

1000124 [2010] RRTA 355 (9 April 2010)

DECISION RECORD

RRT CASE NUMBER: 1000124

DIAC REFERENCE(S): CLF2009/129236, CLF2007/50839

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Mara Moustafine

DATE: 9 April 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

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

Summary of written claims

19. According to his protection visa application, the applicant was born in City A, Fujian province, China and was married with two children. His wife, and daughter, were living in China, while his son, was studying in Australia. The applicant indicated that he completed three years of secondary school and then three years at a college in City A . He claimed that he ran a business in China before coming to Australia.
20. The applicant was granted a Student guardian visa and arrived in Australia on a People's Republic of China passport in his own name. His visa permitted him to remain in Australia for a number of months. The applicant became unlawful until he was located by police during a routine traffic stop. He was reported to the Department and granted a Bridging visa E. The applicant subsequently lodged his protection visa application.
21. In his protection visa application, the applicant set out his claims as follows:

My name is [name], born on [date], in [City A], Fu Jian Province, China. I entered Australia on [date]. Before coming here, I run a [type] business. When contracting a project with the government, I witnessed the corruption of local officials. I was retaliated by officials for disclosing corruption. Faced with the injustice, I had no choice but fled to Australia, and now I'm applying to Australian government for refugee protection.

In [date], the government of District 1 of City A invited tender for project of [name of project]. I won the bidding for [this project]. The project had a total value of [amount] yuan. I was in charge of the section from the [location] to the [location] of [name] in District 1, City A. After I won the bid, I hired [number] workers from different

local towns. I also got loans from the local bank and my relatives and friends. Soon after I won the bidding, the office director of [District 1], [Name] hinted me to give him money. I ignored this dirty request. He replied that I would regret in future.

In [date], the project was completed. However, in the process of checking before acceptance, I was under numerous difficulties intentionally created by the government. Director [Name] made every opportunity to find faults from my project. However, I swallowed the entire grievance and tried to fix everything as possible as I could. Finally, my project was accepted. However, I got into trouble again when it came to the settlement of payment for the project. During the [project], the government prepaid [amount] yuan, and the remaining was [amount] yuan. I asked Director [Name] to pay my money many times. He often said that the government could not pay me due to financial difficulty and asked me to wait for a while. Once, he signed a bill in acknowledgement of the debt and then let me leave. Afterwards, I went to see him but was stopped by security guard from entering government building. I was very angry, and tried to bring a case to the court in order to solve my problem. However, my claim was not accepted after the court knew that I was about to sue the government.

Under such situation, I was unable to pay my workers and repay the loans from the bank. On [date], I organized over [number] workers to demonstrate in front of the [government office] in order to urge the government to pay my money. We lifted a banner saying [Banner wording deleted under s431 of Migration Act]. More and more people watched us. A group of policemen arrived soon and dismissed the people around. A few principal workers and I were taken to the police station. In the station, I told all of my misfortune to the police. However, I was beaten, instead of being sympathized. Later, I was detained for [number] days on the charge of "disturbing public order". I was brutally tortured in house of detention. I was beaten by guards and other detainees. Everyday, I was provided with bad cooked food, with little rice and boiled vegetable.

I was warned not to spread anything against the government after being released. After these sufferings, I lost my last hope to Chinese government; there is no way to live in China. It goes without saying that debt should be paid off. It is unbelievable that the government refuses to repay debt. I felt the injustice of the society, but I was so powerless to do anything. On [date], I was released and required to report to local police station every Wednesday.

After being released, I often found I was followed, which made me horrified. I came up with an idea to go abroad. As my son was studying in Australia, I asked my agent to apply for a visa to Australia. However, I was informed that as I had been detained, it was difficult to get passport and visa. The agent asked me to pay him [amount] to solve these problems. On [date], I got my passport. On [date], under the arrangement of the agent, I left China. After my departure, as I

didn't report to police station on time, the police searched my home soon and investigated my whereabouts. They warned my family that I absconded to avoid punishment and the consequence was severe. After I left, my family secretly mailed complaint letter to Department for letters and visits of FuJian province, in which I mentioned Director [name] demanding bribery. However, my complaint was transferred to [District 1] to deal with at the end.

In [date], the police went to my home again to investigate my whereabouts and Director [Name] also called my family, asking me to contact him as soon as possible after returning China, and saying that everything can be settled. Latter on, my family went to see Director [name] for payments many times, but every time he created difficulties for my family. Out of despair, my family had to bribe him, and took back part of money. However, [amount] yuan still has not been repaid.

I don't believe what the government said as the government has not investigated the corruption of the official. Instead, such official was allowed to continue to be in charge of my complaint. Furthermore, the complained official is still unscrupulous to ask for bribery. I don't believe that they will let me free if I go back to China. I am feared to return China. I hope the Australian government would protect me and let me stay here legally.

Departmental Interview

22. The applicant attended a Departmental interview where he was assisted by an interpreter in the Fuqing dialect. Documents presented at the interview which are on the departmental file included a receipt for an amount purportedly issued to the applicant by the city A in payment for violation of the one child policy; a business card identifying the applicant in his work capacity at the company; two photographs purporting to be examples of company work done by the applicant and four pages from a brochure pertaining to his work.
23. The following is a summary of key points, based on a recording of the interview held on the Departmental file.
 - The applicant said he had trouble getting passport. He could not apply for a new passport after the incident so had to pay an amount to an immigration agent to get a passport and student guardian visa.
 - He ran a business and, when contracting a project with the government, had witnessed government corruption. In China the contractor has to pay money first and then recover it from the government. He had paid a third of contract and tried to recover some money but the government only gave him 5% and then 10% of what he was owed. He was paying ea sum every day. Every time he talked to the government about payment, they sent out people to check on the project. They would then complain and ask him to revise work.
 - This happened in 2006. The project took several months to complete.

- He had to spend a lot of money and had to borrow money for the project and was in debt to family and friends and owed workers salaries. In response he organised a protest outside the office of the authorities. The police arrested 5-6 people and took them to the detention centre. While some were released, he was detained for a number of days as he was the organiser. He was released on a specific date.
- He was accused of disrupting social order; he initially said he was taken to court, but then said he wasn't taken to court but had to pay money to bribe people.
- Before he was arrested and taken to the detention centre he had to pay money or take people responsible for the project to dinner to try to get his money back. He invited the person responsible for contracting the project to dinner several times and gave him money but he still did not pay him the money he owed.
- After his release he had to report to the police station on a regular basis. He only did so once because he could not stay in city A and ran away to Fuzhou where he stayed with a friend. He could not stay because he was followed by someone from "one of the underground organisations".
- At the time he left China the police wanted to arrest him and get revenge.
- While he was in Fuzhou, the Director telephoned his wife and asked him to come back and said it would be a serious offence if he did not come back. After that his wife and his daughter hid at her sister's place.
- After he left China the police searched the house. His wife was staying at the house at the time while his daughter lived with his sister-in-law. Later his wife moved out of the house to live with her parents. There was no-one living in the house now.
- After he left China his wife secretly sent a complaint letter to the authorities. Because employees came asking for money she moved to live with parents.
- He decided to send son to Australia. It cost him a large amount. At the time he had lots of money but then spent all his money on the project. Therefore, he had no choice but to ask his son to stop studying. He does not owe money for this. The son is applying for a working visa in Australia.
- At the project centre he was responsible for contacting people for business and doing projects. He started his own company in 2006 where he worked in a specific capacity. His son applied for a student visa in 2006 for Australia. When he took over the company he had 7-8 employees, but later employed there a larger number of people.
- The brochures he presented at the interview were not from his company but from another company. He brought them to show the sort of work he could do. Before he started his own company he worked in another company. The brochures were not evidence of his own company's work.

- He had no criminal convictions in China – only those related to the project.
- He came to Australia because he was not happy with Chinese government officials.
- Although he arrived in Australia several years ago, he waited over two years to lodge protection visa because he had no idea about visa applications. While he had been in the community for over two years and heard about protection visas, he did not trust a migration agent. When it was pointed out that if he felt unsafe in China, it would seem reasonable that first thing he would do is apply for protection in Australia, he said he had no idea about it when he first came or he would have done it earlier.
- He was in contact with his son, whose visa was not approved yet. His son also applied for a protection visa and then a working visa. Asked why he had not applied for a protection visa when he became aware of it and lodged an application at the same time as his son, he said his son had to work illegally. He knew about the possibility of applying for a protection visa earlier but did not do it because he had no money at the time. Now it cost him several thousand dollars for a migration agent. He did not know that he could lodge a protection visa application without an agent at that time.
- He had been arrested in Australia and it was pointed out that when asked by the immigration officer at the police station if he had any criminal convictions, he had told him that he violated the one child policy and the government had destroyed his house and torn down the gate and windows. He did not mention, however, that he had been arrested for disturbing public order, which he now said was the reason he fled China. The applicant added that he also paid lots of fines and showed a receipt. It was pointed out that the fact that he had not mentioned the arrest at that interview at the police station might suggest that either it did not happen or was not important.
- He fears that if he goes back to China he will be arrested and sent to a detention centre. He still owes money to relatives and friends.

Information from applicant's Student Guardian Visa Application

24. The applicant applied for his Student guardianship visa and according to the application on the Department's file, he indicated that his family unit consisted of his wife and son, identified as in the protection visa application. However there was no mention of a daughter (ff. 62-63). His household registration card dated 1998 described him as a "farmer" and stated that he had achieved an education level of "Junior Middle School" (f.39). The applicant also submitted a Notarial Certificate of No Criminal Punishment Record from the city A Municipal Notary Public Office, which stated that he had "no record of committing offences against the criminal law during his residence in China before [date]" (f.26). The "Sole Trader Business License" (f.15) and Tax Registration Certificate (f.13) identified his business scope. The "Income Certificate" (f.19) and "Approval Letter for Temporary Leave" (f.17) indicated that his company's annual income was over a specific amount.

Tribunal Hearing

25. The applicant appeared before the Tribunal at hearing to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The applicant was represented in relation to the review by his registered migration agent who did not attend the hearing.
26. The applicant was advised at the beginning of the hearing that in reviewing his case, the Tribunal had had regard to the files relating to his protection and guardian visa applications, as well as his son's student and protection visa applications.
27. The applicant was asked who assisted him with his protection visa application and said the lawyer. He said he told his claims to the lawyer, who wrote it down in English. He said the statement of claims was true and correct, though it did not include every detail. Asked if there was anything he wished to add, the applicant said that he had remembered that when he was in the prison he lost a few teeth. This was all he wished to add.
28. The applicant said that in China he was living at a named village X, city A in Fujian province. This was his registered address, but he sometimes stayed at his shop. Two months before he left for Australia he went to live at his friend's place in Fuzhou city because he was being persecuted. He said the house, which he owned, had been demolished in 2009 to make way for infrastructure, along with the whole village. His wife had got very little compensation for the house and now lived with her parents. He added that his son had a hearing yesterday and needed to use evidence of the demolished houses to apply for a visa. The applicant confirmed that the house demolition was not related to the problems which led to his claim for protection.
29. The applicant said he did not own any other property apart from the demolished house. Asked about the shop he had earlier mentioned in city A, he said he owned the shop but leased the land on which it stood. Asked several times for the address of his shop, the applicant was unable to give the street address. He said repeatedly the name of the factory and variously that everybody knew it, that it was in city A. He said he had a business card for the shop and started to look for it in his bag. Asked how long he had owned the business, the applicant said one or two years but could not explain why he did not know the address.
30. When the Tribunal asked if he had the business card for the shop, the applicant said he had many business cards and was not sure. The applicant then pulled out a business card which the interpreter read to the Tribunal, located in city A. The Tribunal asked why he had given a different address and not the one on the business card. The applicant responded that the first address was the shop before and this one was where he hired a few people to work for him. The Tribunal asked what was the address of the last business he had before he left China. The applicant responded by starting to outline the government contract which he had undertaken along the lines set out in his statement of claims.

31. The Tribunal indicated that it was trying to establish the address of the business he was running before he left China and asked why the business card had a completely different address. The applicant said the address on the business card was a place he rented where he hired a few people to work for him. Asked why he had not said that earlier and had given a completely different address, the applicant replied that to do business, he needed two factories – one from which to sell and one for the workers. Asked which one was which, he replied that one was the front shop and that usually clients went to the factory to have a look. Asked where they went, the applicant said to the address on the business card.
32. Asked when he bought the shop and factory, the applicant said he did not buy them but rented the factory in 2005 and the shop in 2004. Asked who was looking after them now, the applicant said they were sold after his project failed. He used the money to repay debts to people. The Tribunal put to him that together that made a large sum of money from the sale. The applicant said he paid the money to workers and also borrowed money from the bank. When he won the project, he borrowed money from relatives and the bank. He sold the shop and factory after he was arrested and collapsed. Asked whether this was before his arrest, the applicant said yes, because he “had no more solutions”.
33. The applicant was asked how many years of education he had completed. He responded that he was not well educated and had only completed junior high school. The Tribunal pointed out that in his protection visa application he stated that after completing secondary school, he had attended “City A [name] College”. This was at odds with his answer that he only completed junior high school. The applicant said that this was just for “technics” The Tribunal asked why he had written one thing in his application under education, but had said something different at the hearing, pointing out that such a variation in answers may raise doubts about when he was telling the truth. The applicant said he was now telling the truth. He confirmed that the real education he received was at primary school and junior high school. He said he graduated at the age of 17.
34. The applicant did not answer directly whether or not he had gone to college after completing school but said “finally I went to learn how to make those [work items].” Asked when that was, he said after graduation and then said that he went out in the late 1980s. Asked to clarify whether the late 1980s was when he went to study or when he finished, the applicant paused and said the year he graduated secondary school should be in the early 1980s. Asked when he finished learning work techniques, he said he went to learn this skill and then followed other people to practice. Asked when and where he went to learn this skill, the applicant said it was in Fuzhou city after he graduated from secondary school. He confirmed that this was in the early 1980s and that he said he studied for “two years plus”. Asked what he was referring to when he had earlier said he finished in the late 1980s, the applicant said he had no explanation.
35. The applicant’s employment history was discussed. Asked to name his employer when he first started work, the applicant provided the details. Asked when he worked for him, the applicant said “many years” then clarified that he was there in the early 2000s and then started his own business, which was not very big at the beginning of 2004. Asked what sort of work he was doing, he

said he was products and also used to run a shop. He said he did not travel outside China.

36. Asked what sort of work he was doing in Australia, the applicant said he had applied for work permission but that neither he nor his son got it. He had previously worked as a tradesman, but now they were really strict and did not allow them to get in. Asked whether he had worked in this occupation in China, the applicant said he had used this skill when working.
37. The applicant said he had two children – his son, with whom he was living in Australia and his daughter. He added that they were fined for breaching the one child policy.
38. Asked why he was afraid to return to China, the applicant said he feared persecution by the authorities who wanted revenge because he had exposed their corruption after they had taken his money and did not help him with his affairs. Asked what he thought would happen if he returned to China, he said it would be serious and they would not let him go. Asked if he meant that he would be arrested, the applicant said this was certain because the group whose corruption he had revealed were angry. He confirmed that he feared returning to China because he would be arrested by some police and other government officers because he had revealed their corruption.
39. Asked if there were any other reasons he feared returning to China, the applicant said that this was the most serious reason. He added that he had many issues with the Communist Party, including the birth control policy – his wife and daughter had been detained by them and he had to pay money to get them out. Asked whether he was making a new claim, the applicant said this was already in his material. The Tribunal put to the applicant that his statement of claims talked about the demonstration and police corruption. It did not mention anything about violation of the birth control policy. The Tribunal pointed out that when asked at the beginning of the hearing if he had any other claims, the applicant had only mentioned his teeth.
40. The applicant confirmed that his daughter who had attended school and was now undertaking further education. Asked several times if he was suggesting that he would be arrested because he had breached the one child policy, the applicant showed the Tribunal a receipt that he had paid a fine for his daughter and said he had been persecuted by the Communist Party. After some discussion as to whether the applicant's claim was based on persecution for breach of the one child policy or because of what happened with the project, the applicant confirmed his claim for protection was based on what happened with the project and not on the birth control issue.
41. The applicant confirmed that his problems started after he did a project for the government. He won the bid. Asked if he had any evidence that he won the bid, the applicant said he lost the contract because the agent who sent him to Australia took it away. He said he had to pay bribes to win the contract. His role was project manager. Asked what examples of his previous work he had shown in the bid process to win the contract, the applicant said he spent money

to hire people and cooperate with them. He said he only had photos of his previous projects.

42. The applicant said that when he finished the project the government refused to pay him. Asked when he was prepaid the money which he mentioned in his statement, the applicant talked about having to borrow money from the bank to pay staff salaries then said he was paid when the project was half way and that he was to be paid 10-15 percent gradually. He then said that money was paid in 2006 Asked what other money had been paid to him and when, the applicant said he had to buy some materials so he had to bribe them continuously. Asked again when he was paid more money, the applicant said that, after he arrived in Australia, his wife kept appealing and they paid her a little bit. Asked to specify the amount, the applicant responded that his wife kept sending letters to appeal the case. Asked again how much she was paid, the applicant gave a vague figure of over a very large sum.
43. Asked the value of the project at the beginning, the applicant advised the amount. The Tribunal pointed out that, if the applicant was managing the project as he claimed, it might expect him to know the details of how much money was being paid and how much outstanding. The applicant responded that currently his wife was still working on getting more money and he had discussed this with her by telephone on Sunday. The Tribunal asked again how much was still outstanding when he left China and how much was outstanding today. He said they still owed around a significant amount. Asked again how much was outstanding, he said a lesser amount.
44. Asked to confirm that since the applicant left China, his wife had, therefore, received a specific amount, the applicant continued to talk about being about to report the officials and that unlike in Australia, in China the project managers had to pay money for projects in advance by themselves. The Tribunal again asked that the applicant answer the questions he was being asked. He confirmed that he had got back that amount and said that this money had been used to repay workers and to pay a bank loan on which a large sum was outstanding.
45. The applicant said the bank loan had been repaid but he still owed money for workers' salaries, but later changed this to say money was still owed to relatives. Asked how much was outstanding the applicant was silent for almost 30 seconds before saying he owed a specific sum to his relatives and friends. He said the workers were almost all paid off. Asked about the money he got for his shop and factories, the applicant said he used this to pay off the workers salaries and the bank loan.
46. Asked when he decided to organise the protest, the applicant said it was in 2007 but he was unable to state the date. He said he remembered that he was detained on the day of the protest. Asked how long it took to organise the protest, the applicant said he went to ask for the money owed to him so he could pay his relatives and workers. He took with him the leader of the workers and two other people. Asked whether the protest consisted of just four people, the applicant said no, more than ten people, mainly workers, took part in the protest which he organised. They wrote slogans and held them up outside the local

government office. Asked how long before the protest they started to organise, he said two days.

47. He said the protest took place close to the main gate of the local government. His wife did not go with him to the demonstration but came later when they went to the downtown area. Asked what time the demonstration took place, the applicant said they went out at 9 am after gathering at his place. He paid them wages and a worker made the placards which read “government delayed our payments” There was a big placard and a few small ones. The group asked to see someone so they could get paid for the project then more people gathered and police came and accused them of sabotaging social order. The police arrived an hour after they started the demonstration. Three or four people were arrested and taken in a police car to the detention centre where they were kept in separate rooms and interrogated for a couple of hours.
48. Asked what gave him the idea to have a demonstration, he said he had seen them in other villages. He did not know if they were effective but was in a rush at that time because workers wanted payment and the bank wanted its money. Asked when his wife came to the demonstration he said when he was arrested and put in the back of the police car, he later changed this to say 10-20 minutes after him. Asked why his wife was not arrested, the applicant said it was because she was a woman, a good person and very honest. He said the reason he was arrested was because he was holding a very large red flag with other people. When it was pointed out that he had earlier said the demonstrators were holding placards, the applicant said the red flag had some letters of protest.
49. The applicant said he was interrogated by police for a few hours then kept in detention centre for a number of days because he committed the crime of breaking social order. He said he was detained in a different place to police station but then said he didn't know whether it was the same place or not, only that he had been in a motor vehicle for a few minutes. He said he was detained because he broke the law and broke social order so he was given this sentence. Asked if he was taken to court and sentenced, he said he was not taken to court. The applicant claimed he was held in detention for a number of days, deprived of food for the first two days and beaten with batons.
50. The applicant said that when he was first taken to detention he did not know how long he would be kept there. Then they convicted him. Asked how this happened he said he was told he broke social order. Asked if he was charged with something, the applicant responded that they charged him with many things, all connected. Asked how he knew he was held for a specific number of days, the applicant said that just before he was taken to the detention centre he was asked to sign a paper. Asked what it said, he said he was confused because he had been beaten and would sign anything. After signing the paper, however, he read that he had breached public order. Asked whether he was detained under Article 23 of the public administration law or under a criminal offence for which he was charged in court, he said words to the effect “We are farmers, how can we argue with them, whatever they say that's it” He said he was not fined but that the paper said he had been detained for a specific number of days. His son was already in Australia and his friend who was an agent in China suggested that he go to Australia.

51. There was an extensive discussion of what the applicant did upon his release from detention. The applicant initially said that he did not go home then changed this to say that when he was just released he went home once to report to the police station, then escaped to his friend's place. He said he had been asked to report to the police station every week but only did this once. Asked several times why he left his home, the applicant responded in incomplete sentences, saying variously that "things just got bigger and bigger"; "they took revenge on me"; "anyway the police station is connected with them"; "I was persecuted by the Communist Party so I had to escape"; "I could not stay there"; they were still after me." Asked how he knew this, the applicant said his wife told him so. He said that at that time he was already convicted and could not even obtain his passport. He was again asked to answer the questions he was being asked, he said he had to hide from their revenge. Asked how he knew there was revenge, the applicant said it was because he reported them and their corruption. A short break was called.
52. When the hearing resumed the applicant was again asked why he could not live at home with his wife. He responded that the PSB was hooked up with other organisations and later that he had to run away from home because the people from the mafia threatened his wife that "if you keep doing things like this, we will kill all of your family" Asked when this death threat was made, he said it was after he left China because an official wanted to keep his position. Asked again when this happened, the applicant said that at the time when he was about to leave China, the official had telephoned him and said "you escape in the fear of crime". Asked where the official had telephoned him, the applicant said he heard from his wife that he had called her. Asked again when his wife got the call, the applicant said it was two weeks after he left China. Later he said it was a few days after he left China Asked whether that was when he made the death threat, the applicant said no.
53. Asked when the threat by the mafia was made, the applicant said that the official was hooked up with the PSB and afraid to lose his official position. The mafia phoned his wife and said things like that. The applicant was asked several times when the death threat was made. He repeated several times that the official, the person who was hooked up with PSB, telephoned his wife and made the threat. It was not long after he left. The Tribunal noted that when he had been asked earlier in the hearing whether the death threat was made at this time, he had said no.
54. The applicant was asked if he was having difficulty understanding the question or the interpreter. The applicant was silent for almost 30 seconds. The Tribunal put to the applicant that if he was having difficulty responding about the date of a death threat, which was a very serious thing, it might suggest that this threat had not really been made. The applicant responded that it had. The Tribunal said it was interesting that the applicant did not mention the death threat in his statement of claims. The applicant replied that it would have been too much if he wrote every detail. The Tribunal pointed out that he had put in many details which were much less serious than a death threat.
55. The applicant was asked when he had been told that he had to report to the police station. The applicant responded that he had been told when he was

released that he had to report to the local police once a week on Wednesdays for a period of three months. He confirmed that he reported only once. Asked what happened when he failed to show the second time, the applicant said the police called his wife while he was with his friend in Fuzhou and said that he had “escaped for fear of crime.” The Tribunal pointed out that earlier he had said it was the official who had called and said this. The applicant responded “anyway ...[official] is hooked up with the PSB, with the police”. It was put to the applicant that if it was the police to whom he was supposed to report, surely it would be the police who had to keep track of him. The applicant replied that the police kept looking for him. He confirmed that the police rang his wife while he was in Fuzhou with his friend.

56. The applicant was asked why he did not mention this in his statement of claims. By contrast the statement said it was after his departure that the police came to search his house and investigate his whereabouts because he did not report on time. Now he was saying that this happened after he did not report a second time. His statement suggested that he kept reporting to the police until he left China and it was when he left that the police discovered that he had absconded. The applicant was asked whether he had any comment about this inconsistency. He replied that he remembered that he reported to the police only once and then he left.
57. The applicant was asked about his decision to go to Australia. He said that after he was released from detention, he hired a migration agent to organise this for him. He said it took two months to find the migration agent, then changed this to say it took the agent two months to organise the documents. He did not answer the question as to when he found the migration agent but said it was the same migration agent who brought his son to Australia. He was introduced by a friend. Asked what documents the agent had to collect, the applicant replied that the agent told him it would be difficult for him to obtain passport because he broke the law, so the agent gave him a price for a package which included a passport, visa and everything else.
58. Asked whether this was his first passport, the applicant said it was his second. His first passport had expired after five years. He had been planning to travel to South East Asia when he was running his business in Fuzhou, but this did not eventuate. Asked why in his protection visa application he had answered no to the question as to whether he had a previous travel document, the applicant said it was because the earlier passport had expired and because he cancelled that trip.
59. The applicant confirmed that when the agent was preparing the documents he signed his own Australian visa application form. The Tribunal pointed out the date of the application, at a time when the applicant had claimed to be in detention. The Tribunal also noted that some of the papers provided in support of the visa were prepared earlier in the month – for instance the income and temporary leave certificates and a record of no criminal offence. Yet he had claimed to have been in detention at this time and had earlier told the Tribunal that he went to his agent after being released from detention at the end of the month. The applicant commented that the agent had organised all passports and

documents for both himself and his son. He confirmed that the documents were genuine.

60. The applicant confirmed that he left China on a passport in his own name issued shortly after he was released. The Tribunal pointed out that he had said earlier that it took agent 2 months to organise all paperwork to get him a passport. The applicant said he paid the agent and within two months the agent had organised everything for him. He said he flew from Fuzhou to Hong Kong and then to Australia. He said friends in Fuzhou arranged for his luggage and he passed through the airport without being detained or stopped,
61. Noting his statement that his wife has been to see the Director about the money many times, the Tribunal asked how it was that she had been able to get money from the Director when he was allegedly threatening to kill everybody. The applicant did not comment.
62. The applicant confirmed that he had been living with his son since he arrived in Australia on a student guardian visa. He said his son had stopped studying two months after the applicant's arrival because their money had run out. Asked whether he had come to Australia to be a guardian for his son, the applicant said the agent said this was the only way he could come. He confirmed that he had come with the intention of applying for a protection visa but did not do so as soon as he arrived because at that time they had no money to engage a migration agent. Now by working he had saved a little bit.
63. The Tribunal noted that when someone delayed putting in a protection application it might suggest that their fears of persecution were not as great as they claimed and this could influence the Tribunal's view of their credibility. In his case, the applicant applied only after he was arrested during a police traffic raid. This might suggest to the Tribunal that he was not genuine in his claims for protection but was simply looking to find a way of staying in Australia. The applicant responded that he made a mistake and should have applied for protection as soon as he arrived.
64. The Tribunal noted that it had seen the record of the applicant's discussion with Immigration at the time of his arrest in the traffic raid. At that time, he only talked about his violation of the one child policy and made no mention of his detention or any of the claims he had made in the context of his protection visa application.
65. Asked whether there was anything the applicant wished to say, he said he felt very confused. He and his son were in Australia without any working permission and their economic situation was very difficult. He begged the Australian government to give him a way out. At least if he got a working visa, he could survive in Australia.
66. Asked whether he had any comment on the fact that he signed the visa application at a time when he claimed to be in detention, the applicant responded that he had subcontracted everything to the agent who organised everything. It was pointed out to the applicant that he had told the Tribunal that he had signed his own visa application form. It was put to him that, if he signed

his own application form, he could not have been in detention at that time. The applicant said he had signed many things brought to him by the agent.

67. Pursuant to s.424AA of the Migration Act, the applicant was advised that there was information before the Tribunal which, subject to his comments, might be a reason or part of the reason for affirming the department's decision not to grant him a protection visa. The applicant was invited to comment on this information immediately or offered more time to comment or respond to the information. The applicant was advised that the issues were ones where there were inconsistencies between what the applicant had said at the hearing and other information available to the Tribunal from his other interviews or documents. These inconsistencies raised doubts for the Tribunal as to when he was telling the truth. The reason this was important was that, in assessing whether or not the applicant was a refugee, the Tribunal had to assess whether or not he had told the truth about his claims. If the applicant had not been truthful on one issue, it may suggest that he had not been truthful about other issues.
68. The first issue the Tribunal put to the applicant was when he owned his own business. At the hearing the applicant had told the Tribunal that he started his own business in 2004. However, in his protection visa application he said he worked for someone from 1985-1995 and that he then worked for himself from 1995 until the time he left China. In his interview with the Department, he said he set up own company in 2006 and the documents he provided for his Guardian visa application and for his son's student visa application indicated that he started to operate his own business in 1990. For example his income certificate and an approval letter for leave stated that he had been operating his business since 1990. The Tribunal noted that the applicant had earlier told the Tribunal that these documents were genuine. The Tribunal put to the applicant that all of these things could not be true simultaneously and it needed to determine when the applicant was being truthful.
69. The applicant was invited to comment or respond but did not do so. He asked whether the Tribunal would be making its decision that day or whether it would take a few more months. The applicant was asked why this was relevant but he did not respond. The Tribunal suggested, and the applicant agreed, that it would put all the issues to him together and then allow him the opportunity to comment on them together at the end.
70. The second issue raised by the Tribunal was the applicant's education level. The applicant's protection visa application stated that he went to Gardening College, suggesting that he undertook formal education in an area relevant to building his reputation as someone who could have won the government contract. However, the applicant's household registration, copies of which were on his Student guardian visa file and his son's student visa file, identified his education level as junior middle high school. This was also the level the applicant had told the Tribunal he had attained at the hearing. Furthermore, in the context of his own protection visa application, the applicant's son had said that his father worked in China as a tradesman who also undertook other work and described him as "a villager" with "no education."

71. The Tribunal noted that the inconsistencies in his evidence about his education level, put together with the inconsistencies on the issue of when he owned his own business, raised doubts as to when the applicant was telling the truth.
72. The third issue raised by the Tribunal was the fact that when the applicant was arrested in Australia and asked whether he had any criminal convictions in any country he made no mention of his detention for the protests which were the basis of his claim for protection, saying only that he had violated the one child policy. The Tribunal said the reason this was relevant was that it might suggest that the applicant only thought about making a claim for protection after he was arrested. By that time, the applicant would have known that his son's claim for protection on the grounds of the one child policy had been unsuccessful and he needed to find another way to put in his protection claim. The applicant may have, therefore, fabricated his claim of having protested at government corruption over unpaid monies. That may raise doubts as to whether the applicant ever won a government contract and whether he was in fact persecuted or detained. The Tribunal said it had not yet made up its mind on this issue, but subject to the applicant's comments, might think this was a possibility.
73. The applicant was asked if he wished to comment on the three issues raised, either immediately or to request more time to respond. After several minutes silence, the applicant said "let it go" several times. When asked to explain what he meant he said "I'm sorry" After another pause, the applicant said "Right now I want to tell the truth. We are illegal migrants here, black people. That's the only way out, only one solution". Asked to elaborate on what this one solution was, the applicant said "I was told by the lawyer that I can get a work visa here, I can make money".
74. Asked whether the representative had told him to use these arguments, the applicant said "right". Asked whether that was in China or in Australia, he said it was in Australia. He said he was told he could get "work permission, Medicare, whatever, you name it" Asked if the representative had told him to say things that were not true, the applicant responded "the lawyer guaranteed me that I can get a work permission." Asked when that was, he said "last year, last September." He made no further comment.
75. At the conclusion of the hearing the Tribunal told the applicant that its role was confined to assessing whether or not he was a refugee and any other visa issues were the domain of the Department of Immigration.

FINDINGS AND REASONS

76. The Tribunal finds on the basis of the passport which the applicant provided to the Tribunal that he is a national of China (PRC).
77. Beyond this issue, however, the Tribunal does not accept that the applicant has presented a truthful account of his circumstances in China.

78. The applicant claims that he owned a business which won a government contract and was arrested and detained for a number of days in China for disturbing public order after he organised a demonstration to protest the failure of the government to pay him all outstanding moneys for completion of the project. He claims that after his release from detention he breached the reporting conditions imposed on him by police, was threatened by mafia and corrupt officials and fled to Australia. The applicant claims to fear returning to China because he will be arrested by police and other government officers whose corruption he revealed.
79. The Tribunal did not find the applicant to be a reliable, credible and truthful witness. In reaching this view the Tribunal has had regard to serious inconsistencies in the applicant's evidence on important details about himself and central aspects of his claim; the fact that he declined to comment or respond on some of these inconsistencies; the applicant's own admissions and other reasons detailed below.
80. First, the applicant claimed that he ran a business which won a government contract for which he was the project manager but that the government did not pay him all moneys owed after the project was completed. However, various aspects of the applicant's evidence raised serious doubts as to whether the applicant in fact ran such a company or project managed the project as claimed. At the hearing before the Tribunal, the applicant was unable to provide the full address of the business he supposedly ran for two years without reaching for his business card. The applicant was unable to explain the reason for this. When the Tribunal pointed out to the applicant that he had given a different location for his business to that which was on his business card, the applicant explained that he in fact had two businesses, a factory and a shop, something which he had not mentioned anywhere before. In the Tribunal's view, the applicant's readiness to shift his evidence to suit his needs raised further doubts about his credibility.
81. Second, there were inconsistencies between what the applicant said in his protection visa application and his evidence at the hearing and other information regarding the education level he had attained. Questioned at the hearing about the education level he had attained, the applicant said he was poorly educated and had only completed junior high school. This was at odds with his protection visa application which stated that he went on to college for three years, suggesting formal education in a skill area relevant to someone who could have won the government contract.
82. After a discussion about this discrepancy early in the hearing the applicant confirmed that the true education he received was at primary school and junior high school. Although he would not answer directly whether or not he attended college, he said he went to learn work techniques in Fuzhou after graduating from secondary school for two years plus. He also gave contradictory evidence about the dates when he completed his studies – 1982 in the protection visa application, first saying 1989, then "should be 1983" in the hearing; and offering no explanation of why he mentioned 1989. Later in the hearing the applicant did not take up the Tribunal's invitation to comment or respond to information on his Student guardian visa file and his son's student visa file that

his household registration identified his level of education as junior middle high school and that, in the context of his own protection visa application, his son had described him as “a villager” with “no education.” The Tribunal finds that the applicant did not give truthful evidence about his education level and does not accept that he ever attended college.

83. Third, the applicant gave inconsistent evidence about his employment history and when he ran his own business between his protection visa application, his departmental interview, his student guardian visa application and his evidence at the hearing before the Tribunal. At the hearing the applicant said that he started his own business in 2004 after working for another employer. However, in his protection visa application the applicant said he worked for someone entirely different from 1985-1995 and that he then worked for himself from 1995 until the time he left China. In his interview with the Department, he said he set up own company in 2006 and the documents he provided for his Guardian visa application and for his son’s student visa application, which he told the Tribunal were genuine, indicated that he started to operate his own business in 1990.
84. The applicant did not offer any comment or response when asked about these inconsistencies. Nor did the applicant comment or respond to statements by his son that his father worked in China as a tradesman who also undertook other work. The Tribunal finds therefore that the applicant did not give truthful evidence about his employment and when he ran his own business. Further, the applicant gave confused responses to questions about how much money had been paid to his company, how much was still outstanding and to whom he still owed money. As put to him during the hearing, his failure to demonstrate any clear awareness of such details raised doubts about his alleged role as project manager of a major government contract. In light of the above, the Tribunal does not accept that the applicant ever ran his own specific business or that he was project manager of a government contract.
85. It follows from the above that the Tribunal does not accept that the government failed to pay the applicant’s company all moneys for the project, which prompted him to lead a protest about government corruption in which he was arrested for breach of public order.
86. It is notable that while the applicant answered questions about aspects of the protest he allegedly organised, he was vague about details like when he decided to organise the protest, at what time his wife arrived and gave an implausible explanation about why she was not arrested – “because she was a woman, a good person and very honest” and why he was – “because he was holding a large red flag” When it was pointed out that he had earlier spoken about placards, he then shifted his evidence to say the flag had some letters on it. The Tribunal does not accept that the applicant organised or participated in a protest as claimed.
87. It follows from the findings above that the Tribunal does not accept that the applicant was actually involved in the claimed government contract, was not protesting non-payments relating to the contract and was, therefore, not arrested and detained for a specific number of days for disturbing public order.

88. Moreover during the hearing, the applicant told the Tribunal that after his release from detention, he engaged a migration agent to arrange his passport, visas and all necessary documentation to go to Australia. He confirmed that he signed his own application form for a Student guardian visa and that the documentation provided in support of that visa was genuine. An examination of the visa application form and relevant documents, however, showed that the visa form was signed yet some of the documents were dated earlier– that is, when the applicant claimed he was in detention and before he claims he engaged the agent to prepare the paperwork.
89. Invited to comment on these discrepancies, the applicant said that he had subcontracted everything to his agent and signed many things brought to him by the agent. However, as was pointed out to him during the hearing, if as he claimed he had signed the visa application form himself, he could not have been in detention as he claimed. The applicant admitted that his agent was not allowed to enter the detention centre. This confirms the Tribunal’s finding that the applicant was never arrested or detained for breach of public order.
90. The applicant’s credibility is further undermined by inconsistencies in his evidence regarding what happened after his release from detention. The applicant’s statement of claims suggested that he continued to report to police until such time as he left China, at which point the police went to his house and threatened his family. At the hearing before the Tribunal, however, the applicant claimed that he only reported to police once and then moved to live with a friend in Fuzhou. When he failed to report to the police a second time, the police called his wife and said he had “escaped for fear of crime”, a statement he attributed earlier in the hearing to the official. He also said the police kept looking for him. Asked to explain the discrepancy, the applicant told the Tribunal that he remembers reporting to the police only once. The Tribunal does not accept that the applicant was required or did report to the police.
91. Asked at the hearing why he had moved to his friend’s place, the applicant talked repeatedly about revenge and then elaborated that people from the mafia or Director threatened his wife that they would kill all of the family. He gave differing accounts of when this threat was made. The Tribunal put to the applicant that his inability to say when the threat was made might suggest that it had not been made at all and observed that it was curious that this threat had not been mentioned in his statement of claims. The Tribunal does not accept the applicant’s assertion that the threat had been made and that the reason he had not mentioned it in his statement of claims was that he could not include every detail. As was put to the applicant, he had included many details much less serious than a death threat. Moreover, the applicant had no comment on the incongruity that the Director paid his wife a large amount of the money owed in spite of having allegedly threatened to kill the whole family. The Tribunal does not, therefore accept that the applicant was threatened by the mafia or police or had to escape their revenge. Nor does it accept that there are any reasons for the applicant to fear returning to China on the grounds that these people are still after him and will arrest him as he has claimed.

92. The Tribunal considers it significant that the applicant did not seek protection until more than two years after arriving in Australia and only after he was arrested. The Tribunal does not accept the applicant's claim that this was because he did not have the money to pay for a migration agent, but considers that the applicant's claim was not genuine and he was simply looking for an avenue to stay in Australia.
93. Notably, at the time of his arrest, the applicant made no mention of his detention for the protests which were the basis of his claim for protection, saying only that he had violated the one child policy. The Tribunal considers that the applicant only thought to make a claim for protection after he was arrested. By that time, the applicant would have known that his son's claim for protection on the grounds of the one child policy had been unsuccessful and he needed to find another way to put in his protection claim. It is the Tribunal's view that the applicant fabricated his claim of having protested at government corruption over unpaid monies.
94. It is significant that when this suggestion was put to the applicant, he did not take up the Tribunal's invitation to comment on this or on serious inconsistencies in his claims, but responded "let it go" and "I'm sorry". The applicant then went on to tell the Tribunal that he had put in his protection visa application because his migration agent had told him that this was the way to get a work visa and make money and had "guaranteed" that he would "get work permission".
95. Considered together, the reasons discussed above lead the Tribunal to find that the applicant has not been truthful about his experiences in China and the reasons he fears returning. The Tribunal does not accept that the applicant ever owned a particular business which won a government contract; that he organised a demonstration to protest the failure of the government to pay him outstanding moneys for completion of the project; that he was arrested and detained for a number of days for disturbing public order; that he breached reporting conditions imposed on him by police after release; that he was threatened by mafia and corrupt officials whom he exposed; or that he had to flee to Australia.
96. As the Tribunal does not accept that the applicant has ever been detained for disturbing public order, breached reporting conditions or exposed corruption by officials related to his alleged rockery project, it does not accept that the applicant has a genuine subjective fear that, should he return to China, he will be arrested by police and other government officers whose corruption he revealed.
97. While it is clear to the Tribunal that the applicant does not wish to return to China, it does not find that this is for reasons presented in his application for protection. The Tribunal therefore does not accept that there is a real chance the applicant will be persecuted if he returns to China now or in the reasonably foreseeable future. As a result, the Tribunal is not satisfied by the available evidence that the applicant holds any well-founded fear of any harm for a Convention reason should he return to China.

CONCLUSIONS

98. 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

99. 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*. PRRRNM