

1305656 [2014] RRTA 171 (13 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1305656
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Melissa McAdam
DATE: 13 March 2014
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of China, applied to the Department of Immigration for the visas [in] June 2012 and the delegate refused to grant the visas [in] March 2013.

STATUTORY FRAMEWORK

3. 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.
4. 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).
5. 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’).
6. 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.

SUMMARY OF CLAIMS

7. The first-named applicant made the primary claims and will hereinafter be referred to as the applicant. The following is a summary of the claims and information he provided in the Protection visa application lodged with the Department:
 - a. The applicant was born [in] Sichuan, in China. He has no brothers or sisters. His parents reside in China. He is of Han ethnicity and Yiguan Dao religion. He lived [in] Sichuan province.

- b. He had approximately [years] of school education in China and attended one year of college in Australia. He has done 'odd jobs' in Australia.
- c. The applicant's grandfather was an active member of the Yiguan Dao religion which is regarded as illegal by the Chinese authorities. His grandfather was arrested by the Public Security Bureau (PSB) in 1974 and sentenced to 15 years imprisonment. He was released in 1989 but died in 1993 of illness.
- d. The applicant's parents were originally farmers. Because of his grandfather they suffered discrimination. In 2000 they had to leave their hometown and move to Fujian. In Fujian they did various hard work and eventually became cleaners. After his parents left the applicant lived with his grandmother at home. She also practiced Yiguan Dao.
- e. [Mr A] was an old friend of the applicant's grandparents who had been imprisoned with the applicant's grandfather. After he returned to the applicant's hometown the applicant's grandmother and [Mr A] started to secretly practice Yiguan Dao together. In October 2006 the applicant's grandmother started encouraging the applicant to practice Yiguan Dao with them and he did.
- f. In February 2007 the applicant's parents returned to Sichuan for Chinese New Year. They discovered that the applicant was practising Yiguan Dao with his grandmother and stopped him attending the Yiguan Dao gatherings. They were worried for his safety and decided to send him overseas.
- g. Because of the applicant's grandfather's background his parents had difficulties obtaining a passport for the applicant. [In] 2007 they got a passport by bribing the police with money. They then arranged someone in Fujian to obtain a Student Visa to Australia for the applicant. The applicant departed China [in] November 2007 and arrived in Australia [in] November 2007 on a Student Visa.
- h. The applicant had difficulties on arrival in Australia as he had to find a job and did not speak English well. His parents were not able to financially support him here because they spent all their savings sending him to Australia. He had to terminate his study in May 2008.
- i. In April 2009 the applicant met a Yiguan Dao member who helped him locate the Yiguan Dao [temple]. [In] April 2009 the applicant became a formal member of the Yiguan Dao temple and has been actively and regularly attending since then.
- j. Around August 2010 the applicant met the second-named applicant who had been abandoned by her ex-husband. They started a de facto relationship. The couple have a child, the third-named applicant, born in [Australia].
- k. The second-named applicant's parents objected to the relationship because they wanted her to marry a rich person. The second-named applicant had studied at [an academy] and did not want the applicant to be involved with Yiguan Dao. She did not want people to know about their relationship.
- l. The applicant prayed to the Ming Ming God and Wuji Laomu and encouraged the second-named applicant to believe in Yiguan Dao. He persuaded her to let the third-named applicant become a member of Yiguan Dao [in] December 2011. The second-

named applicant then become a member of Yiguan Dao [in] December 2011. [They] had a second child.

- m. The applicant's grandmother and [Mr A] were arrested by the PSB [in] May 2011 when their secret Yiguan Dao temple was discovered. The applicant's grandmother was detained for two months and tortured in detention. She was released but passed away [in] July 2011. [Mr A] is still in prison. The PRC authorities continually harass the applicant's parents so they travel from one place to another.
8. The applicant submitted a copy of his passport, a copy of the second-named applicant's passport and the birth certificate for the third-named applicant. The second-named applicant arrived in Australia [in] June 2010. Her passport was issued in China [in] 2010.
9. The applicant submitted copies of Yiguan Dao baptism certificates for each of the applicants and his second daughter, and a letter from [Ms B] of the Tian Ci Holy Dao Association certifying that the applicant has been a member of the association since [date] April 2009, and that his first daughter was baptised [in] December 2011 and his wife baptised [in] December 2011.
10. The applicants appeared before the Tribunal [in] December 2013 and [in] March 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages. The Tribunal also heard evidence from a witness, [Ms B]. The applicants were represented in relation to the review by their registered migration agent.
11. The applicant raised a new claim at his Tribunal hearing that he and the second-named applicant will be required to pay compensation fees for having children outside of the Family Planning rules in China.

CONSIDERATION OF CLAIMS AND EVIDENCE

12. Having regard to the passports, birth certificate and oral evidence by the applicants, the Tribunal finds that the applicants are nationals of China.
13. The issue in this case is the credibility of the applicants' claim to be genuine members of the Yiguan Dao faith.

Yiguan Dao faith

14. Despite some concerns regarding aspects of the applicant's claimed religious beliefs and practices, overall the Tribunal found him credible in his presentation as a Yiguan Dao believer who actively and genuinely practices his faith. The Tribunal found the evidence of the witness, [Ms B], particularly persuasive in her description of her contact with, and observations of, the applicants in her role as [a leader].

Knowledge

15. The applicant demonstrated sound knowledge of the Yiguan Dao faith. He was able to provide information about Yiguan Dao, list its formal principles, and describe the structure of its tenets. He could also relate its beliefs and teachings to personal experiences and feelings in his daily life. While it was sometimes difficult for the Tribunal to follow or understand some of the applicant's more esoteric responses, such as *dirt accumulating on an uncleaned desk*

explaining the requirement to attend Temple, the Tribunal acknowledges that Yiguan Dao is reported to incorporate allegorical aspects of Confucianism, Taoism, and Buddhism.

16. The applicant was able to discuss the particular influences of the main religions upon Yiguan Dao. For example he mentioned Laozi (a Taoist philosopher) as stating “*One comes out of Dao and one creates two which makes three and all comes out of three.*” Readily available sources confirm that this is (or is a paraphrasing of) one of Laozi’s sayings or teachings. When asked what this means the applicant gave an example of money - that “*it doesn’t matter how many zeros there are, if you don’t have a one in front you have nothing*”. The Tribunal does not consider it has the philosophical expertise to judge this explanation right or wrong but simply accepts it demonstrates the applicant has his own personal understanding of the teaching from Laozi.
17. The Tribunal sometimes found the applicant’s responses vague and seeming to evade questions put to him. For example he stated that only Yiguan Dao followers could know the *Three Treasures* because they have “*received the disciplines from the master*”. When asked what disciplines he had received he in turn asked if the Tribunal was asking him about what he had learned. His initial comment was repeated to him and he answered indirectly “*[I]n the temple I underwent the ceremonies and received those from the master and the master told me the path leading to heaven*”. However the applicant stated he was restrained in answering fully on some topics by a secrecy imposed in the Yiguan Dao faith. Available country information, as referred to below, confirms there are aspects of beliefs and teachings and practices in Yiguan Dao which are kept secret from outsiders.

Motivation and Practice in China

18. The applicant gave simple but plausible responses to questions about why he adopted the Yiguan Dao. He stated it was because his grandmother ‘evangelised’ him. When asked what his grandmother told him of Yiguan Dao the applicant gave a somewhat obscure metaphorical narration. He stated “*Humans have to eat if they are hungry and if they feel cold they have to put layers of clothes on. And the water glasses, if we want to pour water into glass it needs to have a bottom to contain the water.*” He also stated that his grandmother told him that pursuing the *tao* leads to understanding that humans have a fixed self - the body, and a genuine self – enlightenment; that the bodies will receive short term enjoyments however when we are born we don’t bring anything with us and when we die we don’t take anything; that only enlightenment leads to heaven; and that we have to use the Three Treasures to solve difficulties and avoid unhappiness.
19. The applicant described how he practiced his religion in China by stating that they “*burned incense, chanted scriptures and kow-towed*”. While this is quite a brief description, in the Tribunal’s view it is an adequate summary of the few month experience the applicant had as a teenager with his grandmother and her friend in secret worshipping sessions in China.
20. When asked what attracted him to Yiguan Dao the applicant spoke in terms of wanting to pursue the truth and enlightenment which lead back to heaven. He then stated “*If you forgot to lock the door when you left home you would worry things may be stolen, but after you pursue this Tao and act upon the principles you won’t be worried.*”

Practice in Australia

21. The Tribunal found the applicant's evidence about his Yiguan Dao practice in Australia reasonably sound. When asked how he practiced Yiguan Dao in Australia the applicant's response was brief, stating "*I go to temple to participate in activities.*" However when asked about his activities he was able to be more descriptive stating they listen to the Tao and have all-day lessons on Sundays and sometimes initiation ceremonies and celebrate the Gods' birthdays. He added he played an important role in the ceremonies.
22. When asked when he last attended a gathering at the Temple he stated it was the Sunday prior to the hearing. When asked about this gathering his responses were somewhat confused. When asked what was said in the lessons on that day he stated he wasn't listening and then changed his evidence to state he didn't participate in the lessons because these were for beginners. He was then asked if he had ever listened to any lessons and he said yes. When asked about the last time he listened to lessons he then stated he doesn't need to listen to lessons and his main task is to help in the temple such as burning incense and cooking. The Tribunal considers his evidence not supportive of an interest in listening to the weekly lessons but that it does support he actively and regularly participates in the Temple.
23. The applicant's witness, [Ms B, from] Tian Ci Holy Dao Association, gave evidence at the hearing that the applicant had been regularly attending the Temple since about April 2009. She stated that he was introduced to the Temple by [a woman] who brought him there. She also stated that when they first met she felt he already had some familiarity with the Yiguan Dao faith, and that he was a person she regularly assigned ceremonial duties too. She spoke of admiring the applicant and his wife's characteristics in that they are respectful and nice to all people and honour their parents, important practices in the Yiguan Dao religion.

Finding

24. The Tribunal considers that the weight of evidence before it supports the applicant's claim to be a genuine and active practitioner of the Yiguan Dao faith. The Tribunal is satisfied that the applicant is genuinely a member of, and believer in, the Yiguan Dao religion.

Second-named Applicant

25. The applicant provided information about the second-named applicant's adoption of and practice of the Yiguan Dao faith in Australia. His evidence was supported by documents including the second-named applicant's Yiguan Dao Initiation certificate, and photographs of her participating in Temple activities. The witness, [Ms B], also spoke at hearing about the second-named applicant's regular attendance at the Temple since 2010, although less regular now she has given birth to a second baby. The witness also spoke in detail of the second-named applicant's personal progression to her Initiation ceremony and the overcoming of the second-named applicant's concerns about her and her family's safety in China. She spoke admiringly of the second-named applicant's character and willingness to help others at the Temple, in terms of this being an important part of the way her branch of Yiguan Dao practices its religion.
26. On the basis of the evidence before it the Tribunal accepts that the second-named applicant has adopted the Yiguan Dao faith in Australia. It is satisfied that her reasons for attending the Yiguan Dao temple and practicing the faith in Australia are for personal religion reasons due to the encouragement of the applicant and [Ms B], and not for the purposes of strengthening a refugee claim.

Third-named Applicant

27. The applicant gave evidence of formally initiating the third-named applicant into the Yiguan Dao faith. His evidence was supported by documentary evidence such as photographs of the third-named applicant with his mother at the Temple, and his Initiation certificate; and also by the witness [Ms B] who confirmed that the third-named applicant had undergone an initiation ceremony at the Temple.
28. On the basis of the evidence before it the Tribunal accepts that the third-named applicant has been formally initiated into the Yiguan Dao faith in Australia. The Tribunal accepts that her father arranged this because he genuinely wants her to be part of this faith and raised with the Yiguan Dao community. Given the third-named applicant is only [a small child] the Tribunal considers she is not capable of formulating a purpose or motive for participating in the Initiation ceremony. The Tribunal is therefore satisfied that the third-named applicant has not been initiated into the Yiguan Dao faith for the purposes of strengthening her refugee claim.
29. The Tribunal accepts the third-named applicant has been initiated into the Yiguan Dao faith with her parents' intention to raise her in this faith.

Country Information

30. Roughly translated, Yiguan Dao means unity way or the way of pervading unity and it claims to unite “the world’s five great religions’: Buddhism, Taoism, Confucianism, Islam, and Christianity”.ⁱ While secrecy dominates the nature of this religious sect ensuring a diverse range of practices, some common elements can be identified. Practices of the Yiguan Dao include:
 - Temples – temples are located on the top floors of private homes and believers are organised in temple cells of eight to 10 core followers per temple. Temples are organised in districts under the loose leadership of a master. The master presides over initiation ceremonies and guides the activities of the district faithful. He is treated with great respect. Due to the Yiguan Dao being organised as a secret sect, its members seek converts discretely.ⁱⁱ
 - Ceremonies – ceremonies are only open to initiated members. Initiation involves new members being taught the *Three Treasures* which is the core secret of the sect. The Three Treasures are a mantra, a hand position and the symbolic opening of a door in the body so the soul may depart from the proper exit and not from one of the body’s other orifices.ⁱⁱⁱ
 - Rituals – There are five rituals common to Yiguan Dao gatherings^{iv}:
 1. The Ritual of Saluting and Taking Leave of the Honourable Presence
 2. The Ritual for Presenting Incense
 3. The Ritual for Presenting Offerings
 4. The Ritual for inviting Spirits to the Altar
 5. The Ritual for Transmission of the Way/ The Rite of receiving the Way
 - Prayer/Kowtows – Religious activities include morning and evening prayer sessions but only the most devout carry them out daily. Believers are expected to attend at least on the full and new moon. Yiguan Dao praying involves very rapid kowtowing in a kneeled position while a cantor on the right announces the names of gods and a cantor on the left counts out the kowtows.^v

Treatment of Practitioners in China

31. The most recent reported instances of Yiguan Dao followers being adversely treated in China were the arrests of Yiguan Dao believers and destruction of Yiguan Dao temples in Fujian in 1993 and 1994. The Chinese Government has the authority to crackdown on unauthorised religious activities and according to one expert (Professor Philip Clart, Department of Religious Studies, University of Missouri-Columbia) writing in 2007, authorities do “crack down” on Yiguan Dao groups when they are discovered.^{vi}
32. Regarding the situation and treatment of Yiguan Dao practitioners in China, RRT information indicated in 2007, in general, that the religion is:
 - a proscribed religion in the People’s Republic of China, and was radically stamped out by the Communist government in the 1950s.
 - Yiguan Dao groups outside China (principally in Taiwan) try to make converts in the People’s Republic and re-establish the religion there. The province of Fujian is a centre of such activity due to the strong presence of Taiwanese-owned companies and joint ventures in this area.
33. The Department of Foreign Affairs & Trade in its Report 1274, dated 16 May 2011, reported that the post did not have definitive information about how the Chinese Government would assess the children of the Yiguan Dao followers. However, as Yiguan Dao was banned in mainland China in the 1950s and there has been no information to suggest that this ban had been lifted, the post would consider that Chinese authorities would regard Yiguan Dao followers along the same lines as other banned religious sects. The post noted that the PRC’s authorities’ treatment of unauthorised religious activities differed depending on the province and city, and it is difficult to assess how Chinese authorities would deal with individual cases of this largely unknown religious sect. The post noted that Yiguan Dao’s origins as a secret religion with an organised structure would raise the suspicion of authorities if Yiguan Dao followers were known to exist in mainland China.

Well-founded fear

34. In view of the available country information the Tribunal accepts that Yiguan Dao is a prohibited religion in China. It accepts that practitioners of Yiguan Dao would be subject to punishments applied to members of proscribed religions and sects by the Chinese authorities, such as arrest, imprisonment, and physical mistreatment.
35. The Tribunal is satisfied that there exists a real chance the applicants’ religious faith would come to the attention of the Chinese authorities if they returns to China, through their self-identification as Yiguan Dao followers, their regular practice of the faith and their contact and dealings with other Yiguan Dao practitioners, in both Australia and China.
36. The Tribunal finds that, as believers and practitioners of a prohibited religious faith the first-named applicant and second-named applicant are at risk of being arrested, imprisoned and physically mistreated by the authorities in China. The Tribunal is also satisfied there is a real chance the third-named applicant will be subjected to serious harm in the form of physical mistreatment and detention, at least short term, in view of her parents’ declaration she belongs to the Yiguan Dao faith, and given that she will be present with her parents in the practice of their faith.

37. Accordingly the Tribunal is satisfied there is a real chance the applicants will be seriously harmed in China because of their religion.
38. Given their fear is of the Chinese authorities the Tribunal is satisfied that they will not have effective protection in China from the harm they fear, and that they will not have any relocation option.
39. There are no indications that any of the applicants have a right to enter and reside in any third country and the Tribunal accordingly finds they have no such right. They are therefore not excluded from Australia's protection.
40. The Tribunal is satisfied that the applicants have a well-founded fear of persecution in China for reason of their religion.
41. Given these findings the Tribunal considers it unnecessary to assess the applicants' claim regarding their breach of the Family Planning rules in China.

CONCLUDING PARAGRAPH

42. For the reasons given above the Tribunal is satisfied that each of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants satisfy the criterion set out in s.36(2)(a).

DECISION

43. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.

Melissa McAdam
Member

ⁱ Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.424

ⁱⁱ Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.425

ⁱⁱⁱ Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, pp.424-425

^{iv} Jordan, D.K. & Overmayer, D.L. 1986 'The Flying Phoenix: Aspects of Chinese Sectarianism in Taiwan' Princeton University Press p. 227

^v Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, Murray R, 1994, *The Other Taiwan: 1945 to the present*, East Gate, NY, p.435

^{vi} Clart, P. 2007, Email to Research & Information 'Re: Yiguan Dao in China', 13 October)