

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. What are the likely consequences for ship jumpers upon return to China?**
- 2. What are the likely consequences for a failed asylum seeker upon return to China?**

RESPONSE

- 1. What are the likely consequences for ship jumpers upon return to China?**

The most recent information on Chinese ship jumpers found in the sources consulted was a 2001 advice provided by DFAT. The advice stated:

A.1 As far as we can determine, ship jumping is not specifically categorised as “illegal departure” in the 1997 Criminal Law. However, relevant regulations or classified internal (“neibu”) documents governing China’s border controls may do so. We do not have access to all the relevant current regulations or internal documents to respond definitively on this question. That said, it is an offence under article 109 of the Criminal Law for a state employee to “defect while outside china, thereby endangering state security”. Offenders are liable to imprisonment for up to five years, or ten years in “serious cases”. Serving military personnel who desert their post while outside the country are also liable for five or ten years’ imprisonment under article 430 of the Criminal Law.

A.2 The treatment of military and civilian ship jumpers is likely to differ. We understand that Chinese authorities would be likely to make considerable efforts to ensure the return of a military deserter, depending on his or her access to or knowledge of classified military information. If necessary, Chinese authorities would use a range of means to persuade the deserter to return voluntarily. On return, depending on his or her access to or knowledge of classified military information, the deserter could expect severe punishment under military law. **A civilian ship jumper would be subject to civil punishment under relevant border control regulations. It is possible that repatriated ship jumpers would receive treatment similar to repatriated illegal immigrants ie. they would be fined, or in cases of repeat**

offenders, subjected to administrative penalties (DIAC Country Information Service 2002, *Country Information Report No. 08/02 – Return and treatment of PRC ship jumpers*, (sourced from DFAT advice of 21 December 2001), 22 January – Attachment 1).

Of interest is an earlier dated 1995 DFAT advice which stated that in the course of the post's research on ship jumpers it was advised by contacts in the US Embassy that:

...while they assumed that shipjumpers were included amongst returnees from the United States, they had had no reason to focus on shipjumpers as a category (Department of Foreign Affairs and Trade 1995, *DFAT Report No. BJ10402 – China: DIEA Update Request: PRC Shipjumpers*, 18 July – Attachment 2).

2. What are the likely consequences for a failed asylum seeker upon return to China?

Country sources indicate that it is not possible to comment definitively on the treatment of failed asylum seekers returning to China. It would depend on the circumstances of the individual case. Generally, the possible treatment of a returnee would vary according to the person's profile.

DFAT advices on various situations are outlined below.

In March 2007 DFAT responded to questions concerning possible treatment by the Chinese authorities of failed Chinese asylum seekers who were named in the media and who might be imputed to be a Falun Gong practitioner, underground Christian or political dissident in the following terms:

R.1. Advice provided in our reftel (CX161676) [see below] would remain applicable in these circumstances.

R.2. In terms of the possible treatment the person might receive on return to China, it is not particularly important how the person comes to the attention of Chinese authorities. As advised in reftel, it is not possible to comment definitively on how Chinese authorities would treat returnees to China who were failed asylum seekers. If Chinese authorities believed them to be a member of one of these groups (Falun Gong, underground church, political dissidents), it would be likely that authorities would interview them and might keep them under surveillance or detain them for a short period. Authorities may record the failed asylum attempt in the person's dossier ("dang an"), which could impede the person's attempts to obtain employment (particularly government employment) or engage in further education. If the person was a high-profile activist in Australia (for example a prominent Falun Gong leader, or someone known for publicly criticising the Chinese leadership) it is likely that the authorities would treat them more severely (longer-term surveillance, administrative detention) than if the person was a low-profile member of one of these groups.

R.3. Media publicity of the mere fact that the person had applied (sic) for asylum would not necessarily lead to harsher treatment (sic) for the person on return. Our impression is that these days Chinese authorities view seeking to remain in Australia through a protection application as more commonplace behaviour rather than a sign of political disloyalty. Authorities could, however, treat the person more severely if he or she was quoted publicly as criticising China's regime or senior leadership in the media. If, for example, the person had been an active, outspoken member of one of these groups and had publicly called for the end of Communist Party rule in China, he or she would be more likely to be put under surveillance and possibly detained on return to China. At the extreme, the person could be criminally prosecuted, for example under Article 105 of China's Criminal Law, which prohibits "incit[ing] others by

spreading rumours or slander or any other means to subvert State power or overthrow the socialist system.” (DIAC Country Information Service 2007, *Country Information Report No. CHN8990 – CIS Request CHN8980: China: Publication of client details*, (sourced from DFAT advice of 20 March 2007), 22 March – Attachment 3).

The document CX161676, referred to above, is a September 2006 DFAT advice which responded to the question on “what treatment the PRC delegation interviewees might expect” as follows:

It is not possible to comment definitively on how Chinese authorities would treat returnees to China who were failed asylum seekers. It would be very likely that Chinese authorities would interview them and might keep them under surveillance and detain them for a short period. Any further action would depend on the circumstances of the individual cases. Authorities maintain a dossier on every PRC citizen and we would expect authorities would record the person’s failed asylum attempt in this file. This conceivably (sic) could impede the person’s attempts to obtain employment (particularly government employment) or engage in further education (DIAC Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September – Attachment 4).

DFAT continued on the treatment of returnees who are members of underground church groups:

BJ551458L (CX160293) provided advice on the treatment of members of underground churches in China and that advice is applicable also to this question. Those whose Christian activity was through membership of registered churches in China are less likely to face any repercussions, however it would depend on the circumstances of each case (DIAC Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September – Attachment 4).

The document CX160293, referred to above, is August 2006 DFAT advice that:

In general, Chinese authorities view politically active Uighurs as more threatening than members of underground church groups. Chinese authorities are particularly concerned about politically active Uighurs because they view Uighur political activity as having separatist objectives. Underground church groups are by and large tolerated by the authorities.

In occasional cases where an underground church leader has come to the attention of the Chinese authorities, on return to China the authorities might take the person in for questioning. In rare cases the person might face further consequences (for example administrative or criminal detention), depending on the circumstances of the case. For example, a prominent leader of an underground church group which was known for proselytising might be more likely to face more serious consequences than an ordinary member of an underground church group (DIAC Country Information Service 2006, *Country Information Report No. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639)*, (sourced from DFAT advice of 7 August 2006), 25 August – Attachment 5).

A June 2006 DFAT advice on the treatment of Uighurs returning to China included:

A2. Failure to comply with Chinese authorities expectations to provide information could possibly result in repercussions on return to China. This could include Chinese authorities harrasing (sic) individuals and/or their family members, (for example including, but not

necessarily limited to, creating difficulties in pursuing education or public sector employment opportunities.)

A3. We consider there to be a small likelihood of Chinese authorities learning of individuals' PV applications in the absence of some indiscretion by the applicants. But if this information were revealed, on return to China, failed applicants would be likely to be subject to official scrutiny. In addition to possible consequences listed in paragraph 2, authorities might interview the person and might put the person concerned in administrative detention (DIAC Country Information Service 2006, *Country Information Report No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, (sourced from DFAT advice of 28 June 2006), 29 June – Attachment 6).

In addition, a report on China by Dr. Thomas Weyrauch to the 10th European Country of Origin Information Seminar, dated 17 March 2006, stated that:

Forced repatriation can be problematic, especially if the Chinese authorities do not cooperate on this matter. There are cases in Germany, for instance, where the Chinese embassy refuses to issue travel documents to rejected asylum seekers.

One has to be cautious when assessing whether there is a risk of persecution upon return or not: basically, if the returnee (a rejected asylum seeker or a repatriated migrant) is unknown to the authorities, then persecution is not likely. There are legal regulations prohibiting illegal boarder crossing in the criminal law. But Chinese authorities didn't care so much in the last years, even if they know that this person asked for political asylum in foreign countries, because the authorities expect that they left China for economic reasons. Diplomats from Western countries monitored the situation of repatriated people, and they found out that in most of the cases there was no political persecution, nor criminal prosecution.

On the other hand, the situation differs for returnees involved in offences or actions against the Chinese government, or the CCP. Practising Falun Gong, being a member of an underground church, playing a leading role in the opposition (in exile, too) can still be a reason for persecution (Weyrauch, Dr. Thomas, 'Important Aspects on Human Rights in the People's Republic of China', in '10th European Country of Origin Information Seminar 1-2 December 2005, Budapest: China' 2006, ECOI website, 17 March http://www.ecoi.net/pub/bp269_COI-SE-Budapest200512-China-Report-Final.pdf - Accessed 20 March 2006, p. 25 – Attachment 7).

The US State Department also reported on repatriation to China:

The law neither provides for a citizen's right to repatriate nor otherwise addresses exile. The government continued to refuse reentry to numerous citizens who were considered dissidents, Falun Gong activists, or troublemakers. Although some dissidents living abroad have been allowed to return, dissidents released on medical parole and allowed to leave the country often were effectively exiled. Activists residing abroad have been imprisoned upon their return to the country (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 – China*, 6 March – Attachment 8).

Other information on the treatment of returnees may be found in the attached extract from the UK Home Office's country report for China (UK Home Office 2006, *Country of Origin Information Report: China*, 22 December, paras. 39.03-39.07 – Attachment 9).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au/>
China Daily <http://www.chinadaily.com.cn/>
International Transport Workers' Federation (ITWF) <http://www.itfglobal.org/>
LawInfoChina <http://www.lawinfochina.com/SiteMap/Index.asp>
Maritime Union of Australia (MUA) <http://www.mua.org.au/>
Seafarers' International Research Centre <http://www.sirc.cf.ac.uk/>

Databases:

FACTIVA (news database)
BACIS (DIMA Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue
International Transport Workers' Federation (ITF) (undated), *The Trade Union Rights of Chinese Seafarers* (taken from a June 2006 case)

List of Attachments

1. DIAC Country Information Service 2002, *Country Information Report No. 08/02 – Return and treatment of PRC ship jumpers*, (sourced from DFAT advice of 21 December 2001), 22 January. (CISNET China CX61187)
2. Department of Foreign Affairs and Trade 1995, *DFAT Report No. BJ10402 – China: DIEA Update Request: PRC Shipjumpers*, 18 July. (CISNET China CX8715)
3. DIAC Country Information Service 2007, *Country Information Report No. CHN8990 – CIS Request CHN8980: China: Publication of client details*, (sourced from DFAT advice of 20 March 2007), 22 March. (CISNET China CX174138)
4. DIAC Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September. (CISNET China CX161676)
5. DIAC Country Information Service 2006, *Country Information Report No. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639)*, (sourced from DFAT advice of 7 August 2006), 25 August. (CISNET China CX160293)
6. DIAC Country Information Service 2006, *Country Information Report No. 06/29 – CIS Request No 8597: China: Treatment of Uighurs on Return to China*, (sourced from DFAT advice of 28 June 2006), 29 June. (CISNET China CX156339)
7. Weyrauch, Dr. Thomas, 'Important Aspects on Human Rights in the People's Republic of China', in '10th European Country of Origin Information Seminar 1-2 December 2005, Budapest: China' 2006, ECOI website, 17 March http://www.ecoi.net/pub/bp269_COI-SE-Budapest200512-China-Report-Final.pdf – Accessed 20 March 2006, p. 25.

8. 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 – China*, 6 March.
9. UK Home Office 2006, *Country of Origin Information Report: China*, 22 December, paras. 39.03-39.07.