

1506280 (Refugee) [2015] AATA 3537 (28 October 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1506280
COUNTRY OF REFERENCE:	China
MEMBER:	David McCulloch
DATE:	28 October 2015
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 28 October 2015 at 3:49pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of China applied for the visa [in] December 2013 and the delegate refused to grant the visa [in] September 2014.
3. The applicant appeared before the Tribunal on 20 October 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

CONSIDERATION OF CLAIMS AND EVIDENCE

4. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration. The Tribunal has had regard to DFAT Thematic Report - Unregistered

religious organisations and other groups in the People's Republic of China, 3 March 2015. Parts of that report relied upon in this decision are detailed below.

9. The issue in this case is the credibility of the applicant and whether, on his accepted claims, he fulfils the criteria for protection. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

Background and claims

10. The applicant arrived in Australia [in] June 2007 on a [Student] visa. The student visa ceased [in] December 2009 and the applicant became unlawful noncitizen. The applicant lodged the current Protection visa application [in] December 2013.
11. The applicant was born on [date]. He was [age] years old when he arrived in Australia. The applicant provided a statement as part of his application for a Protection visa which outlines his claims as follows.
12. The applicant is from a rural area. Both his parents were Christians. From childhood, the applicant attended a Local Church and was baptised at the age of [age]. The applicant's parents were arrested twice in China for attending the unauthorised church. The first occasion occurred during the summer holidays after the applicant graduated from primary school. The second occasion was in the second year of the applicant's middle school. On the first occasion, the applicant was caught with his parents and given a warning. On the next occasion, police told the applicant school to bail him out. The school gave the applicant a seven-day suspension as punishment.
13. In 2007, when the applicant came to Australia he could not find a Local Church and attended online services in China and read the Bible and set prayers with the other audience. He attended one church but it did not have the same feel as his church in China. In addition, when people heard that the applicant was from the Local Church they deliberately alienated him.
14. In 2009, the applicant's parents informed him that their church had converted to 'Eastern Lightning' and they were helping to establish more churches in new places. The applicant listened to sermons given by the Elder of the new church. The church sent people to connect with the applicant in Australia accepted him as the formal disciple of their sect. The applicant began to contact more adherents within the church and encourage them to do more witnesses. The applicant thought of setting up his own 'Eastern Lightning' church. The applicant recruited Chinese people in Australia and after several gatherings the church in China decided to send clergy to Australia.
15. During 2012, the church in China was repeatedly harassed by the local government which meant they were unable to send clergy to Australia. The applicant's parents were arrested for spreading gospel leaflets in the street. 'Our' net was hacked and blocked by the Chinese cyber police. The congregation in Sydney had to be dissolved, as more members left Sydney one after another.
16. Just before the Spring Festival of 2013, the applicant's parents were bailed out. Their communication was closely monitored by the local government so they were afraid of having online sermons through the internet. On [a specific day in] 2013, the applicant's parents were taken away by police to be brainwashed and released a week later.
17. The applicant had a girlfriend in Australia with whom they had a [child]. Her family's belief varied from the applicant's and they separated and she took the child with her. The applicant's parents cautioned him not to claim to have been a member of the sect Eastern

Lightning as if he did it would create troubles with the local government in China and that he would be discriminated against by members of other sects. The Chinese government label the church as a cult which they claim involves spiritual phenomena such as speaking in tongues, curing diseases, expelling evil spirits as groundless superstition. As a result the applicant has never disclosed his faith publicly.

18. The applicant did not finish his education in Australia because family could not support him. The applicant will be persecuted because of his faith if he returns to China.

Independent evidence concerning Eastern Lightning and 'evil cults'

19. Some religious groups are banned by law, designated as 'evil cults' (*xiejiao*)¹ and followers can be sentenced to terms in prison.² Article 300 of China's *Criminal Law* states that those who participate in 'superstitious sects or secret societies or weird religious organizations' are subject to imprisonment.³ A judicial explanation from 1999 described the term 'evil cults' as:

"those illegal groups that have been found using religions, *qigong* [a traditional Chinese exercise discipline], or other things as a camouflage, deifying their leading members, recruiting and controlling their members, and deceiving people by molding and spreading superstitious ideas, and endangering society."⁴

20. The following 'Christian-related' groups are banned as 'cults': the Local Church (also called the 'Shouters'), Established King, Lightning From the East, Lord God Sect, Lingling Sect, All Scope Church, South China Church, Disciples Sect (Narrow Gate), Three Ranks of Servants, Cold Water Sect, Commune Sect, New Testament Church/Apostles Faith Sect, Resurrection Sect, Dami Evangelization Association, and World Elijah Evangelism Association.⁵ The CCP has a Leading Small Group for Preventing and Dealing with the Problem of Heretical Cults and its implementing "610" offices, which are tasked with eliminating Falun Gong, and addressing 'evil cults'.⁶
21. There are no public criteria for determining, or method of challenging, the designation of 'evil cult'.⁷ Protestant communities have been concerned by some of the new 'cults', and particularly by Eastern Lightning because they consider it heretical, and because the vast

¹ The term '*xiejiao*' has been translated has also been translated as 'heterodox teaching', however the term 'evil cult' is more usually used in English now.

² US Department of State 2014, *China (includes Tibet, Hong Kong, and Macau) – International Religious Freedom Report 2013*, 28 July, Section II, page 4, paragraph 3

³ US Commission on International Religious Freedom (USCIRF) 2015, *USCIRF 2015 Annual Report - China*, 30 April, pp 35-36 <<http://www.uscirf.gov/sites/default/files/China%202015.pdf>> CISEC96CF1685

⁴ US Department of State 2014, *China (includes Tibet, Hong Kong, and Macau) – International Religious Freedom Report 2013*, 28 July, Section II, page 4, paragraph 3

<<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2013&dliid=222123>> OG54B544637

⁵ Yang Fenggang 2012, *Religion in China: Survival and Revival Under Communist Rule*, New York, Oxford University Press, pp.103–5, CIS961F9402249. The US Department of State gives variations of these names: the Local Church ('Shouters'), Eastern Lightning, the Society of Disciples (*Mentu Hui*), Full Scope Church, Spirit Sect, New Testament Church, Three Grades of Servants (or *San Ban Pu Ren*), Association of Disciples, Lord God Sect, Established King Church, Unification Church, Family of Love, and the South China Church. (US Department of State 2014, *China (includes Tibet, Hong Kong, and Macau) – International Religious Freedom Report 2013*, 28 July, Section II, page 4, paragraph 3

<<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2013&dliid=222123>> OG54B544637)

⁶ US Department of State 2014, *China (includes Tibet, Hong Kong, and Macau) – International Religious Freedom Report 2013*, 28 July, Section II, page 4, paragraph 4

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⁷ US Department of State 2014, *China (includes Tibet, Hong Kong, and Macau) – International Religious Freedom Report 2013*, 28 July, Section II, page 4, paragraph 4

<<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2013&dliid=222123>> OG54B544637

majority of its converts are drawn from unregistered Protestant house-church congregations.⁸

22. According to the United States Commission on International Religious Freedom (USCIRF), on 3 June 2014 the Chinese government published a list of 20 'cults' and began 'a sweeping crackdown' against them.⁹ As part of the 'anti-cult' campaign, the government 'issued a directive to "eradicate" unregistered churches over the course of the next decade'.¹⁰
23. The *China Aid Association* also reported that more than 20,000 religious practitioners were accused of being heretics and were taken into police custody during the Chinese Communist Party's 'anti-cult' campaign in 2014, with around 1,100 people convicted on criminal charges and sentenced.¹¹ *China Aid* described the 2014 campaign against 'cults' as 'similar to the crackdown on Falun Gong in 1998'.¹² Many 'anti-cult' trials have been conducted in secret, with the accused forced to accept government-appointed lawyers and not allowed to hire their own legal counsel.¹³ In addition, the Chinese government 'intimidated and pressured family members of those accused of so-called "cult activities" to not raise their legal cases and incidents of persecution publicly, thus many remain unknown'.¹⁴
24. Eastern Lightning focuses on evangelising Christians because they are thought less likely than the general population to inform the authorities of their activities.¹⁵ During 2014 the Church of Almighty God, also known as Eastern Lightning, was banned and more than 1,000 adherents were arrested and convicted.¹⁶ In February 2015 two members of a banned religious group were executed for murdering a woman who rejected their apparent attempt to recruit her in a McDonald's restaurant.¹⁷
25. In December 2012, Fujian was mentioned in relation to a nationwide crackdown on members of a Christian sect, the so-called Church of Almighty God, also known as Eastern Lightning.¹⁸ The Longyan Public Security Bureau issued a press statement in December 2012 saying that 27 members of the Church of Almighty God had been arrested for illegal propaganda and spreading malicious rumours. Also in December 2012, six people were detained for 15 days in Gongkou village in Zhangzhou city, Fujian province for promoting the

⁸ Dunn, EmilyC. 2009, "Cult," Church, and the CCP: Introducing Eastern Lightning', *Modern China*, Vol. 35, No. 1, Jan, page 107, paragraph 2 CIS26553

⁹ United States Commission on International Religious Freedom (USCIRF) 2015, *USCIRF 2015 Annual Report – China*, 30 April, page 36, paragraph 1 <<http://www.uscirf.gov/sites/default/files/China%202015.pdf>> CISEC96CF1685

¹⁰ United States Commission on International Religious Freedom (USCIRF) 2015, *USCIRF 2015 Annual Report – China*, 30 April, page 36, paragraph 1 <<http://www.uscirf.gov/sites/default/files/China%202015.pdf>> CISEC96CF1685

¹¹ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.6, paragraph 5 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

¹² China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.3, paragraph 2 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

¹³ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.7, paragraph 2 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

¹⁴ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.7, paragraph 2 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

¹⁵ Dunn, EmilyC. 2009, "Cult," Church, and the CCP: Introducing Eastern Lightning', *Modern China*, Vol. 35, No. 1, Jan, p.107, CIS26553

¹⁶ China Aid Association 2015, *China Aid 2014 Annual Report – Religious and Human Rights Persecution in China*, 30 April, p.3, paragraph 2 <<http://www.chinaaid.org/p/annual-persecution-reports.html>> CISEC96CF1731

¹⁷ 'China may increase penalties for illegal cults to life in prison' 2015, *Reuters*, 24 June <<http://www.reuters.com/article/2015/06/25/us-china-lawmaking-cults-idUSKBNOP509P20150625?feedType=RSS&feedName=worldNews>> CXBD6A0DE8867

¹⁸ Li, Yao 2012, 'Christians warn against cult influence', *China Daily*, 20 December <http://www.chinadaily.com.cn/china/2012-12/20/content_16033787_2.htm> CX312592

Church of Almighty God.¹⁹ This well-known sect has been declared an 'evil cult' and its members have been subject to waves of arrest since the late 1990s. It has also been condemned by other Christian groups.²⁰

26. DFAT Thematic Report - Unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015 provides:

The interpretation of what constitutes a cult can vary throughout China, with some local authorities listing behaviours such as "deifying leaders, deceiving people, and spreading superstitions and heretical beliefs" as grounds for labelling a group a "cult". Practices deemed superstitious, cult-like, or beyond the vague legal definition of "normal," can attract harassment, detention and imprisonment by authorities (for example, in December 2012, Chinese media reported more than 1,300 people across 16 provinces had been detained for propagating rumours of an apocalypse). A joint interpretation issued by the Supreme People's Court and Supreme People's Procuratorate in 1999 stated that punishments for cult crimes can be applied when one "resists group bans by relevant departments, resumes banned groups, establishes other sects, or continues [illegal] activities". Individuals who organise or use "superstitious sects, secret societies or evil religious organisations" to undermine the state's laws or administrative regulations can be sentenced from three to seven years in prison under Article 300 of the Criminal Law. Government crackdowns against cults occur with relative frequency in China.

Groups such as the Guanyin Method Sect (Guanyin Famen or the Way of the Goddess of Mercy), Zhong Gong (a qigong exercise discipline), and Falun Gong (see below) are banned by the Chinese government. The government also considers several Christian groups to be "evil cults," including the "Shouters," Eastern Lightning, Society of Disciples (Mentu Hui), Full Scope Church, Spirit Sect, New Testament Church, Three Grades of Servants (or San Ban Pu Ren), Association of Disciples, Lord God Sect, Established King Church, Unification Church, Family of Love, and South China Church.

Both registered and unregistered orthodox Christian Churches tend to deride the doctrines of "cultish" organisations as heresy. However, at the same time, government crackdowns on "cults" often bring attention and scrutiny of Christian house churches by government officials, scholars, and ordinary people who can find it difficult to distinguish between the two.²¹

27. In questioning the applicant on the beliefs, practices and views of other churches of Eastern Lightning, the Tribunal has relied upon a detailed 2009 journal article by a Melbourne academic.²²

Hearing, credibility, findings and assessment

28. In considering overall the credibility of the applicant the Tribunal is cognizant of the words of Beaumont J in *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 in which he stated that 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for...[but this should not lead to]...an uncritical acceptance of any and all allegations made by supplicants'. The Tribunal notes also the remarks of Gummow and Hayne JJ in *Abebe v Commonwealth of Australia* (1999) 197 CLR 510 at 191 where it was said that 'the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising'.

¹⁹ Department of Foreign Affairs and Trade (DFAT) 2013, *RRT Country Information Request - CHN41439 - Family planning; Falun Gong; Christians, Returnees, and Corruption*, Country Information Report No. 13/28, 3 July, CX310619

²⁰ See Section 5 *Cults and Sects*

²¹ 25. DFAT Thematic Report - Unregistered religious organisations and other groups in the People's Republic of China, 3 March 2015. Para 3.20 – 3.21

²² Dunn, E, 'Cult', *Church, and the CPP, Introducing Eastern Lightening*, Modern China, Vol. 35 No.1 Jan 2009

29. The Tribunal is satisfied that the applicant is a citizen of China and accordingly his claims will be assessed against China.
30. The Tribunal in the hearing sought to confirm with the applicant that he had attended a Local Church in China and it was apparent from his answers that there was some confusion about the type of church he claims to have attended. The applicant indicated that it was in fact a family church. The Tribunal pointed out that there was a significant difference between family or house churches and the Local Church. The Tribunal also asked the applicant why he had referred in his written statement to the church being a Local Church but was not able to get a clear answer from the applicant.
31. After questioning the applicant about the beliefs of the church he attended in China, it was clear to the Tribunal that the church the applicant claimed to attend in China was not a Local Church. The Tribunal has considered whether to draw an adverse inference from the inconsistency in the claims in this respect, but considering all the evidence, the Tribunal is satisfied that the inconsistency is due to confusion over nomenclature. In particular, the Tribunal notes that, in the interview with the delegate of the Minister, the applicant referred to the church being a normal house Church with no name, until in 2009 it changed to Eastern Lightning. The applicant's description of the beliefs of the church to the delegate were also consistent with the church being a family/house Church rather than a Local Church.
32. The delegate, in his decision, drew an adverse inference from the failure of the applicant to locate a Local Church to attend in Australia after his arrival here. Given what the Tribunal accepts as confusion over the nature of the church that the applicant attended, it does not draw an adverse inference from this fact.
33. However, the Tribunal did explore with the applicant why he did not investigate the attendance of a church (other than a Local Church) that adopted similar beliefs to his church in China. The Tribunal was of the view that there are many different Christian churches in Sydney with Chinese congregations. The applicant indicated that he attended one church in [a suburb] but he did not feel comfortable there because of its practices. When the Tribunal indicated to the applicant it concerns over the fact that he did not further investigate other churches to attend, the applicant said that he was mentally focused on his studies and it was not until he matured and started to think independently and learnt about the Eastern Lightning church that he began to be more seriously committed to his religion. The applicant acknowledged that he did not leave China due to religious problems and the claimed detentions of his parents and himself.
34. In terms of the claimed detentions of the applicant's parents and himself in China, as a result of participation in an unregistered family church, the applicant, in the hearing, gave evidence of these events with a degree of detail which was largely consistent with his written claims and the evidence that he had given to the delegate of the Minister. Contrary to the finding of the delegate of the Minister, the Tribunal formed the impression that the applicant was speaking from actual experience.
35. The applicant provided an account to the Tribunal of his becoming involved in Eastern Lightning, a visit to Australia by a representative of the church, his recruiting of other followers and a period of gatherings (weekly over a period of six months in 2010) which was credible to the Tribunal. The applicant was able to correctly answer a range of questions concerning the key text of Eastern Lightning, aspects of Jesus Christ as believed by the church, the name of the founder of the Church, the symbol of the devil in the church, the fact that sinners suffer a deterioration of the flesh, where the name Eastern Lightning comes from, and the importance of proselytising.

36. The applicant indicated that after other adherents of the Church drifted away from Sydney in 2010 and regular meetings ceased, the applicant continued to seek to make contact with others and persuade them to join the church. He said that he did not have much success. The Tribunal asked the applicant to tell it how it would 'pitch' the church to others. The applicant indicated to the Tribunal that he needed some time to gather his thoughts to do this. The Tribunal gave him this time. The applicant said that he would tell potential converts about the epoch of Kingdom and the fact that the day of judgement was approaching and that the speeches of Jesus Christ needed to be passed on to everyone in daily life. He indicated the need to have access to books and other materials.
37. The Tribunal was of the view that this 'pitch' was somewhat limited for a person who had been instructed in the beliefs of the church and were seeking to persuade others to join. The applicant said that he was not an expert and was still learning.
38. The applicant said that in around Easter 2013 he started attending, on a weekly basis, a church in [another suburb]. He said the church did not have any specific name. He said he attended until 2014. He said that he stopped attending because there was an event held involving visiting clergy from [another country] who distributed a pamphlet making reference to Eastern Lightning as an 'evil cult'.
39. The Tribunal put to the applicant that it did not seem consistent with him having a belief in Eastern Lightning to then become involved with a more mainstream church, given that Eastern Lightning is perceived to have radical beliefs. The independent information indicates that in China both registered and underground Protestant churches take a very negative view of Eastern Lightning. When asked, the applicant indicated that he did not seek to proselytise to members of the Church about Eastern Lightning because he acknowledged that they viewed Eastern Lightning as distorted. In response to why he attended the mainstream church, the applicant said that at first he was not aware of the significant differences and thought that there were similarities in beliefs. He also wanted a community connection which was not possible as there were no gatherings of Eastern Lightning adherents. The applicant indicated that it was not until the pamphlet was distributed by the [overseas] clergyman declaring Eastern Lightning an evil cult that he realised that there was such a difference and hostility towards Eastern Lightning.
40. The applicant says that since leaving this church in 2014 there is no communal Eastern Lightning practice in Sydney that he can participate in. He reads relevant materials and communicates on the Internet in relation to the church. He feels lost.
41. The applicant gave evidence in the hearing about the arrests in China of his parents in 2012 and 2013. The accounts of these detentions were broadly consistent with written claims and evidence given in the interview with the delegate of the Minister. There was an aspect of the evidence that was somewhat unsatisfactory in the Tribunal's view. There was a discrepancy in the applicant's evidence as to whether or not he had specifically asked his parents whether there was documentary evidence of their arrests, such as detention certificates or arrest warrants.
42. The Tribunal asked the applicant why he waited six years from arriving in Australia to seek protection. The applicant said that originally he did not consider that his circumstances met the relevant definition. After a time, friends gave him advice that his experience back in China and his current circumstances might be sufficient to invoke protection. The applicant indicated that what happened to his parents in 2012 and 2013 was a significant factor in his decision to claim protection.
43. When asked how he would practice his religion should he return to China, the applicant indicated he had no specific plans as Eastern Lightning is declared as an 'evil cult'. The

applicant indicated that it would certainly be his wish to continue to practice Eastern Lightning and any failure to do so would be because of the fear of the attitude of authorities.

44. Considering the totality of the applicant's evidence, there are certain difficulties. The applicant failed to investigate options to practice his religion on arrival in Australia other than attending one church, that did not suit him. It seems inconsistent with the applicant becoming an adherent of Eastern Lightning that he would then attend a mainstream Christian church.
45. However, the Tribunal takes into account that, in its assessment, the applicant was on the whole a credible and honest witness who recounted details and events in a manner which caused the Tribunal to think that he was speaking from actual experience. The Tribunal believed the applicant when he said that the reason he did not engage with religious activity on first arriving in Sydney was he was more focused on his studies and was only later that he began to focus on a religious belief in the form of Eastern Lightning after communication with his parents. The downplaying by the applicant of his religious activity on arrival in Australia is consistent with the applicant's acknowledgement that he did not leave China due to the difficulties that it faced from the participation in the family church.
46. In terms of the applicant's participation in a mainstream church from 2013, despite saying he was an adherent of Eastern Lightning, the Tribunal believes the applicant when he says that he needed some sort of spiritual and community connection and there was no outlet for this with Eastern Lightning. The Tribunal is of the view that the applicant was aware that Eastern Lightning was considered distorted by the church that he attended but that this did not become clear to him until the visit by the [overseas] clergyman in 2014 and the distribution of a pamphlet which made reference to Eastern Lightning as an 'evil cult'.
47. The applicant's attempt to 'pitch' Eastern Lightning to the Tribunal was not overly detailed in terms of displaying a solid knowledge of the principles of the belief system. The Tribunal accepts that nervousness and the pressure of being put on the spot may explain part of the difficulty. The Tribunal also accepts that the applicant was not an expert in the religion but still may have had a motivation to seek to persuade others to join the religion.
48. In terms of the applicant not applying for protection until 2013, the Tribunal accepts the applicant's explanation that his motivation in coming to Australia was to study and it was only later that he got advice and began to realise that he may have a claim for protection and that a key motivation for this was what happened to his parents in 2012 and 2013.
49. In relation to his parent's detentions in 2012 and 2013, the Tribunal notes that there is independent evidence cited earlier that indicates there was a crackdown in Fujian Province of Eastern Lightning adherents in 2012.
50. Considering all of the evidence, the Tribunal is satisfied that the applicant is a believer in Eastern Lightning. It is satisfied that he would wish to practice Eastern Lightning on return to China were it not for the attitude of the authorities. The Tribunal is satisfied that the applicant's parents are adherents of Eastern Lightning and that they were detained by authorities in 2012 and 2013. The applicant is satisfied that the applicant's parents were detained on two occasions as a result of participation in an unregistered family church in China. The relatively minor issue of inconsistencies over supporting documents does not cause the Tribunal to disbelieve this claims. The Tribunal is satisfied that the applicant was detained himself on the second occasion but released to his school, before his parents were released. The Tribunal is not satisfied that the applicant's difficulties with the church in China were the reason that he came to Australia in 2007.

51. The independent evidence makes clear that Fujian Province is relatively liberal in terms of its treatment of underground churches. However, Eastern Lightning is in a different category as an 'evil cult' which increases the risk of adverse attention from authorities. There is evidence of a relatively recent crackdown of Eastern Lightning in Fujian, in 2012, and more recent evidence from 2014 of the crackdown of 'evil cults' in China as a whole.
52. All that being the case, the Tribunal is satisfied that there is a real chance of adverse treatment in terms of arrests, detention as a result of participation that the applicant would wish to have in Eastern Lightning on his return to Fujian. The Tribunal is of the view that there is a real chance of detention that would constitute a threat to his life or liberty thus constituting serious harm for the purpose of s.91R(1)(b) and 91R(2)(a) of the Act. The Tribunal is of the view that any failure by the applicant to undertake activities in Eastern Lightning on return to China would be due to the fear of harm. The Tribunal is satisfied that the harm would be for the Convention reason of the applicant's religion and that this would be the essential and significant reason for the persecution pursuant to s.91R(1)(a). The Tribunal is satisfied that the persecution would involve systematic and discriminatory conduct pursuant to s.91R(1)(c).
53. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.
54. In the current case, even if the applicant were to relocate to another part of China, a well-founded fear of persecution will remain. The independent information suggests that 'evil cults' face repression and crackdown by authorities in all parts of China. The Tribunal considers that there is a real chance of the applicant facing serious harm as a result of the practice of Eastern Lightning wherever he may decide to live in China.
55. As the harm feared is a product of the Chinese state, the applicant is unable to avail himself of the protection of the Chinese government. The Tribunal is satisfied on the evidence before it that the applicant does not have a right to enter and reside in any other countries and therefore s.36(3) of the Act is not applicable.
56. For the reasons given above, the Tribunal is satisfied that the applicant has a well-founded fear of being persecuted for reason of his religion, and thus the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).
57. Given that the applicant satisfies the criterion in s.36(2)(a) of the Act, assessment of the complementary protection criterion does not apply.

DECISION

58. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

David McCulloch
Member