

060766337 [2006] RRTA 196 (23 November 2006)

DECISION RECORD

RRT CASE NUMBER: 060766337

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Alan Gregory

DATE DECISION SIGNED: 23 November 2006

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of China (PRC), arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa on. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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, in this case 18 May 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

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.

There are on file two translated copies of PRC Identity cards:

1. An identity card of the People's Republic of China [information about the applicant deleted in accordance with s431 as it may identify the applicant] (D f 12).

2. An identity card of the People's Republic of China [information about the applicant deleted in accordance with s431 as it may identify the applicant] (D f 7).

There is a PRC passport issued in City A in early 2000s.

The applicant's wife and children remain in China and do not form part of the application for review. [information deleted in accordance with s431 as it may identify the applicant]

The applicant attached to his application for a Protection visa a statutory declaration made in NSW in 2006 set out in 51 paragraphs. (D f 49-53)

The applicant states he entered Australia for the first time in early 2000s on a PRC passport under a different identity.

He states he was born in the 1960s and his birth name was a different one and was born in Place Z, Town Y, City B, China. He states he has a de facto wife and few children. He states he attended Place Z primary school in the 1970s, then middle school, in the 1980s, then he spent many years learning his building skill. The applicant states he became a small operator in the 1990s, but as a small operator from the countryside and facing corrupt officials he could not get jobs. In the late 1990s he was told that a company was looking for export labourers to go to Country C, he sat the entrance exam and was selected. In the late 1990s he was sent by this company to Country C as an export labourer and worked for several years there, and returned to China in the mid 2000s. He states that "during the period I worked in Country C, I became a Christian; and particularly, I was honourably baptised by two priests ...".

The applicant states that on his return to China he continually practiced religion at a public church in Town Y, City B, China. This church belonged to an official organisation called Church S. But he found the practices "much different from the ones at the church in Country C because those religious practices had strictly restricted and closely supervised by the PRC authorities. There was strong political colour in the Church without any genuine religious freedom and all religious practices or activities were solely for the purpose to make all Christians only to practice their religions under the leadership of the Communists."(para 12)

The applicant states he was questioned by the priests in the Church about his practices overseas and warned never to spread “anti-Communist” religious ideologies to those Christians in the Church.

He stated that as he could not bear the strong political atmosphere he established a “home gathering group” in the 2000s, and he organised for Christians who shared similar religious ideologies to have religious practices in the home. However, this was not tolerated by the PRC authorities and he was denounced as someone spreading overseas “anti-Communist” ideas. He states he was threatened many times by those officials of the local religious affairs office and the police of the Public Security Bureau.

In the early 2000s he arranged for some Christians to have a gathering at his home, but a few officials from the local religious affairs office together with some police from the Public Security Bureau (PSB) broke in. They had to stand against the wall, his home was searched, and he was taken to the PSB. He was detained for some weeks and made to sign a forced confession that he was engaged in anti-government religious activities. He was tortured by the police during the interrogation. He was forced to disband his home gathering group. He was regularly questioned by PSB officials and the local police. He decided to escape this and go overseas, but his passport had been destroyed by the police, and he had to apply for a new one. This was refused.

The applicant stated that because of these events, he decided to change his name, and since the early 2000s became Person F, and had a new PRC ID card (certified copy was attached).

The applicant stated that he established another gathering of a Christian group in the early 2000s an underground religious group which spread Christianity. He said he was again subjected to questioning. He had started organising Christians in his group to spread religious materials to those members of Church S, encouraging them to seek religious freedom. He stated that during this period he was continually subjected to questioning or interrogation by local officials or the police because they suspected he was engaged in illegal religious activities. In the early 2000s a friend of the applicant was discovered distributing religious materials to members of the Church S and he exposed the applicant as the provider of those materials. The applicant stated that in the early 2000s the authorities discovered he was behind this group and the distribution of their material and he was detained for a short period in the early 2000s. He was then sent to a construction site where he had to do manual labour without pay (D 1 f 49-50). He stated he was subject to inhumane persecution and forced to work at least 10 houses (sic) per day without payment. He stated he was not allowed to return home and he was not allowed to practice his religion and not even allowed to attend Church S.

The applicant also stated that he was allowed to return home early in the year but was continually subjected to questions from the local officials and police and he found it impossible to continue his religious practice and he decided to go overseas. He had to use a false passport that was not in his name, and that was the reason he came to Australia on a false passport. He stated that he cannot return to China because he believed he would be subject to persecution from the local authorities solely owing to his religious beliefs and practices. He stated that his wife and children and parents are being subjected to persecution as they have been implicated in his case.

A hearing was held. The applicant gave evidence.

The applicant said that when he went to Country C as a labourer it was the first time he had left China. He said his wife and children did not go with him. He said they stayed at his home, he owned a home which he had inherited, it was a large house. He said his parents were alive and lived next door. He said he had one sibling who lived in the country. He said he was in Country C for several years and did not travel outside of Country C while he was there.

He said before he went to Country C he was a free-thinker. He said he had trained in the building trade and he had a lot of knowledge about the techniques in the construction industry. He said he was very familiar with aspects of the construction industry and house building. He said he did try to run a small construction business before he went to Country C. He did work as a small scale contractor but this was not successful.

The applicant said his income in Country C was higher than what he would have earned in China. He said he lived in temporary sheds on the construction site and the company provided food. He said he saved money during this period.

He said he had contact with Christian groups, in Country C. He went to the city to visit and heard other Chinese workers in the churches, and he started attending the Chinese Church. He said there were many in Country C. He went to one in City D. He said both English and Chinese were spoken. He said the church was a Protestant church. He said the Catholic churches were different as they believed in Maria but the Protestant churches believed in Jesus.

The applicant said he decided to become a Christian, and he was baptised in the early 2000s. He said he had with him his baptismal certificate and the Tribunal asked him to send in a certified copy. He said he was baptised in the river as Christ was and this was a great honour. He described his baptism when two ministers held him, placed their hands on his head, and helped him to immerse in the water. He said he was also confirmed in the same year.

He said there was communion service every Sunday, which he attended. Asked if there was bread and wine, he said they had for the communion, biscuits and coco cola. Asked if he had any job with the church he said he would go early each Sunday and help prepare the food and help with the cleaning. He said he sometimes took part in the service. He said he gave witness to God and would elaborate on the Bible. He said he did not have any official position in the church. He said there were ministers, the elders and the brothers and sisters of the congregation. He said he had told his wife about his conversion and she was happy, asked why he said because he had learned a lot and told her some of the stories from the Bible. He said he also told his parents and they were happy. He said his father had been a professional and they were happy he had learned from the Bible. He said his parents now had also become Christians.

The applicant said in the early 2000s he returned to China. He said he had been away a long time and missed his family and his parents and decided to return and spread the word of God to China. He said he did construction work and worked for people, he did not run his own business as he needed time for preaching. He said his wife became a Christian and she was baptised. He said he attended the Chinese Christian church, but found the local churches in China completely different from what he had experienced in Country C. He said the Chinese Christian Church believed in the Communist Party and were loyal to the party. He said overseas he found everyone could bear witness to the lord, they could study the Bible together and the people loved each other. He said it was Church S that he attended when he

returned to China. He said he did not want to stray from the true path. He said the church also had a communion service.

Because he was troubled by this church he started holding services in his own home. He felt troubled because he believed that the Church was promoting Chinese Communist ideas rather than Christianity. This was from the early 2000s and it started with a small number of people but the numbers increased after that. He said officials came and spoke to him. They had done so before he joined Church S, and asked him if he had spread anti-communist ideas from overseas in the church. He said he was threatened by these officials. Asked what the threats were he said they said he was not to propagate any anti-communist or religious ideas that he had learned overseas. They asked him not to do this. Again he was asked the nature of the threats made and he said he would be persecuted and the police would arrest him and place him in prison. Asked who made these threats he said it was officials from the religious management bureau, as well as a minister from the Church S, and also the police.

In the early 2000s when he had a gathering at his house, officers from the religious control bureau and the police came to his house, confiscated some of his belongings including his passport and cut the passport up. They took him to the police security bureau in order for him to help them with their investigation. He was kept by the police in detention for several weeks.

Asked about others, he said others were not arrested then, and he could not produce evidence, because he was not formally charged but was detained without any trial. He said there was no basis for his arrest and no legal basis or record. He said there was no press account as these things were not publicised.

The Tribunal asked if he had a copy of the confession he was forced to make, he said he did not. He said he was tortured, asked to specify, the applicant said that his hands were bound with ropes and he was hung from the ropes, and then he was asked to kneel on a drawer that was open, and then they used prisoners against him, and when he was put with the prisoners he was attacked by their fists and given numerous punches. He said they described this to him as a “present for newcomers”. He said what took place in prisons was not open to public scrutiny.

He said some of the others in his house ran away, and as they did not see what happened in prison no one could tell about this. He said people had no idea of the torture that he suffered. Asked if people could make statements that he was taken to prison he said it would take time.

After he came out of prison he returned to Church S and again they warned him and threatened him and forbid him to organise any home based or underground gatherings. He said the threat was he would go to prison again and with more serious torture.

Asked why he had two identity cards, he said that one was the original one of his birth name, but because of the persecution he changed his name and hence the second card. He hoped by this means to obtain a passport but the authorities knew of his identify despite the new card and stopped him from getting a new passport. He said there was no religious freedom and he had wanted to go overseas again to escape. He wanted to have his own group to pursue his own religion.

The applicant said that in the early 2000s he started his own group. Asked how many people attended he said it became a few hundred. Asked how he could house all these people, he said

his house was large and he used the rooms at his house and also rooms in his parents' house next door. He said he was careful and made the gatherings secret. He put small stools about and people also sat on the floor. He said they talked about the stories in the Bible, did Bible study and he told them how he became a Christian in Country C. He said he was the leader of this group.

Asked about his friend who was mentioned in his declaration he said this friend had been arrested. He said that he himself was arrested again in the early 2000s, and detained again for some weeks and after that he was forced to work for nothing in a construction site. This was for several months. After a year he returned to his house.

The applicant said he used a false passport to come to Australia. A Christian friend had obtained it for him and also obtained a visa for him, and he said he asked for protection from the Australian Government. He said as the visa was applied for under someone else's name he did not know details of the application. He said he had no relations in Australia.

Asked what church he attended in Australia, he said he attended the Christian Assembly in the city, which had a church near the city railway station. He said the services were in Mandarin and English and he was very happy there.

Asked if he had any documents he said he had with him: Photographs taken with fellow Christians in Country C, a Certificate of Baptism, a statement from his church in Australia, and ID certificate and passport. The Tribunal explained it had on file copies of his ID certificate and his passport but wanted certified copies of the other documents mentioned. He agreed to send them to the Tribunal. He also agreed to try and obtain some documentation from China, as the Tribunal pointed out to him on several occasions that he was not able to support his statements by any other material.

The applicant said he applied for protection to the Australian government because he wanted to escape the dark ruling of the Communist Party. He said he did this out of his desire for religious freedom. He said during the short months he has been in Australia he has been given protection from the dark and ruling of the Chinese Communist Party and extended his gratitude.

The applicant said he had casual work from time to time doing toiling, which he could do. He lived in an Australian suburb where he rented a room. He said he did his own cooking. He said he was unable to contact his wife, as she was under watch and it was not wise for him to make contact with her. He had lost contact with many of his friends.

In late 2006 the Tribunal wrote to the applicant, and invited him to submit some additional information, namely certified copies of documents he may have in regard to his baptism, statement from his church in Australia, and photographs of him with Christian friends in Country C, and further any statements from friends in China or other documents pertaining to his life in the Christian church in China.

Later the Tribunal received a submission from the applicant. This included:

- Certified copy of a letter written by Person M, chairman of the Christian Assembly of City H;
- Photos of the applicant with Christians in City H Australia;

- Certified and translated copy of a testimonial signed and finger printed by Christians in the underground church in China, six names, dated late 2006;
- Certificate (translated) from Person N, of the Church in Country C, stating that “the applicant was baptized in the early 2000s;
- Six photos taken of the applicant which appear to be in Country C, outside and inside a church.

FINDINGS AND REASONS

The Tribunal notes the following country research information.

In the USA Commission on “International Religious Freedom” (May 2005), it is stated “The Chinese government continues to engage in Systematic and egregious violations of religious freedom.” It also states how the government and government officials “control, monitor and restrain the activities of all religious communities...”. It specifically mentions “house” or “underground” Christians. It also states “prominent religious leaders and laypersons alike continue to be confined, tortured, imprisoned and subjected to other forms of ill treatment on account of their religion or belief.” While from November 2004 the Chinese government announced a new set of regulations on religious affairs, which suggested the protection of religious freedom, the Commission is sceptical about the reforms. It notes that the reforms specify that official recognition is limited to five “official religions” – Protestantism, Catholicism, Islam, Buddhism and Taoism. The Commission suggests the reforms rather than grant freedoms, tends to regularize management practices, so giving authorities more control over religious groups.

What is called mainly (there are variations on the name) the “Three-Self Patriotic Movement” or church is the only government sanctioned Protestant church in China. There is also an officially recognised Catholic Church in China - the Chinese Patriotic Catholic Association (often referred to as the CPA or CPCA or CCPA).

In the **Human Rights Watch 2006**, ‘China: A Year After New Regulations, Religious Rights Still Restricted’ 1 March <http://hrw.org> (accessed September 2006) it is stated

Arrests, Closures, Crackdowns Continue

(New York, March 1, 2006) – One year after China’s Regulations on Religious Affairs came into force, Chinese citizens’ ability to exercise their right to freedom of religion remains as subject to arbitrary restrictions as ever, Human Rights Watch said today. The regulations took effect on March 1, 2005. At the time they came into force, the Chinese government asserted that the national regulations, the first comprehensive set of regulations on religion in China, constituted “a significant step forward in the protection of Chinese citizens’ religious freedoms.” However, local officials continue to repress religious activities that they determine to be outside the scope of the state-controlled religious system. Their decisions are often made arbitrarily and in a manner inconsistent with the right to freedom of belief or religion. Chinese officials continue to detain and arrest religious believers, close religious sites, and impose restrictions on the movements, contacts, visits, and correspondence of religious personnel.

“Chinese officials claim the new regulations safeguard religious freedom

through the rule of law, but the intentional vagueness of the regulations allows for continued repression of disfavored individuals or groups,” said Brad Adams, Asia director of Human Rights Watch. “There’s nothing accidental about the vagueness – it gives officials the room they need to legitimize closing mosques, raiding religious meetings, ‘re-educating’ religious leaders, and censoring publications.” Human Rights Watch said the most significant problem with the regulations is that arbitrariness is implanted in the text. The regulations state that “normal” religious activities are allowed, but then fail to define what the term “normal” means, leaving practitioners unclear about what is allowed and what is banned. The regulations also include other undefined key terms, such as “religious extremism,” “disturbing public order,” and “undermining social stability,” each of which only adds to the ambiguities and the potential arbitrariness of the application of the regulations. In the year since the regulations went into effect, attempts to rein in unsupervised religious activities concentrated on preventing like-minded believers from working together to propagate their beliefs, to “plant” new religious sites, or to educate their children. Thus, the size and composition of religious meetings, personnel, literature, and religious education for minors all came under attack.

In another section of the Report it is stated:

In 2005, officials concentrated on raiding large-scale meetings bringing together religious personnel from scattered provinces and cities. Many of those present were detained and fined; a few were arrested. Many of the gathering involved teacher and leadership training sessions. Such meetings are viewed with particular hostility by a government and Party whose aim is to control the indoctrination of new generations of “patriotic” religious leaders. Other targeted churches had been engaged in activities to increase membership. One was raided during baptism ceremonies for 60 new believers; another involved a Sunday school teacher training class for high-school and university students. Reports alleged that police officers and religious affairs cadres conducting the raids mistreated congregants, and that those detained also were mistreated by official personnel.

An unusual series of coordinated raids in May 2005 at 100 locales netted some 600 believers in Jilin province in what is believed to have been an attempt at shutting down growing house church influence on an academic community. A few key house church leaders were detained to ensure their attendance at “study sessions” where they would be subjected to attempts to force them to affiliate with the “Three-Self Patriotic Movement,” the official umbrella organization for Protestants. Most of those detained – one gathering involved some 100 pastors; another drew 50 participants from 20 provinces and cities – were released following payment of fines.

The points made by the Human Rights Watch were consistent with the claims made by the applicant. He Tribunal notes that the reported raids in various provinces in May 2005 coincides with the claims made by the applicant about the raid on his group.

When the Archbishop of Canterbury visited China in October 2006, he was hosted by the Three-Self Patriotic Movement as well as the State Administration of Religious Affairs. (Archbishop of Canterbury’s web site: www.archbishopofcanterbury.org). This indicates the status given by Chinese authorities to the church and that leading religious visitors are only permitted to meet with Government sanctioned religious groups.

Activities by non-official Christian groups, often called “house” or “underground” are frowned upon, and according to the US Department of State International Religious Freedom Report of 2005, (Bureau of Democracy, Human Rights and Labor), unregistered spiritual activities are regarded as illegal and subject to punishment.

In regard to passports, the Tribunal notes the following reports:

Regarding exit from China, the available sources indicate that freedom to travel overseas is generally the case, although passports are difficult to obtain for certain classes of dissident. Section 2d (Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation) of the most recent The US Department of State country report states:

The Government permitted legal emigration and foreign travel for most citizens passports were increasingly easy to obtain in most places, although those whom the Government deemed to be threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports.

(US Department of State 2005 *Country Reports on Human Rights practices 2004 China*, 28 February, 2D).

<http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>

The types of religious and political dissidents who had trouble obtaining a passport in 2004 are described in more detail in the same section of the US report:

There were reports that some academics faced travel restrictions around the year’s sensitive anniversaries, particularly the June 4 anniversary of the 1989 Tiananmen Square massacre, and there were instances in which the Authorities refused to issue passports or visas on apparent political grounds. Members of the underground churches sometimes were refused passports and other necessary travel documents. Some Falun Gong members also had difficulty in obtaining passports. On June 1, Dr Jiang Yanyong and his wife were detained while en route to pick up a visa to travel abroad to visit their daughter. They were held for 7 and 2 weeks, respectively, because he wrote to government leaders requesting an official reassessment of the Tiananmen massacre. (US Department of State 2005 Country Human Rights Practices 2004, China, Reports on 28 February).

The previous year’s US report specifically mentions that business travellers could obtain passports “relatively easily”.

The Government permitted legal emigration and foreign travel for most citizens. Passports were increasingly easy to obtain in most places although those whom the Government deemed to be threats, including religious leaders, political dissidents and some ethnic minority members continued to have difficulty obtaining passports.

The US Department report of 2006 states:

Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports... There were reports that some academics faced travel restrictions around the year’s sensitive anniversaries, particularly the June 4 anniversary of the Tiananmen Square massacre. There were instances in which the authorities refused to issue passports or visas on apparent political grounds. Cheng Yizhong, the editor of

Guangdong Province's Southern Metropolitan Daily newspaper, was banned by authorities from travelling abroad during the year to accept a UNESCO press freedom award. Members of underground churches, Falun Gong members and other politically sensitive individuals sometimes were refused passports and other necessary travel documents (US Department of State 2006, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in Country Reports on Human Rights Practices for 2005 – China, 8 March 2005).

Other findings

The Tribunal finds that the applicant's evidence to be a consistent and credible account of the events. In considering the applicant's nationality the Tribunal recognised that the applicant had two identity cards and entered Australia on a false passport. The Tribunal accepts the applicant's claims that he changed his name as a result of the "black spot" against his name. Further the Tribunal accepts that the applicant obtained a false passport through a Christian friend. Based on the available country information the Tribunal accepts that someone with the profile of the applicant in regard to underground Christian activities may have difficulty in obtaining a passport. However considering the reasons given by the applicant for this there was sufficient evidence and so the Tribunal finds that the applicant is a Chinese national.

The Tribunal found the applicant's claims as stated in his original statement and also expressed by him at the hearing, both consistent and found the applicant a truthful witness. The Tribunal accepts the applicant's claims that he had changed his name as a result of his experiences. The applicant provided answers to questions from the Tribunal which indicated he had a strong Christian faith which was Bible based and evangelical. The Tribunal accepts that during his work period in Country C the applicant became a Christian and was baptized. The Tribunal accepts that the applicant, while working in Country C for several years became converted to Christianity and practiced his religion there. The applicant placed importance on the fact that he was baptised in the River. There is the baptismal certificate provided as well as photographs of him in a church and with other Christians.

The Tribunal also accepts that the applicant on his return to China as a Christian, joined the church in his local area, but broke away because of his dissatisfaction with the church and its teaching and participated in undergrounds or home gatherings of Christians. The Tribunal accepts that he was questioned by priests of the Church S about his beliefs as well as by local officials. The Tribunal accepts the applicant's claims of trying to change identity, of being involved with Church S and then his own house church. The Tribunal accepts that the applicant set up a home gathering of like minded Christians in 2000s. The Tribunal accepts that he was threatened and denounced by local officials because of these activities. The Tribunal accepts that the applicant was detained in 2004 and subjected to ill-treatment by these local officials. It notes not only his attempt to escape notice by changing his name and how he used a false passport to leave China and enter Australia. The Tribunal accepts that the strength of the applicant's feelings about his religion prevents him from attending the government authorised Church S.

The Tribunal accepts the claims by the applicant of being pressured by local officials because of his Christianity, especially when he broke from the officially authorised Church S and accepts his claims of arrest and detention without trial. His account of underground and house church activity was consistent with country information. Country information indicates that such people as the applicant are subject to detention and imprisonment and may also be

subject to torture. The applicant's claim of acting against him in the early 2000s is consistent with country information which indicates that there was a movement by officials in various provinces of China to act against such groups as underground or house Christians. The Tribunal accepts that the applicant was arrested a second time by authorities for providing illegal religious material for distribution to members of Church S. The Tribunal accepts that he was detained a second time in the early 2000s, without legal procedure and it accepts that he was sent to a construction site and was forced to do punitive jobs under surveillance for several months. The worsening of his treatment with his second detention in the early 2000s, compared to his earlier detention, both without trial, suggests that should he continue his religious practices he would be subject to further and more serious punishment by local officials.

The Tribunal gave weight also to the documentation the applicant supplied post-hearing, which indicated that he had an active association with a similar Chinese Christian church in City H, and his baptismal certificate, photos and the evidence of his fellow Christians from the house church, all verified his claims. The applicant has shown his strong Christian faith by joining a kindred group in City H and the Tribunal accepts the evidence provided by the Church in City H that he is a regular attendee of that congregation and continues to practice his faith.

Research provided by country information provides independent evidence that supports the claims of the applicant. Given the above findings the Tribunal accepts that the applicant has suffered serious harm in the past.

The Tribunal finds that the applicant will continue to practice his Christian faith and is therefore satisfied that there is a real chance of persecution occurring to the applicant in the reasonably foreseeable future, if he were to return to China. The Tribunal is satisfied that the applicant's religion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a) of the Act.

The Tribunal considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal accepts that the applicant fears he will face serious harm, amounting to persecution.

In this case, relocation is not a reasonable option as the reports of country information indicate that while the degree of restriction of religious practice may vary across the provinces and regions, the targeting of religious groups is reported as widespread and the applicant with his determination to continue house gatherings of like minded Christians is likely to attract the attention of local authorities wherever he would go in China.

The Tribunal has considered whether the applicant has a legally enforceable right to enter and reside in any other country other than China (s.36(3) of the Act) and is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than China.

The Tribunal is satisfied on the evidence before it that the applicant has a well-founded fear of persecution for a Convention related reason and is satisfied that the applicant is a refugee.

CONCLUSIONS

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

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officer's I.D. lward