

1001270 [2010] RRTA 289 (20 April 2010)

DECISION RECORD

RRT CASE NUMBER: 1001270

DIAC REFERENCE(S): CLF2009/144872

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Denis O'Brien

DATE: 20 April 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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] September 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and his review rights by letter of 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 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).
4. The applicant applied to the Tribunal [in] February 2010 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 Refugees 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. Secondly, 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 if the 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 unable to be controlled 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 (see *Chan* per McHugh J at 430; *Applicant A* per Brennan CJ at 233, McHugh J at 258).
14. Persecution also 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. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified 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. Fourthly, 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 he or she has genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded when 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.
19. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1 Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of “practicable”, to expect him or her to seek refuge in another part of the same country. What is “reasonable” in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department’s file 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.
21. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

Protection visa application

22. The applicant is [age deleted: s.431(2)]. He was born in Hebei Province of the PRC. He attended [Village A] Primary School and [Town A] School. Before coming to Australia, he lived at [Village A], [Town A], [City A], Hebei Province. He was a chicken farm owner from August 1996 until September 2009.
23. The applicant has a wife and two sons in China. [sons ages deleted: s.431(2)]. The applicant obtained a passport in August 2008 and made a brief visit to Japan at the end of November that year. He was granted a visitor visa to visit Australia [in] September 2009 and arrived here [about twelve days later]
24. His protection visa claims were set out in a letter to the Australian Government written in Mandarin. That letter and a translation by a NAATI accredited translator were included with his protection visa application. In the letter the applicant claimed that:

- He owned a chicken farm at [Town A] which comprised 10,000 laying hens and which supplied 10,000 broilers (meat chickens) each year for meat;
- In October 2008 he was asked to come to a meeting at the Industry Section of [Town A] Government. At that meeting the head of the Industry Section, [Mr A], told him that the local Communist Party Secretary of the Town, [Mr B], had, through his cousin, [Mr C], come to know of a South Korean businessman, [Mr D], who was looking for a site to establish a large [processing plant] in the area. The site of the applicant's farm had been selected as the ideal site and the Town Party Committee had concluded that the site be sold to [Mr D];
- The applicant and his wife were shocked and were initially reluctant to agree to the acquisition of their farm. Eventually they agreed when, at a further meeting [in] March 2009, they were offered under a compensation agreement 10,000 yuan per mu of land and 600,000 yuan for buildings, equipment and stock. The applicant signed the agreement;
- [In] July 2009 the applicant was again called to a meeting at the Industry Section. He was told that, due to the global financial crisis, the South Korean company was unwilling to proceed unless the price reduced to 5,000 yuan per mu and 200,000 yuan for buildings, equipment and stock. The applicant refused because it would mean a loss for him of almost 300,000 yuan;
- The applicant was then called to a meeting with the Communist Party Secretary, [Mr B], who put pressure on the applicant to agree to the price. Again the applicant refused;
- The next day, [Mr A] called the applicant and arranged for him to come to a meeting at the [name deleted: s.431(2)] Restaurant to see if agreement could be reached;
- At that meeting those present got the applicant drunk After the meeting the applicant was presented with a copy of an agreement with his forged signature and fingerprint;
- The applicant believes that [Mr B], the local Communist Party Secretary, corruptly colluded with his cousin, [Mr C], to forcibly acquire the applicant's farm at an unfair price;
- The applicant lodged a complaint with his local county government Petition and Letter Office. As a result, he was kidnapped by underground elements who acted on the direction of [Mr B]. He was brutally beaten, his life was threatened and he was told to cease his petition. The applicant's wife wanted him to take the matter no further but, after he recovered, the applicant decided to make a further petition at the provincial capital level. When heading off to this appointment, he was again kidnapped by elements connected to [Mr B], was detained for a day, given a packet of cash and warned not to take the matter further;

- After returning home and discussing the matter with his wife, he decided to flee to Australia because of the persecution he had suffered.

Department interview

25. At the Department interview, when asked by the delegate what would happen to him if he returned to China, the applicant said that he would be beaten until he was disabled or killed. When the delegate asked why, given that the authorities had already taken his land, the applicant replied that he had, [in] September 2009, before departing China, written a letter to the Secretary of the Province reporting [Mr B] as corrupt. The applicant said that [Mr B] would want to harm him because he had made this report. The applicant mentioned a vegetable grower who, as a result of complaining about the acquisition of his land, had had his hand cut off. The applicant had not kept a copy of the letter he had written reporting [Mr B] as corrupt.

Tribunal hearing

26. At the hearing before the Tribunal the applicant said that, up until he embarked on chicken farming in 1996, he had a 15 acre farm on which he grew corn and wheat. In 1996 he began a chicken farm on the land with his wife. He obtained a loan from the bank, secured by a mortgage over his brick house, which was separate from the farm. As the chicken farm operation grew, he increased its size by leasing an adjoining 15 acres from his neighbours. The Tribunal put to the applicant that he had told the delegate that the size of the farm was 30 mu. He said that was correct. He thought that one mu was the equivalent of one acre.
27. The applicant described in some detail the chicken farming operation. He said that over time it grew to 20 chicken houses. He described the battery arrangements, with cages on each side of the central corridor in each chicken house containing the chickens. He said the breed of chickens for meat was “niketi” and the breed of chickens for eggs was “han lan hui” (“ocean grey”) He said he would buy chicks from Zhending City and Yukou City. Young chicks needed to be kept at a constant temperature of 35 degrees. They were fed initially with a solution of water and sugar, 6 or 7 times a day, including during the night. At first only the applicant and his wife attended to all the chores. They started with 300 chicks. By the end of 2007, with the expansion of the business, they employed 6 workers.
28. The applicant described how eggs from the laying hens would roll from the cages for gathering and placing into boxes for sale. Traders would come to the farm to buy the eggs for delivery to markets. After the meat chickens were one year old, they would be sold to a processing factory in the town. The factory would collect them live and take them to the factory for processing.
29. The Tribunal questioned the applicant about his meeting with [Mr A] in October 2008. The applicant described the meeting and what was said at the meeting. The description was consistent with the description given in his protection visa claims. The Tribunal said that it did not understand the proposal for the construction of a [processing plant] on the site of the applicant’s farm. The applicant said that farmers in the area grew both [details deleted: s.431(2)] and he understood that it was proposed that the plant would process both.

30. The applicant said that, at the meeting [in] March 2009 when he signed the compensation agreement for the acquisition of his farm, those present included [Mr A], the South Korean businessman, [Mr D], and [Mr B]'s cousin, [Mr C]. The applicant clarified that the total compensation price agreed was RMB 600,000. He signed up on this basis, calculating that, after he repaid the bank and paid his neighbours for outstanding moneys due under his land leasing arrangements with them, he would have RMB 100,000. The Tribunal asked the applicant if he had a copy of the agreement. He said he did not. His family had been forced from their house and were now living in an abandoned house. They did not have any relevant documents with them.
31. The applicant said that, at the meeting with [Mr A] [in] July 2009, he was told that the reduced total compensation price was RMB 300,000. The applicant told [Mr A] that he could not agree to this. The applicant was urged to accept for the benefit the South Korean businessman's investment would bring to the town. The applicant was told that, whether he accepted or not, RMB 300,000 was all he would get
32. The Tribunal asked the applicant why he did not rely on the terms of the compensation agreement he had previously signed. He said that he did but was told that the town would lose the opportunity for the business investment unless the price were reduced.
33. The applicant said that, when [in] July 2009 he was called to the meeting at the town meeting room, the Party Secretary, [Mr B], made a speech in which he said that, if the applicant agreed to the new terms, he would be benefiting his 100,000 fellow townspeople. When the applicant said that he could not agree to the new terms, [Mr B] yelled at him that the outcome would not be good for him and left, slamming the door.
34. The next day [Mr A] telephoned the applicant and invited him to meet over drinks at the [name deleted: s.431(2)] restaurant with [Mr C] to see if agreement could be reached. The applicant agreed. He thought that he might be able to convince those concerned not to take his land. At the restaurant they got him drunk on Maotai.
35. The applicant said that [Mr A] presented him a few days later with an agreement for RMB 300,000 in compensation. The agreement bore the purported signature of the applicant. The applicant objected, saying that the signature was a forgery. The document also bore what appeared to be his fingerprint. The applicant believed the fingerprint was obtained when he became drunk at the restaurant. [Mr A] told the applicant that, if he denied the agreement, he would be breaking the law. He also told the applicant that half of the RMB 300,000 had already paid into the applicant's account. The applicant found another copy of the signed agreement, also bearing his fingerprint, in his briefcase.
36. The Tribunal asked the applicant if in fact he received RMB 150,000 into his account. He said he did not; he received RMB 100,000 and was later paid another RMB 100,000. That was all he received. From this he owed RMB 100,000 to the bank and RMB 45,000-50,000 to his neighbours for the leased land. He paid his neighbours but did not repay the bank, ultimately using the balance of the funds to get to Australia. Because the bank was not repaid, it took possession of his house after he came to Australia and the Public Security Bureau (PSB) sealed the house up. That is why the applicant's family now live in an abandoned house.

37. The applicant decided to make an appointment with the Petition and Letter office of the local county government to complain about what he considered was collusion between the local Communist Party Secretary, [Mr B], and the South Korean businessman to forcibly acquire the applicant's farm at an unjust price. The appointment was made for [a date in] July 2009. The office was in [Town B] [In] July the applicant attended there and met with a [Mr E]. The applicant told [Mr E] what had happened and gave him a copy of the agreement. [Mr E] told him to go home and wait for his answer.
38. When it was getting dark on his way home, a car pulled up beside the applicant and 6 people jumped out. Three of them grabbed him, put him into a sack, loaded him into the car and took him off to a deserted house. The applicant was taken out of the bag but his feet and hands were tied and he was made lie on the floor. One of the men said words to the following effect: "You got a lot of guts if you want to mess up with [Mr B]. He was doing you a favour. Take it or leave it. If you don't want it, you won't get any money. If you keep on appealing, we will kill you, just like killing an ant."
39. The men then punched and kicked the applicant, leaving him bleeding from the left eyebrow and mouth. The blows also loosened some of his teeth.
40. At about 9 pm the men left, leaving the applicant to crawl to his house, which was about 3 kilometres away. On the outskirts of his village, someone saw the applicant and helped him home. People from the village asked the applicant why he was taking on [Mr B] when he was like a local emperor. Once the applicant arrived home, his wife contacted the local doctor, who came to the applicant's house and treated him.
41. After the applicant recovered, his wife said to the applicant that he should let the matter go because she and the applicant were common people who could not bring governments down.
42. The applicant's wife had a relative in the office of the Industry Section of the Town Government. The relative told her that the South Korean businessman had in fact paid the compensation agreed under the first agreement and it was [Mr B] and his cousin who had cheated the applicant out of those funds.
43. The applicant did not want to let the matter rest and decided to make another complaint, this time to the provincial Petition and Letter office in [City B]. He made an appointment for [a date in] July and headed off at about 5am on the morning of that day to walk to the main road to catch the bus to [City B] He was only about 10 minutes from home when again a car pulled up and the applicant was bundled into the car. The men in the car blindfolded the applicant so he could not see them. The applicant was taken to a hilly area not far from his home and was kept there all day without any food. Then one of the men said to the applicant words to the following effect: "You are a brave man but [Mr B] does not want to see you again. If he does see you again, he will kill you." They threw the applicant a bag containing RMB 100,000.
44. The Tribunal said to the applicant that in his written statement in support of his protection visa claims he had not mentioned how much money was in the bag. The applicant said he forgot to mention this when he prepared his written statement.
45. The Tribunal put to the applicant that in his written claims he had not said anything about his farm having been demolished. The Tribunal asked him why he had not

mentioned this. The applicant said the forged agreement was executed [in] July 2009 and the farm was demolished [about five days later]. He said that he was there when it was demolished, as were officials from the Town Government and PSB officers. The local newspaper sent a reporter but [Mr B] stopped him from writing anything.

46. The Tribunal said to the applicant that in the interview with the delegate the applicant mentioned that he had written a letter before coming to Australia. The Tribunal asked what this letter was about. The applicant said that he wrote the same letter to the City, District and Provincial Government offices. In the letter he complained about [Mr B] and [Mr C] for taking bribes and said that they had hooked up with a group to bully people in the applicant's town. He said that he had not given much thought to this letter when he came to Australia and had not kept a copy. He only remembered it when he was interviewed by the delegate.
47. The Tribunal said to the applicant that there were some aspects of his story that the Tribunal was having difficulty believing and said that it needed to put those matters to him to get his response. First, the Tribunal said that it could not understand why, having told [Mr B] that he could not accept the terms of the new compensation arrangements which had been put to him, the applicant agreed to attend the further discussion at the restaurant and why he allowed himself to get drunk at that discussion. The applicant replied that, in the Chinese way, he thought he should try to make [Mr A] and [Mr C] happy so that they might agree not to resume his land.
48. The Tribunal also said that it was having difficulty understanding how those who kidnapped the applicant a second time would have known that he was heading to [City B] to make a complaint. The applicant replied that the system was that he had to make an appointment first so he guessed that someone in the Petition and Letter office tipped [Mr B] off after the applicant telephoned to make the appointment.
49. The Tribunal further said that independent country information suggested that under the Land Administration Law of the PRC compensation had to be provided when land was appropriated and the formula was that a citizen was entitled to receive between six and ten times the average yield of the land over the previous three years. The applicant responded that, if he had sought legal redress, he would not have succeeded under Communist Party law.
50. The Tribunal asked the applicant what had been the purpose of the trip to Japan the applicant had taken in November 2008. He said that he was part of a business delegation from [City A] He had been part of the delegation so he could visit Japanese chicken farms. He said that he learned a lot about how Japanese farmers dealt with bacteria and about their techniques for feeding chickens.

Country of origin information

51. [Details relating to City A and City B deleted: s.431(2)].
52. Problems arising from land confiscation and compensation disputes are common in today's China, where land throughout the country is being redeveloped for Chinese industry and infrastructure, in an environment of widespread official corruption. Reports indicate that people often have difficulty in accessing adequate, or even any, compensation for confiscated land or property and resort either to demonstrations or to

following the rarely successful paths of using the legal system or petition system to seek redress.

53. The Land Administration Law of the People's Republic of China (2004 Revision) notes:

The state may make expropriation or requisition on land according to law for public interests, but shall give compensations accordingly. (Art.2)

Owners or users of the land expropriated shall, within the time limit specified in the announcement, go through the compensation registration for expropriated land with the land administrative departments of the local people's governments on the strength of the land certificate. (Art.46)

54. Under Article 47 of that Law compensation must be provided when land is expropriated. The formula under that Article for determining the compensation amount is that a citizen will receive between six and ten times the average yield of the land, using average yield figures from three years prior to expropriation.

55. The US State Department reported in 2008 that those who chose to petition the Central Government about their grievances reportedly faced "harassment, detention, incarceration, and restrictions on rights to assemble and raise grievances" (US Department of State 2009, *Human Rights Report for 2008 – China*, February, Section 2).

56. According to the Australian Department of Foreign Affairs and Trade (DFAT), "Post noted that protests and arrests relating to land resumption in China are common but rarely reported in the state media or acknowledged by Chinese authorities" (Department of Foreign Affairs and Trade 2008, *DFAT Report 894 – China: RRT Information Request: CHN33731*, 1 October).

57. The annual World Report published in 2008 by Human Rights Watch reported that ordinary citizens faced obstacles to accessing justice over illegal land seizures:

Ordinary citizens face immense obstacles to accessing justice, in particular over issues such as illegal land seizures, forced evictions, environmental pollution, unpaid wages, corruption, and abuse of power by local officials, a situation that fuels rising social unrest across the country. The authorities have stopped disclosing figures about the number of riots and demonstrations after they announced a decline from over 200 incidents per day in 2006, but large-scale incidents were reported in 2007 in almost all of China's 34 province-level administrative units. Several demonstrations involved tens of thousand of people, such as in Yongzhou (Hunan) in March 2007 and Xiamen (Fujian) in June. In speeches and articles top security officials acknowledged the heightening of social conflicts, but remained defiant toward greater independence of the judiciary, blaming "hostile" or "enemy forces" for trying to use the nation's legal system to undermine and westernize China (Human Rights Watch 2008, *World Report 2008 – China*, 30 January, p.262).

58. Sources report that local government officials in China have expropriated contract farm land for development purposes with limited consultation and compensation. According to Professor Li, from the Chinese University of Hong Kong "research by the Chinese Academy of Social Sciences shows that land expropriation is now the most volatile issue in the countryside, particularly in coastal areas"(Lum, T. 2006, *Social Unrest in China*, US Congressional Research Service, 8 May, p.3

<http://www.fas.org/sgp/crs/row/rl33416.pdf> – Accessed 12 December 2006; Li, L. 2006, *Driven to Protest: China's Rural Unrest*, Current History website, 14 August, p.250 http://www.currenthistory.com/org_pdf_files/105/692/105_692_250.pdf – Accessed 11 October 2007).

59. Academic Thomas Lum, in a 2006 paper for the US Congressional Research Service, discusses the confiscation of contract land by government officials and the lack of property rights and compensation for previous occupants:

In the past few years, a new kind of protest has appeared, caused by anger over local development projects and resulting land confiscation and environmental degradation. The lack of property rights in China has led to many governmental abuses at the local level. The country's first comprehensive bill on property rights, which purportedly would help both wealthy private entrepreneurs and common citizens protect their rights to property, was shelved at the annual session of the National People's Congress in March 2006 following opposition from conservative leaders. A majority of Chinese peasants have long term (30 year) land-use contracts but not ownership or the right to sell them. When land takings occur, farmers are entitled only to compensation based upon agricultural output and resettlement costs. Village, township, and county governments generally receive the lion's share of the price of the "sale" or transfer of land-use rights to the developer. Violent clashes between demonstrators and police have erupted in not only poor regions in China's interior, but also rich coastal areas, where development pressures are heavy (Lum, T. 2006, *Social Unrest in China*, US Congressional Research Service, 8 May, p.3

<http://www.fas.org/sgp/crs/row/RL33416.pdf> – Accessed 12 December 2006)

60. Kevin O'Brien and Lianjiang Li, in their 2006 book on resistance in rural China, argue that central government regulations "to protect ordinary people" have been ignored by many local officials. They claim that as a result of this local officials have, among other things, "expropriated land and used coercion against villagers" (O'Brien, K.J & Li, L. 2006, *Rightful Resistance in Rural China*, Cambridge University Press, New York, p. 28).

61. In 2006, the *Asia Times* reported on steps to curb land abuses:

Beijing is reportedly considering removing the power to grant land requisitions from local officials, requiring all such permits to receive approval from Beijing, in an effort to halt rampant abuses of power and corruption with respect to land use by local officials. ...
...Shortly before the 21st Century Business Herald published the article, the Ministry of Land and Resources publicly expressed its concern that "in some cities over 90% [of] land requisition contracts are illegal". It is widely believed that Beijing's consideration of centralizing land requisition is part of its efforts to curb local officials' granting land requisitions that violate central government policies on land use and macroeconomic control. Indeed, such malpractice is rampant among local officials, whose major concern is to boost local gross domestic product (GDP), which is linked to their performance, and hence their possible promotion. And the easiest way to boost GDP in a given location is to build more infrastructure or property development projects – which requires land (Fong, Tak-ho 2006, 'Land abuses: Beijing's cure has side effects', *Asia Times*, 30 June
http://www.atimes.com/atimes/China_Business/HF30Cb01.html – Accessed 18 May 2007).

FINDINGS AND REASONS

62. The applicant travelled to Australia on what appears to be a valid Chinese passport and claims to be a national of China. The Tribunal finds that he is a citizen of the PRC and has assessed his claims against that country as his country of nationality.
63. In the Tribunal hearing the applicant's answers were straightforward and spontaneous. His oral evidence was broadly consistent in its detail with what was provided in his written statement. There is some confusion in the evidence as to the size of the applicant's farm. On information before the Tribunal, the traditional Chinese unit of area measurement of a "mu" is equivalent to 0.1647 acres ([http://en.wikipedia.org/wiki/Mu_\(unit_of_area\)](http://en.wikipedia.org/wiki/Mu_(unit_of_area))). That would mean that, on the basis of the applicant's oral evidence as to the area of his land, that land was about 1.5 acres and that, with the lease of a similar adjoining area from his neighbours, the total area of the chicken farm was about 3 acres. That seems plausible for the size of the chicken farming operations he described. The fact that the applicant wrongly thought that a mu was equivalent to an acre is not material. There is also some confusion between the applicant's written evidence and his oral evidence as to the compensation sums offered to him. This may be explicable due to the different way the compensation components are presented in the written evidence. In his oral evidence the applicant maintained that the original total compensation amount was RMB 600,000, that this was reduced to RMB 300,000 under the allegedly forged subsequent agreement and that in fact he was paid RMB 200,000. Again, the applicant gave straightforward oral evidence about these amounts.
64. On the basis of the knowledgeable answers the applicant gave about chicken farming, the Tribunal accepts that he was a chicken farmer in Hebei Province. The Tribunal also accepts that his land was expropriated. His story in this regard is consistent with the country of origin information referred to above indicating that appropriations of peasant farmer lands for development projects are common.
65. The Tribunal also accepts the applicant's account of the failure to pay him the proper amount of compensation for his land. Again the applicant's story is consistent with the country of origin information indicating that local officials are frequently corruptly involved in land acquisitions. The Tribunal had great difficulty understanding how the applicant could have put himself in a position where, under the influence of liquor, his apparent assent was obtained to a compensation outcome to which he did not agree. However, the Tribunal accepts the applicant's explanation that, in the Chinese cultural way, he agreed to attend the restaurant meeting because he wanted to continue to seek to please the government officials in the hope that they might not pursue the expropriation of his farm. The Tribunal also accepts that it was not practically open to the applicant to seek legal redress through the courts to vindicate his rights under the first compensation agreement that he signed.
66. The Tribunal was troubled by the circumstances which the applicant described of his two kidnappings, in the first of which he was severely beaten. However, the Tribunal accepts the applicant's explanations that he had to telephone to make appointments at the respective Petition and Letter offices and that, in these circumstances, [Mr B] or his cousin may have been tipped off about the applicant's attendance at the Petition and Letter office of the local county government and about his proposed attendance at the like office in [City B]. The Tribunal accepts that the applicant was harmed as a result of

his seeking to protest against the acquisition of his farm on unjust terms and that the harm he suffered was serious harm within the meaning of s.91R(1)(b) of the Act and involved systematic and discriminatory conduct within the meaning of s.91R(1)(c).

67. The Tribunal also accepts that, with the limited compensation funds the applicant received, he paid out his neighbours for the lease obligations he owed to them and used the balance to travel to Australia. The Tribunal accepts that the bank was not paid funds due to it under the mortgage and, as a result, his family house has been sealed up by the PSB and his family is living in difficult circumstances elsewhere.
68. The issues for the Tribunal are whether the applicant now has a well-founded fear of being persecuted for a Convention reason and whether relocation is a reasonable option for the applicant.

Well-founded fear for a Convention reason

69. It has been said that “political opinion” in the definition in Article 1A(2) of the Convention “should be understood in the broad sense, to incorporate, within substantive limitations now developing generally in the field of human rights, any opinion on any matter in which the machinery of State, government, and policy may be engaged”: Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed (2007, Oxford) at p 87. In the present case the Tribunal considers that the applicant’s seeking to assert his right to just compensation for the appropriation of his land by government authorities through his making of petitions or complaints to the relevant Petition and Letter offices is properly to be regarded as an expression of political opinion. He was seeking to take a stand by challenging actions of the authorities in taking his land from him in the manner that they did.
70. Does the applicant now have genuine fear founded upon a real chance of being persecuted for his political opinion? The Tribunal considers that he does. The Tribunal is not convinced that, if, as the applicant claimed, he wrote letters complaining about [Mr B] and his cousin before leaving China, those letters might in themselves result in his being further persecuted if he were to return to China. However, he has suffered persecution in the past at the hands of, or at the behest of, a powerful Communist Party official ([Mr B]) and the persons who have engaged in that persecution have made threats upon his life. The fact that his house has been sealed up by the PSB since he left China suggests that Communist Party officials may still wish to cause him serious harm if he were to return to China. The Tribunal is therefore satisfied that the applicant has genuine fear founded upon a real chance of persecution for his political opinion.

Relocation

71. The principle referred to above that the Convention does not provide protection to persons who can avail themselves of the real protection of their country of nationality elsewhere within the country only applies if those persons can genuinely access domestic protection and for whom the reality of protection is meaningful. If internal safety is illusory or unpredictable, it may be said that the person’s fear of persecution in relation to the country as a whole is well-founded (*Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 442-3; Beaumont J at 450-1). In the present case, the Tribunal does not consider that relocation is a reasonable option because the persecution he has suffered in the past is persecution at the hands of, or at the behest of, a Communist

Party official who, under the Chinese system of government is necessarily linked to the State. The fact that the applicant's house has been sealed up by the PSB adds to the risk that the applicant would be vulnerable wherever he resided in China.

CONCLUSIONS

72. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

73. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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