commitments I was not able to attend Mass at that church more regularly. I did attend Mass at other churches wherever I go if possible.*
18. *The way that the Church in [location] in Hai Phong practices Christianity is different from what we were taught in Hong Kong and what I believe Christianity to be. As the Church is under the control of the government there is always an official of the government present to ensure that people do not speak out against the government in any way, and especially to ensure that people do not critique the government's policy of religion. I objected to this because I feel it is important for people's religious expression not to be constrained or curtailed. I have heard that the Pastor's sermons are constrained by the government. One government official would attend Mass each week. I feel that this presence prevented people talking to each other after church because they were concerned about the conversations being monitored. I felt that people only attended Mass and then left, they did not build a community and talk to each other after the service. I believe that children of God need to talk to each other to build a community in God. I want more people to adopt Christianity so that more people can be rescued and can become a child of God.*
19. *Even though the government of Vietnam recognizes freedom of religion in the Constitution, the government does not want religion to spread as the government is atheist. I believe the government is worried that children of God will listen to God only.*
20. *When I returned to Vietnam I acted as a freelance missionary. I would talk to people I met through my work and teach them about Jesus Christ. I was required to travel a lot for work and used these travel opportunities as opportunities to promote my missionary work and to tell more people about Jesus Christ. I would often spread the word of Christianity to the people I meet in different towns. When I was travelling I would attend church whenever I could.*
21. *I have been questioned twice for my Christian practices. The first time was mid-2006 when I was questioned briefly by village government authorities. I was given notice by the local police which asked me to come to the police offices to answer some question. There are no police stations in Vietnamese villages but there is a section in the local building for the police to work, so this is where I went to speak to the police. I was asked a number of questions by the chief assistant of the local police in relation to a trip I travelled with [Pastor 2] and [Pastor 3]. The police asked me about the relationship between the two and me. They became pastors in late 2006 but were not at this time. I told them that one of the pastors, [Pastor 2] was my friend from Hong Kong. They asked where I went as I was absent two days from my local area. I told them I went to Quang Ninh. They asked what I did in Quang Ninh. We went to Quang Ninh to tell people about God's word. However, I told the authorities that I went there to see my friends. They believed me. The questioning took about 15 minutes altogether.*

22. *I believe I was questioned by police because I had been spending time with [Pastor 2] and [Pastor 3]. I was told by them that they believe the government opposed their work and that they believed their phones were bugged. Both [Pastor 2] and [Pastor3] have previously been arrested because of their religious practices. I read in the newspaper that [Pastor2] was charged with teaching illegally before she was licensed as Pastors. She told me this had happened as well. She was arrested for a few days and then released. I was told that [Pastor 3] had also been arrested for teaching Christianity illegally and imprisoned for a few days as well. I met [Pastor 2] at the refugee camp in Hong Kong. I talked to her about Christianity whilst at the refugee camp in Hong Kong and as a result she became a Pastor.*
23. *In February 2007 I assembled a 'group' in my house I started this group because my neighbours and people around me had the need to worship God. I started inviting my friends to my house so we could all worship God. We would meet regularly to practice our faith and to discuss the teachings of Jesus Christ. This group practiced the faith of a Christian Alliance branch of Protestantism. My group was called [name]. Ten people, in addition to the three people in my family would regularly attend.*
24. *I started this 'group' with [Pastor 4]. I met [Pastor 4] in 2006. Our group was registered with the government under [Pastor 4]'s name. I could not register the 'group' in my name because I am not a Pastor, and only Pastors can register religious groups. Because we were registered the government did not give us any trouble at this stage. The government limited the number of people who could attend the meeting to ten, excluding people in my family. We were allowed to worship Jesus Christ but we were not allowed to criticise the authorities or discuss anything political. We were told this when we registered. Sometimes the police would send a police officer [name] to the meeting to make sure we were not saying anything that criticised the government. Although [name] wore plain clothes I recognized him and knew he was the Chief Assistant for the Local Police.*
25. *On [date] December 2007 I was summoned to answer questions at the police station. This was in relation to the 'group' which met at my house. I was questioned by the police for ten minutes at the village police office [Pastor 4] and I wanted to organise a special Christmas festival which the authorities disapproved of. When I was questioned, police asked how many people and who was invited to celebrate Christmas with me. I told them that this year I was going to invite about 30 people from other groups including Pastors. They told me that I was not allowed to invite other group members to celebrate Christmas. They also asked me what the purpose of the festival was and what would be discussed during the festival. I only invited [Pastor 4] and members of my group.*
26. *In August 2008 I came to Australia to attend a Christian [Conference] which was held in Sydney. [Pastor 4] had been invited to attend but the government made it difficult for him to go. He had been arrested on [date] December 2007 because of his religious practices and physically abused by police. He celebrated Christmas in [location] and another church. He was invited to give a speech there. There were a lot of people coming to the gathering. Whenever the authorities see a large church gathering they are suspicious. He was asked who had organised the Christmas celebration and he told the police that it was him so he was arrested. As a result he suffered head injuries and had to go to the hospital. He tried to pursue legal claims in response to what the police did to him and because of this, [Pastor 4] was not granted a passport. He was not able to go to the conference and therefore he invited me to attend the conference as his replacement*
27. *I already had a passport. I applied to the Australian Embassy in Hanoi for a visa to come to Australia.*
28. *During the time I was in Vietnam, I have been questioned by the authorities about my belief and my work in spreading Christianity. The government are aware of the group meetings that I have my family's house. They found out I went to Australia to attend the Christian [Conference] in Sydney with ten others after I left Vietnam on [date] August 2008.*
29. *On [date] August 2008, one day after I left Vietnam, the authorities came to my house and questioned my wife. They asked her why I was going to Australia and they asked her about my*

relationship with the other people who were attending the conference. They told her I do not deserve to work for the government and that they would make sure I would not have a job when I returned. They accused me of damaging the government policy against religion in Vietnam because I was spreading Christianity. They threatened my family. A statement from my wife in relation to this meeting is enclosed.

30. *On [date] August 2008 my wife received a letter telling me I was no longer employed.*
31. *On [date] November 2008, the day after my Australian visa expired, the authorities came to my house with a warrant to arrest me. (See original Vietnamese warrant and English translation attached). It states that I am under arrest by the Deputy of the Security Guard, [name], for the district of Hai Phong city. It says I'm being charged for my religious behaviour, under article 78 and 87 of the Vietnamese Penal Code. They accuse me of damaging the government's policy on religion and working with people overseas to achieve such objectives. The minimum penalty for violation of article 78 is between 12 and 20 years of imprisonment, life imprisonment or capital punishment.*
32. *I found out about the arrest warrant the morning of [date] November 2008. I received the arrest warrant from my wife in early December. However, I didn't give the documents to DIAC at the time because I was waiting for an appointment and I thought that I would hand over the documents then. I never received any letter asking me to come to an interview so I did not get the opportunity to give this information to DIAC before their decision. DIAC had my correct address at the time so I think the letter must have been lost in the mail.*
33. *I believe that if I return to Vietnam I will be immediately arrested under the warrant of [date] November 2008. I do not believe I will receive a trial because these crimes are considered so serious. Even though the Vietnamese government makes it appear to the international community that they have a fair judicial system, in reality there are numerous cases of people being arrested and disappearing without receiving a fair trial. I believe I cannot depend on a fair judicial process.*
34. *I am aware of people who have been beaten while in police custody and later died as a result. [Pastor 4] has told me of two missionaries, Giang A Lau of Dien Bien Phu Church in Lai Chau Province and Trung of Ba To Church in Quang Ngai Province who have been tortured to the point of death by the police. These people were also spreading religion in the same way as I have been. They were targeted because they were spreading religion and I will be targeted in the same way. They will also not be Pastors. I have heard that other similar cases from the Internet.*
35. *I fear that my wife will be arrested as well due to her association with me. My wife is unable to give evidence at my Refugee Review Tribunal hearing as she is fearful for her safety if she does so.*
36. *I attended the Christian [Conference] in Sydney with 4 Pastors and 6 other Protestant Christians. The 6 other Christians were not missionaries, just regular Christians. The Pastors have all returned to Vietnam. I have been told by [Pastor 2] that they were interviewed by the authorities about what they had been doing at the conference in Sydney. I don't know what happened to them after they were questioned. I don't think that they will be persecuted in Vietnam because they are official Pastors so they have the recognition from the authorities. As long as these Pastors only spread the words of Jesus Christ in the Church they will not have problems because anything said inside the church this is under the control of the government. Pastors only have problems if they spread the religion outside the church where the government can't control. This is what [Pastor 4] did and the reason he was persecuted. I do not think these Pastors had done anything like this.*
37. *I believe that my situation is different from theirs because I have been questioned twice previously and have already come to the attention of the authorities on these occasions. Also, the government draws a clear distinction between religious activity carried out by Pastors and religious activity carried out by people like myself who are not Pastors. In Vietnam Pastors are required to register with the government and attend government approved training before*

they can become Pastors. Therefore the authorities can control what Pastors do. Because I'm not a Pastor, I cannot be controlled in the same way. I also believe that I have been targeted because of the more active role I play in recruiting people to Christianity. I have converted approximately 100 people since 1994. I further believe the authorities are scared that if I return to Vietnam I would spread my Christianity. Therefore, because I am a missionary and not a Pastor, I believe that I'll be treated differently from the other conference attendees.

38. *Since arriving in Melbourne I have attended the [suburb] uniting Church and I am known by the Minister, [Pastor I].*

39. *I cannot return to Vietnam because I fear I would be arrested by the authorities. The authorities of Vietnam cannot protect me because they are the people persecuting me. I do not have a right of entry and residence to any other country.*

40. *It is for these reasons I'm applying for a Protection Visa to remain in Australia.*

25. In the statement by the applicant's wife referred to in (b) above, she stated that at approximately 6 a.m. [in] November 2008 the police had visited their home with an order of arrest for her husband.

26. The "Urgent Order of Arrest" document referred to in (c) states:

...based on the acts aiming at undermining the government's policy and in collusion with foreign organisations of [applicant] which have violated articles 78 (High Treason) and 87 (Undermining the Unity Policy) of the Criminal Law of the Socialist Republic of Vietnam. Pursuant to articles 79 (carrying out activities aimed at overthrowing the People's administration) and 81 (infringing upon territorial security) of the Criminal Law for Prosecution of the Socialist Republic of Vietnam. Hereby issue the order to immediately arrest [applicant].

27. In the reference referred to in (e) above, the referees states:

.... I have known [applicant] when he first came to the Vietnamese Uniting Church in [suburb] since September 2008 and became a member of my congregation.

[Applicant] is a diligent and honest Christian I have ever known. He attends at church services regularly on a basic weekly and getting along with people very well.

On the ground of humanity, I would ask you to favourably consider [applicant's] situation with compassion so that he will have the opportunity to have his medical treatment in Australia.....

The First Hearing

28. The applicant appeared before the Tribunal [in] March 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages. The hearing ran for a period longer than scheduled and was adjourned to a second hearing [in] March 2009

29. The applicant was represented in relation to the review by his registered migration agent who attended the Tribunal hearing.

30. The applicant told the Tribunal he was born in Hai Phong, North Vietnam on [date deleted: s431(2)].

31. He had gone to secondary school in Vietnam between 1984 until 1989 when in year 11 he had gone with his brother to Hong Kong where they lived in a refugee camp and

unsuccessfully applied for refugee status before returning to Vietnam in December 1993.

32. He told the Tribunal that while in the refugee camp in Hong Kong he had been baptised. When the Tribunal enquired as to the Church into which he had been baptised, he told the hearing it was the Protestant church. He did not recognize the name of the Vietnamese Evangelical Church listed on the Baptism Certificate provided in support of his application
33. When asked if he was aware of the fact there were recognised protestant churches in Vietnam, the applicant replied that some branches of churches had been recognised and others had not been recognised. The applicant did not answer when asked if he was aware of the Southern Evangelical Church of Vietnam (SECV) or the Evangelical Church of Vietnam North (ECVN), the two officially recognised protestant churches in Vietnam
34. The applicant told the Tribunal that when he returned to Vietnam from Hong Kong he was employed doing deliveries for [company deleted: s431(2)].
35. In 2002 he obtained employment for a state run company and in October 2003 he was seconded to an office in [location deleted: s431(2)] that was responsible for the local irrigation system. He had worked for this company until August 2008 when he left for Australia.
36. At the hearing he confirmed the information in his application regarding his employment that said he was a 'gate operator' for the irrigation company in which role he was required operate a 'gate' controlling water flow onto farmland. When asked how often he was required to operate the gate, he told the hearing that times varied but he followed a schedule provided by the office.
37. The applicant told the Tribunal he had come to Australia with a group of 11 people for a religious conference
38. He provided the hearing with his conference name tag (on file) which showed his name under the heading "[conference name deleted: s431(2)] Conference 2008". Despite the wording of the name tag, the applicant said he was not a "Christian" as he believed this name was a reference to Catholics. He said in his church, people were referred to as members of the faithful.
39. He also provided a receipt in his name for \$90 being for '[conference name deleted: s431(2)] registration 2008'
40. He told the Tribunal the other delegates had returned home at the end of the conference and he believed they had been questioned by authorities on their return which he agreed was normal practice in Vietnam when people returned from an overseas religious conference
41. He told the Tribunal that during the conference he had stayed at the home of a gentleman called [name deleted: s431(2)] who was a supporter of the church but not a delegate at the conference.

42. At the conference he had met [Pastor 1], the pastor of a church in [suburb deleted: s431(2)], a Melbourne suburb, who had invited him to come to Melbourne at the conclusion of the conference.
43. He told the hearing that after the conference he had come to Melbourne and had attended the church where [Pastor 1] conducted services and preached the truthful words of God.
44. When asked about his religion, the applicant told the Tribunal he had learnt about God while in Hong Kong when a Minister had come to the refugee camp. He had attended Bible courses, listened to preaching and attended weekly church services where he was able to thank and praise God. He told the Tribunal that on his return to Vietnam he bought the faith with him and practised his faith at a church in [location deleted: s431(2)], Hai Phong, however he said this was a registered church and therefore did not have the freedom he had enjoyed when practising his faith in Hong Kong.
45. He told the Tribunal when he went on business trips he was able to talk to people about his faith.
46. The applicant said he was a member of the Christian Alliance church, the head of which was Minister Dinh Thien Tu in Saigon He told the hearing that in February 2007, with [Pastor 4] he opened up a group of the church which met at his home.
47. When asked about his personal involvement in the church, he said he did not have an official position but was a voluntary worker. When asked to describe his role or function, he said he did not have a title or any official position in the church.
48. When asked what he fears on his return to Vietnam, he told the Tribunal that after he left Vietnam the government had issued search warrants for him and he believed he would be jailed on his return. He said he believed the search warrants had been issued because he had been spreading the word of God and had travelled to a foreign country to attend a religious conference and the government thought he was a dangerous person who works closely with foreign organizations. When the Tribunal asked whether the applicant was a dangerous person, he replied that the current regime of Vietnam considered him dangerous because they were scared of people who spread the word of God.
49. The Tribunal referred to independent evidence which suggested the Vietnamese government was only interested in persons who were involved in religion for political purposes.
50. The Tribunal asked the applicant to comment on information provided by [Pastor 5], the convener of the conference for which he had come to Australia. He told the Tribunal he was unaware of such information.
51. The Tribunal read the applicant an email from [Pastor 5] in which he referred to the applicant stating:

We have just been in Vietnam for eight days connecting with churches. At this time amongst Vietnamese ethnic people we did not see any persecution. In fact I would have to say that the church in Vietnam is experiencing the greatest freedom that I have seen since I have been involved with the Church in Vietnam.

If [applicant] is claiming refugee status on Christian grounds, I doubt it is justified. I apologise for any problems this has created and assure you that we will be more careful in future in who we invite.

52. The Tribunal suggested to the applicant that if the contents of [Pastor 5]'s letter were accurate, it was potentially damaging to his claims and invited him to comment.
53. He responded that [Pastor 5]'s perspectives were his own experience and not reflective of individual circumstances where individuals were jailed and beaten for their religious beliefs.
54. The Tribunal referred to this evidence and to the claims in his application that Vietnamese authorities were torturing and killing people for their religious beliefs. The Tribunal commented that this was not consistent with other available evidence and referred to the International Religious Freedom Report 2007, which stated in part: "Protestants and Catholics across the north reported improvement in most officials' attitude towards their religion, and in general Protestants and Catholics were allowed to gather for worship without harassment."
55. When asked why he would be treated differently to the other conference attendees, he said the others were either Ministers who the government were able to control or were simply followers who had not been spreading the word of God.
56. The applicant told the hearing he had read and understood the primary decision.
57. When asked why he had not attended the scheduled meeting with the Department, the applicant stated that he had not received the invitation.
58. As the interpreter had only been booked for a limited time, the hearing was adjourned.
59. The migration agent told the Tribunal he had a substantial submission. The Tribunal invited the agent can make a submission in writing.
60. Following the first hearing, the applicant's agent made a comprehensive written submission to the Tribunal under the following headings:
 - Introduction
 - Letter of [Pastor 5]
 - Investigations of the Refugee Review Tribunal
 - Interrogation upon return to Vietnam
 - Official policy of the Vietnamese government and the Country information
 - Urgent Order of Arrest
 - Non-attendance at DIAC interview
 - Profile of the applicant and the basis for a well-founded fear of persecution

Second Hearing

61. At the second hearing [in] March 2009, the applicant spoke of his religious beliefs and practices. He told the Tribunal his only motivation was his belief in God and his wish to be saved. This evidence was consistent with his earlier Statutory Declaration in which he stated "*Christianity appeals to me because I believe in the salvation offered by Jesus Christ.... I converted to Christianity because I believe that if I follow Jesus I will have eternal life*". He said there was no political element or influence on his belief or practices.
62. He told the Tribunal the name of his church was the Christian Alliance. He repeated that he had no official position or authority in the church but was simply a volunteer and his involvement and activities had nothing to do with politics or political activism.
63. The applicant told the Tribunal that on two separate occasions in 2006 and 2007 he had been interrogated by the police in his village. The first occasion followed a visit to his home by two friends who later became pastors in the church. He had been called to the police station and questioned about his relationship with these two people. He said the police had been satisfied with his answers and had allowed him to leave after about 15 minutes.
64. The second occasion, near Christmas 2007 he had been summoned by the police and questioned about the meaning of Christmas for about ten minutes. He said the police had forbidden him to arrange a party with thirty people to celebrate Christmas. He said he had not been abused or physically harmed on either time he had been interrogated.
65. The applicant told the Tribunal he was in good health and other than some mild sporadic indigestion he had nothing that would require him to contemplate medical treatment in the foreseeable future.
66. The Tribunal then asked what he believed [Pastor 1] meant when in his reference he wrote, "*On the ground of humanity, I would ask you to favourably consider [applicant's] situation with compassion so that he will have the opportunity to have his medical treatment in Australia*". He told the Tribunal he could not explain the Pastor's words, but said that after his application was refused, his lawyer suggested he get a reference from a minister of religion. He had spoken with the minister about his occasional indigestion which was why he thought the minister had referred to his health in the reference.
67. He told the Tribunal he did not take any medication for his condition because the doctor told him medication may cause undesirable side effects.
68. In response to a question from the Tribunal, the applicant stated that [Pastor 1] preached the true word of God. The Tribunal notes [Pastor 1] presides over a congregation of the Uniting Church of Australia.
69. The applicant's migration agent made a submission in which he stated his belief the applicant was a genuine refugee, with a well founded fear of persecution based on his religious beliefs for which he had experienced persecution in the past. The applicant's profile made him a person of interest to the authorities and his relationships with individuals who engaged in religious activities were liable to create the perception if not the reality that he was a person who placed God before country and was therefore of interest to the authorities.

70. The Tribunal then engaged in discussions with the applicant's migration agent about the issues raised in his submission [in] March 2009 before the agent summarised the applicant's position
71. The agent stated that the first issue before the Tribunal was whether or not the applicant had a profile that would make him of adverse interest to authorities in Vietnam. He stated that while the applicant may not actually be political, he may be in danger of being perceived as being political.
72. He stated that proof of his profile existed in that he had been previously interrogated on two occasions. He claimed the second instance in which he was interrogated was of concern because displeasure had been expressed at his plans to have Christmas party for 30 people.
73. He stated that the applicant was engaged in covert religious activities and had been involved in converting others to Christianity which made him of adverse interest to authorities.
74. The fact that Vietnamese nationals returning from religious conferences were routinely interrogated about their trip meant that the applicant would have to explain his extended absence. The agent said he believed the Vietnamese authorities would be aware the applicant had sought asylum in Australia, an act which carries an inherent criticism of one's own government which, coupled with his religious activities, meant he was at risk of persecution.
75. He stated that the applicant's presentation had been consistent, measured and without embellishment and therefore should be believed
76. Regarding the 'Notice of Termination' from his employer, the Tribunal asked whether there was any evidence that the notice was issued because of his involvement in religious activities or whether it may have been issued because he had left work and not returned. The agent said there was no evidence of the employer's motivation but that it was reasonable to assume it was because of his religious activities.
77. Subsequent to the hearing, the Tribunal submitted the Order of Arrest document for authentication examination. The report of the examinations stated:
 - This document is prepared on white, A4 sized, non-watermarked paper which could be considered as a standard type of copy paper which would be universally available.
 - This is not an original document. Everything on it is printed by an ink jet printer or copier. This includes all full wet stamps and two signatures. Refer to images on Attachment 1.
 - The dotted line in the text at the top left-hand corner exhibits signs of misalignment as if the original version of this document could have been "repaired" prior to copying occurring. Refer to the image on Attachment 2.
78. [In] April 2009, pursuant to section 424A, the Tribunal sent the applicant a letter inviting comment on the findings of the authentication process. The letter said in part:

.. you are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or part of the reason, for affirming the decision that is under review.

The particulars of the information are:

In support of your application you provided the Tribunal with a document that purported to be an arrest warrant (and the translation of the document into English headed 'URGENT ORDER OF ARREST').

The Tribunal arranged for the document to undergo a forensic examination by the Document Examination Unit which provided the following observations:

- This document is prepared on white, A-4 sized, non-watermarked paper which could be considered as a standard type of copy paper which would be universally available.
- This is not an original document. Everything on it is printed by an inkjet printer or copier. This includes all four wet stamps and the two signatures.
- The dotted line in the text at the top left-hand corner exhibits signs of misalignment as if the original version of this document could have been repaired prior to copying occurring.

This information is relevant because subject to your comments it may lead the Tribunal to believe this document to be fraudulent which would mean that it is not acceptable evidence in support of your claim and may lead the Tribunal to find you are not a witness of truth. You are invited to give comments on or respond to the above information in writing.

Your comments or response should be received by the Tribunal by [date deleted: s431(2)] May 2009.....

79. By facsimile dated [in] April 2009, the applicant's migration agent provided a submission which included a Statutory Declaration from the applicant dated [in] April 2009 and a request for an extension of time to respond to the Tribunal's letter [in] April. The Tribunal granted an extension of time until [a date in] May 2009.
80. By facsimile dated [in] May 2009, the applicant's migration agent provided a submission which included a Statutory Declaration from the applicant dated [in] May 2009 and a request for a further extension of time to respond to the Tribunal's letter [in] April. The Tribunal granted the request for an extension of time until [a date in] July 2009.
81. [In] July 2009, the Tribunal received correspondence from the applicant's agent which stated in part, "I have been instructed by my client that he has unfortunately been unable to obtain a certified copy of the Order of Arrest that the RRT had been awaiting. The reasons that the applicant has been unable to procure this document are for reasons beyond his control. Included with this submission was a translated letter of response from the City of Hai Phong Post Office which stated that after investigations, "the

Parcel Post No [number] that you sent on [date]/05/2009 has gone missing immediately after received at our Post Office due to the fault of our staff”.

82. Having considered the applicant’s response, the Tribunal wrote a further letter to the applicant which stated in part:

... The Tribunal is in receipt of your response to its previous enquiry regarding the authenticity of the ‘Order of Arrest’ document. The Tribunal has considered your submissions regarding your inability to provide the original document. However, despite these submissions, the Tribunal still has concerns regarding the authenticity of this document and the document of which you purport this to be a copy.

Please find attached a copy of the “Forensic Document Examination Report” which leads to the Tribunal’s concerns. This report is relevant because the comments in the report indicate that:

- The document is prepared on white, A4 sized, non-watermarked paper which could be considered as a standard type of copy paper which would be universally available.
- This is not an original document. Everything on it was printed by an ink jet printer or copier. This includes all full wet stamps and two signatures.
- The dotted line in the text at the top left-hand corner exhibits signs of misalignment as if the original version of this document could have been “repaired” prior to copying occurring.

Subject to any comments you might make, the report may lead the Tribunal to the view that the copy of the “Order of Arrest” provided by you is not reliable evidence of the existence of a genuine “Order of Arrest”, which in turn may lead the Tribunal to believe that no such arrest warrant was ever issued. If the Tribunal finds that no arrest warrant was ever issued, this may in turn lead the Tribunal to the view that you were not subject to the attention of the Vietnamese authorities in the past. This may lead the Tribunal to find that you do not hold any fear of future harm or attention by the Vietnamese authorities or that such a fear is not well founded.

You are invited to give comments on or respond to the above information in writing

83. The Tribunal received a response from the applicant in the form of a statutory declaration which stated:

84. I, [applicant’s name and address deleted: s431(2)] in the state of Victoria, electrician, do solemnly and sincerely declare as follows:

1. I am responding to the letter of the Refugee Review Tribunal dated [in] September 2009. In this letter, the Tribunal has requested that I comment on the authenticity of the copy of my Order of Arrest that I have provided to the Refugee Review Tribunal as part of my application for a Protection (class XA) visa.
2. The Thuy Nguyen District, Hai Phong city, Vietnam, police station has the original copy of the Order of Arrest against me. The police

refused to provide the original of the Order of Arrest to me or my wife, who is in Hai Phong city, Vietnam.

3. Although they were unable to provide the original, the police did send a certified copy of the Order of Arrest to my wife.
 4. I asked my wife to send the certified copy of this Order of Arrest by registered post to me in Australia. The certified copy was sent [in] May 2009.
 5. Unfortunately the certified copy was lost by the Hai Phong City Post Office. A letter from a Hai Phong City Post Office that I have provided to the Tribunal confirms this.
 6. Before my wife sent the certified copy by post, she scanned the document in an Internet café and sent it to my friends e-mail address. I printed off this document and provided this copy to the Tribunal
 7. I reiterate that the document provided to the Tribunal was neither the original nor the certified hard copy of the Order of Arrest provided by the police. It was a document that is a scanned and printed copy of the Order of Arrest.
 8. The document was printed on white, non-watermarked paper because it was printed by me, on an ordinary printer. The original may have been printed on different paper.
 9. The Tribunal has also said that the text at the top left-hand corner exhibits signs of misalignment. First of all, the information in this part of the document simply shows the Order number ([number deleted: s431(2)]) and does not contain any concrete information about me. If the document were to be tampered with, why would it be necessary to tamper with this information? Would it not be the name or other details used to identify me that would be tampered with?
 10. Secondly, it is possibly that the dotted line became misaligned in the photocopying, scanning and/or printing of the document.
85. The Tribunal identified the following independent evidence as relevant to the applicant's claims:

Independent Country Information - Religious Freedom

The 2008 US State Department report on religious freedom in Vietnam stated: The country has an area of 127,000 square miles and a population of 83.5 million. Some estimates suggest that more than half of the population is at least nominally Buddhist. The Roman Catholic Church comprises 8 to 10 percent, several Cao Dai organizations comprise 1.5 to 3 percent, the primary Hoa Hao organization 1.5 to 4 percent, Protestant denominations 0.5 to 2 percent, and one Muslim organization less than 0.1 percent of the population. Most other citizens consider

themselves nonreligious, although many practice traditional beliefs such as veneration of ancestors and national heroes.....

In February 2005, the Prime Minister issued the "Instruction on Some Tasks Regarding Protestantism," which calls on authorities to facilitate the requests of recognized Protestant denominations to construct churches and to train and appoint pastors. Further, the Instruction directs authorities to help unrecognized denominations register their congregations so that they can worship openly and move towards fulfilling the criteria required for full recognition. The Instruction directs authorities in the Central and Northwest Highlands to help groups of Protestants register their religious activities and practice in homes or "suitable locations," even if they do not meet the criteria to establish an official congregation. The Instruction also directs local officials to allow unregistered "house churches" to operate so long as they are "committed to follow regulations" and are not affiliated with separatist political movements.....

The Government officially recognizes Buddhist, Catholic, Protestant, Hoa Hao, Cao Dai, Baha'i, Muslim, and Pure Land Buddhist Home Practice...

Other obstacles to religious growth and training remained. Officially recognized religious groups faced some limitations in obtaining or publishing teaching materials, expanding training facilities, sharing their faith, building new houses of worship, and expanding the number of clergy in religious training in response to increased demand from congregations. However, the Government continued to ease limitations compared to previous years.....

Adherence to a religious faith generally does not seriously disadvantage people in non government civil, economic, and secular life, although it likely would prevent advancement to higher CPV, government, and military ranks. The military does not have a chaplaincy. Avowed religious practice was formerly a bar to membership in the CPV, but now the CPV claims that tens of thousands of the more than 3 million Communist Party members are religious believers.

Practitioners of various religious groups serve in local and provincial government positions and are represented in the National Assembly. Some clergy and religious followers are members of the CPV-affiliated mass political and social organization, the Vietnam Fatherland Front. CPV and government officials routinely visit pagodas, temples, and churches, making a special point to visit Catholic and Protestant churches over Christmas... (Section II)

The status of respect for religious freedom improved significantly during the period covered by this report. In many areas Buddhists, Catholics, Protestants, Hoa Hao, Cao Dai, as well as the Government, reported an increase in religious activity and observance. Compared to previous years, the Government continued to ease restrictions placed upon most religious groups.....

Attendance at religious services continued to increase during the period covered by this report...

The Government and the VBS successfully hosted the fifth International UN Vesak Day in May 2008. This was the first international conference of Buddhists in Vietnam, with 3,500 attendees, 2,000 of whom were foreign delegates representing more than 80 countries.....

During the reporting period, some religious groups were also allowed to convene large religious gatherings, including Catholic celebrations at the La Vang Catholic sanctuary, traditional pilgrimage events such as the Hung Kings' Festival, Buddhist ceremonies in Hue, and the Hoa Hao Founding Day and

commemoration of the founder's death. At each event, attendance was estimated in the tens of thousands or higher...

There were few reported instances of societal discrimination or violence based on religion during the period covered by this report...

(US Department of State 2008, International Religious Freedom Report for 2008: Vietnam, 19 September)

86. With regard to the treatment of returnees to Vietnam, the Tribunal notes the following advice from the Department of Foreign Affairs and Trade (DFAT):

Between 1996 and 1999, 110,000 people who left Vietnam illegally were returned to Vietnam by the UNHCR. The UNHCR individually visited and monitored the situation of 40 percent of these returnees. UNHCR officials have confirmed that in no case monitored, did a returnee complain of arrest, persecution or discrimination because of their decision to flee.

The embassy estimates that between 3,000 and 4,000 Vietnamese, resettled in Australia as refugees, have now returned to Vietnam to live and to work, or to set up businesses. The government of Vietnam is pursuing a series of policies to encourage such people to return. Nearly all of these people would have left Vietnam illegally. DFAT 1999, Country Information Report No.54/99, "Vietnam: Desertion: CIS Request Number AC674", 25 February)

87. The Tribunal also notes comments provided to the Tribunal by Professor Carlyle A. Thayer of the Australian Defence Force Academy, University of NSW, an authority on the Socialist Republic of Vietnam (2005, "Comments for the Australian Refugee Review Tribunal"). He indicated that he was not aware of any reports of prosecution of returned asylum seekers by the Vietnamese authorities on the grounds that they sought asylum in Australia.

FINDINGS AND REASONS

88. In assessing the claims made by an applicant the Tribunal needs to make findings of fact in relation to those claims and this will more often than not involve an assessment of the credibility of the applicant. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. See *Randhawa v Milgea* (1994) 52 FCR 437 at 451, per *Beaumont J*; *Selvadurai v Miew & Anor* (1994) 34 ALD 347 at 348 per *Heerey J* and *Kopalapillai v Mima* (1998) 86 FCR 547 .

89. In *Abebe v the Commonwealth of Australia* (1999) 162 ALR 1 at 52 Gummow and Hayne JJ observed:

"...the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising. It is necessary always to bear in mind that an Applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not for life."

The Tribunal must keep in mind that if the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding

with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (*See MIMA v Rajalingam (1999) 93 FCR 220*).

90. The Tribunal accepts that the applicant is a citizen of Vietnam and assesses his claims against that country.
91. The Tribunal accepts the applicant's evidence that he had previously unsuccessfully claimed asylum as a refugee in Hong Kong. The Tribunal notes that despite this claim, he gave evidence that he had returned to Vietnam and lived without fear of persecution.
92. Having legally obtained a Vietnamese passport in his own name in May 2008, the applicant was granted a three-month visitor visa [in] July 2008 and arrived in Australia [in] August 2008
93. The applicant told the Tribunal he had decided to come to Australia in April 2008. Given the applicant's visit to Australia is the only time the passport has been used, leads the Tribunal to find the applicant obtained the passport for the express purpose of visiting Australia.
94. Regarding his religious belief, the applicant provided evidence he had been introduced to the teachings of Jesus and been baptised in Hong Kong in 1991. The applicant gave evidence that his belief in God is based on the fact that it is the only path to heaven. He claimed that since returning to Vietnam in 1993, he had regularly spoken to people he met about God. On a number of occasions he told the Tribunal there was no political element to his religious beliefs or practices.
95. He said his role in the church was that of a voluntary worker without any official position, authority or title.
96. Despite his claims to have been engaged in missionary activities for fifteen years, he said the only time he had been spoken to by authorities was on two occasions when he had been questioned by police. The first time was in 2006 when he had been questioned for 15 minutes after a visit to his home by two friends who subsequently became church Pastors, the other time was in December 2007 when he had been questioned for about 10 minutes about the significance of Christmas. He told the Tribunal that on both occasions the police were satisfied with his answers and he had been free to leave although he claimed that at the second questioning he was told he could not invite 30 people to his home to celebrate Christmas.
97. The Tribunal accepts that the applicant believes in God and chooses to practice his faith as a Protestant, however for the reasons detailed below, the Tribunal does not accept the applicant has a well founded fear of persecution for a Convention reason should he return to Vietnam now or in the reasonably foreseeable future.
98. In his statutory declaration dated [in] February 2009, at point 34, the applicant claimed:

I'm aware of people who have been beaten while in police custody and later died as a result. [Pastor 4] has told me of two missionaries, Giang A Lau of Dien Phu Church in Lai Chau Province and at Trung of Ba To Church in Quang Ngai Province, who have been tortured to the point of death by the police. These people were also spreading religion in the same way as I have been. They were targeted because they were spreading religion and I will be targeted in the same way. They were also not Pastors. I have heard about other similar cases from the Internet.

99. The Tribunal finds this unsubstantiated claim is not consistent with available independent evidence. For example the US Department of State Country Report on Human Rights Practices issued March 11, 2008 in reference to 'Freedom of Religion' states:

Freedom of Religion

The constitution and government decrees provide for freedom of worship, and overall respect for religious freedom improved during the year, but the government persisted in placing restrictions on the organized, political activities of religious groups. However, the government continued to relax restrictions on religious activities, and such activities continued to grow significantly.

Problems remained in the implementation of the 2004-5 Legal Framework on Religion. These included excessive delays, and in some cases inaction, in the registration of Protestant congregations in the north and the Northwest Highlands; inconsistent application of procedures for congregation registration and other legal requirements; continued restrictions on religious recruitment; difficulties in the establishment of Catholic seminaries and Protestant pastor training courses; and unresolved land expropriation claims involving a number of religious denominations. Some provincial authorities were more active, while others appeared not to consider positive and consistent implementation of the Legal Framework on Religion a priority.

The government remained concerned that some ethnic minority groups active in the Central Highlands were operating a self-styled "Dega Church," which reportedly combines religious practice with political activism and calls for ethnic minority separatism. The government also restricted the leadership of the unrecognized UBCV and maintained that it would not recognize the organization under the existing leadership.

The government maintained a prominent role overseeing recognized religions. Religious groups encountered the greatest restrictions when they engaged in activities that the government perceived as political activism or a challenge to its rule. The government continued to ban, and actively discouraged participation in, one unrecognized faction of the Hoa Hao Buddhist Church. Government authorities imprisoned and defrocked a number of ethnic Khmer Buddhists for their involvement in antigovernment protests in the Mekong Delta early in the year. Some religious figures, including Catholic priest Nguyen Van Ly, Khmer Krom monk Tim Sakhorn, and Protestant activist Nguyen Van Dai, were sentenced to prison terms for their political activism.

By law religious groups must be officially recognized or registered, and the activities and leadership of individual religious congregations must be approved by the appropriate lower-level authorities. The law mandates that the government act in a time-bound and transparent fashion, but the approval process for registration and recognition of religious organizations was sometimes slow and nontransparent. Nevertheless, new congregations were registered throughout the country, and a number of religious denominations were registered at the national level. In March the Baha'i Faith received official recognition, and in October the government recognized the Vietnamese Baptist and Mennonite religious groups. The Protestant Vietnam Inter-Christian Fellowship and the Vietnam Presbyterian Church also received national-level recognition. However, in the northern region and the Northwest Highlands, local authorities had not acted on registration applications submitted in 2006 by more than 1,000 Protestant congregations among ethnic minority groups, the Hmong in particular.

Some local authorities continued to demand that even recognized religious organizations provide lists of all members of subcongregations as a precondition to registration, although this specific requirement was not codified in the Legal Framework on Religion. Some registered congregations in the northern

region and the Northwest Highlands complained that officials used such lists to keep unlisted members from participating in services or for harassment by local authorities or their agents. Annual activities by congregations also must be registered with authorities, and activities not on the accepted annual calendar require separate government approval.

As in past years, official oversight of recognized religions and their registered subcongregations, as well as problems faced by followers of nonrecognized religions or unregistered subcongregations of recognized religions, varied widely from locality to locality, often as a result of ignorance of national policy or varying local interpretations of the policy's intent. In general central-level efforts to coordinate proper implementation of the government's religious framework reduced the frequency and intensity of religious freedom violations. Nevertheless, activities of nonrecognized and unregistered religious groups remained technically illegal, and these groups occasionally experienced harassment. The level of harassment declined in comparison with previous years, and the vast majority of unregistered churches and temples were allowed to operate without interference.

The government actively discouraged contacts between the illegal UBCV and its foreign supporters, although such contacts continued. Police routinely questioned some persons who held alternative religious or political views, such as UBCV monks and certain Catholic priests. Police continued to restrict the free movement of UBCV monks.

There were few credible allegations of forced renunciations during the year. However, there were isolated but credible reports of local authorities in some northwest provinces "encouraging renunciations" of recently converted Christians and pressuring them to return to their traditional beliefs. Some of these persons reported that they were also denounced for "believing in an American religion" and were therefore "enemies of the state." A training manual for local officials published by the Government Committee on Religion in late 2006 appeared to encourage recently converted Christians to return to their traditional beliefs. The manual was highlighted by international human rights groups and reportedly reworded during the year to meet legal requirements.

Articles in some provincial newspapers encouraged local authorities and ethnic minority groups to favor animist and traditional beliefs and to reject Protestantism.

Buddhists practicing their religion under the Vietnam Buddhist Sangha Executive Council, the officially sanctioned Buddhist governing council, were generally free to practice their religion. While these constituted the vast majority of Buddhists, the government continued to harass members of the banned UBCV and prevented them from conducting independent religious activities outside their pagodas.

In February the government rejected the appointment of two Catholic bishops endorsed by the Vatican. However, Catholic officials reported that the government generally continued to ease restrictions on assignment of new clergy. In August the Jesuits opened their new theological training facility in Ho Chi Minh City. The Catholic Church indicated that it had begun exploring with government authorities the establishment of additional seminaries. Late in the year, the government moved towards establishment of an official joint working group with the Vatican to develop principles and a roadmap toward establishing official relations.

A number of Catholic clergy reported a continued easing of government control over activities in certain dioceses during the year. In many places local government officials allowed the Church to conduct religious education classes (outside regular school hours) and charitable activities. The Ho Chi Minh City government continued to facilitate certain charitable activities of the Church in combating HIV/AIDS; however, other activities and permits for Catholic NGOs remained suspended.

At least 10 Hoa Hao Church followers remained in prison on accusations of playing key roles in a protest and clash with the police following a 2005 religious event. Hoa Hao monks and believers who accepted the government-approved Hoa Hao Administrative Council were allowed freedom to practice their faith. Monks and followers who belonged to dissident groups or declined to recognize the authority of the council suffered restrictions.

Reports that some ethnic minority boarding schools discriminated against children from religious, especially Protestant, families continued. In 1997 the government published regulations in a circular appearing to prohibit religious adherents from attending certain schools; however, authorities denied that the government has a policy of limiting access to education based on religious belief and cited the 2005 Education Law, which calls for universal education for children. The government was reportedly working on an update and clarification of its regulations at year's end.

Foreign missionaries may not operate openly as religious workers in the country, although many undertook humanitarian or development activities with government approval.

The government generally required religious publishing to be done through a government-owned religious publishing house; however, some religious groups were able to copy their own materials or import them, subject to government approval. The government relaxed restrictions somewhat on the printing and importation of some religious texts, including in some ethnic minority languages. Other publishing houses were allowed to publish religious-related texts. The government's religious publishing house also published the Bible and other religious materials in ethnic minority languages for the first time. However, in a few cases unauthorized religious materials were confiscated and the owners either fined or arrested.

The International Religious Freedom Report 2007 stated:

The Constitution provides for freedom of worship; however, government restrictions still remained on the organized activities of religious groups.

The status for the respect of religious freedom and practice continued to experience important improvements during the reporting period. The Government deepened implementation of its 2004 Ordinance on Religion and Belief and supplemental decrees on religious policy issued in 2005, (referred to as the Government's "legal framework on religion.") New congregations were registered throughout the country's 64 provinces; a number of religious denominations were registered at the national level; and citizens were generally allowed to practice religion more freely. Improving economic conditions in the country also allowed for greater access to religious practice and resources. In recognition of its "significant improvements towards advancing religious freedom," the U.S. Department of State lifted the country's designation as a Country of Particular Concern (CPC) for Religious Freedom in November 2006.

Despite progress during the reporting period, problems remained in the implementation of the country's legal framework on religion. These included slowness, and in some cases inaction, in the registration of Protestant congregations in northern Vietnam and the Northwest Highlands; inconsistent application of procedures for congregation registration and other legal requirements; ongoing restrictions on religious recruitment; difficulties in the establishment of Catholic seminaries and Protestant pastor training courses; and unresolved land expropriation claims involving a number of religious denominations. Some provincial authorities were more active, while others appeared not to consider positive and consistent implementation of the legal framework on religion as a priority. The Government rejected the appointment of two Catholic bishops endorsed by the Vatican. However, the Catholic Church reported that the Government generally continued to ease restrictions on church assignment of new clergy, and the Church indicated that it had begun exploring with government authorities the establishment of additional Catholic seminaries.

The Government continued to remain concerned that some ethnic minority groups active in the Central Highlands were operating a self-styled "Dega Church," which reportedly mixes religious practice with political activism and calls for ethnic minority separatism. The Government also actively restricted the leadership of the unrecognized Unified Buddhist Church of Vietnam (UBCV) and maintained that it would not recognize this organization under its current leadership. The Government maintained a prominent role overseeing recognized religions. Religious groups encountered the greatest restrictions when they engaged in activities that the Government perceived as political activism or a challenge to its rule. The Government continued to ban and actively discourage participation in one unrecognized faction of the Hoa Hao Buddhists. Government authorities imprisoned and disrobed a number of ethnic Khmer Buddhists for their involvement in antigovernment protests in the Mekong Delta in early 2007. Some religious figures, including Catholic priest Nguyen Van Ly and Protestant pastor Nguyen Van Dai, were sentenced to prison terms for their political activism.

Nevertheless, overall respect for religious freedom improved during the period covered by this report. Participation in religious activities throughout the country continued to grow, and Protestant believers in the Central Highlands continued to report significant improvements in their situation. Approximately 40 Protestant house churches were registered in northern Vietnam and hundreds in southern Vietnam during the reporting period. However, hundreds of other applications remained pending, especially in the Northwest Highlands. For the first time since 1975, the Government authorized the printing of Bibles in three ethnic minority languages in the Central Highlands. During the reporting period, Protestantism remained the country's fastest growing religion among its six recognized faiths - Buddhism, Hoa Hao Buddhism, Catholicism, Protestantism, Caodaism, and Islam.

The Government registered several new religious denominations during the reporting period, including the Vietnam Seventh-Day Adventist Church, the Grace Baptist Church, the United World Mission Church, one faction of the Mennonite church, the Baha'i Faith, and two smaller Buddhist groups--the Tu An Hieu Nghia group and the Pure Land Buddhist Home Practice Association.

During the reporting period, the national and some provincial Committees on Religious Affairs (CRA) were active in resolving religion-related problems and concerns. The national CRA organized a number of programs to offer training to members of religious denominations on legal registration procedures and to local authorities on how to implement the national legal framework on religion. On the occasion of the Asian Pacific Economic Conference (APEC) Summit and the visit of President George W. Bush to Hanoi in November 2006, the country's first-ever ecumenical religious service was held, led by the Catholic archdiocese of Hanoi and the Evangelical Church of Vietnam North (ECVN). In January 2007 the Prime Minister Nguyen Tan Dung visited the Vatican and met with Pope Benedict XVI, and in March 2007, an official delegation from the Vatican reciprocated by visiting the country.

Protestants and Catholics across the north reported improvement in most officials' attitude towards their religion, and in general Protestants and Catholics were allowed to gather for worship without harassment, despite some isolated incidents. Christmas and Easter holidays passed generally without incident in the country. In the fall of 2006, the Southern Evangelical Church of Vietnam (SECV) reported its first-ever graduating class of 219 ordained pastors since the organization was officially recognized in 2001. During the reporting period, the Government welcomed the return of Buddhist Zen Master Thich Nhat Hanh for a series of "reconciliation prayer events" in Ho Chi Minh City, Hue, and Hanoi.

There were no known instances of societal discrimination or violence based on religion during the reporting period.

100. The applicant gave evidence that his religious beliefs and practices were non-political, and that he held no position of authority within the Church. The Tribunal accepts this evidence and believes it is the reason he has not held a profile for his religious beliefs or activities and therefore has been of no interest to the authorities in the past.
101. The applicant claimed that the day after he left Vietnam the authorities had come to his home and questioned his wife about his trip to Australia and his relationship to the

other conference attendees. He claimed they threatened his family and told his wife they would ensure that he did not have a job when he returned to Vietnam.

102. The applicant told the Tribunal he had been terminated from his employment as a result of his religious activities. He provided the Tribunal with an English translation of a document dated [in] August 2008 which stated his labour contract was terminated effective [in] September 2008. As discussed at the hearing, the document provides no reason for the decision and as the Tribunal suggested at the hearing, particularly in light of his claim that he had been engaged in religious activity for fifteen years and was so engaged when he was first employed and had continued his religious activities throughout the term of his employment, it was equally plausible that he was terminated for deserting his post rather than for his religious activities.
103. The Tribunal finds the timing extraordinary. The applicant, who says he has been engaged in missionary activities for 15 years claims to have been issued with a termination notice by his long-term employer on the Tuesday following his leaving to go overseas on a legal mission the previous Friday. The Tribunal finds the applicant was not terminated because of his religious activities.
104. The applicant told the Tribunal he had been openly speaking of his religious beliefs in Vietnam for over 15 years without interference from the authorities. Having found the applicant left Vietnam legally on a passport issued in his own name and that he had no profile for his religious beliefs or activities, the Tribunal does not accept that the authorities had any adverse interest in his movements and would not have been aware of the purpose of his travel. The Tribunal therefore finds the authorities did not visit his home immediately after he left Vietnam, did not threaten his family and therefore finds he was not terminated from his government employment as claimed.
105. The applicant claimed the basis of his fear that he will be arrested on his return is that after he left Vietnam, the authorities issued an arrest warrant for him.
106. In support his claims the applicant provided a statutory declaration dated [in] February 2009 in which he said at point 31:

[In] November 2008, the day after my Australian visa expired, the authorities came to my house with a warrant to arrest me. (See original Vietnamese warrant and English translation attached)
107. The document referred to was headed “Urgent Order of Arrest”. The Tribunal was concerned about the authenticity of the document and therefore submitted it for forensic inspection. The results stated that it was not an original document as claimed in the statutory declaration but a colour copy. The applicant was advised of the Tribunal’s actions in this regard and of the results of the examination which stated in part that the document may have been ‘repaired’ prior to copying.
108. In response, after being granted considerable extensions of time, the applicant provided a translated letter from the relevant Vietnamese Post Office advising that the parcel containing the original document had gone missing. The response was contradictory to his statutory declaration in which he had claimed it was the “original Vietnamese warrant” and did not provide the Tribunal with satisfaction regarding the authenticity of the submitted document.

109. Keen to ensure natural justice, the Tribunal again wrote to the applicant expressing its concerns regarding the authenticity of the document and enclosing the forensic report.
110. In response, the applicant provided no new or corroborative evidence but stated that the document was not an original or a certified copy but a scanned and printed copy of a copy.
111. The investigation results lead the Tribunal to find the “Order of Arrest” document provided is not an original document as claimed and the applicant’s responses to the investigation of the document leads the Tribunal to find the applicant was not a witness of truth.
112. From the evidence provided, the Tribunal finds there was never an arrest warrant issued for the applicant which leads the Tribunal to find the police did not visit his home either in August immediately after his departure to Australia or [in] November 2008 the day after his Australian visa expired.
113. The Tribunal found numerous reports (e.g. US DOS Reports referred to previously, Compass Direct, Human Rights Watch report of October 2004) that the Vietnamese authorities monitor the activities of some religious groups such as the Church of Nguyen Hong Quang, the Mennonites, the United Buddhist Church in Vietnam and other ethnic minority Protestant groups particularly in North Vietnam and central highlands, it could find no information in these reports of a focus on, or the evidence of ‘wanted lists’ in relation to religious groups.
114. Article 21 of Decree No. 136/2007/ND-CP of August 17, 2007, on Vietnamese Citizens’ Exit and Entry deals with the classes of Vietnamese citizens who are not permitted to leave the country. No mention is made of citizens being refused permission to leave the country because of religious beliefs or activities. Article 24 states that if persons who are not permitted to leave the country have been granted papers for export from Vietnam, ‘the Ministry of Public Security’s Immigration Control Department shall cancel as papers’
115. The fact that the applicant was allowed to leave the country on a legally obtained passport indicates he was of no interest to the authorities at the time he left Vietnam.
116. The Tribunal does not accept that the applicant is currently or has ever been of any adverse interest to the Vietnamese authorities on the basis of his actual or imputed religious beliefs or practices or for any other Convention reason and therefore finds he has no reason to fear persecution should he return to Vietnam now or in the reasonably foreseeable future.
117. In support of his application, the applicant submitted a statement he claimed his wife had made [in] September 2008 which stated:

I am [name], 28 years of age, currently of [location], Thuy Nguyen District, Hai Phong city, wife of [applicant], currently attending a study tour in Australia.

I make the following statement in relation to the visit by the public security officials to my home on the [date] August 2008.

At 5:30 p.m. on [date] August 2008, after I had come home from work and was preparing dinner, [name], Chief of the Village’s Public Security Office, accompanied by another official that [name]

introduced to me as his superior, attended my home, and requested me to provide them with some information in relation to my husband's visit to Australia.

They asked me about the purpose of my husband's trip. In reply I told them what I knew of: my husband was attending a conference of a Protestant Church in Australia.

They asked me about my husband's relationship with other members of the delegation. I answered them that of all members of the delegation I knew only [Pastor 2], who is of Hai Phong and had often visited us, but I did not know any others.

Subsequently they informed me that these were persons who had been arrested on numerous occasions because of the illegal evangelisation activities, and now they were making connections with foreign evangelical organisations.

They informed me that my husband was not having the behavioural standards of a public servant of the State, and that he was a dangerous element to the policies with regard to religions of the Party and the Government.

118. The statement raises a number of concerns, firstly the Tribunal questions why the applicant's wife would make a statement [in] September 2008, only days before he lodged an application for a Protection visa and refer to her husband as 'currently attending a study tour in Australia' when the conference for which the applicant had come to Australia had ended in August. Secondly, she claims the officials referred to the other delegates as, "people who had been arrested on numerous occasions ... and now they were making connections with foreign evangelical organisations" The applicant told the hearing that all other delegates had returned home after the conference and while they had been subjected to the standard procedure of interview for persons returning from international religious conferences, there was no suggestion that any of them had been detained or arrested and thirdly, in light of the applicant's involvement in missionary activities in Vietnam, without any interference from authorities, for over 15 years, the Tribunal finds it implausible that authorities would be aware of the purpose of his trip and would visit his home the day after he had been permitted to leave Vietnam on a passport legally obtained in his own name.
119. Given the Tribunal's previous findings regarding the applicant's credibility as a witness and that the authorities had not visited his home as claimed, the Tribunal gives this document no weight in considering the evidence in this case.
120. The applicant claimed he had been subjected to "harsh measures" and "persecution" in the past.
121. When asked to provide details of the persecution, he spoke about the two times he claimed to have been questioned by local authorities. The first occasion in mid-2006 when he had been questioned for 15 minutes at the local police station about his relationship with two people who subsequently became pastors. The second time was in December 2007 when he had been questioned by local police for 10 minutes about a group meeting that had taken place at his home.
122. There were internal inconsistencies in the evidence provided by the applicant on this issue. For example, in a statutory declaration about the first questioning in mid-2006, he says it was about his travels with two others, whereas at the Tribunal hearing he claimed it was about the fact that the same two had visited his house. The Tribunal is inclined to reject the applicant's claim he was ever interviewed. However, having

considered the “what if I’m wrong” test, the Tribunal considered the claims. While the Tribunal accepts that he may have associated with people who had been detained by authorities and arrested “for a few days” as claimed, it was the evidence of the applicant that he had been questioned briefly about his association with these people and his answers had satisfied the authorities. The applicant told the Tribunal that on neither occasion of being questioned had he been abused or physically harmed and was free to leave after a short period of time, the Tribunal finds that these two instances of being questioned do not constitute harsh treatment or persecution in the past and the Tribunal further finds that they are not evidence the applicant has come to the attention of local authorities because of his religious beliefs or behaviour and do not provide a well founded fear that he may face persecution in the future.

123. Accordingly, the Tribunal does not accept the applicant’s claims that these events constitute evidence that his past religious activities or his travel to Australia for a religious conference mean the authorities regard him as a dangerous individual who will be arrested or otherwise be subject to serious harm on his return to Vietnam.
124. Available independent information, particularly the ‘2008 US State Department Report on Religious Freedom in Vietnam’ (see para. 100) refers to the ongoing easing of restrictions on religious activity which allows for the open practice of religion where it does not have a political element or motivation. The applicant repeatedly stated that his religious beliefs and practices were without political element or influence, accordingly, the Tribunal finds the applicant does not face the real chance of persecution for his religious beliefs or activities should he return to Vietnam now or in the reasonably foreseeable future.
125. The applicant’s migration agent suggested that Vietnamese authorities would be aware the applicant had sought asylum in Australia which would result in his facing persecution on return. In addition to the fact that this suggestion is contradicted by the advice of the Department of Foreign Affairs and Trade referred to in point 82 earlier, and the comments of Professor Thayer at point 87, the Tribunal is satisfied that information provided in a protection visa application is treated by the department and other agencies as confidential and not passed to the authorities from the applicant’s home country. The Tribunal therefore finds the Vietnamese authorities would not be aware of the applicant’s protection visa application and therefore he would not be targeted for serious harm on the basis that he had claimed asylum.
126. Regarding the applicant’s claims of fear of persecution on the basis of imputed political opinion from the suggestion made by his agent that while the applicant may not actually be political, he may be in danger of being perceived as being political, the Tribunal accepts the evidence of the applicant that he has no current or past political motivation or involvement
127. The applicant told the Tribunal that he held no official position in the church but was simply a believer and a volunteer who had openly engaged in his religious beliefs and activities for over 15 years without interference from the authorities. It was the applicant’s own evidence that the only two occasions on which he had been spoken to by authorities were when he had been questioned briefly in 2006 and 2007 about his religious beliefs and activities with no questions about his political persuasions. The Tribunal therefore finds that applicant does not have political profile that is of interest to the Vietnamese authorities either real or imputed.

128. The Tribunal therefore does not accept the proposition that he may be perceived as political and therefore finds the applicant does not face a real chance of persecution because of his imputed political opinion should he return to Vietnam now or in the reasonably foreseeable future.

129. Section 91R(3) of the Migration Act 1958 states that:

for the purposes of the application of this Act and the regulations to a particular person:

- (a) in determining whether the person has a well founded fear of being persecuted for one or more of the reasons mentioned in article 1A(2) of the Refugees Convention as amended by the Refugees Protocol;

disregard any conduct engaged in by the person in Australia unless:

- (b) the person satisfies the Minister of the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol

130. The Tribunal has considered the evidence presented related to the applicant's activities since arriving in Australia, such as his attendance at the conference and his attendance at Uniting Church services.

131. The Tribunal finds that the applicant's conduct since arriving in Australia has been motivated by his Christian beliefs and also by his wish to strengthen his claims to be a refugee. The Tribunal has therefore taken his behaviour since arriving in Australia into account in considering the applicant's claims.

132. Having considered his claims individually and cumulatively, the Tribunal finds that the applicant does not have a real chance of persecution for a Convention reason should he return to Vietnam now or in the reasonably foreseeable future.

133. Accordingly, the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason.

CONCLUSIONS

134. 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

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: RCHADW