

0906451 [2010] RRTA 73 (17 February 2010)

DECISION RECORD

RRT CASE NUMBER: 0906451

DIAC REFERENCE(S): CLF2007/132007 CLF2009/68059

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Brook Hely

DATE: 17 February 2010

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), arrived in Australia [in] November 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] May 2009. The delegate decided to refuse to grant the visa [in] July 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] August 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department and Tribunal files relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. [In] May 2009 the applicant lodged with the Department an application for a Protection (Class XA) visa. According to his application form, the applicant was born [in] 1965 at Fuqing City, China, and is a Chinese citizen of Han ethnicity. He holds a Chinese passport which was issued [in] July 2007 by Exit and Entry Administration, Ministry of Public Security, Fujian. He was married [in] February 1980 in Fuqing City to [name deleted: s.431(2)], who remains in China. He has one son, [name deleted: s.431(2)], who was born [in] 1991 and who remains in China. He also has one daughter, [Ms A], who was born [in] 1991 and who travelled to Australia [in] August 2007 on a student visa. He also has four brothers and two sisters, all of whom live in China. Both of his parents are alive and residing in China.
21. The applicant claimed in his application form that he was the owner of a pig farm in Dongzhang in the Fujian province, from December 2004 until April 2007 when he claims that his farm was dismantled by the authorities (discussed below). Prior to this he claims to have worked as a farmer from 1979 until purchasing his farm in December 2004.
22. The applicant stated in his application form that he legally departed China [in] November 2007 from Bai Yun and he provided details of his exit permit. He travelled to Australia on a student guardian visa on the basis that his daughter was studying in Australia. He stated in his application form that he had difficulties in obtaining his travel documentation, although he did not provide further particulars.
23. The applicant provided with his application four photographs showing what were claimed to be the ruins of his pig farm in China after it had been dismantled. He also provided a copy of his passport, as well as a detailed statement setting out his claims to protection. According to that statement:
 - In December 2004, the applicant borrowed RMB500,000 to start up a pig farm in response to government incentives to do so. The farm was located in [Village A], Dongzhang Town. Due to a lack of government planning, waste from pig farms in the area had to be dumped near the Dongzhang Reservoir, which polluted the reservoir.
 - On 25 March 2006, the People's Government of Fuqing City made plans to build bio-gas pools, to reduce the pollution of the reservoir caused by pig farming. The applicant, as well as other pig farmers, actively responded to this plan and he spent a further RMB 200,000 in building a bio-gas pool.

- On 20 March 2007, a government environmental report was issued which revealed that, despite some improvements, the Long River was still the most polluted water system in the Fujian Province. The Fuqing City government decided to dismantle 351 pig farms within 500 metres of the Long River, including the applicant's farm.
- The government prepared a formula for the payment of compensation, according to which the applicant would receive RMB 50,000 in compensation for his land (although no compensation for his [number] pigs). By this stage his farm had only been in business for two years and he still owed over RMB 300,000 to the bank. He did not consider the government's proposed compensation to be reasonable and so he refused to have his farm dismantled.
- [In] April 2007, the cadre of [Village A] responsible for dismantling the pig farms, [Mr A], came to the applicant's pig farm with a group of people requesting that he dismantle his farm himself. The applicant refused, on the basis of inadequate compensation. [Mr A] responded angrily, saying that there was no room for negotiation. They quarrelled vehemently and [Mr A] then made a call on his mobile telephone. Thirty minutes later a police car arrived and the applicant was taken to the Public Security Bureau of Fuqing City.
- The applicant was then interrogated and beaten by the police. He was charged with disrupting public service and was detained for seven days. Whilst in detention he did not get sufficient food and the officers often beat him without reasonable cause, causing him to suffer serious physical and mental injuries.
- When he was released and returned home, his wife told him that after he had been taken to the police station [Mr A] had brought more than ten people with an excavator and trucks to take his pigs and dismantle his farm. [Mr A] gave his wife RMB 40,000, saying that he had deducted RMB 10,000 for the cost of hiring the excavator and trucks to dismantle the farm.
- The applicant appealed for justice to the People's Government of Fuqing City a few times, but received no reply.
- [In] May 2007, the applicant organised 25 pig farmers to travel to the People's Government of Fuqing City to petition for justice. They carried banners with slogans saying 'Oppose to dismantle Pig Farm by force' They were then surrounded by police and arrested. The applicant was interrogated and charged with organising an illegal parade and disturbing the public peace. He was detained for 30 days.
- The applicant says that the above experiences have made him lose confidence in the Chinese government, which he considers does not provide justice or sufficient protection of human rights.
- [In] August 2007, the applicant's daughter came to Australia to study. The applicant then travelled to Australia to accompany her. It was after he was in Australia that he learned that people like him could apply for a protection visa in respect of the persecution he had suffered in China. He also stated that he feared returning to China.

Tribunal Hearing

24. The applicant appeared before the Tribunal [in] October 2009 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's daughter, [Ms A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
25. The following is a summary of the evidence given at the hearing.

Applicant's personal background

26. The applicant stated that he was born in [Village B], Dongzhang, Fuqing County, Fujian Province ('the village') [in] 1965. He initially stated that he lived in the village his entire life until coming to Australia. However, later in his evidence he stated that he worked for approximately two years in Shandong Province in China between 2000 and 2003, making pancakes for a living prior to his return to the village to purchase his pig farm.
27. The applicant stated that he went to primary and secondary school in Dongzhang, finishing school in around 1978. He then worked in farming for several years, before moving to Shandong to work for two years and then returning to the village. He stated that his parents are both still alive and living in the village, although they are now very old and no longer working. His parents also lived with him in a large house which was separated into three smaller houses. The applicant also stated that he had six brothers and two sisters, although his eldest brother had died. Some of his brothers lived with him in the same house in the village as his parents, although none had worked with him on his pig farm. He stated that he married his wife, [name deleted: s.431(2)], in 1989 and they had a daughter in 1991 and a son in 1992.

The applicant's pig farm

28. The applicant stated that he purchased his farm in December 2004. At the time it had not previously been used for pig farming and he constructed the necessary buildings and purchased pigs to commence the business. He stated that the size of the farm was [details of farm and pigs deleted: s.431(2)]. He stated that the farm was located approximately [distance deleted: s.431(2)] from the Dongzhang water storage, which he described as being larger than a big lake.
29. When asked why he started pig farming, the applicant stated that this was because the government had been encouraging people to move into pig farming and had provided incentives to do so. The Tribunal asked the applicant about the details of these incentives. He stated that pig farmers were eligible for interest-free loans and were exempt from paying tax. The Tribunal asked whether he received any subsidies from the government in relation to his pig farming. He stated that the government gave him RMB 300,000 to purchase the farm, but he denied receiving any other subsidies.
30. The Tribunal asked the applicant about his farming methods. He stated that he raised the pigs until they weighed approximately 100 kilograms and he would then sell them to a food processing factory in Douhua County. He said that the pigs were usually approximately five months of age at the time of being slaughtered. He also stated that he worked in the farm alone. The Tribunal asked the applicant whether he was ever helped on the farm by his

brothers or children. He stated that his brothers were all married and had their own families to look after, although his son occasionally lent a hand on the farm on weekends.

31. The Tribunal asked the applicant whether he had ever had any documents proving his ownership of the farm. He stated that he did not. When pressed by the Tribunal on this issue, he stated that this was because he had constructed the farm himself and because the government incentives at the time to encourage pig farming meant that there had not been complicated processes to go through to get approval to construct a pig farm. He also stated that everyone in his village knew that it was his farm so there was no need to have written confirmation. The Tribunal asked the applicant whether he had any documents relating to his bank loan for the farm. He stated that he had such documents in China which he was able to provide to the Tribunal.
32. The Tribunal asked the applicant whether he ever had any insurance for his pig farm. He stated that he did not. In the villages, he said, farmers just farm their pigs; they do not have or even know about insurance.
33. The Tribunal asked the applicant about the construction of bio-gas pools referred to in his application. He stated he built a bio-gas pool about the size of the Tribunal hearing room and twice as high. He would put the pig faeces into the pool to generate bio-gas.

Problems with the Chinese authorities in relation to his pig farm

34. The Tribunal asked the applicant about what problems he experienced with the Chinese authorities in relation to his pig farm. He stated that he used to dump waste from his farm into the Dongzhang Water Storage because the government had not developed a proper waste management plan. In 2006, testing of the water by the authorities showed that it was severely polluted. The Fuqing government announced that it would demolish 351 pig farms within 500 metres of the Long River, which included the applicant's farm.
35. The Tribunal asked the applicant when the government announced that it would demolish the 351 pig farms. The applicant initially stated that it was in June 2007, although later said that he had been confused and he changed his answer to March 2006.
36. The applicant stated that, under the formula for compensation decided by the government, he was not entitled to receive any compensation for his pigs and was only to receive RMB 50,000, calculated at [amount deleted] yuan per square metre of his farm. The Tribunal asked the applicant who told him what would happen to his farm and whether he received any documents. He stated that he did not receive any documents. In 2006 a village official came and told him that his farm was to be demolished, although this official did not know the details of what compensation he was to be paid. The applicant stated that he did not protest at this time, as he had not yet learned of the inadequate level of compensation that he was to be paid. The Tribunal clarified with the applicant that the first time he learned of how much compensation he was to be paid was when he was told by the Fuqing official in charge of the demolition project, [Mr A]. He initially stated that this took place in July 2007. However, later in his evidence he stated that this took place in March 2007 just prior to his first period in detention.
37. The Tribunal asked the applicant whether he petitioned against the demolition of his farm. The applicant's evidence on this point was somewhat confused, although he appeared to state that initially he did not as he had not yet been told of the amount of his compensation. When

he was told by [Mr A] of the amount he was to be paid, he says that he refused to accept it. He stated that [Mr A] came onto his property with several other men and told him that he had to demolish his farm because it was polluting the river. The applicant refused and [Mr A] then telephoned the police. He was then taken away by the police to serve seven days in administrative detention in Fuqing for disrupting official business. He said that he was beaten in the back by the police officers whilst in detention.

38. The Tribunal asked the applicant whether his family were notified of his detention. He stated that his brother telephoned his wife. When asked how his brother knew of his whereabouts, he stated that everyone in the region knows where persons are detained in Fuqing. He said that his brother visited him once whilst in detention and that his wife visited him twice. He also said that this was his first time in custody or detention.
39. The Tribunal asked the applicant what happened when he returned to his farm. He said that his wife had told him that later that day after he was taken away by the police, a group of men came with trucks and machinery to take his pigs and demolish his farm. He also said that they gave his wife RMB 40,000, instead of RMB 50,000, because they deducted the cost of the demolition from his original compensation amount.
40. The Tribunal asked the applicant whether he knew of other pig farms that were demolished. He stated that his was the only farm demolished from his village. He said that there must have been others whose farms were demolished, but he did not know the details as he had been busy with his own farm.
41. The applicant said that he was very angry with the inadequacy of the compensation paid, so he organised a protest. He said that he knew of other pig farmers who were upset over the demolition of pig farms, who joined his protest. He said that these farmers were not from his village, but from surrounding villages. He also said that he did not know all of those who attended the protest, as he had just told some farmers, who had then spread the word to others. The Tribunal asked the applicant whether he had organised a meeting prior to the protest and he said that he had not. He said that he had simply spread the word to meet at Fuqing at a particular time to conduct the protest. He stated that the protest was held [in] August 2007. When the Tribunal pointed out that he had stated in his application that the protest was held [in] May 2007, he clarified that the date in his application was incorrect and should have read [in] August 2007.
42. The Tribunal asked the applicant why he had stated earlier that he was not familiar with whether other farms had been demolished, yet now claimed to have organised a protest of other farmers whose farms had been demolished. He stated that he had not know the exact details of their demolition at the time, but by the time of their protest all of their farms had been demolished in the same manner as his. He did not know if any of the men had been detained for refusing to accept the compensation amount offered.
43. The Tribunal asked the applicant about what happened to him and his fellow protesters. He stated that he and five others were arrested and the rest ran away to avoid capture. He said that he was questioned and then detained for 30 days, as he was accused of having organised the protest. The other five men were detained for shorter periods, with some receiving 6 -7 days and the others receiving approximately 10 days. He said that his wife visited him twice during his period in detention, which was at the same place as his prior period of detention.

44. The Tribunal asked the applicant whether he organised any future protests or action against the authorities after his release from detention. He stated that he did not. He said that he gave up the matter because he had no further avenues of appeal. He stated that, in China, officials cover for one another so there was no point in appealing the matter further.

Travel to Australia

45. The Tribunal asked the applicant about how he came to Australia. He stated that his daughter travelled to Australia to study and he applied for a student guardian visa. He confirmed that he did not have any difficulty obtaining permission to travel or obtaining a new passport.
46. When asked why he had wanted to come to Australia, he stated that it was because of the corruption of the Chinese government, as evidenced by the treatment he received in relation to his pig farm.

Repayment of loan

47. The Tribunal asked the applicant whether his wife had suffered any harm since his departure from China. He stated that she had not. However, he said that the government will sell his house in China if he does not repay the loan of RMB 300,000. The Tribunal pointed out that it had been over two years since he left China and no action had been taken in relation to his house. The applicant stated that this was because he was in Australia. He said that, if he returns to China, the bank will require him to repay the entire loan of RMB 300,000 in one lump sum. The Tribunal asked the applicant why he was not able to repay the loan periodically, such as monthly. He said that bank loans in China did not work this way and that loans must be repaid in one lump sum.
48. The Tribunal asked the applicant whether he had repaid any of the loan since December 2004. He said that he had not, as in China loans are repaid in one lump sum rather than periodically. He said that the bank was waiting for him to return to China so that it can auction his house.
49. The Tribunal stated that it found it difficult to understand why the bank would wait almost five years after the loan was first taken out without taking any action, during which time the applicant did not repay any of his loan. The Tribunal also stated that it found it difficult to understand why the bank had taken no action in the past two years since his departure from China and why the bank had to wait until his return to China before it could auction his house. The applicant stated that in China the men decide everything, so the bank had to wait until he was back in the country rather than dealing with his wife.
50. The Tribunal raised with the applicant that he arrived in Australia in November 2007, yet did not apply for protection until May 2009. He stated that this was because when he arrived he did not speak English and did not understand that he was able to apply for a protection visa.

Future fears

51. The Tribunal asked the applicant what he fears will happen if he returns to China. He stated again that his house will be auctioned if he returns to China as he is unable to repay the RMB 300,000 owing on his loan. He stated that he had particular concerns for his son, who is still in secondary school. He stated that his son had excelled in his studies and had a promising

future, but if he loses their family home his son will have nowhere to live and his studies and future prospects will suffer.

52. The Tribunal asked the applicant whether his fear of returning to China was due to his fear of losing his house. He stated that it was. He emphasised several times his concern that this would make him and his son homeless, which would severely impact on his son's education and future prospects
53. The Tribunal asked the applicant whether he had any other reason to fear going back to China. He stated that he does not want to deal with corrupt Chinese officials again. He said that he was concerned that the officials will keep causing trouble for him because he organised protests in the past. When the Tribunal pointed out that this was over two years ago, he stated that Chinese officials are like this and do not forget.
54. The Tribunal asked the applicant whether he intended to organise any more protests in China. He said that he did not because there were no further places to which to appeal. He also stated that he did not intend to take any further action in relation to what happened to his farm, stating that it would be futile to do so.
55. The Tribunal asked the applicant whether there was anywhere else he could live in China where he would be free from harm. He stated that he could not leave his home village as he needed to care for his elderly parents and because his son would not be eligible to study in another part of China.

Evidence of the applicant's daughter

56. The Tribunal then took evidence from the applicant's daughter, [Ms A]. She confirmed that the applicant had been a pig farmer in China prior to her coming to Australia in 2007 on a student visa.
57. The Tribunal asked [Ms A] about the problems her father had experienced with the Chinese authorities in relation to his pig farm. She stated that in April 2007 the authorities asked them to demolish their farm. She said that her father refused because he had spent a lot of money on the farm. She said that she was not present when this occurred, although was told afterwards by her mother that a group of men came and took her father into detention because he refused to accept the government's offer of compensation. She said that the following day she was present at the farm when the men came back and demolished the farm. She said that she was not living with her parents at the time, as she was at boarding school, but she visited the family home approximately once per month.
58. The Tribunal asked how long the applicant was detained when he was first taken away by the authorities. [Ms A] stated that she found it hard to recall, as it was so long ago, but believed it was for 15 days. She did not visit him in detention and could not remember whether her mother had visited him.
59. The Tribunal asked [Ms A] about when the applicant was detained the second time, following the protest that he organised. She stated that this occurred 'very close' to his release from detention on the first occasion. When pressed by the Tribunal, [Ms A] stated that it was only a matter of weeks, not months, and she agreed that three or four weeks after his release sounded about right

60. The Tribunal asked [Ms A] who else was involved in the protest. She stated that there were some other pig farmers from their village, as well as other farmers from surrounding villages. However, she stated that she was only 15 or 16 years old at the time and she did not play any role in organising the protest.
61. The Tribunal asked about the applicant's period of detention following the protest. She stated that this was around one month. She was not sure whether her mother visited the applicant in detention, as she was mostly at boarding school at the time.
62. The Tribunal showed [Ms A] the photographs provided with the application and she confirmed that the photographs depicted her father's pig farm after it was demolished.

Invitation to provide documents

63. [In] October 2009, the Tribunal wrote to the applicant confirming that he had stated at the hearing that he would provide to the Tribunal documents relating to his loan of RMB 300,000 in relation to his pig farm. The Tribunal confirmed that it would give the applicant until [a date in] November 2009 to provide these documents.

Second Tribunal Hearing

64. [In] November 2009, the Tribunal held a second hearing in relation to this application. The hearing was again conducted with the assistance of an interpreter in the Mandarin and English languages.
65. The Tribunal confirmed with the applicant that he had received a copy of the audio tapes of the first Tribunal hearing. The Tribunal asked the applicant whether there were any aspects of his evidence that he wished to amend. The review applicant stated that he had had many things on his mind during the first hearing and the incidents that he was talking about were sad for him to think about, which had caused him to make one mistake. He stated that the demonstration that he arranged outside the municipal government in Fuqing was held [in] May 2007, not [in] August 2007 as he had said in his evidence at the previous hearing.
66. The Tribunal asked the applicant whether there were any other pig farmers in his village. The applicant stated that there was one other farmer in his village who raised pigs, but he only raised a small number of pigs. The Tribunal asked whether this man's farm was also demolished and the applicant stated that it was demolished around the same time as his farm. The Tribunal put to the applicant that, at the first Tribunal hearing, the applicant had said that his was the only farm in his village to be demolished. The applicant stated that he had meant that his farm was the first farm to be demolished, but there were other farms in the village that were also demolished.
67. The Tribunal asked the review applicant to clarify when the government report was made public about the pollution of the river and the period of time between this report and when he was first told that his farm was to be demolished. The applicant stated that the report was released in March 2007 and he was told one month later, in April 2007, that his farm was to be demolished. The Tribunal pointed out that, at the previous Tribunal hearing, he had said that the government report had been released in March 2006 and that the village cadre came and informed him later that year that his farm was to be demolished. The applicant stated that when he was arrested and put into detention he was beaten up by the police which makes

it difficult for him to think clearly. He also said that, because the whole event was so sad, his brain was not able to remember the events clearly.

68. The Tribunal asked the applicant to clarify the circumstances surrounding when he was informed that his farm was to be demolished. The applicant stated that he was told by a village cadre, [name deleted: s.431(2)], that his farm was to be demolished, but he did not know at that time what the compensation would be. Later, in around March or April 2007, a government official named [Mr A] came and told him that his farm was to be demolished. He was told that the compensation would be [amount deleted] Yuan per square metre and that he would not receive any compensation for his pigs. The Tribunal asked why the total of his compensation amount was only RMB 50,000. If his farm was [size] square metres and the compensation amount was [amount] Yuan per square metre, the Tribunal calculated that he should have been entitled to RMB 63,960. The applicant stated that he did not know why this was the case, but he suspected that an amount was being deducted by the government officials for them to keep for themselves.
69. The Tribunal asked the applicant whether he had ever received anything in writing in relation to the demolition of his farm. He stated that, at that time, he did not want them to demolish his farm but they demolished it by force. The Tribunal repeated its question. The applicant stated that, at that time, they did not have any written notice; they would just come to tell him to clear out and demolish his farm and that they wanted him to do it himself. He said that he told them that he wanted proper compensation. The Tribunal stated that it had some difficulty accepting that there was a program for demolishing farms and payment of compensation and not a single piece of paper was ever given to him about it. The applicant repeated that the officials came to tell him about it personally rather than in writing. The Tribunal again expressed its surprise that there was never a single piece of paper given to him about either the demolition or the compensation. At this point, the applicant changed his evidence and stated that he was given a contract. The Tribunal asked when this occurred and he replied that it was in March or April of 2007. He said that the contract said that his pig farm had to be dismantled and, if he did not do it himself, the government would come and dismantle the farm and charge him for it. The contract also said that if he demolished the farm himself he would get a 10% bonus.
70. The Tribunal asked why he had never mentioned this contract before. The applicant stated that he thought the Tribunal was only asking about whether he received a written notice. The Tribunal asked whether he still had a copy of this contract and the applicant stated that he gave his copy to his migration agent. He could not remember when this occurred, but he believed that it was approximately two or three months earlier and that it was prior to the previous hearing. He also stated that the name of his agent was [Mr B], however he stated that he had asked his daughter to handle all of the matters relating to this application so he did not know any further details. The Tribunal pointed out that the applicant did not have a migration agent appointed in connection with this review. The applicant stated that he was not familiar with the details as this was all handled by his daughter. The Tribunal asked the applicant to clarify whether there were any other documents that he gave to [Mr B]. The applicant indicated that he gave [Mr B] a copy of this contract, as well as the loan document requested by the Tribunal at the first hearing. The Tribunal clarified that there were no other documents which he gave to [Mr B].
71. The Tribunal asked the applicant to describe the layout of his farm, including how much of the farm was taken up with buildings and how much of it was left open to grassland. The applicant was somewhat unclear in his attempted responses, so the Tribunal asked the

applicant to sketch a diagram depicting the layout of his farm. The Tribunal also asked the applicant what the farm looks like now. The applicant stated that it is more or less the same as it was two years ago, being just littered with bricks and rubble. The Tribunal asked why he was not able to use the land for some other type of farming. The applicant stated that he is living in Australia, his wife works at another place, his son studies in Fuqing City, and his father is old. The Tribunal asked why he was not able to use the land to start up a different type of farming if he was to return to China. The applicant stated that there was no other land or place to grow things and he still owed the bank RMB 300,000. He said that, if he returns to China, the government will auction his house and he will become homeless and will be unable to look after his parents.

72. The Tribunal asked the applicant whether he received any documentation in connection with his detention. He stated that he received some kind of detention order or certificate which said that he was detained for disrupting public work or public affairs. The Tribunal asked whether he still had a copy of this certificate and he said that he had asked his daughter to arrange a copy from his wife in China. However, he said that he was not aware whether his daughter gave a copy of the certificate to [Mr B]. The Tribunal pointed out that this document would be very important for his review and it was surprised that the applicant had not followed up with his daughter to ascertain whether a copy of the certificate had been obtained from China and, if so, whether it had been provided to the Tribunal. The applicant again indicated that he was not aware whether his daughter had provided a copy of the certificate and that he had assumed that she would have done so.
73. The Tribunal asked the applicant how many people were housed in the detention centre. The applicant stated that there were five in his group. The Tribunal asked approximately how many people were housed in the entire detention centre. The applicant stated that he did not pay attention to this because he was locked inside one area for the entire time. The Tribunal clarified through a number of questions that it was the applicant's evidence that he was locked inside a single room for the entirety of his stay in detention, on both the first occasion for seven days and on the second occasion for 30 days. The Tribunal asked whether he was required to perform any type of labour during his stay in detention on either occasion. The applicant stated that he was not. The Tribunal indicated that it was its understanding that detainees are often required to perform labour during administrative detention. The applicant stated that he was not aware whether other detainees were required to perform manual labour, but he was not.
74. The Tribunal asked the applicant about the period of time between his first detention and his second detention. The applicant stated that he was first detained [in] April 2007 for seven days and that he was subsequently arrested and detained [in] May 2007. The Tribunal pointed out that he had stated at two separate times in his evidence in the previous hearing that the date of the protest was [in] August 2007. The Tribunal also pointed out that he had confirmed that this was the correct date even when the Tribunal pointed out that his statement had recorded the date of the protest [in] May 2007. The Tribunal indicated that it had some difficulty accepting his evidence at this hearing that the correct date of the protest was, in fact, [in] May 2007. The applicant stated that he was beaten by the police and it was a sad thing for him to remember, so his mind was not thinking straight at the first hearing.
75. The Tribunal asked the applicant whether he ever submitted a formal written petition to the government in relation to the demolition of his farm and the amount of compensation that he received. The applicant stated that he visited the Fuqing City government and complained to them personally, but he was ignored. The Tribunal noted that there was process in China for

lodging written petitions with the government and asked why he did not pursue that avenue of complaint. The applicant indicated that he did not pursue the petition process because he had been ignored when he complained verbally at the Fuqing City government.

76. The Tribunal asked the applicant about how he organised the protest [in] May 2007. The applicant initially indicated that he met a number of other pig farmers at the animal feed factory and discussed the matter with them. He said that they all went back to talk to their friends and families and later they organised a march. Upon further questioning, the applicant indicated that he had actually gone to speak with different pig farmers individually to arrange the protest. Whilst the applicant's evidence in relation to how he organised the protest was somewhat unclear, it appears that he claims that the protest was organised through word of mouth and that there was never any meeting in relation to the protest prior to it being held.
77. The Tribunal asked the applicant what he was hoping to achieve from the protest. The applicant stated that he wanted to receive justice and reasonable compensation. The Tribunal again asked why the applicant had not considered pursuing his complaint through the petition system. The applicant stated that the government officer would not even bother to look at petitions. The applicant also indicated that he was very angry over what had happened to him and had wanted to take some action.
78. The Tribunal asked the applicant about the conditions of his detention during the second time that he was detained. The Tribunal confirmed with the applicant that he was not allowed out of his room for the entire 30 days of his detention, except to go to the toilet. He also stated that he shared the room with five other members of his protest.
79. The Tribunal asked the applicant whether he received any visitors during his times in detention. He indicated that he received two visits from his wife and a visit from one of his brothers during his first period of detention and that he received two visits from his wife during his second period of detention. The Tribunal asked the applicant where these visits were conducted within the detention centre. The applicant stated that he was inside the detention centre and they were on the outside. The Tribunal asked the applicant to clarify whether he remained in his cell during these visits. The applicant again stated that he was inside and they were outside on the other side of an iron gate. The Tribunal stated that it could not understand how he could be kept in one room for his entire period of detention and that his visitors were able to talk to him through a gate from the outside of the detention centre. The Tribunal asked whether there was a gate between the inside of the detention centre and the outside. The applicant again stated that he was inside and they were outside. The Tribunal asked whether he could see people walking around outside from his cell. He stated that it was not a big area and he could see outside. The Tribunal said that he must have been inside some sort of building. The applicant stated that in the compound there were buildings and then outside there was a gate that visitors could come to. The Tribunal asked whether visitors needed to make an appointment or could just turn up at the gate. The applicant stated that they had to talk to the guard and if he allowed them, then they could see him. The Tribunal asked how far it was from the gate to the rooms. The applicant stated that it was not far, maybe 20 metres. The Tribunal asked how he could see through from his room inside the building outside to the gate. The applicant then stated that the guard had allowed him out of his cell during these visits.
80. The Tribunal asked the applicant whether he discussed with his fellow protestors the idea of holding any further protests. The applicant indicated that they sometimes talked about how

cruel the government was, but he was not aware whether they had organised any other protest. The Tribunal asked him how he could not be aware whether his fellow protestors had organised another protest. The applicant stated that China is a big country so he was unable to say whether other pig farmers had organised a protest. The Tribunal clarified that it was not asking about the rest of China, but was only asking about the other pig farmers whom he knew. The applicant stated that he did not think so.

81. The Tribunal asked the applicant why he considered that he was still of interest to the authorities in China, given that the protest he held was an isolated event over two years ago. The applicant stated that he had expressed discontent at the government and organised the march so the government is not happy with him. He stated that if he returns to China he will have to repay the loan of RMB 300,000 and it is not possible for him to do so, so his house will be sold and his son and his father will be left homeless. The Tribunal stated that it was aware of his concerns about his house being auctioned, but it was interested to know specifically what concerns he had in relation to what the government would do to him. The applicant stated that he feared that anything he wants to do the government will not allow. He said that even if he wants to build a house, the government will not allow him and that when his son graduates from school, the government will not allocate jobs to him.
82. The Tribunal pointed out that the applicant had had no difficulty getting the necessary documents from the government when applying for his student guardian visa, such as having his passport issued. The applicant stated that his problems with the government had been only with the local officers at the county level and that he had applied for his passport from a different part of the government. The Tribunal indicated that an inference could arguably be drawn that he was not of any adverse interest to the authorities or else they would not have issued his passport and the other relevant documentation to facilitate his departure from China. The applicant indicated that he had not had any difficulty because he did not have a criminal history.
83. The Tribunal then took oral evidence from the applicant's daughter, [Ms A]. The Tribunal asked [Ms A] to draw a diagram depicting the layout of their family's pig farm. Whilst [Ms A]'s diagram did not bear a particularly close correlation with the diagram drawn by the applicant, her evidence was consistent in relation to the fact that all of the pigs were kept in pens under a roof which were divided into partitions, that the male pigs and female pigs were separated and that the pigs were not allowed to roam the surrounding grasslands.
84. The Tribunal asked [Ms A] about the assistance she provided the applicant in organising necessary documents to submit to the Tribunal. [Ms A] stated that she and the applicant had explained their situation to a migration agent in Sydney named [Mr B]. She also stated that she had arranged a copy of the applicant's loan document and detention notice from China and given these documents to [Mr B]. The Tribunal asked when she had given these documents to [Mr B] and she stated that it was after the first hearing when the Tribunal had requested a copy of the applicant's loan documents.
85. The Tribunal resumed taking evidence from the applicant. The Tribunal asked why he was not able to relocate to another part of China. The applicant stated that his son is studying at high school and his father is 81 years old. He said that, according to Chinese custom, it is difficult to move to another part of China and no one would rent him another place to live because of his age and it would be considered bad luck. He also stated that it would be hard for him to find a job in another part of China. The Tribunal pointed out that he had previously lived and worked for two years in Shandong Province. The applicant stated that

his father would not be able to move with him to Shandong as no one would rent a house to him. He also indicated that he did not earn very much money when he was living in Shandong. The Tribunal pointed out to the applicant that, whilst he is living in Australia, he is not looking after his father so how would it be any different if he was living in another part of China. The applicant stated that his son sometimes looks after his father when he returns to the home village on weekends.

86. The Tribunal referred to the copy of the loan contract that had been submitted to the Tribunal. The Tribunal noted that it was aware that document fraud was a significant problem in China, especially in the Fujian Province. The Tribunal asked the applicant whether there was anything he wished to say about this issue or about why the Tribunal should be satisfied that the loan document was authentic. The applicant insisted that the loan document was genuine. He indicated that he was able to give pigs an injection to prevent them from getting the flu and other types of illnesses.
87. The Tribunal asked the applicant whether there were any other matters that he wished to raise with the Tribunal in relation to his application. The applicant stated that if he was returned to China he would have to repay RMB 300,000 which he was not able to pay. He said that his son was studying at the moment and he would lose the family home. He said that the effect would be so great because his father is 82 years old and would have nowhere else to go and would become homeless and starve to death. He said that he would be accused and scolded by thousands of people and would lose face to the people of his village. He says that, as a father, he would not be able to face his own son or his parents if they were to become homeless. He said that he might as well bang his head and kill himself.
88. The Tribunal indicated that it was interested in speaking with the agent who assisted the applicant to submit relevant documents to the Tribunal, to ascertain the whereabouts of the additional documents to which he had referred in his evidence. The Tribunal emphasised that it would only speak with [Mr B] if the applicant gave his consent, which he was free to refuse. The applicant confirmed that he consented to the Tribunal telephoning [Mr B] during the hearing.
89. The applicant telephoned [Mr B] using the telephone number provided by the applicant's daughter. The Tribunal asked [Mr B] whether he was a migration agent and he stated that he was not, but his wife was a migration agent. [Mr B] confirmed that he knew of [the applicant] and that he had assisted [the applicant] to submit relevant documents relating to his application. At this point, [Mr B] handed the telephone to an associate who was more familiar with [the applicant]'s circumstances. That associate ([name deleted: s.431(2)]), confirmed that [in] November 2009 he had submitted a copy of [the applicant]'s loan document, together with an English translation and an Australian Federal Police criminal record check. He also confirmed that he had submitted copies of photographs at the time that the applicant lodged his review with the Tribunal. The Tribunal confirmed with him that, aside from those documents, no other documents had been provided to him or [Mr B] by the applicant or his daughter.
90. The Tribunal indicated to the applicant that it was having some difficulty accepting that there was truly a detention centre certificate and contract relating to the demolition of his farm, given that these had never been provided to the Tribunal or mentioned to the Tribunal prior to this hearing. The Tribunal asked the applicant whether there was anything he wished to say about this. The applicant stated that he would talk to his daughter about it to follow up where these documents were. The Tribunal asked the applicant how much time he would need to

provide these documents and the applicant agreed that two weeks should be sufficient. The applicant asked the Tribunal what documents the Tribunal required. The Tribunal stated that it was a matter for the applicant to decide which documents would be of assistance in supporting his application. However, the Tribunal noted that the applicant had referred to a contract relating to the demolition of his farm as well as to a detention centre certificate and that these documents appeared to be relevant to his application. The Tribunal indicated that the applicant could provide any other documents that he thought might assist, such as any further photographs of his farm.

Section 424A and 424(2) letter

91. [In] November 2009, the Tribunal sent a letter to the applicant pursuant to ss 424A and 424(2) of the Act, which relevantly stated:

Invitation to comment on or respond to information

...

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

The particulars of the information are:

1. On or about [date] September 2007, you lodged an application for a student guardian visa to travel to Australia in connection with your daughter's studies in Australia. In support of that application, you provided a copy of a certificate stating that there was no record of you committing offences against the criminal law during your residence in China before [date] July 2007, dated [date] August 2007. A copy of this certificate is enclosed (in Chinese), as well as the copy of the English translation submitted with your application.

This information is relevant to the review because it may indicate that you were not of any adverse interest to the authorities in your region in mid-2007 given the preparedness of the authorities to provide you with this document. The Tribunal also notes that your passport was issued on [date] July 2007, which is shortly after your claimed protest and period in detention. According to your application form, you also departed China legally on [date] November 2007 on a valid exit visa. Viewing these matters together, this could lead the Tribunal to conclude that you did not have the political profile in your home region in China that you now claim given that the Chinese authorities facilitated and permitted your departure. This could indicate that you do not have a well-founded fear of persecution by the Chinese authorities if you were to return to China. This could form the reason or part of the reason for affirming the decision of the Department under review.

2. At the first hearing of your review application, on [date] October 2009, your daughter ([Ms A]) gave oral evidence. In the course of her evidence, your daughter indicated that the period between your first and second periods in detention was 'not long' and was 'very close'. When the Tribunal sought to clarify this period, she indicated that it was a matter of weeks, not months, and that 3 – 4 weeks sounded about right. By contrast, you indicated in your evidence in that hearing on a number of times that you did not hold your protest (leading to your second period in detention) until [date] August 2007, which is approximately 15 weeks after your first period in detention. At the

second hearing, on [date] November 2009, you sought to amend your earlier evidence and stated that the correct date of your protest was in fact [date] May 2007.

This information is relevant to the review as it may indicate a material inconsistency between your evidence and the evidence of your daughter. This may lead the Tribunal to infer that you have not been truthful in your claims regarding your involvement in a protest in China (and consequent period in detention). This may be the reason or part of the reason for affirming the decision under review.

3. At the second hearing, on [date] November 2009, you stated in your evidence that copies of all of your relevant documents were provided by your daughter to a migration agent who had been assisting you prepare your application. You indicated that you provided this person with a copy of a contract given to you in connection with the demolition of your farm. Your daughter also indicated in her evidence that she had also given this person a copy of a detention certificate in connection with your period in detention. The Tribunal telephoned this person during the second hearing, on the telephone number provided by your daughter. However, in discussions with this person and his associate (who was more familiar with your application), it was claimed that all documents provided by you or your daughter had been forwarded to the Tribunal. This comprised a copy of your loan contract and your Australian Federal Police criminal record certificate, which were provided to the Tribunal in early November. The associate to the agent also indicated that you had provided a copy of several photographs, which were submitted with your original application. Aside from these documents, however, neither party was aware of any other documents provided by you or your daughter in connection with this application.

This information is relevant to the review as it may indicate that you have not been truthful in relation to the existence of relevant documents in connection with your application. This may lead the Tribunal to infer that you have not been truthful in your claims and may be the reason or part of the reason for affirming the decision under review.

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

Invitation to provide information

You are also invited to provide the following information in writing:

- At the second hearing, on [date] November 2009, you indicated that you were given a written contract in relation to the demolition of your pig farm. You indicated that you had this document in Australia and that you had provided a copy to a migration agent who had assisted you in preparing your application. You are invited to provide a copy of this document or, alternatively, an explanation as to why you are no longer able to provide it.
- At the second hearing, on [date] November 2009, you indicated that you were given a document by the detention centre in connection with your detention. You indicated that your daughter had requested your wife to send over a copy of this document to provide to the Tribunal. You are invited to provide a copy of this document or, alternatively, an explanation as to why you are no longer able to provide it.

92. The applicant was invited to give his comments or response and provide the requested information by [a date in] December 2009.
93. [In] December 2009, the Tribunal received a submission from the applicant in response to the Tribunal's letter [of a date in] November 2009, which relevantly stated:

1. I was detained in April 2007 and May 2007 on the charges of disrupting public service and disturbing public peace respectively. My acts only constitute a breach of general law and policies, and they are not convicted crimes. The punishment I was imposed was only executive punishments, not criminal sentences. That's why I was able to get a proof of showing no criminal offences recorded.

According to the passport management regulations in China, person with a record of criminal offences would not be granted passport during the serving time. According to this regulation, the government should issue a passport to me, as I was not a person serving the time. Even so, I was intentionally troubled with some difficulties created by the Public Security Bureau. They said that I was detained before, so they wouldn't be able to grant the passport to me. Nevertheless, the agent who helped me with my visa finally managed to get me the passport.

2. During the first interview, I was so nervous that I miss-said the detention time of May [date] as August [date], which was caused by only one word difference in Chinese. My daughter was the witness to confirm that I was detained on [date] May. As my mind was in a state of an anxiety, I hope the Tribunal could forgive my mistake made out of nervousness.

3. We provided all the application documents to the migration agent. When the Tribunal made phone call to the agent, [name], she was not in the office at that moment. Her associate answered the questions based on his memory, so it was incomplete. Moreover, when the associate said he couldn't remember some of the documents as it had been too long time ago. As for this matter, my agent and the associates are all willing to testify for me once they go into my files and find out those documents.

Respected member of the Tribunal, you have very limited knowledge about what kind of misery those people have suffered from the violent demolition conducted by the government. You also have you limited knowledge about how much those people had to cost to defend their own rights. In China, the violence has been aggravating all the time. The government just continues to ignore the people's farewell. The violent demolition conducted by the government is everywhere, they are all the news. On 21" November 2009, in the city, in the largest city of China, Shanghai, Rong Pan who tried to stop government from dismantling her house due to insufficient compensation. Unexpectedly, the government used the high pressure fire fighting water gun to attack Rong Pan and finally her house was demolished to the ground. In the night of 29th November 2009, in the capital city of Sichuang Province, Chendu, Fuzhen Tang had to burn herself and die in order to protect her house from being demolished. The local government defined this event as violent defy of law, and the husband of the deceased was detained afterwards. According to the family member of the deceased, Tang had to take this extreme act only upon seeing that her family were beaten by the people hired by the government to demolish the house. If the government could make reasonable compensation and kindly treat the demolished house owner, why would the deceased resort to such extreme act? The attached are the news about these two stories.

Above examples are all new events happening in the big cities in China, even in such an international metropolis like Shanghai. This kind of violence can happen in big cities like Shanghai, not mention in rural areas where we live. In the rural area, the government officials are more blatant. Those pig farmers who had the similar experience with me in that year continued to petition to Fujian Provincial authority and even to State Letters and Visits Bureau. However, the issues have never been resolved. One of them went to Beijing to petition, however, he was abducted and taken back by Fuging police, now was still detained in Fuqing City Detention Center. If I went back and continue to petition to higher authority, I would end up being caught and put in prison at any moment.

Respected member of the Tribunal, I heard that some other applicants who shared the similar experience with me have gained protection from Australian government, I plead for taking my suffering into your consideration from my perspective, and approve my application.

94. The applicant also attached two translated news items downloaded from the internet relating to the two incidents on 21 November 2009 and 29 November 2008 referred to in his written submission. The applicant did not provide copies of the alleged written contract relating to the demolition of his farm or any documentation in relation to either of his alleged periods in detention.

Second 424A letter

95. [In] December 2009, the Tribunal sent a second letter to the applicant pursuant to s 424A of the Act, which relevantly stated:

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

The particulars of the information are:

1. At the first hearing of your review application, on [date] October 2009, your daughter ([Ms A]) gave oral evidence. In the course of her evidence, your daughter was asked whether her mother visited you whilst you were in detention. She claimed to be unable to recall the events well because they occurred so long ago. When the Tribunal pointed out that it was only a little over two years ago, and involved matters of great importance and seriousness to her family, she stated that she repressed many of the memories because they were unpleasant.
2. At the first hearing, your daughter was also asked about the length of time between your first and second periods in detention. Your daughter again claimed that it was hard to provide a specific response as she could not recall the events well because they were unpleasant to remember.

The information contained in paragraphs 1 and 2 is relevant to the review as it may indicate reluctance on your daughter's part to provide specific evidence on matters relevant to your claim for fear of contradicting your oral evidence to the Tribunal. This might indicate that your daughter has fabricated part or all of her evidence so as to be consistent with your claims. This may lead the Tribunal to infer that you have not been truthful in your claims. This may be the reason or part of the reason for affirming the decision under review.

96. The applicant was invited to give his comments or response and provide the requested information by [a date in] January 2010.
97. [In] January 2010, the Tribunal received a submission from the applicant in response to the Tribunal's letter [of a date in] December 2009. In this response, the applicant noted that he had not initially planned to ask his daughter to appear at the hearing as a witness. She had accompanied him to help him find the Tribunal and then decided to stay and give evidence when told by the Tribunal officer that she was able to do so. He also stated that his daughter was living at boarding school at the time of the relevant events and usually only returned home once every month, or sometimes every two or three months. He stated that she was therefore 'not at home when I suffered all these things, and she only got to know these things when here [sic] mother told her later' He also stated that his wife did not tell her the details of his detention. He also reiterated his earlier comments that forcible dismantling of farms was common in China.

Independent country information

98. The Tribunal has also considered independent country information relevant to the applicant's claims. To the extent that that the Tribunal has relied upon such country information, it is referred to below.

FINDINGS AND REASONS

General comments about credibility

99. The Tribunal accepts that 'applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.' The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.
100. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
101. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
102. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it

before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v Milgea* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)

103. The Tribunal did not regard the applicant as a credible witness as to his claims of mistreatment by the authorities. During the first hearing, when the applicant was asked open-ended questions his evidence bore an unnaturally close correlation with the chronology and detail of his statement submitted with his original application. The Tribunal observed during both hearings, although particularly so during the first hearing, that the applicant would frequently return to the details and sequence in this statement when answering questions, sometimes even when not directly relevant to the question being posed. The Tribunal also observed that the applicant was evasive, unsettled and at times inconsistent in his evidence when asked about matters not detailed in his statement. The Tribunal also notes that his statement was relatively brief and therefore could not be taken to be such a comprehensive record of the events underpinning his claim that he might not be expected to recall matters not included in this statement.
104. The Tribunal has considered the applicant's claim that his memory is affected by the injuries he received whilst in detention and by the great sadness that these events have caused him. The Tribunal does not accept this explanation. As set out below, the Tribunal does not accept that the applicant was detained as alleged. The Tribunal also notes that the applicant has not produced any medical evidence to support his claims of memory impairment.
105. The Tribunal also did not accept the applicant's daughter, [Ms A], as credible as to the claims of mistreatment of her father. Her evidence at the first hearing was also generally limited to the matters contained in her father's statement and she often became vague and evasive when asked about matters falling outside that statement or when asked to provide specific details. For example, the Tribunal asked [Ms A] about the length of time between the applicant's first and second periods in detention. [Ms A]'s responses were initially vague and evasive, stating that the length of time was 'not long' and 'very close'. It was only through the Tribunal's repeated questions on this subject that [Ms A] eventually agreed to the Tribunal's proposition that 3 – 4 weeks sounded about right. The Tribunal is mindful that [Ms A] was only aged 15 or 16 at the time of the relevant events and the Tribunal accepts the applicant's submissions that she was mostly living at a boarding school during the relevant period. However, whilst the applicant claimed in his submissions that [Ms A] could not recall the relevant details because she was mostly living at boarding school, the Tribunal notes that [Ms A] herself stated in her evidence that she could not recall the details because they were unpleasant to remember. The Tribunal does not accept either of these explanations. Having regard to the totality of her evidence, the Tribunal came to the conclusion that she, like the applicant, had rehearsed the facts described in the applicant's statement and was reluctant to provide evidence on matters falling outside that statement for fear of contradicting the evidence of her father.

Claims relating to pig farming

106. Notwithstanding that the Tribunal does not accept the applicant and his daughter as credible witnesses, it does accept some of the claims made by the applicant. The Tribunal accepts that he was formerly a pig farmer in the Dongzhang region. The Tribunal notes that the applicant previously applied for a student guardian visa [in] September 2007, which was granted [in] November 2007. In support of that application, the applicant submitted a translated copy of his Chinese household registration card, which recorded his occupation as 'farmer'. Whilst the

card does not specifically identify him as a farmer of pigs, the Tribunal is prepared to accept this to be the case. The Tribunal also notes that the loan contract provided to the Tribunal recorded the purpose of his loan as ‘cultivation (building piggery and buying boar)’

107. The Tribunal also notes that the applicant was confident in his evidence when questioned about various aspects of his pig farming, such as in relation to the age and weight of pigs at the time of slaughter. The Tribunal accepts that the diagram prepared by the applicant at the hearing depicting the layout of his farm was generally, albeit not entirely, consistent with the diagram prepared by his daughter, [Ms A]. In particular, both identified the farm as being divided into separate partitions, with the male and female pigs separated. Both also stated that the entire construction was under cover and that none of the pigs were allowed out of their partitions, such as to graze on the surrounding grasslands.
108. The Tribunal also notes that the region of China around Fuqing is well known for its pig production. For example, a 2005 report in *China Today* aimed at attracting Taiwanese investors to China, referred to the high level of pig production in Fuqing City, which it described as ‘One of the biggest pig producers in China’ (Fan, Y. 2005, ‘Ideal Territory for Taiwan Investors’, *China Today* <http://www.chinatoday.com.cn/English/e2005/e200502/p76.htm>)
109. The Tribunal also accepts that the applicant started pig farming in response to government incentives. The applicant appeared to be genuinely indignant about his failed pig farming venture in light of his motivation for taking up the venture in response to the government’s encouragements to do so. Moreover, independent country information confirms that the Chinese government has been concerned over recent years about rising pork prices and has introduced a range of measures to encourage pork production. For example, an article dated 4 September 2007 by the National Development and Reform Commission of China reported on measures formulated by the Chinese government to deal with the problem of rising pork prices. The first measure was to ‘encourage sow breeding’ by establishing a subsidy of 50 yuan per sow and subsidising 80% of insurance premiums to pig farmers: National Development and Reform Commission 2007, ‘Current Price Situation of Non-staple Food’, China Internet Information Center website, 4 September <http://www.china.org.cn/e-news/news070904.htm>)
110. Similarly, an article dated 23 June 2007 in *China Daily* reported that the Chinese government plans to spend 6.5 million yuan on pig farming subsidies ‘to protect the industry from collapsing in the event of disease outbreaks, and to stabilize rising pork prices.’ (‘Subsidy Plan to Combat Increasing Pork Prices’ 2007, *China Daily*, 23 June, China Internet Information Center website <http://www.china.org.cn/english/BAT/214917.htm>)
111. An article dated 25 December 2007 by *Xinhua News Agency* reported that the Chinese ‘government has promised to double the subsidy for every fertile sow to 100 yuan from July 2008 for a whole year.’ An article dated 15 August 2008 by *Interfax-China* reported that ‘between July this year and June 2009, the government is offering farmers a subsidy of RMB 100 (\$14.60) per breeding sow’ (‘15.2 bln yuan for pig breeders to boost supply’ 2007, *Xinhua News Agency*, 25 December <http://www.china.org.cn/english/government/236908.htm>; and ‘Chinese government to help farmers fill piggy banks’ 2008, *Interfax-China*, 15 August).
112. The Tribunal notes that the applicant stated that the government incentives to encourage pig farming were limited to interest-free loans and tax exemptions, rather than subsidies and

insurance reductions as indicated by the country information noted above. However, the Tribunal acknowledges that the applicant claims to have entered pig farming in 2004, whereas the measures described above appear to have been introduced in around 2007. The Tribunal has not been able to find reliable information on relevant government incentives in 2004 to encourage pig farming and is prepared to accept the applicant's claims on this matter as accurate

113. The Tribunal is also satisfied that the applicant invested money in creating bio-gas pools in 2006 to minimise the environmental impact of his farm. The Tribunal notes that a 2003 Asian Development Bank Environmental Assessment Report on a pig breeding project in Fujian outlines the potential environmental impacts of pig farming and techniques for mitigating these impacts, including through the process of biogas generation from pig manure (Asian Development Bank 2003, 'Initial Environmental Examination: Fujian Soil Conservation and Rural Development II Project: Dahe Pig Breeding Farm Subproject', Asian Development Bank, August http://www.adb.org/Documents/Environment/PRC/PRC_FujianII_Dahe_Pig_Farm.pdf, esp at pp 4-5).

Claims relating to pollution of Donzhang Reservoir and consequent demolition of pig farms

114. The Tribunal is satisfied from independent country information that pig farming has been a significant cause of pollution of the Dongzhang Reservoir. For example, an article in the New York Times, dated 15 December 2007, referred to pollution of the Fuqing waterways and its impact on aquaculture farming in the region, particularly eel farming. The article stated, for example:

Government records document the environmental ills in the region. The nearby Dongzhang Reservoir, a water source for agriculture and more than 700,000 people, was recently rated level 5, near the bottom of the government scale, unfit for fish farming, swimming or even contact with the human body.

The Long River, the major waterway in Fuqing, has been degraded by waste dumped by paper factories **and slaughterhouses** The government this year rated large sections of the river below level 5, or so highly polluted that it is unfit for any use. (emphasis added)

115. The Tribunal is also satisfied from independent country information that the pollution of the Donzhang Reservoir from pig farming has led to the government confiscating and demolishing numerous pig farms within close proximity to the Dongzhang Reservoir.
116. For example, a January 2008 news article in *China Daily* referred to the closure of 472 pig farms from 2006 – 2007 in Dongzhang due to concerns over pollution of the nearby Dongzhang Reservoir and consequent damage to the region's eel industry. The article referred to the case of one pig farmer who was compensated RMB 46,800 for the confiscation of his farm. The article also noted that this farmer had to tear down his own farm, which is consistent with the applicant's evidence that he was asked by the authorities to demolish his farm himself:

Many people in Fuqing followed Yang, and today the city produces more than 30 percent of China's eels. ...A December 15 New York Times report alleged the water in which Fuqing eels are farmed has become "toxic" because of excessive growth of aqua-farms. The farmers

mix illegal chemicals and pesticides in fish feed, which further pollutes the water and threatens consumers' health.

...The authorities had stopped people from any industrial activity in the area so I began raising pigs," Zhou says. "But in 2004, city officials ordered that all pig farms be demolished to better protect the source of water. I had to tear down mine in November 2006, for which the authorities gave me 46,800 yuan (\$6,415)."

Zhou's was among the 472 pig farms to be razed in 2006 and 2007, which cost the government 66 million yuan (\$9 million). "The pig farmers weren't pleased at first," says Xie. "But now they realize how important water protection is."

117. And further:

The demolition of pig farms forced many villagers out of business. It was a blow to the local economy, but the authorities knew water protection was more important than the temporary setbacks. (Meidong, H. and Yinan, H. 2008, 'Slippery charges land eel farmers in fishy net', *China Daily*, 4 January http://www.chinadaily.com.cn/cndy/2008-01/04/content_6369689.htm).

118. The Tribunal is also prepared to accept from the above information that the compensation offered by the Chinese government to owners of such pig farms was considered by some farmers to be inadequate, resulting in dissatisfaction among some farmers. The Tribunal notes, for example, that independent country information indicates that disputes over land confiscation has been a significant source of unrest in China over recent years. For example, according to a Freedom House report in July 2008:

One of the major sources of discontent is the confiscation of land without adequate compensation, often involving the collusion between local government and rapacious developers (Freedom House, *Freedom in the World 2008: China* (July 2008), <http://www.freedomhouse.org/template.cfm?page+22&year+2008&country+732>).

119. The 2008 US State Department Country Report on China stated:

Forced relocation because of urban development continued and in some locations increased during the year. During the year protests over relocation terms or compensation, some of which included thousands of participants, were increasingly common and some protest leaders were prosecuted. (US State Department, *2008 Country Report on Human Rights Practices: China* (25 February 2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm>)

Claims relating to demolition of the applicant's farm and his compensation terms

120. The Tribunal had some concerns with the applicant's evidence in relation to the demolition of his particular farm and the compensation he received. The applicant changed the timeline of events on a number of occasions during his evidence in relation to these matters. He claimed in his statement that the government environmental report that led to the demolition of pig farms was released in March 2007. In his evidence at the first hearing, however, he stated that this report was released in March 2006 and that he was first notified that his farm was to be demolished later that year. Furthermore, on a number of occasions the Tribunal queried parts of his evidence, such as in relation to when he first complained about the demolition of his farm and when he first learned of the compensation he was to be paid. In doing so, the Tribunal noted to the applicant that he had earlier stated that he first learned in 2006 that his farm was to be demolished. The applicant did not correct or seek to amend that evidence, but rather sought to explain the reasons for the delay between events in 2006 and events in 2007.

It was not until the second hearing that the applicant claimed that the government environmental report was released in March 2007 and that his farm was demolished in April 2007, indicating a considerably more compressed timeline to these relevant events than was indicated at the first hearing.

121. The Tribunal also had great some concerns with the applicant's initial evidence that he did not receive any documentation in relation to the demolition of his farm or the compensation terms. After several questions on the matter, the Tribunal expressed its surprise that he would not have received a single piece of paper in relation to either the proposed demolition of his farm or the proposed compensation terms. It was only then that the applicant changed his evidence and claimed that he had received a written contract about the demolition and compensation. He further claimed that this had been provided to a migration agent assisting him to prepare his application. However, when the Tribunal telephoned this agent during the second hearing, he appeared to have no knowledge of any documents provided by the applicant or his daughter other than those provided to the Tribunal. Moreover, despite being specifically invited by the Tribunal under its combined s 424(2) / 424A letter dated [in] November 2009 to provide a copy of the alleged contract, no such contract was ever provided to the Tribunal.
122. The Tribunal was concerned that the applicant may have only been aware of the events relating to confiscation of pig farms, due to his own farming activities in the region, but that he had not personally been involved in these events as claimed.
123. However, whilst the Tribunal had concerns in relation to the above evidence, these doubts are not sufficient to satisfy the Tribunal that this evidence should be rejected. The Tribunal notes that the applicant has provided photographs allegedly depicting his demolished farm. These photographs are undated, non-descript and contain no readily confirmable identifiers to verify his claims. However, the Tribunal considers that the photographs should nevertheless be afforded some, albeit limited, weight given that they are broadly consistent with his claims. The Tribunal is also mindful of its obligation to proceed on the basis that a particular factual claim might possibly be true in circumstances where the Tribunal is not able to confidently reject the claim as untrue (see *MIMA v Rajalingam* (1999) 93 FCR 220).
124. Against the backdrop of the findings made earlier concerning confiscation of pig farms in the region where the applicant lived, the Tribunal accepts the applicant's claim that his pig farm was confiscated and demolished by the Chinese authorities. The Tribunal also accepts that the applicant was dissatisfied with the amount of compensation paid to him for his farm, particularly due to the failure to compensate him for the loss of his pigs. The Tribunal also accepts that this resulted in the applicant being deprived of his source of income in circumstances where he had not yet been running his farm for long enough for him to repay his loan. The Tribunal accepts that this caused the applicant distress, anxiety and anger, perhaps justifiably so. The Tribunal also accepts that this left the applicant with a RMB 300,000 debt which he was unable to repay and which has caused him great anxiety due to the prospect of his home being repossessed by the bank.

Claims relating to the first period in detention

125. The Tribunal is prepared to accept that the applicant was reticent to accept the government's compensation terms and that this resulted in him quarrelling with the officials at one of the times they attended his farm. As noted above, the Tribunal accepts that the applicant was

dissatisfied with the amount of compensation being offered, especially in relation to the lack of compensation for his pigs.

126. However, the Tribunal does not accept the applicant's claims that this quarrel resulted in him being detained. The Tribunal found the applicant's evidence in relation to his periods in detention to be highly unconvincing. For example, when the Tribunal sought details at the second hearing in relation to the detention centre, such as the number of people detained, the applicant initially indicated that he was unable to say as he had been locked inside one room for his entire period of detention. The Tribunal confirmed with the applicant through a series of questions that he claimed to have never been allowed out of his room for the entirety of his detention, on both the first occasion for 7 days and the second occasion for 30 days. However, when the Tribunal asked the applicant about the circumstances surrounding his visits in detention from his wife and brother, his evidence took on a different complexion. His evidence became very vague and the applicant was reluctant to provide any details about how these visits were conducted, aside from repeating on several occasions that he was on the inside and they were on the outside. The Tribunal expressed its confusion at how he was able to see his visitors outside the detention centre if he was never allowed out of his room. The applicant initially indicated that he was able to see them from within his room, although later changed his evidence and stated that the guard had let him out of his room during these visits.
127. The Tribunal also notes that the applicant claimed at the second hearing that he was issued a detention centre certificate in relation to his period in detention. The Tribunal does not accept this evidence. The applicant failed to mention this certificate either to the Department or to the Tribunal in the first hearing and it was only in response to direct questioning on the matter during the second hearing that the applicant claimed to have possession of such a certificate. However, despite being specifically invited by the Tribunal under its combined s 424(2) / 424A letter dated [in] November 2009 to provide a copy of any alleged detention documents, no such documents were ever provided to the Tribunal. In addition, the persons who had allegedly been assisting the applicant to submit documents to the Tribunal, discussed earlier, had no knowledge of any such documents when they were questioned about this during the second hearing.

Claims relating to the protest

128. The Tribunal does not accept that the applicant arranged or participated in a protest in relation to the demolition of his farm and/or the amount of compensation that he received. Again, this was an aspect of the applicant's evidence in which he became highly evasive and vague.
129. For example, at the second hearing the Tribunal asked the applicant through a series of questions how he arranged the protest. The applicant was unable to provide any clear explanation as to how it was arranged. He initially stated that he met with other pig farmers at the local animal feed factory and that they had all gone and told their friends and families. However, he later indicated that he had gone and individually seen several pig farmers whom he knew and that they had spread the word to other farmers. The applicant was also unable to offer a clear explanation as to what he was hoping to achieve in arranging the protest or what his fellow protesters did about their grievances after the alleged protest.
130. The Tribunal also notes that the applicant's evidence as to the date of the protest substantially changed during the course of this review. In his statement submitted to the Department, the applicant claimed that the protest was held [in] May 2007. At the first hearing, however, he

stated that the protest took place [in] August 2007. Later in his evidence he again discussed the protest and the Tribunal again asked him the date of this protest. He repeated that it was held [in] August 2007. At this point the Tribunal pointed out that in his statement attached to his application to the Department he had claimed that the protest was held [in] May 2007. The applicant again stated that the protest was held [in] August 2007 and stated that the date in his statement was incorrect. Curiously, however, when the applicant's daughter gave evidence at the first hearing she stated that the period between the applicant's first and second periods in detention was 'not long' and 'very close'. When the Tribunal sought to clarify this period, she indicated that it was a matter of weeks, not months, and that 3 – 4 weeks sounded about right. This evidence puts the time of the alleged protest at early / mid May, which is consistent with the applicant's written statement but not consistent with his oral evidence.

131. By the second hearing, having heard the audio recording of the first hearing in the interim, the applicant sought to amend his evidence from the first hearing and claimed that the correct date of the protest was indeed [in] May 2007. He claimed that he had been confused at the first hearing due to injuries he sustained when he was detained and because the events were so sad to him that they affected his memory. As noted earlier, the Tribunal does not accept this explanation given that the Tribunal does not accept that he was detained by the authorities as claimed and given that no relevant medical evidence was ever provided to the Tribunal. Rather, the Tribunal considers that the applicant sought to amend his evidence on this point due to its inconsistency with the evidence of his daughter on a critical aspect of his claim.
132. For the above reasons, the Tribunal concludes that the applicant did not arrange or participate in a protest in relation to the confiscation of his pig farm as claimed.
133. The Tribunal also notes the ease with which the applicant obtained a passport and exit visa, as well as a criminal record certificate, in connection with his application for a student guardian visa. The Tribunal further notes that these documents were issued in the immediate aftermath of the applicant's claimed protest activities and period in detention, with his passport issued [in] July 2007, his criminal record check issued [in] August 2007 and his departure from China under a lawful exit visa occurring [in] November 2007.
134. Despite initially ticking the box on his protection visa application form to the Department to indicate that he had had difficulties obtaining a travel document, the applicant corrected this at the first hearing and confirmed that he had no such difficulties. The Tribunal prefers the applicant's oral evidence on this issue, rather than his subsequent written submissions to the Tribunal [in] December 2009 in which he claimed that he was 'intentionally troubled' by the Public Security Bureau in obtaining his passport.
135. The Tribunal accepts that periods in administrative detention in China do not appear on a person's criminal record and would therefore not ordinarily show up on a criminal record certificate. However, independent country information indicates that the Chinese authorities place controls over the issuing of passports and departure so that persons who are of adverse interest would have difficulties obtaining travel documents and departing China legally. For example, the US Department of State made the following assessment in March 2007:

Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports... There were reports that some academics faced travel restrictions around the year's sensitive anniversaries, particularly the June 4 anniversary of the Tiananmen Square massacre. There were

instances in which the authorities refused to issue passports or visas on apparent political grounds. Members of underground churches, Falun Gong members, and other politically sensitive individuals sometimes were refused passports and other necessary travel documents (US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in Country Reports on Human Rights Practices for 2006).

136. DFAT advice on passport and exit procedures from January 2003 noted:

Provided the applicant does not fall into any of the categories of persons ineligible to leave China ... the passport would likely be issued.

...Checks with the public security bureau in the applicant's place of registered residence would reveal any adverse records held by public security organs on the applicant. An applicant "whose exit, in the judgement of the relevant department of the state council, would be harmful to state security or cause a major loss to national interests" would likely be denied a passport. Illegally obtaining a passport in the applicant's own name through bribery would be possible, but highly risky and expensive. It would be easier to obtain a passport using someone else's identity (DIMA Country Information Service 2003, *Country Information Report No. 12/03 – Passport and Exit Procedures*, (sourced from DFAT advice of 15 January 2003), 24 January).

137. DFAT further advised in September 2006 on the 'categories of persons ineligible to leave China':

The Ministry of Public Security has advised that a person who was warned for what was deemed unacceptable behaviour in public might not have a police record if their misdemeanor was considered minor and they received an on-the-spot warning only. If they were detained for any period or were subject to other administrative penalties or procedures, then they would have a police record.

...The Ministry of Public Security said that border exit procedures were carried out according to Chinese law. Chapter II, Article 8 of the Administrative Law on the Border Exit and Entry of Citizens of the People's Republic of China states that Chinese citizens will not be allowed to exit the PRC border under the following circumstances:

- i) If the person is a defendant in a criminal case or suspected of a crime by the security organs, the People's Procuratorate or the People's Court;
- ii) If the People's Court notifies that the person is involved in a civil case that has not been completed and they cannot leave the country;
- iii) If the person is currently serving a criminal sentence;
- iv) If the person is undergoing re-education through labour;
- v) If the relevant organs of the State Council believe that, after departing the country, that person might cause danger to national security or cause extreme harm to national interests.

...As a general point, we remind you that implementation of rules in China can be incomplete, or over-zealous (*Department of Foreign Affairs and Trade 2006, DFAT Report 540 – RRT Information Request CHN30682, 28 September – Attachment 10*).

138. More recently, *The Passport Law of the People's Republic of China* sets out the circumstances in which a passport will be refused:

Article 13 Under any of the following circumstances, the passport issuance departments shall not issue any passport to the applicant:

- (1) He does not have the nationality of the People's Republic of China;
- (2) He is unable to prove his identity;
- (3) He cheats during the process of application;
- (4) He has been sentenced to any criminal punishment and is serving the sentence at present;
- (5) The people's courts notice that he is not permitted to leave China because he is involved in pending civil case;
- (6) He is a defendant or criminal suspect of a criminal case; or
- (7) The competent organs of the State Council believe that his leaving China will do harm to the state security or result in serious losses to the benefits of the state.

Article 14 In case an applicant is under any of the following circumstances, the passport issuance departments shall not issue to him any passport within six months to three years as of the day when he completes the criminal punishment or is repatriated to China:

- (1) He is sentenced to any criminal punishment due to his hindering the administration of national border (frontier); or
- (2) He is repatriated to China due to his illegal exiting China, illegal dwelling or illegal employment overseas

(The Passport Law of the People's Republic of China, Promulgated by the 21st Session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on 29 April 2006 and effective as of 1 January 2007, Beijing Review website http://www.bjreview.com.cn/document/txt/2006-12/14/content_50706.htm – Accessed 16 February 2007 – Attachment 2).

139. The Tribunal accepts that the applicant's claimed political activities were at the milder end of the spectrum. As such, his activities may not have been of such concern to the authorities to result in him having his passport, criminal record certificate or exit visa refused. Nevertheless, the Tribunal considers that the ease with which he had these documents issued indicates that he was not of particular concern to the authorities following his alleged protest. This indicates that he did not have the adverse political profile that he now claims and undermines his claim that he will face problems with the authorities if he returns to China due to this adverse political profile.

Claims relating to the second period in detention

140. Given that the Tribunal does not accept that the applicant organised or participated in a protest with fellow pig farmers, it follows that the Tribunal also does not accept that the applicant was detained for 30 days in relation to that protest. Again, the Tribunal reiterates its findings and reasoning above in relation to the applicant's evidence being highly unconvincing in relation to his periods in detention.

Claims in relation to fear of the authorities

141. Given the Tribunal's above findings that the applicant did not arrange or participate in any protests against the government, and given also its observations above about the ease with which the applicant was issued relevant documents in connection with his student guardian visa application, it follows that the Tribunal does not accept that the applicant now has, or

ever had in the past, the political profile in his region that he claims. The Tribunal does not accept that the applicant has ever been detained, interrogated and/or beaten by the authorities or charged with any offences such as disturbing the public peace, disrupting public service or organising an illegal parade. The Tribunal finds that the applicant is not of any adverse interest to the authorities and does not face a well-founded fear of any form of serious harm by the authorities for any reason, be it political opinion, membership of a particular social group of pig farmers (or disgruntled pig farmers) or otherwise.

142. The Tribunal has also considered what the applicant is likely to do if returned to China now that his farm has been demolished. The Tribunal has considered whether, even if the applicant did not participate in any protests in the past, there is a real chance that he may do so in the future and whether this may expose him to a real chance of serious harm.
143. The Tribunal questioned the applicant extensively in relation to this matter. Despite claiming to have participated in a protest prior to his departure from China, the applicant disavowed any intention to engage in future protests if returned to China. The Tribunal sought to ascertain the reasons for this, and whether part of the reason for refraining from protest was on account of a fear of the harm that may befall him by the authorities. However, the Tribunal was left with the clear belief that the applicant regarded further protest on the matter to be futile.
144. The applicant also claimed that he was not aware of any other protests having been carried out by other pig farmers within his region since his alleged protest in May 2007. As noted above, the Tribunal does not accept that the applicant did in fact arrange or participate in any protest as claimed. Against that finding, coupled with the applicant's evidence that no other pig farmers have engaged in protests in his region and that he himself has no intention of engaging in any further protests due to it being futile to do so, the Tribunal finds that there is no prospect that the applicant will be exposed to a real chance of serious harm in the reasonably foreseeable future on account of his future conduct in connection with the demolition of his pig farm and/or the adequacy of the compensation he was paid.
145. Given the above findings, it also follows that the Tribunal does not accept that he will be subjected to other forms of mistreatment by the authorities as claimed, such as his claim that the government will not allow him to build a house and will not allocate jobs to his son when he graduates. In any event, the Tribunal does not accept that such forms of alleged future mistreatment would amount to serious harm for the purposes of s 91R(1)(b).

Claims relating to the loss of his house if he returns to China

146. The Tribunal has also considered the applicant's claims relating to his inability to repay his outstanding debt of RMB 300,000 in connection with his farm. The Tribunal found the applicant to be genuine in relation to this aspect of his evidence. He frequently returned to this issue and repeated his concerns on numerous occasions in relation to the future welfare of his son and father if his house is forcibly auctioned to repay his debt if he returns to China, resulting in his family being left homeless.
147. Whilst the Tribunal can sympathise with the applicant about this prospect, the Tribunal is unable to find that this alleged harm is for reason of any of the five Convention grounds, namely his race, religion, nationality, membership of a particular social group or political opinion. Rather, the prospect of his house being sold is purely a contractual matter relating to his inability to repay his loan. The Tribunal finds that the loss of the applicant's home in

China as a result of his failure to repay his debt to the government and/or bank would not amount to serious harm for the purposes of s 91R(1)(b)

Summary of findings

148. For the above reasons, the Tribunal accepts that, prior to his coming to Australia, the applicant was a pig farmer from Donzhang who entered pig farming in response to government incentives. The Tribunal accepts that he invested in bio-gas pools to minimise the environmental impact of his farm. The Tribunal also accepts that the Chinese government confiscated and demolished numerous pig farms within close proximity to the Donzhang Reservoir, due to harmful pollution of the Reservoir caused by waste from pig farms, and that many pig farmers affected by this program were dissatisfied with the level of compensation that they received. The Tribunal also accepts that the applicant's farm was one of those farms demolished by the government under this program and that he was dissatisfied with the amount of compensation he received.
149. Whilst the Tribunal accepts that the applicant may have quarrelled with one of the government officials in relation to the adequacy of compensation, the Tribunal does not accept that this resulted in the applicant being detained for seven days as claimed. The Tribunal also does not accept that the applicant arranged or participated in any protest in relation to the demolition of his pig farm, the compensation he received or for any other reason. The Tribunal does not accept that he was detained for 30 days in connection with any such protest.
150. The Tribunal does not accept that the applicant is, or ever has been, of any adverse interest to the authorities in China in connection with his pig farm demolition, his alleged protest or otherwise. The Tribunal does not accept that there is any prospect that the applicant will engage in any future conduct to bring him to the adverse attention of the Chinese authorities, either in connection with his demolished pig farm or otherwise. It follows that the Tribunal does not accept that the applicant has a well-founded fear of persecution for a Convention reason as claimed.
151. The Tribunal accepts that the applicant faces a real chance that his house in China may be forcibly auctioned to repay his RMB 300,000 debt. However, for the reasons above the Tribunal does not accept that this would amount to serious harm or that this would be for reasons of the applicant's race, religion, nationality, membership of a particular social group or political opinion.

CONCLUSIONS

152. 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

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

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

Sealing Officer: PRMHSE