

1102615 [2011] RRTA 477 (14 June 2011)

DECISION RECORD

RRT CASE NUMBER: 1102615

DIAC REFERENCE(S): CLF2010/114074

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Mary Urquhart

DATE: 14 June 2011

PLACE OF DECISION: Melbourne

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2008 and applied to the Department of Immigration and Citizenship for the visa [in] August 2010. The delegate decided to refuse to grant the visa [in] February 2011 and notified the applicant of the decision.
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] March 2011 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 Regulations.

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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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'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.

The Primary application

20. The Department file reveals the applicant arrived in Australia [in] May 2008 as the holder of a student visa (572) granted [in] April 2008 and valid until [in] July 2008. A subsequent student (572) visa was granted [in] July 2008. The applicant applied for a Protection visa [in] August 2010 and is currently on a Bridging Visa A granted in association with her Protection visa application.
21. The applicant's claims are detailed in the Protection visa application at folios 22-25 of Departmental file CLF2010/114074:

41. I am seeking protection in Australia so that I do not have to go back to The People's Republic of China (PRC)

42. Why did you leave that country?

On [date] May 2008, I arrived in Australia on a student visa. I am from the People's Republic of China ("PRC"). I believe that I must have a well-founded fear of persecution on my return owing to my firm Christian belief and active involvement in the Local Church (a.k.a. "Shouters") which has been regarded as the "Evil Cult" by the PRC authorities.

On [date] January 1989, I was born in [village], [town], Fuqing City, Fujian Province, China. Both of my parents, [names], are devout Christians and active members of the Local Church. My parents have two children, me and my brother [name] who was born on [date].

From July to August 2003, I was arranged by my parents to attend a teenage Bible studying group of the Local Church during the summer school holiday. Including me, there were 12 students in the studying group; and we secretly gathered in the private home of [Mr A], my father's good friend, who was a church brother of the Local Church in [village] of [town]. [Mr A] conducted us to study teachings of the Local Church as well as "The Recovery Version of the Bible" every day. [Name], an Elder of the Local Church, who was famous Christian of the Local Church in my hometown, also gave us some lectures. At the end of the studying group, all of our 12 students were baptised and have become Christians of the Local Church since then. From then on, I insisted on attending secret meetings of the Local Church in the evening of every Friday, Saturday and Sunday. At that time, I studied at [school]. [Ms

B], my classmate, who used to study together with me at the teenage Bible studying group of the Local Church in the summer holiday, always joined with me to attend those secret meetings. We became very good friend.

43. What do you fear may happen to you if you go back to that country?

In September 2004, both [Ms B] and I were enrolled in [School 1]; and we continually attended secret meetings of the Local Church together. Sometimes, both of us secretly distributed some promotion materials of the Local Church in the campus. At the beginning, we dared not let our parents realise our activities, because we were afraid that they would not agree with us. Later on, our activities were eventually discovered by our parents. As we had expected previously, our parents thought that we were too young to take the risk, but both [Ms B] and I still insisted on doing so sometimes.

In August 2005, my parents started preparing to send me to study in the overseas, and thus they obtained a passport for me through their friend. However, my father was in troubles after that, and my parents had to stop their plan temporarily.

In October 2005, my father's friend [Mr A] invited my father to go with him to Taizhou City in Zhejiang Province, where [Mr A]'s cousin [Mr C] just opened a furniture factory. [Mr C], who was also a church brother of the Local Church, needed some experienced carpenters to help him to establish and develop the business. My father was a skilful and experienced carpenter; and also he wanted to make more money for me to study in the overseas; and thus he agreed with [Mr A] to go to Taizhou City.

In May 2006, however, my father, with [Mr A] and his cousin [Mr C], was arrested by the Public Security Bureau ("PSB") in Taizhou City of Zhejiang Province, because they were alleged to have illegal gatherings of the "Evil Cult" Actually, my father, [Mr A] and [Mr C] organised those church sisters or brothers, who were members of the Local Church, had secret meetings after they arrived in Taizhou. They also evangelized to the local people. It was unfortunately discovered by the PSB. In order to save my father, my mother had to spend a lot of money to bribe the police, but in the end, my father was still forced to have one-year re-education through labour. [Mr A] was also sentenced to re-education through labour for one year. [Mr C]'s factory was regarded as an illegal gathering place. As an owner of the factory, he had been regarded as a major leader and he was sentenced to two-year re-education through labour.

From May 2006 to May 2007, my father was forced to accept re-education through labour in a labour camp in Zhejiang. Although it was far away from my hometown, I was still implicated deeply. The school principal or my class teacher often questioned me, asking me to "learn" well from the "lesson" of my father and forcing me to study Communist teachings. Moreover, I was often discriminated, bullied or abused by those students who had actually known nothing about the truth. I was really subjected to huge pressure. Luckily, I was strongly supported not only by church sisters or brothers like my good friend [Ms B] but also by some kind students

One of those kind students was [Mr D]. He was at the same year as mine but in different class. He once found that I had been bullied by some students; and then he tried his best to protect me. As a result, he was heavily beaten by them. After then, we became very good friend. I later on learned that [Mr D] had been in the same age as mine; and that both of us were born in [date]. After then, both [Ms B] and I evangelised to him, helped him study Recovery Version of Bible, and arranged him to

attend our secret meeting. In February 2007, [Mr D] was baptised and became a brother of the Local Church

44. Who do you think may harm/mistreat you if you go back?

In May 2007, both my father and his good friend [Mr A] were released. After then, they returned to my hometown from Zhejiang. Having experienced in those sufferings, my parents thought even more that it would be very much necessary to send me to study in the overseas so that I could accept western education and also have a genuine chance to enjoy real freedom of Christian belief. Therefore, they re-started planning and organising my trip to the overseas with helps of their reliable friends

45. Why do you think this will happen to you if you go back?

But, it was really difficulties. On one hand, my family spent a great deal of money in order to save my father or let him not be treated harshly in the labour camp; and on the other hand, both of my parents had to give evidence showing their stable employment with stable annual income during the recent year. Finally, [Mr E], whose father was the best friend of my grandfather, agreed to help my parents. He not only gave us strong financial support but also evidenced that both my parents had worked at his company, [name].

In November 2007, I was personally in troubles. At that time, had already graduated from [School 1]; but I attended an evening English coaching class at the school in order to improve my English. In the afternoon of [date] November 2007, many police suddenly raided my home. The police said that they had discovered some pieces of the Local Church promotion pamphlets last night in the campus of [School 1]. Considering that I had attended the evening English coaching class in the school and my family background, I was regarded as a major suspect. Although the police could not find anything from my home, they still took me to the PSB in Fuqing. Actually, I knew that it had been done by my friend [Ms B], but no matter how the police threatened me and even mistreated me physically, I still refused to say anything. Finally, the police transferred me to the detention centre in Fuqing, where I was detained for over 2 weeks.

Meanwhile, my father was also subjected to investigation by the PSB; and he was interrogated by the police twice. But, the police could not find any evidence. As a matter of fact, as soon as I was arrested by the police, the church brothers or sisters of the Local Church did everything possible to save me. Moreover, my family's friend [Mr E] found some contacts (“guanxi”) in the Fuqing PSB and he also spent a lot of money; and thus I was eventually released on [date] November 2007.

After that, the police gave me more and more troubles. Almost every one or two weeks, I was questioned by the police; and furthermore, I was required to submit a report to detail my routine activities. It made me more and more difficult to attend those secret meetings of the Local Church.

46. Do you think the authorities of that country can and will protect you if you go back? If not, why not?

In April 2008, with strong helps of my parents' friends and [Mr E], I finally obtained my Australian visa. In order to guarantee me to depart the country smoothly, [Mr A] had to take some time to bribe an official in Fuzhou airport through his social contacts (“guanxi”). Therefore, I did not leave China until [date] May 2008.

Before I left China, I did not tell [Mr D] about my plans to go overseas for a long time. I eventually told him just one day before my departure from the country. He was very much surprised. He said that he never ever liked to be separated from me, because he loved me very much. Actually, before that, he many times expressed his love to me. He also asked my good friend [Ms B] to persuade me to accept his feeling. But, I really could not do so even though I knew that he was a good man. But, on the other hand, I was really afraid to hurt him, and thus I had to keep in contact with him.

Unexpectedly, after my leaving China, [Mr D] was changed greatly. He misunderstood me very much; and he always believed that he had been abandoned by me. Later on, I learned from my good friend [Ms B], who had already become a student at [University 1], that [Mr D] got drunk every day; and that he even rarely attended meetings of the Local Church.

In order to help him, I had to talk with [Mr D] through QQ on the Internet. Particularly, I continually invited him to pray together with me and pray reading the Lord's words with me. I also transferred him some good articles collected from "The Holy Word for Morning Revival". Although I knew that it was dangerous owing to the Internet police in China, I had to take the risk, because I really wanted [Mr D] to live in the bosom of our Lord.

Thanks our Lord, [Mr D] eventually returned to his normal Christian life. Furthermore, he, and my good friend [Ms B], re-printed those articles transferred by me from "The Holy Word for Morning Revival" and then distributed to other church brothers or sisters of the Local Church.

In January 2010, my good friend [Ms B] and other 3 church sisters had been arrested by the PSB because they had been alleged to distribute "illegal" promotion materials of the "Evil Cult" in the campus of [University 1]. Confessed by them, the police found that those "illegal" promotion materials were supplied by [Mr D] who had obtained them actually from me. As a result, both of us have been targeted by the police since then. Fortunately, [Mr D] successfully escaped before the police went for him.

My parents, however, got into troubles again. They were questioned by the PSB for 4 or 5 times. The police not only asked them to expose my activities but also asked them to warn me not to send "illegal" materials to China again. My brother was also implicated. He had to terminate his study. Right now, he has to work in Changsha, Hunan Province, where is far away from my hometown.

Since I arrived in Australia in May 2008, I have continually been attending the Local Church actively. I am really a refugee, because I do indeed have a well-founded fear of persecution on my return.

22. The claims are summarised by the delegate as follows:

She comes from a devout Christian family belonging to the Local Church and growing up following The Recovery Version of the Bible. During the July - August 2003 school holidays her parents make arrangement for her to attend bible study classes, after which she undergoes her baptism.

Since September 2004, she had attended regular secret gatherings of the Local Church and distributed pamphlets, together with her friend [Ms B], while they were both enrolled in [School 1].

In October 2005 her father travels to Taizhou City for work purposes, with fellow church member [Mr A], who has a cousin operating a business that was in need of carpenters. In May 2006, her father, [Mr A] and his cousin all three are arrested by the Public Security Bureau (PSB) for illegal church gatherings and evangelising. Her father was sentenced to 12 months re-education through labour in Zhejiang province, from May 2006 to May 2007.

While at high school she converts a fellow student [Mr D] to Christianity and he is baptised February 2007.

On the [date] Nov 2007 the PSB visit her at home and search the premises. Nothing of interest was located, but they arrested her and she was taken to the local police station. The authorities accused her of distributing religious material on school premises, as she attended English class at the campus in the evenings. She is threatened and physically mistreated by the police, after which she is transferred to a detention centre in Fuqing, where she is held for two weeks.

After her release she needs to report to the police regularly and she is questioned by the authorities. She obtains a visa for Australia in April 2008 and after bribing authorities departs on [date] May 2008. After her departure, [Mr D] is disillusioned and ceases attending church. As she wants to assist [Mr D] she communicates with him via the internet, where she encourages him to pray and sends him articles from "The Word for Morning Revival".

[Mr D] returns to Christian life and reprints the articles she sent him, which he and [Ms B] distribute to other church brothers and sister of the Local church. In January 2010 [Ms B] and three other sisters are arrested for distributing 'illegal' promotional material of the 'Evil Cult' on the [University 1] campus. They confess to receiving the material from [Mr D], who initially received them from her. [Mr D] manages to elude capture but her parents were questioned between four and five times in relation to the matter and advised to warn her not send such material to China. She has actively attended the Local Church in Australia since her arrival in May 2008 and fears persecution if she was to return to China.

23. The applicant was interviewed by the Department about her claims [in] November 2010.
24. The delegate records that the applicant's knowledge and practise of Christianity, with The Local Church, was tested at interview. The applicant demonstrated that she was able to discuss her religious beliefs with confidence and that she was aware of at least some of the abstract notions behind Christianity.
25. The delegate records that overall, the applicant appeared to have some spiritual commitment to Christianity.
26. The delegate relied upon country information which indicates that the PRC authorities are increasingly tolerant towards Chinese Christians, and in some cases actively cooperate with Christian groups outside of the auspices of the Three Self Patriotic Movement/China Christian Council. The delegate found that overall, country information is indicative that the authorities in Fujian Province are very tolerant of unregistered Christian religious groups, and some sources seem to indicate that particular congregations of The Local Church have even been able to register in Fujian and become legal, despite the national banning of the group.

27. Despite his satisfaction that the applicant is likely to be a practising Christian, the delegate nonetheless was not satisfied that the applicant substantiated a claim of well-founded fear of persecution.
28. The delegate did not accept that a family being persecuted by the Chinese authorities would make arrangements for only one family member to depart, while others remained in China, with at least one member continuing to reside at the family home. Given this, the delegate did not find the applicant's claims credible and rejected them.
29. The application was refused.

The Review

30. The applicant appeared before the Tribunal [in] June 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
31. The applicant was represented in relation to the review by her registered migration agent.

Summary of evidence at the hearing

32. The applicant stated her full name and gave her date of birth as [date deleted: s.431(2)]. She is [age deleted: s.431(2)]. She told the Tribunal that she was a high school graduate in the PRC and came to Australia on a Student Visa. When she arrived she studied Patisserie. She later switched courses. The applicant first arrived in Australia [in] May 2008. It was her evidence that she has no family in Australia; that her parents and younger brother live in the PRC. Her younger brother is working. The applicant told the Tribunal that because of her situation he could not continue his studies and so he works delivering goods for a retail shop. She said he had been at high school.
33. The applicant told the Tribunal her father's occupation was carpenter and that her mother was not employed. The Tribunal asked if her father ran his own business. The applicant said no he works for a good friend of the family on a construction site.
34. The applicant produced her passport issued [in] August 2005 in Fujian. She told the Tribunal that she had obtained a passport in 2005 because at that time her parents wanted to send her overseas for a better education and true religious freedom. She was [age deleted: s.431(2)] at the time she obtained her passport.
35. The applicant stated that she was a Christian belonging to the local church. She said that all her family belonged to the local church and were Christians. As well, her grandmother and grandfather on her father's side were still living and were also Christians.
36. The applicant gave evidence that she had been baptised in mid-July 2002. She said her brother was also baptised. She had been baptised in her home village by [Mr A] at his home.
37. The Tribunal asked the applicant what baptism meant. The applicant described baptism as washing away the old life and becoming a new person whose sins are redeemed by the Father and Son. She said it was the coming of the Holy Spirit; the entering into blessings of the Holy Spirit.

38. The Tribunal asked the applicant when she first commenced practising Christianity. She said she had been a Christian since she was very young. She used to go with her parents and brother to local church gatherings. These took place normally in the home of one of the brothers and were held secretly she said. The Tribunal asked the applicant what happened at a gathering. The applicant said that normally at a gathering, those gathered would enjoy the word of God. There would be hymn singing and praying and prayer readings. She said people would pray together. They would read the bible, and they would discuss what was contained in the word. They would gather knowledge and the truth of God from reading the bible. She said they would then enjoy spreading the word. She said prosthelitisising was part of her religious belief. The applicant said that at the gatherings, those gathered would go through the books and tell each other what they felt from the words that were read. She said they would discuss what had touched them that day.
39. The applicant told the Tribunal that she prosthelitysed away from gatherings. She said, "Jesus said if two or three gather in my name I will be among them." For this reason she sometimes gathered with just her family. At other times she prosthelitysed to people she didn't know. She said people like her who love the Lord, spread God's word to others.
40. The Tribunal asked the applicant if her family had ever held gatherings in their home. She said they did.
41. The Tribunal asked the applicant about which bible she used. She said she used the Recovery Revised Bible. She said it contained notes written by the founder of the local church. She said the notes were explanations of the word. She said for this reason they did not have a priest and did not need one. Everyone in the local church was equal; there was no hierarchy from any priest down.
42. The Tribunal asked if her church was a government-sanctioned church. The applicant said it was not. The Tribunal asked if she had ever attended a government-sanctioned church. She said she had never. The Tribunal asked if she knew the difference between her local church and a government-sanctioned church. She said she knew a number of differences. The applicant explained that in her church they used the recovery version of the bible. They had no priests. She said a lot of things were different. The way they are baptised is different. She said that in her local church the body is totally soaked during baptism, and the water represents the washing away of sins. She said apart from the differences in the way they understood the bible and the way they prayed there are also very great differences, as in the local church they only listened to God whereas in the registered churches they think they believe in God but really they are listening to the Communist Party, they are not totally listening to God's word. She added that most people who go to the registered churches are employees who have been sent to it from upper levels. She said there was a lot of corruption in the registered churches. She said people like her who really believe in God would not go to such a registered church.
43. The Tribunal referred to the applicant's application, in particular where she said that she had obtained a passport in 2005 to study overseas but that her parents had to stop this plan because there were troubles, and they had to stop their plan to send her overseas temporarily. The Tribunal asked what the troubles were. The applicant replied that she hated the Chinese Communist Party and asked why did they have to treat her family as they did. She said her father wanted to raise money to send her overseas and agreed to go with [Mr A] to work in Taizhou City. She said at the time her father was working in the factory of [Mr C] who was in the church with her father. They were working in Taizhou City in Zhejiang Province in a

furniture factory. She said her father wanted to earn more money to send her to study overseas; however, her father had been holding gatherings and had held a gathering inside the factory where he worked. She told the Tribunal that as a result of that he was caught at the gathering and sentenced to a year in corrections. She said he conducted the gathering inside the factory in a small workshop. She said police came and arrested him and more than 10 brothers and sisters who were attending. Those attending included [Mr C] and [Mr A].

44. The Tribunal asked the applicant if all 10 were sentenced as her father had been. The applicant said they were not. She said her father was sentenced to one year corrections because during the gathering on that day he was the leader. He made the call to the others to come and gather there. The applicant said the others solved the problem of their arrest by paying money. She said however, [Mr A] was sentenced to one year, and [Mr C] was sentenced to two years because the gathering took place in his factory. She said her father was sent to a labour camp corrections farm. The Tribunal asked if her family were able to take things to the father. She said they were not.
45. The Tribunal asked the applicant what she meant when she stated that to save her father her mother had to pay a lot of money to bribe police. The applicant said before her father was sentenced her mother was worried and so tried to bribe the authorities for a shorter sentence for her father. The applicant said her mother worried that her father would be tortured from inside, and if she paid money the police might treat her father a little better.
46. The Tribunal asked the applicant if in her prosthelitising there was anyone in particular that she had spread the word of God to. The applicant replied she had in particular prosthelitised a person named [Mr D]. He was a student friend of hers in the same year as she was. She told the Tribunal she had referred to him in her statement. She gave evidence that she passed God's word to him and he then became a Christian.
47. The Tribunal asked the applicant when her father was released from detention. She said in May 2007. The Tribunal asked if he went back to working in the furniture factory. The applicant said he did not because the factory was ordered to close down so he could not work there. The Tribunal asked where did he work. The applicant said he returned home taking odd jobs. Later he went to work with [Mr E]. She said that [Mr E] helped her and her family tremendously. She said he helped them when her father was in prison. He helped them organise for her to go overseas and he helped her father with work. Because he had helped them, they helped him when they could. The applicant said her family had spent money in order to save her father or not let him be treated harshly in the labour camp.
48. In her statement in support of her application, the applicant said that things were difficult. "On one hand my family spent a great deal of money in order to save my father or let him not be treated harshly in the labour camp and on the other hand, both of my parents had to give evidence showing their stable employment with stable annual income during the recent year. Finally [Mr E], whose father was the best friend of my grandfather, agreed to help my parents. He not only gave us strong financial support but also evidenced that both my parents had worked at his company, [name deleted: s.431(2)].
49. The Tribunal then asked the applicant if she had had any difficulties herself because of her religion. She replied she had. The applicant said that in November 2007 she had an incident and was taken by the police. The Tribunal asked where she was. She said she was home alone. The Tribunal asked what happened. The applicant said she heard a knock on the door and opened it and saw a few police at the door of her home. The Tribunal asked how many

police were there. The applicant said there were six policemen in uniform. They asked her, her name, and then they brought a piece of paper. She thought maybe it was a warrant, and then they pushed her to the wall and held her there and searched her home and made a mess. She said she was very scared and angry, thinking how can they do this without a reason, how can they cause such chaos. She said they found no evidence; however, they escorted her into a people carrier, that is, a long vehicle, and took her to Fuqing City Police Station and interviewed her. She said they asked her if she believed in God, and then they jokingly said if you believe in God we will catch you.

50. The applicant explained that at the time she had finished high school and attended an English coaching school in order to improve her English. She was no longer at [School 1]. She told the Tribunal that, according to the police, the day before they found some pamphlets in [School 1], and considering her background, and that she was the only Christian there, they came and arrested her believing she had left those proselitytising pamphlets.
51. The Tribunal asked the applicant how the police knew that she was the only Christian at the school. She replied they investigated. She said at the time her father had been sent to corrections her school had been notified of his detention and the school had been told to keep an eye on her, and everyone knew she was a Christian and belonged to the local church.
52. The applicant said at the time she knew who those pamphlets belonged to and it wasn't her but she didn't say anything. The Tribunal asked how long she was kept at the police station. She said she was detained for two weeks but that she was taken from the police station to a detention centre which was the City of Fuqing Detention Centre and kept there for two weeks. She said she was [age deleted: s.431(2)] at the time. The Tribunal asked how she was transferred to the detention centre. She replied she was taken from the interview room in a police vehicle and she saw the name of the detention centre when she got out of the car.
53. The Tribunal asked the applicant if any paperwork had been done on her arrival at the detention centre, such as finger printing or signing documentation. She said there was none. She said they didn't show her anything before interrogating her. She said she was told to stand in a different position with her knees bent and was handcuffed from behind. The Tribunal asked the applicant if it was her evidence that she was interrogated again at the detention centre. She replied she was, every day.
54. The Tribunal asked the applicant what questions were asked of her. She replied they barely asked anything; they just asked her to admit what they wanted her to admit but she wouldn't do those things. She added she always remembered the Lord's word: "When they hit you on the right side of the face turn the left cheek".
55. The Tribunal asked the applicant to tell it about her life in prison. She said in prison it was not a life a human would live. She said every day they got up at 6 am and had to go for a run, then they had breakfast and then they were sent to do correction labour work. She said she was always tortured. She said she was only a child but they treated her like that day and night, torturing her, and why, just because she loved God. She added, the Lord said, "You who follow me need to carry the cross" At this point the applicant was quite distressed and the Tribunal asked if she would like a break. She said she did not want a break.
56. The Tribunal asked the applicant if she or her family used an agent to help them organise things for her to come to Australia to study. She said they did. The Tribunal asked the

applicant when she first met with the agent. She replied she couldn't remember; it was a long time ago.

57. The Tribunal asked the applicant when she was released from the detention centre. She replied after two weeks, [in] November 2007.
58. The Tribunal asked the applicant if she had any further difficulties with the authorities because of her Christian beliefs. She replied she did. She said even after she was released, the authorities would not let her go or have a good time. She had to report to them which was like an interview, and even when they were interviewing her they would still use torture things. The Tribunal asked what things she meant. She replied they would ask her are you a God believer, and then they would try to make her do magic to make things appear, saying if she couldn't do that she would have to stand on her knees, and they would ask her such things when she reported, which was almost every week or twice a week.
59. The Tribunal asked the applicant where she had to go to report to the authorities. She said she went to their branch of the police station in Fuqing City. The Tribunal asked the applicant if the police she reported to were the same police as the ones in the detention centre, or different. She replied they were the same. The Tribunal then asked the applicant if what she was saying was that the same police came from the prison where she had been detained to the police station. In response the applicant said the police were different police. The Tribunal asked if she had ever met these police before. She said she had. The Tribunal asked her whereabouts. She said that they were the ones who had arrested her at home.
60. The Tribunal asked the applicant if there were any other things that she was required by the police to do. She said she was required to tell them what she did daily. Everything in her life was under scrutiny.
61. The Tribunal asked the applicant which she considered to be worse; being asked by the police to do magic to make things appear or being questioned about her daily activities and routines. She replied it was worse to make something appear and have to stand on her knees. The Tribunal then suggested to the applicant that she had not put this into her statement. She replied she had not but she did say she was physically abused and she mentioned that she had to go there daily reporting, and she said there was no difference for this reason.
62. The Tribunal then asked the applicant, apart from the reporting, if there were any other difficulties she had with the authorities. She replied there were. She said it became difficult for her to attend church gatherings. She said there were less and less opportunities for her to go to them. Every day she was afraid she would be caught, no matter what she did.
63. The Tribunal asked the applicant if she had any difficulties getting a visa. She said she did. Because of the things that happened she had many difficulties, and they had to go through her uncle who used the many ways of his social network to help her. Without him she said they couldn't get things done. The Tribunal asked the applicant if she knew what documents were required for a visa. She said she couldn't quite remember. She just remembered her parents running around everywhere for documents. The Tribunal asked if she knew that she was required to present some documentation about her school results. She said she didn't remember but she remembered her mother went to see a teacher at her school. It was a teacher that her mother knew. She said because of her status it was hard to get this documentation, but she said thank God we went through her mother's relationship with the teacher and obtained what was needed. The Tribunal then asked the applicant if she knew

whether or not she required a police clearance for a visa. She said at the time she didn't know.

64. The Tribunal referred to the applicant's statement and asked what happened to her friend, [Ms B]. The applicant said she was later sentenced to two years correction. The Tribunal asked why this was. The applicant said [Ms B] was arrested and sentenced because she took morning revival materials, which the applicant had sent to [Mr D], copied them and tried to pass them onto others and she was caught. The Tribunal asked how this had an effect on the applicant. The applicant said she sent the material from Australia to [Mr D]. She caused all the trouble. She said [Ms B] and three of the sisters admitted they obtained the documents from [Mr D] and he had got them from the applicant. The applicant then said at the time the police searched for [Mr D], but he had escaped.
65. The Tribunal asked the applicant who the three sisters arrested with [Ms B] were. She named them and said they were students in [University 1] that she came to know through [Ms B]. The Tribunal asked how long [Ms B] was sentenced for. The applicant said two years and that she was still detained. The Tribunal asked the applicant if she had been in touch with [Ms B]'s family. The applicant said after [Ms B] was arrested she contacted [Ms B]'s parents. She thought it was may be this year or last year – around about Chinese New Year time. She has forgotten which month.
66. The Tribunal reminded the applicant that she said her parents got into trouble again and asked what that was about. The applicant said because the authorities became aware the articles [Ms B] had were sent by the applicant, the authorities then went and questioned her parents. She said they arrested her parents and forced them to tell them about the applicant's daily activities and urged her parents to warn the applicant not to send any more materials or they wouldn't be kind to her parents any more.
67. The Tribunal asked how this implicated her brother. The applicant said her younger brother was not taken to the interview but he was at school, and he was at the same school she had been at, and he got the same treatment. He had to be supervised and monitored. He was discriminated against by other students and abused. He originally got good results at school, but then his results went down and he finally stopped studying and left school.
68. The Tribunal asked how long her parents were arrested on this occasion. The applicant said they were kept in custody for one day. She said her parents were not only questioned but interrogated. The authorities also said cruel words to her parents and kept threatening them.
69. The Tribunal asked the applicant if her parents still lived at the same address. She said they did. She then added whilst her mother was at home her father daren't stay at home, he can only keep shifting between different construction sites. She said it is too dangerous for him to stay in one spot.
70. The Tribunal reminded the applicant that earlier in response to Tribunal questioning she said her father was a carpenter who worked on the construction site of her uncle and asked how her two pieces of evidence could be reconciled together. The applicant said before her father was working in a construction site but it closed down and now he only did casual jobs. He still helps her uncle out but needs to shift between different sites as it is a construction company. The Tribunal suggested to the applicant that her father, because he did work on various construction sites, was used to travelling around. The applicant said that was not so. She said originally he was stable, and it was only later that when he wanted to earn more

money he moved to Taizhou. She said that factory in Taizhou closed and he had to move to different places. She told the Tribunal if her father could choose he would be at home. She said at the moment it is hard for her to be in contact with him because he is always drifting from place to place.

71. The Tribunal asked the applicant if she had any difficulty departing the PRC. The applicant said at the time, with her situation, she had difficulties. She had the help of her uncle who gave money to people in customs to keep one eye shut as she departed. The Tribunal asked how this was done. She said her uncle bribed personnel. The Tribunal asked the applicant how she knew this, and she said her parents told her. The Tribunal asked if she knew how much her uncle had to pay. She said she didn't know; she was not sure what he paid. She said when she arrived at the airport they tried to go through customs and there was a little dispute; however, her uncle was walking with her and they let her through.
72. The Tribunal asked the applicant why she did not apply for a Protection Visa when she first arrived in Australia. The applicant responded saying that at the time she had her Student Visa. She said she consulted migration agents and they said that there was no need to apply for a Protection Visa now. Also she said she didn't have any money. She said she just kept praying to God and couldn't feel peace and so she thought that perhaps it wasn't the right path that God wanted her to go through. The Tribunal then asked the applicant when it was that she decided to apply for protection. She replied at a time about halfway through last year. She was unemployed and couldn't find a job, and one of the sisters in Sydney came and said she had a job that the applicant could do, and the sister told her that in her situation she could apply for a Protection Visa. The applicant said she thought that now she had a job and her visa had expired and her passport had expired she would apply for a Protection Visa.
73. The Tribunal asked the applicant if she could say who had the higher adverse profile with the authorities in the PRC; herself or her father, given that she fears returning home. The applicant replied, before she would have said her father but now she believes it is her. She said because she has been sending so many articles about the local church back home and because the sisters had been arrested, if she went back now she would be at great risk. She said with her father drifting around they couldn't find anything about him so they would look to her as the one spreading the evil. The applicant said she often communicated with the sisters about what was the better way to spread God's message in the school. She said you've only got to look at this world; earthquakes, tsunamis, floods and fires. She said God says when these things happen we are getting closer to his appearance again; we are getting closer to God. For this reason she looks at how better she could pass God's message to university students, but with the Communist Party it is impossible for them to accept this.
74. The Tribunal asked the applicant if she completed her pastry course that she first studied when she arrived in Australia. She replied she did not. She said she switched to a different school. She went to do an interpreting and translation course. The Tribunal asked why she had done this. She replied because at the time she had a dream that she wanted to speak good English and wanted to spread God's word here because here people were enjoying real religious freedom. Also she said, in church there are some Chinese speaking people who need translations and interpreting and she wanted to be able to contribute and be utilised within the church. The Tribunal asked the applicant if it had anything to do with pastry cooks being taken off the list of people eligible for permanent residency. The applicant said it was not related. She said the circumstances inside China were so bad that she really wanted people to hear God's message.

75. The Tribunal asked the applicant if there was anything further she wished to tell the Tribunal about her application. The applicant said she had just received bad news that [Mr D] is already arrested. She didn't know how he could go through all the abuse. Now at this time it was so terrifying. She said he wanted to leave the country. Now he is arrested by police and is in custody. She said if she cannot get protection in Australia she will face the same persecution if she returns to the PRC. She said now she believes every path she has gone through God has arranged for her. She then quoted the bible, referring to sparrows falling from the sky and the Lord counting every hair of the head of one's head. She said without the permission of God none of these things happen.
76. The Tribunal asked the applicant when she heard that [Mr D] was arrested. She replied last January in 2011. The Tribunal asked who told her. She said her parents. The Tribunal asked the applicant why, earlier today, she told the Tribunal that [Mr D] had escaped, in particular why she had not told the Tribunal then that he had been arrested. She replied that before he did escape, but in December 2010 he rang and said he was hiding, he wanted to try to go to Thailand. After that her family rang and said he had been captured and arrested.

Country Information

77. The United States Department of State Country Report on International Religious Freedom for 2009, China, states, in part, the following [5.10]:

Officials from the Three-Self Patriotic Movement/China Christian Council (TSPM/CCC), the state-approved Protestant religious organization, estimated that at least 20 million citizens worship in official churches. Government officials stated there are more than 50,000 registered TSPM churches and 18 TSPM theological schools. The World Christian Database estimates there are more than 300 unofficial house church networks. The Pew Research Centre estimates 50 million to 70 million Christians practice without state sanction. One Chinese scholar estimated in a public lecture at Renmin University that the number of Christians in China, including those in TSPM churches and unregistered churches, is near 90 million. By contrast, the Chinese Communist Party is estimated to have 60 million members, 10 million of whom are believed to participate regularly in religious services. Currents of Calvinism or Reformed theology gained influence among house churches and Christian intellectuals. Pentecostal Christianity was also popular among house churches.

Although the Government authorized funding to build new places of worship for registered venues, the number of temples, churches, and mosques has not kept pace with growth in the number of worshippers. For example, in Beijing, a city of 17.4 million, there are only 13 registered Protestant churches. Some registered churches faced difficulty registering new church venues. The shortage of space in registered churches is one factor driving the proliferation of unregistered churches and groups. [5:10]

Under its Family and Friend Worship Policy, the State Administration for Religious Affairs (SARA) states on its website that family and friends holding religious meetings at home need not register with the government.

78. Tony Lambert provided the following profile of Christian churches in the applicant's province of Fujian in his 2006 book, *China's Christian Millions*:

"Fujian has a thriving and rapidly growing Christian community. As a coastal province in the southeast, it was one of the first provinces to be evangelised by the

Protestant missionaries in the early 19th century. By 1949 there were about 100,000 Protestants. Official estimates of Protestants in Fujian were 1,179, 000 - after fifty years of communism a twelve fold growth. According to Lambert, in 2002, Fuzhou, the capital, with its six surrounding rural counties and two smaller municipalities had at least 350,000 Protestants meeting in 300 registered churches and 2, 000 meeting points. In 2004, Fuqing City had about 350, 000 believers meeting in 520 churches.” [5:13]

Correspondence from the Executive Secretary of the Hong Kong Christian Council states that the current view of the Chinese authorities ‘is that unregistered Christian groups should be discouraged but also tolerated’ The Executive Secretary also stated that ‘arrests of leaders take place occasionally, not as a result of religious policies, but when unregistered religious meetings “become too aggressive or high profile” or when local officials attempt to extort money from unregistered churches’ and that ‘financial extortion accounts for most of the reported arrests of church leaders, particularly in central China’ [5.14].

The Executive Secretary of the Hong Kong Christian Council asserts that Fujian enjoys ‘the most liberal policy on religious freedom in China,’ especially in relation to Christianity [5.14].

79. A report from the Christian group OMF International (formerly Overseas Missionary Fellowship) dated April 2009 (CX236260) indicates the following, in part, concerning the situation for Christianity in Fujian Province:

‘There are also large numbers of independent house churches in Fujian. The Fuzhou region saw the rise in the 1930s of the independent church movement known as the "Little Flock" associated with Watchman Nee (Ni Tuosheng). At the time, many educated young people and students broke away from the traditional denominational and missions churches to meet in what they believed was closer to the New Testament pattern. Today some in this movement hold their own meetings on TSPM church premises - others continue as unregistered house churches. The Little Flock churches are particularly strong in Fuqing County, where probably about half of the more than 100, 000 believers belong to this grouping. In fact, Fujian seems to be home to a large number of independently-minded Christians. Apart from the Little Flock there are at least 80,000 members of the True Jesus Church in the province - this is another indigenous Chinese church which was founded nearly a century ago. In general, local government in Fujian seems fairly tolerant of unregistered believers as it is rare that one reads of cases of persecution of house-church Christians in this province.’

Local Church

80. In his book, *The Politics of Protestantism in Contemporary China*, Jason Kindopp has noted that:

While Local Church repression was particularly harsh during the 1980s and 1990s, over the last ten years official tactics have evolved, lengthy judicial sentences giving way to short-term administrative detentions and large fines often imposed on unrepentant church figures... it is important to note that Local Church repression is unevenly implemented and has eased greatly over the past ten years. In some areas, county-level authorities have formally authorised Local Church congregations which now operate legally in Shanghai, Nanjing, Fuzhou and several rural counties in Fujian and Zhejiang Provinces.

In Fujian's rural Longtian district, the Local Church recently built a massive church complex "with a 4,000 person seating capacity and adjoining classrooms for Sunday school." Following President Bush's appeal to Beijing over the Li Guanggang, Yu Zhudi and Lin Xifu Recovery Bible-smuggling case, to appease the US, CCP leaders reportedly instructed Fujian authorities "not to touch the Local Church, resulting in at least a temporary period of unprecedented freedom from official repression." According to Kindopp, the softening of official attitudes in some locations has coincided with - and perhaps has been influenced by - Local Church leaders' recent efforts "to bring the group into greater conformity with the evangelical Protestant mainstream." As well as stepping back from its former exclusivist stance, Local Church rituals have been softened to make the group "more acceptable to mainstream evangelicals..." [5:22].

Kindopp indicates that Local Church repression is unevenly implemented and has eased greatly over the past ten years. In some areas, county-level authorities have formally authorised Local Church congregations to operate legally in Shanghai, Nanjing, Fuzhou and several rural counties in Fujian and Zhejiang Provinces.

81. In a country report published in November 2008 it was stated that although:
it was noted that reports had been received of a few arrests of Catholic priests in the years 2003 to 2005, ...overall most Christians in Fujian - Protestant and Catholic - were able to practise their faith according to their conscience.' While it is acknowledged that 'there are occasional crackdowns... Christians in Fujian enjoy relatively liberal policies on religious freedom.' [5.16]
82. The Research Directorate of the New York-based organisation Human Rights in China stated in 2007:
that [o]nce a person has been rounded up in a church raid, he'll be known to local officials, who will also mark him as a recidivist if he pops up in future raids. ... It is very likely that a person detained at an underground church meeting would be entered into the [Public Security Bureau (PSB)] database. [5.19]

FINDINGS AND REASONS

83. The applicant travelled to Australia on a PRC passport and claims to be a citizen of the PRC. On the basis of the evidence of her passport and her evidence at the hearing before the Tribunal, the Tribunal finds that she is a citizen of the PRC.
84. The applicant fears significant physical harm and that her liberty is under threat, and that she would be mistreated due to her religious activities if she returned to the PRC.
85. At the outset the Tribunal records it found the applicant overall to be a credible witness when discussing evidence of her religious practise and events pertaining to the arrest and detention of her father. Her evidence and account of past events was, on the whole, detailed and consistent, and in conformity with the independent evidence sourced by the Tribunal.
86. The Tribunal accepts that the applicant comes from a devout and practising Christian family who are active members of the local church. The Tribunal accepts that the applicant and her family attended gatherings which were held in secret. The Tribunal accepts that the applicant is familiar with the recovery version of the bible used by those adhering to the local church. The Tribunal accepts that she is baptised and understands the reasons for her baptism. The Tribunal finds the applicant was able to give a cogent account of her Christianity and

demonstrated an ability to discuss her beliefs with confidence. The Tribunal accepts the applicant's commitment to Christianity, including proselytising.

87. The Tribunal accepts the applicant's father is a carpenter who travelled to Taizhou City to earn more money in order to send his daughter overseas, and whilst in Taizhou City he worked at a furniture factory owned by [Mr A].
88. The Tribunal finds it plausible that, whilst in Taizhou City, the applicant's father organised a gathering in a workshop of the factory at which some 10 or more people attended and that at that gathering her father was the leader on the day. The Tribunal accepts and finds plausible that the gathering was raided by police and that the applicant's father and the owner of the furniture factory and another were arrested. The Tribunal accepts that her father, as a result of the raid, spent time in a re-education or corrections camp. The Tribunal accepts that the applicant's plans to come to Australia, made originally in October 2005, were put on hold due to the arrest of her father in May 2006.
89. The Tribunal accepts that, following her father's arrest, the applicant's school may have been notified and she may have come under greater scrutiny, supervision and even monitoring. The Tribunal accepts this may also have extended to her brother at the same school and that this had an impact on his studies.
90. The Tribunal accepts the applicant's claim that the authorities found some Local Church 'promotion pamphlets' at [School 1] where the applicant had attended evening classes. The Tribunal accepts that the applicant was considered the "main suspect" and was taken to the PSB in Fuqing. The applicant claims she knew who was responsible but said nothing. The Tribunal accepts the applicant's failure to co-operate with the authorities led to her being questioned, threatened and mistreated. The Tribunal finds her evidence that she was detained for two weeks plausible.
91. The Tribunal accepts the applicant's evidence that she had in particular spread the word of God to a person named [Mr D] and that as a result he became a Christian. The Tribunal accepts that later, the applicant sent him further Christian literature electronically. The Tribunal accepts that another Christian friend of the applicant and of [Mr D], a [Ms B] downloaded and printed that material for distribution and as a result came to the attention of the authorities. The applicant said [Ms B] was arrested and sentenced because she tried to pass the material onto other university students and was caught by the authorities. The Tribunal finds this account to be plausible and consistent with country of origin information that, whereas underground churches may be tolerated by the Chinese authorities to some extent, they tend to be more concerned when proselytising to the young is involved.
92. The applicant claims that after her time in detention she was harassed by police every one or two weeks and required to submit a report detailing her routine activities. She claims she was tortured but gives no plausible detail in regard to the claim. She says she was questioned about her faith and asked to work magic, if she was a Christian by making things appear; it was her evidence that she was required to stand on her knees if she failed to do the "magic".
93. The applicant claims she was required to report to the police station in Fuqing City. The Tribunal notes the applicant's inconsistent evidence in relation to the police who she reported to. At first she indicated they were the same police who had questioned her in detention. Then she changed her evidence claiming they were the police who first arrested her. The Tribunal does not accept the applicant's vague claim that she was required to tell the authorities what

she did daily or that everything in her life was under scrutiny. The Tribunal finds the vagueness of her evidence together with the inconsistencies lead it to find the evidence is unreliable and the Tribunal has formed the view that the applicant's evidence is an embellishment for the purpose of enhancing her application for protection.

94. The Tribunal notes the applicant was able to depart China legally using her own passport. The Tribunal finds this to be an indication that the applicant herself was not of adverse interest to the authorities when she left home.
95. However, given the applicant's strong commitment to her faith and her readiness to express her political opinion critical of the Chinese Communist Party and the authorities, the Tribunal considers that taking all the information together there is a real chance which is not remote that she will encounter harm capable of amounting to persecution for reasons of her religion in the reasonably foreseeable future should she return to China.

Relocation

96. The Tribunal is satisfied that the risk of Convention persecution exists in the country as a whole and that safe relocation within the PRC is therefore not reasonably open to the applicant.
97. The Tribunal accepts that to require the applicant to modify her behaviour in the event that she were to return to China by joining a different denomination of Christianity, either with a registered or unregistered church, or by practising her religion discreetly, would amount to persecutory curtailment of her current religious beliefs. As the Tribunal has found the applicant's description of her commitment to the Christian faith convincing, the Tribunal accepts that if the applicant returns to the PRC now or in the reasonably foreseeable future she will continue to engage in unofficial Local Church activities, including proselytising unless precluded from doing so by fear. In this regard the Tribunal notes *Applicant S395 of 2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473, McHugh and Kirby JJ made the following observation at [40]:

"Persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps - reasonable or otherwise - to avoid offending the wishes of the persecutors."

Delay

98. The Tribunal has considered her explanation for delay. The Tribunal considered the delay by the applicant in applying for a Protection visa noting that some 2 years plus passed between the applicant arriving in Australia and her application for refuge. The applicant explained this in terms of originally being granted a student visa, having no money and importantly, not being sure it was the pathway God wanted for her at that time. The Tribunal is satisfied that the delay, although a relevant consideration in the assessment of this application, is not such as to erode the applicant's claim of holding a well-founded fear of persecution in the circumstances of this case.

S.91R(3)

99. The Tribunal accepts the evidence of [names deleted: s.431(2)] that the applicant regularly attends the Chinese speaking “[church deleted: s.431(2)]” at [suburb deleted: s.431(2)] and has done so since her arrival in Australia in June 2008. The Tribunal accepts the applicant has taken an active role within that congregation and has done so otherwise than for the sole purpose of strengthening her Protection Visa claim.

State protection

100. As the harm the applicant faces is at the hands of the PRC authorities and security forces, the applicant will be unable to obtain protection from those authorities from the harm she faces.
101. The applicant presented evidence which the Tribunal considers to be consistent and plausible evidence about her religious beliefs and Christianity in China and in Australia, and accepts that she has an active commitment to her Christian beliefs and to proselitytising about those beliefs and fears of persecution if she were to return to China.
102. Having considered the applicant’s claims singularly and cumulatively the Tribunal finds the applicant would be treated as an active proselitytising member of an unregistered church by the Chinese authorities if she were to return to the PRC in the reasonably foreseeable future. The Tribunal finds the applicant's commitment to Christianity in particular would increase the chance of her coming to the adverse attention of the authorities as an active proselitytising member of an unregistered church. The Tribunal finds there is a real chance that the applicant will face serious harm capable of amounting to persecution for the purposes of s.91R of the Act in the reasonably foreseeable future should she return to China and that her Convention based fear is well-founded.

CONCLUSIONS

103. 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

104. 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.