

0809040 [2009] RRTA 424 (29 April 2009)

DECISION RECORD

RRT CASE NUMBER: 0809040

DIAC REFERENCE(S): CLF2008/128395

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Suseela Durvasula

DATE: 29 April 2009

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] November 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2008. The delegate decided to refuse to grant the visa [in] December 2008 and notified the applicant of the decision and her review rights by letter [on the same] date.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] December 2008 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

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

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

EVIDENCE

19. The Tribunal has before it the Departmental and Tribunal files relating to the applicant.

Protection visa application

20. The applicant is a Chinese national from Fujian province aged in her early forties. In her protection visa application she states that she is married with one daughter and one son. She completed five years of primary school education in Fuqing City. She worked as a farmer from July 1980 to August 1990, as the owner of a snack bar from August 1990 to July 1997 and as the owner of a restaurant from August 1997 to February 2007. She was unemployed after that.
21. She states that she lived in [place name deleted in accordance with s.431(2) of the Migration Act 1958 as it may identify the applicant], Fuqing City from at least August 1998 to February 2007. From February 2007 to August 2007 she spent time in a re-education-through-labour camp. From August 2007 to November 2007 she lived in [Town 1], Fuqing City.
22. The applicant arrived in Australia [in] November 2007 on a Subclass 580 Student Guardian visa. She travelled as the guardian of her son who is in Australia on a student visa. The visa was granted to her [in] November 2007 and ceased [in] July 2008. The applicant applied for a protection visa [in] September 2008. The applicant travelled to Australia on a passport issued to her [in] October 2006.
23. In a statement lodged with her protection visa application, the applicant outlines her protection visa claims as follows:

She started believing in Christianity when she was a child, under her parents' influence. Most of her neighbours were also Christians.

In August 1997 she opened a restaurant. She continued worshipping God and mentioned God to her old customers.

In April 2006 she decided to found an organisation called the [Town 1] Underground Church. The venue was the cellar of her restaurant. The cellar was soundproof and easy to hide in. Initially about 10 fellow believers attended every weekend. The number started to increase.

In February 2007 police raided the restaurant as they had noticed a number of people attending the restaurant at weekends. There were 31 people present at the time. None escaped as there was no back door to the cellar. The police arrested five leaders including the applicant. The rest of the people were fined and asked to fill in some forms.

The applicant was taken to the local police station. The police questioned her and ascertained she was one of the main leaders as the gathering was in her restaurant.

They asked her who the other leaders were. She did not tell the truth and undertook all the charges alone.

The applicant was sentenced to 6 months in re-education-through-labour camp. Her restaurant's business licence was cancelled and it was sealed up. Her family lost their income. After the applicant was released from labour camp she had to be hospitalised. It cost her more than RMB 10 000.

The applicant and her husband filed lawsuits to every level of court, wrote letters and appealed to every level of government to seek compensation and get her business licence reinstated. It made no difference and brought her more persecution by the government. The applicant continued to host family church gatherings.

Through an agent the applicant obtained a student guardian visa as her son came to Australia on a student visa. After her arrival in Australia, the applicant went to the Chinese church in Sydney. She missed the 'optimal time' for applying for a protection visa due to lack of knowledge.

Departmental interview

24. The applicant was interviewed by the delegate [in] November 2008. A summary of relevant evidence provided at that interview is set out below:

Her parents were Christian so she followed Christianity since she was very young. She was baptised as a Christian in 1991. Before 1997 the applicant and her parents worshipped at a family church.

In April 2006, the applicant decided to establish her own underground church. She had a restaurant and wanted to tell her customers about Christianity so she wanted to organise another informal church. The church did not have a formal name, despite her claim in her written statement that the organisation was [Town 1] Underground Church. The group had 20 to 30 members.

The worship was led by other members. When asked what happened at the worship, she stated that brothers and sisters gathered together in the storage area of her restaurant. They told her how to be Christian. They would pray to Jesus for a good life and healthy body and tell the goodness to others. The elders would read parts of the Bible and explain the contents. For example the elders would read from the book of John. This was the longest part of the Bible. They then sang holy songs and would pray by themselves for a bit. Each service took more than one hour.

Her church believes in God and Jesus Christ. Jesus Christ is the son of God. There is also God in the Heaven. Jesus and God are the same. Jesus was put on the cross. He died and was reborn after three days. Jesus is in the mind of all Christians.

In her church the applicant got other people to worship but the baptisms were done by the elders. The applicant's main role was to collect holy songs.

The applicant was arrested in February 2007.

She had no problems departing China as she obtained a visa through a friend.

When asked why she waited about 9 months after arriving in Australia before she applied for protection, the applicant stated she had no idea she could apply a protection

The applicant attends the [name deleted: s.431(2)] church in Chinatown She attends every Sunday if she remembers to go. She started going the first week she arrived in Australia She has many friends in the church but no-one told her about applying for protection. The applicant did not apply for protection initially as she thought it would impact on her son. Later on she saw the newspaper and realised that applying for protection would not impact on her son.

Her husband is a Christian. He was not present when the police raided her restaurant as he worked in a different town. He was not questioned by the police after they arrested the applicant. The police later questioned her husband about her whereabouts but he has told them he does not know where she is.

Review application

25. After lodging the review application, the applicant provided the following documents with English translations to the Tribunal:
- Certificate of baptism from the Fuqing [Town 1] Christian Church stating that the applicant was baptised [in] March 1991.
 - Letter from the Fuqing [Town 1] Christian Church dated [in] October 2008 stating that the applicant accepted Christ as her personal saviour in 1991 and has been devoting herself to Christ.
 - Business license for the applicant's restaurant issued [in] February 2007, stating the licence was valid from [date deleted: s.431(2)] August 1997 to [date deleted: s.431(2)] August 2012.
 - 'Re-education through labour decision' from the Fuqing City Reeducation Through Labour Administration Committee dated [in] March 2007. This stated that the applicant was arrested [in] February 2007 for organising a bible study session for youth at her restaurant. She was sentenced to 6 months re-education through labour.

Tribunal hearing

26. The applicant appeared before the Tribunal [in] April 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
27. At the hearing the applicant gave evidence that was consistent with the claims in her written statement and those made at the Departmental interview. She told the Tribunal that she has one son and one adopted daughter. Her husband was often away from the house as he worked in another town as a construction worker. He was not present when the police arrested her in February 2007.
28. The applicant described how she practised Christianity with her parents when she was young. They did not attend the registered church as it was run by the Chinese government. Neighbours used to come to their house for prayer meetings or they would go to other people's houses. The applicant described in detail what would occur at these meetings. Her family did not have a problem with the authorities as they moved from place to place for the meetings.

29. The applicant described the nature and significance of her baptism ceremony in 1991. She was not baptised before then as she did not understand the Bible well enough before that. She only wanted to be baptised after she understood the Bible.
30. In 1997 the applicant established her own restaurant. She used to evangelise to her customers and tell them about God. She also prayed at night and read the Bible. She did not attend meetings as she did not have much spare time. Customers who came to her wanted to find out where they could attend underground church meetings so the applicant eventually decided to set up her own church in the basement area of the restaurant in 2006.
31. The applicant described the nature of the underground church she established. The meetings were held on Sundays between 2pm and 3pm. In the first year, only about 8 people attended. After that it increased to 20 or 30 people. The applicant described what happened at these meetings.
32. The applicant spoke of her understanding of Christian beliefs, the Christian understanding of God, the Bible, and in particular, the stories about Jesus Christ in the Bible.
33. In relation to difficulties with the authorities, the applicant stated that at first, only a few people attended the meetings and the authorities did not suspect anything. When the numbers increased, they became suspicious.
34. On the day the applicant was arrested [in] February 2007, there were at least 30 people in the meeting. The applicant described the circumstances of her arrest and detention. She confessed to being the church group leader as it was her restaurant. The other people were either fined or released after being arrested. She was sentenced to 6 months in a re-education through labour camp. She described the conditions in detention and in the labour camp.
35. After her release from detention, the authorities cancelled her business licence for her restaurant. The applicant was mentally unwell. She had to go to hospital to seek medical treatment and take medication. This cost her RMB 10 000. When asked how she was able to afford for her son to study in Australia, she stated that she borrowed money from relatives and friends and her husband was still working.
36. She continued to practise Christianity after her release. She attended small family church meetings at different places. Some meetings were held at her place. She did not have difficulties with the authorities as the meetings were small and were held at different places.
37. When asked what she feared if she returned to China, the applicant stated that she would still keep evangelising and telling people about God and the Gospels. She would still attend underground church meetings and continue to organise meetings. She cannot live happily without a church. She is afraid that the authorities will eventually find her and cause her trouble for engaging in these activities.
38. The Tribunal put to the applicant that country information indicated a relatively high degree of tolerance for Christianity and underground church worship in Fujian province. The applicant stated that she lives in a country area and the incident that occurred to her would not have been reported. She understands that people are still persecuted.

39. The applicant described her church going activities in Australia and the reasons why she delayed lodging a protection visa application. This was consistent with her responses at the Departmental interview.

Independent evidence

40. Several sources have reported on the liberal application of religious policy in Fujian, sources also report the closure and demolition of house churches in the province. In the 2006 edition of *China Christians Millions* Lambert describes religious policy in Fujian as “relatively liberal’ however, he also notes the occurrence of “occasional crackdowns on house churches”. Lambert provides the following information on the Christian community in Fujian and the treatment house churches.

Fujian has a thriving and rapidly growing Christian community. As a coastal province in the south east, it was one of first to be evangelised from the early 19th century. By 1949 there were about 10,000 Protestants. Official estimates of Protestant Christians in 2004 were 1,179,000 – a twelve-fold growth after fifty-five years of Communism. In early 1999 a TSPM spokesman stated there were 4,000 registered churches and meeting points. In 2000 the TSPM magazine *Tianfeng* revealed there were over 1,200 pastoral workers in Fujian.

Fuzhou, the capital, with its six surrounding rural counties and two smaller municipalities had at least 350,000 Protestants in 2002, meeting in 300 registered churches and 2,000 meeting points. In 2004 Fuqing City had 350,000 believers meeting in 520 churches, according to a Hong Kong Pastor. After Wenzhou, it is the area with the second greatest number of churches in the whole country and has been dubbed “China’s Second Jerusalem” About 26 per cent of the population are Christian. Pingtan, a large island off the coast, has also seen incredible growth, from under 5,000 Christians in 1959 to 60,000 today, divided equally between registered and unregistered congregations. At least 15 per cent of the island’s population are Christians.

The “Little Flock” or “Assemblies” were started by Watchman Nee in the 1930s and are still strong in Fujian, especially in the Fuzhou and Fuqing areas where they number many thousands. Many of them prefer to have no links with the TSPM. In Xiamen at least one third of the believers meet in over 100 independent house churches, according to a knowledgeable Hong Kong Christian. The “True Jesus Church”, another indigenous church is also strong in the province with some 70,000 members in total. They are very strong in Putian County, numbering about 20, 000 there. There are about 210, 000 Roman Catholics in Fujian. In general, the official religious policy has been applied relatively liberally in Fujian, although there have been occasional crackdowns on house churches and “underground” Catholics (Lambert, T. 2006, *China’s Christian Millions*, Monarch Books, Oxford, pp.240-1).

41. The 2007 US Department of State (USDOS) International Religious Freedom Report states that during 2007 there were reports of the closure of unregistered churches in Fujian. The following excerpt of the USDOS report also provides general information on the status and treatment of house churches in China:

There were many reports of repression of unregistered Protestant church networks and house churches during the reporting period. The national religious affairs ministry, known as State Administration for Religious Affairs (SARA), stated that friends and family holding prayer meetings at home need not register with the Government, but the regulations on religious affairs (RRA) state that formal worship should take place only in government-approved venues. There were many reports that police and officials of local Religious Affairs Bureaus (RABs) interfered with house church meetings, sometimes accusing the house church of disturbing neighbors or disrupting social order. Police sometimes detained worshippers

attending such services for hours or days and prevented further house worship in the venues. Police interrogated both laypeople and their leaders about their activities at the meeting sites, in hotel rooms, and in detention centers. Leaders sometimes faced harsher treatment, including detention, formal arrest and sentencing to reeducation or imprisonment. Treatment of unregistered groups varied regionally. For example, local officials in Henan Province mistreated unregistered Protestants, and local officials in Hebei Province tightly controlled Roman Catholics loyal to the Vatican.

...During the period covered by this report, the Government's respect for religious freedom remained poor, especially for members of unregistered religious groups and groups the Government designated as "cults." The Government tends to perceive unregulated religious gatherings or groups as a potential challenge to its authority, and it attempts to control and regulate religious groups to prevent the rise of sources of authority outside the control of the Government and the CCP. In some regions government supervision of religious activity was minimal, and registered and unregistered churches existed openly side-by-side and were treated similarly by the authorities. In other regions local officials supervised religion strictly, and authorities placed pressure on unregistered churches and their members. Local regulations, provincial work reports, and other government and party documents continued to exhort officials to enforce vigorously government policy regarding unregistered churches. Officials in many locations pressured unregistered religious groups, including house churches, to affiliate with one of the PRAs and register with government religious affairs authorities. Officials in some areas organized registration campaigns collecting the names, addresses, and sometimes the fingerprints of church leaders and worshippers. Some local authorities continued to harass religious groups that did not register by arresting and interrogating unregistered church leaders. In other regions government supervision of religious activity was less stringent and registered and unregistered churches coexisted openly. Despite the efforts at control in some areas, official sources, religious professionals, and members of both officially sanctioned and unregistered places of worship reported that the number of religious adherents in the country continued to grow.

Police sometimes closed unregistered places of worship, including Catholic churches and Protestant house churches with significant memberships, properties, financial resources, and networks. The Government closed churches in Zhejiang, Jilin, and Fujian Provinces during the reporting period. In some cases local officials destroyed the properties of unregistered religious groups. SARA [State Administration for Religious Affairs] considers unregistered churches to be illegal, although SARA has stated that prayer meetings and Bible study groups held among friends and family in private homes are legal and do not require registration. In some areas unregistered house churches with hundreds of members met openly with the knowledge of local authorities. In other areas house church meetings of more than a handful of family members and friends were proscribed. House churches could encounter greater difficulties when their membership grew, when they arranged for the regular use of facilities for the specific purpose of conducting religious activities, or when they forged links with other unregistered groups or with coreligionists overseas. Urban house churches were generally limited to meetings of a few dozen members or less, while meetings of unregistered Protestants in small cities and rural areas could number in the hundreds. It was also difficult for registered groups to register new places of worship, such as churches and mosques, even in areas with growing religious populations (US Department of State 2007, *International Religious Freedom Report 2007: China (includes Tibet, Hong Kong, and Macau)*, 14 September, Introduction & Section 2).

42. A Department of Foreign Affairs and Trade (DFAT) Country Information Report dated 28 November 2007 reports on the difficulty in accessing information on underground Christians

in China due to limitations in freely available information and the “political sensitivity” of the information. DFAT, in line with this advice, stated that it “has no specific information regarding the enforcement of the prohibition of underground churches in Fujian generally, or in Fuqing in particular” (DIAC Country Information Service 2007, Country Information Report No.07/88 – China: CISQuest CHN9120 – ‘Shouters’ Christian group and Fujian Province (sourced from DFAT advice of 28 November 2007), 29 November 2007).

FINDINGS AND REASONS

43. The applicant travelled to Australia on a Chinese passport and claims to be a national of China. The Tribunal accepts that the applicant is a Chinese national and has assessed her claims against China as her country of nationality.
44. The Tribunal has some doubts about the applicant’s claims to fear harm in China. These doubts are primarily in relation to the applicant’s delay in lodging an application for a protection visa. The Tribunal considers it implausible that the applicant, who has a son studying in Australia, and was regularly attending a Chinese Christian church and having contact with other refugees, would not have been aware earlier that she could have applied for protection. This casts some doubt on her claims that she genuinely feared harm in China as a result of a prior detention and her attendance at underground religious services in China.
45. Against this concern, the Tribunal must balance the other evidence provided by the applicant in support of her claims. Delay in lodging a protection visa application does not necessarily mean that all of the applicant’s other claims are untrue. The Tribunal found the applicant to be a credible witness. Her evidence was consistent with her written statements, the other documentary evidence on file and her claims at the Departmental interview. She has not sought to exaggerate or embellish her account of what happened to her in China. She provided a detailed and credible account of her Christian beliefs and practices, the nature of her underground church activities and the circumstances in which she was arrested and detained by the authorities.
46. The Tribunal accepts that the applicant is a practicing and committed Christian and has been so since childhood. The Tribunal accepts that she grew up in a Christian family. At the hearing and the Departmental interview, she was able to explain the central Christian beliefs and rituals, such as the baptism and the stories in the Bible about Jesus. She has evidence in the form of a letter and baptism certificate from her underground church in China to support her claims about her religious activities.
47. The Tribunal accepts the applicant’s evidence about her church-going activities and religious practice in Australia. The Tribunal is satisfied that the applicant has attended church in Australia because she is a committed Christian and that it is conduct otherwise than for the purpose of strengthening her refugee claim under subsection 91R(3) of the Act.
48. The Tribunal accepts the applicant’s claims that she practised in an underground church in China from her childhood. At the hearing, she provided a detailed account of her underground church activities and described the prayer meetings and the nature of her worship. The Tribunal accepts her evidence that she did not want to attend the official registered church as it was not consistent with her religious beliefs and was controlled by the Chinese government.

49. The Tribunal accepts that the applicant started organising underground church meetings in the basement of her restaurant in 2006. She provided a detailed account of these meetings and what happened at them. The number of attendees continued to grow and the meetings came to the attention of the authorities.
50. The Tribunal accepts that the applicant was detained in February 2008 for organising underground church activities and sentenced to labour camp for 6 months due to her being targeted as a church leader. She provided a detailed account of the circumstances of her detention and the time spent in the labour camp. She has provided documentary evidence to support her claims about her detention. The Tribunal accepts that after her release from detention, the applicant's business licence was cancelled and she petitioned the government to have the licence returned and to pay her compensation.
51. The Tribunal accepts that the applicant continued to practice in underground churches after her release from detention in 2007, but was not caught as she practised secretly and moved from place to place. The Tribunal nevertheless accepts that the applicant has a genuine well-founded fear of being arrested and detained, given her close association with the other underground church members, her earlier record of being arrested and her willingness to 'evangelise' to others and actively tell them about the Christian faith. The Tribunal accepts the applicant's evidence that because she had earlier come to the attention of the local authorities and had a leading role in organising underground church activities, it is likely that she will come to their attention again if she returns to China and continues to worship in an underground church.
52. The Tribunal also accepts the independent evidence discussed above which indicates that although the attitude of the authorities towards unregistered churches varies considerably between different parts of China and Fujian is considered to be one of the most liberal provinces in China, such churches will always be vulnerable to changes in the way they are perceived at the national level and to changes in the attitude of the local administration. The independent evidence suggests that when crackdowns towards house churches occur, both leaders and members are detained, interrogated and subjected to physical abuse. The independent evidence also indicates that sporadic mistreatment of underground Christians continues to occur in Fujian. It is also difficult to access accurate information about underground Christians in Fujian.
53. In these circumstances, the Tribunal is satisfied that there is a real chance that persons known to attend unregistered underground churches may be subjected to serious harm. The Tribunal is further satisfied that the applicant may be targeted for her membership of an underground church. The Tribunal also accepts that the applicant would continue to attend house churches and evangelise to others on her return to China because she believes, as a Christian, that she must do so. She is unwilling to attend registered Christian churches in China.
54. The Tribunal accepts that if targeted for reasons of her religion, the applicant would face detention and probable physical mistreatment. The Tribunal considers that the harm which the applicant fears involves serious harm and that the applicant's religion is the essential and significant reason for the persecution which she fears. The Tribunal is also satisfied that the persecution which the applicant fears involves systematic and discriminatory conduct.
55. As the Chinese Government is responsible for the persecution which the applicant fears, the Tribunal also considers that there is no part of China to which the applicant could reasonably be expected to relocate. There is also nothing in the evidence before the Tribunal to suggest

that the applicant has a legally enforceable right to enter and reside in any other country apart from her country of nationality. The Tribunal therefore finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

CONCLUSIONS

56. 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

57. 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 Officers ID: RCHADW