

**1205075 [2012] RRTA 851 (19 September 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1205075

**DIAC REFERENCE(S):** CLF2010/170560 CLF2011/188297

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Susan Pinto

**DATE:** 19 September 2012

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.

## 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 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), applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2011.
3. The delegate refused to grant the visa [in] March 2012, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. Whether an applicant is a person in respect of 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.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **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.

### **Application to the Department**

20. When lodging the application to the Department, the applicant indicated that she is a citizen of China, born on [date deleted: s.431(2)]. The applicant indicated that she speaks, reads and writes Mandarin. The applicant stated that her religion is Falun Dafa.
21. The applicant indicated that she applied for a Student visa [in] December 2010. She stated that she was granted the visa [in] March 2011 and arrived in Australia on that visa [in] April 2011.
22. The applicant stated on the application form that her address in China from [birth] to April 2011 was [address deleted: s.431(2)].
23. The applicant also stated that in Australia she resided at [address deleted: s.431(2)] [in] April 2011 and that from [May] 2011 to "now" that she resides at [Suburb 1].

24. The applicant indicated that she has had 15 years of education in China [educational details deleted: s.431(2)].
25. The applicant stated that she was employed for [a] Department until April 2011, earning 3,000 *yuan* per month. The applicant also indicated that that she was employed [in a] Factory between February 2004 and August 2007, earning 3,500 *yuan* per month.
26. The applicant indicated that she left China legally and has not been convicted, charged or investigated in relation to any crimes.
27. The applicant provided no details of any family members on the application form.
28. In a statement provided to the Department in support of the application, the applicant stated the following in relation to her claims to be a refugee:
  - The applicant is a Falun Gong practitioner who started practising at the end of 1996.
  - After experiencing hardship and difficulties, the applicant escaped China and arrived in Sydney [in] April 2011.
  - The applicant was unwell as a child and in 1996 her mother was given a copy of *Zhuan Falun* by a good friend. The applicant used her spare time after class to read the book. She instantly felt that her mind was clearer and her world and human life completely changed. From that time, she was no longer tormented by sickness and knew she would never depart from Falun Gong.
  - In 1999, the Chinese government “launched a persecution of Falun Gong” The applicant travelled to Beijing to appeal with her mother and sister who were also Falun Gong practitioners.
  - Later, they were escorted back by police officers from the police station in [Company 2] and detained for half a month. At the time they were separated and interrogated over the night and the applicant was “greatly harmed mentally” She was not allowed to sleep but due to her age she did not suffer physical persecution.
  - The applicant’s family suffered more severely because there were many people in her family who practised. Her [mother] was imprisoned in a forced labour camp for 1 year; and then sentenced to 3 years. The applicant’s eldest sister [Ms H] was sentenced to 5 years imprisonment. She had to rush between 2 places, sending them things.
  - After the applicant graduated, her family asked her to go to another city in order to protect her. Her boss thought highly of her moral standards and abilities to work and she did everything according to the requirements of Dafa and this “caused a change of morale in the company”. Through her performances they all identified with Falun Gong. She told her boss and colleagues about Falun Gong and asked them to participate in the “Three Withdrawals” which is withdrawing from the Chinese Communist Party, the Chinese Youth League or the Chinese Young Pioneers.

- As the applicant kept talking about Dafa with fellow practitioners her telephone was monitored. The local National Security staff traced their company and she eventually quit the job and left. However, the National Security Department did not have any evidence and her boss warded off further harassment and the “affair” ended there.
- In 2007, the applicant’s eldest sister’s 5 years of imprisonment ended and the applicant returned to her home town. The applicant and her sister set up a “truth clarification material production site” and used the money to provide truth clarification materials about Dafa. They printed booklets, flyers, self-adhesive posters, and *ClearWisdom Weekly* They also produced calendars and cards and New Year pictures and helped to send material to the *ClearWisdom* website. They used mobile telephone calls to make truth clarification calls and produced a list of names of people who had done the Three Withdrawals. They also edited and produced materials about the local situation and set up a Fa study site where 5 to 6 practitioners attended their home every week.
- They also produced truth clarification material and distributed the material in residential areas, universities, parks and other places after work. They were also responsible for transferring the material among fellow practitioners in different regions. The applicant was aware of the danger but persisted in order to let the deceived Chinese people know the truth.
- The applicant’s non Falun Gong friend who shared a flat with her was temporarily detained by the National Security for participating in the pro-democracy movement in China. After she was released she told the applicant that under pressure she had revealed the applicant’s situation to the National Security Department. However, they moved to a different location and avoided danger.
- The applicant’s family was never able to spend New Year together as the authorities would use this time to persecute a member of their family. The applicant’s father who was not a practitioner was put under unbearable pressure and he suffered mental harm.
- The applicant’s [mother] was arrested 5 times after she went to Beijing to appeal and she experienced detention, brainwashing, re-education through labour and sentencing. Her eldest sister [Ms H] was sentenced to 5 years imprisonment. The applicant refers to articles on the *Clearwisdom* website about the “facts of the persecution” they suffered.
- The applicant’s sister’s husband was forced to sign a divorce agreement and her sister’s child lost her mother at the age of [age deleted: s.431(2)]. During the 5 years that her sister was in prison the child endured great harm, including “cold shoulders” of teachers and classmates.
- The applicant’s second eldest [brother-in-law], went to Beijing to appeal in 2000 and was illegally subjected to a year in education through labour and in 2002 he was illegally arrested again and had to leave home and live in exile. However, after many years he was again arrested by the 2008 Olympic

organisers and sentenced to 8 years imprisonment. The applicant again refers to the *Clearwisdom* website.

- Staff from the 610 office often went to their home to harass them and in February 2010 the applicant's father could no longer deal with the pressure and left the family. Several days after that he left forever and the sorrow was something which could not be expressed in words.
- The applicant's family hoped that she could escape from the "terrifying system" and [in] April 2011 she arrived in Sydney. The following day she went to Chinatown to look for fellow practitioners. The applicant took part in the truth clarification activities on the day to commemorate the 12<sup>th</sup> anniversary of April 25. The applicant was interviewed and the article was published on the English website of *Clearwisdom* but the article does not refer to the applicant by name. It only mentions that the applicant came from [China] on the previous day. If needed, the reporter can verify that the applicant was the interviewee.
- Since that day, the applicant has not missed a single opportunity to practice Falun Gong in Australia and regularly attends Falun Gong activities. The applicant does not want to suffer the persecution that her mother, sisters and brother in laws have suffered.

29. The applicant provided the following documents to the Department in support of her application:

- Photographs of the applicant participating in Falun Gong exercises with other practitioners [in] May 2011 on [a] Television Report.
- Photographs of the applicant holding banners relating to Falun Gong. The caption states that they were taken on 25 April 2011 for the 12<sup>th</sup> anniversary of the peaceful appeal.
- Statement by [Ms A], dated [October] 2011, who states that she is a veteran Falun Gong practitioner and has been subjected to persecution. [Ms A] refers to the *Clearwisdom* website regarding her arrest. She states that after the crackdown she went with the applicant, her mother and 2 sisters to Beijing to appeal but they were arrested on their way and escorted back to [Company 2]. She states that they were then detained and after that time the applicant and her family were persecuted. She states that the applicant has produced many Falun Gong materials and exposed the persecution of practitioners. The statement is signed by several other persons.
- Statement by [Mr B], stating that he was persecuted by the Chinese government and obtained a protection visa. He states that he met the applicant in April and after speaking with her for some time she went to work for [Media Company 4] where he is an editor and reporter. The applicant told him about her work in China in producing truth clarification material at her home and he listened carefully and could tell that she had been genuinely involved and is a mature Falun Dafa disciple. He states that she participates in study groups and distributes The Epoch Times and helps people to withdraw from the CCP and its related organisations. He also states that he has learned that several of her family members were persecuted in China.

- Statement by [Ms C], who states that [in] April 2011 a group of Falun Gong practitioners conducted a large scale group exercise in [a park] and when she arrived in Chinatown she saw the applicant distributing Falun Gong materials and they started a conversation. She states that she was impressed by the applicant and what she had done to clarify the truth in China. The applicant told her that the Master helped her to find them as soon as she arrived in China. [Ms C] states that she told her right away that she could move in with her and help her and she moved in a week later because she wanted to live with Falun Gong disciples. The day after they moved in together they went to the Chinese consulate to do the exercises and send righteous thoughts. Since that time she has been doing her best to be involved in different Falun Gong activities.
- Statement by [Ms D], who states that she is a Falun Gong practitioner. She states that she met the applicant [in] April 2011 in Chinatown. She states that she and the applicant often went to the Chinese Consulate together in Sydney to protest and also went to parliament House in Canberra to appeal. She also states that the applicant goes to [other locations] on weekends to help Chinese people to quit the CCP and often looks after the newspaper at the Quit CCP Service Centre in [Suburb 1]. She states that every Tuesday night the applicant attends the group Fa-study at [Suburb 1] and at weekends she participates in the group Fa study at [Suburb 3].
- Court judgment, dated 2003, stating that [the applicant's mother], a retired worker of [Company 2] was put under administrative detention in December 1999 for disrupting social order and in June 2000 she was subjected to one year of re-education through labour for attending illegal meetings. [In] August 2002, she was placed under house arrest. [In] January 2003, she was put under criminal detention for allegedly organising and utilising an evil cult and [in] February 2003 she was formally arrested and is currently in [detention]. It states that she was sentenced to 3 years imprisonment, suspended for 5 years.
- Court judgment, dated 2002, stating that [the applicant's sister], [age deleted: s.431(2)], was sentenced for 25 days in December 1999 for practising Falun Gong and distributing flyers. It states that [in] October 2001 she was put under criminal detention and [in] November 2001 placed under house arrest and [in] February 2002 she was formally arrested by the PSB and that her period of imprisonment is from [October] 2001 to [December] 2006.
- Notice of Arrest for [name deleted: s.431(2)], stating that he was arrested due to his involvement with a cult organisation [in 2008] and detained at [a] Detention Centre.
- Falun Dafa *Clearwisdom.net*, downloaded [in 2008], stating that on [an evening in] 2008, [police] arrested [the applicant's brother-in-law] and he is illegally detained [at a] Police Station.
- Falun Dafa *Clearwisdom.net*, downloaded [in] January 2010, stating that 10 Falun Gong practitioners were sentenced. It states that [the applicant's mother], a former employee of [Company 2] was sentenced to 3 years and suspended 3 years.

- Falun Dafa *Clearwisdomnet*, downloaded [in 2001], stating that [Ms H] was arrested in 2001 and sentenced to 5 years imprisonment. It states that she was formerly employed by [Company 2].

*Department interview*

30. The applicant was interviewed by the delegate [in] March 2012. The Tribunal has listened to the CD Rom recording of the interview and a summary of the applicant's evidence follows:

The applicant confirmed her understanding of the interpreter and that she had no objections to the interpreter. The applicant did not bring her Chinese identity card with her from China. The applicant gave her current address. When asked where she lived in China prior to arriving in Australia, the applicant stated that she lived at her sister's place and her address is [Address 1]. When asked when she moved to live with her sister, the applicant stated that it was soon after the persecution started and her mother and sister were often not at home so she went to live at their address. The applicant stated that in her application form it says she lived at that address since she was born. The applicant stated that there must be some mistake and her family's address was in [Address 2], Shaanxi province. The delegate stated that the address on the application form is not the address that she has just said. The applicant stated that was the address that she and her elder sister rented in Xi'an city. It is not their house. It is where they rented. The applicant lived there with her eldest sister. The delegate advised the applicant that she had not provided any evidence of her family. The applicant was asked how many times she moved. The applicant stated that she did not move at all and the home address was [Address 2] and [Address 1] was her second sister's address. The applicant's sister rented the place in Xi'an after her sister was released. When asked why she did not live with her parents, the applicant stated that since the start of the persecution her mother was arrested 5 times but it may have been more than that. The applicant's father also lived at her sister's home. The husband of her second sister also lost his job and did not have anywhere to live and then they all lived together with their second sister.

The applicant was asked whether she is close to her family members. The applicant agreed. The applicant was asked why she has not given details of her family on the application form. The applicant stated that in the beginning she did not understand the form. After her second sister came to Australia she helped her sister to complete her form for protection. The applicant confirmed that she is referring to her second sister and the applicant helped her complete her application. The applicant was asked if anyone helped her to complete the application. The applicant stated that she did it by herself. The applicant was asked whether she is claiming she did not know she had to include family members. The applicant agreed. She completed the form by herself because her appointment in July with the Refugee Advice and Casework Service (RACS) was cancelled because she did not confirm her appointment.

The applicant was asked to write down the names and dates of birth of each of her family members. The applicant wrote down her eldest sister [Ms H], born on [date]; her [mother], born on [date]; her elder sister [Ms E], born on [date] and her [father] who is died in [date]. The applicant stated that she wanted to look at her *hukou* to check her mother's details.

The applicant was asked whether the information she provided for her student visa is correct. The applicant agreed. When asked how she obtained her current passport, the applicant stated that she and her eldest sister went to apply for a passport and used the old identity card, not the new generation one. The applicant went to the local police station to get a certifying letter and went back to obtain a passport which she then

received. At that time, her sister did not apply. When she applied, the identity card had changed to the new one and she was refused. The applicant thinks her sister was refused because the identity card had a mark so people who have been in prison all have that mark and the PSB could see it. The applicant indicated that it was because of Falun Gong that her sister was refused. When asked why she obtained a passport in 2008, the applicant stated that her family wanted her to be safe. When asked why she applied for a passport at that time, the applicant stated that in 2007 she came back to work in Xi'an from another place. In the past she went somewhere else to work because her family wanted her to be safe. In 2008, before the Olympics the applicant's second sister's husband was arrested and sentenced to 8 years and her eldest sister was almost kidnapped from home.

The delegate advised the applicant that it is important to understand what has happened to her and not only her family members. The delegate again asked why she applied for her passport and what she means by her comments that her family wanted her to be safe. The applicant's family wanted her to be away from mainland China to live and believe. The applicant was asked where she was planning to depart to. The applicant stated that she did not have any plans. When she came back to Xi'an to work she worked in an organisation where they organised people to go overseas to study. The applicant was working at [Company] and the other is the [Consultancy Company]. It has 2 names because her boss registered the company as [name]. When asked her role in that company, the applicant stated that she was the Manager/Section Chief of the information part. When asked her duties, the applicant stated that if a parent brings her child here she tells the parent what documents they need to prepare. The applicant began working for that company in 2007. The applicant confirmed that she worked for a company that assisted people to go overseas to study. The applicant confirmed that she was quite familiar with how to apply for a visa. The applicant was asked whether she decided after working for the company that she should come to Australia to study. The applicant agreed. When asked whether she came to Australia to study, the applicant stated that study is just a "pathway" or an "excuse". After she came to Australia she spoke with her students and teachers and told them that she came to Australia not to earn money or have a better environment but to have a safe and free environment to believe and help those people who are being persecuted in China and to tell the truth to more people.

The applicant was asked why it took her 2 years after getting her passport to apply for a student visa. The applicant stated that she needed to build up some funds before she could depart. When asked whether anything else prevented her from leaving China, the applicant stated that her personal conditions did not allow her to go anywhere else. The applicant explained that her company did most of its business for people going to New Zealand to study, but her age was no longer suitable for her to go to New Zealand. The applicant was asked if she applied for another visa to go anywhere else before applying to come to Australia. The applicant stated "no" When asked again if she is sure that she has not applied for another visa to another country, the applicant stated that she is sure. The delegate advised the applicant that information before the Department indicates that she applied for a visa to go to another country. The applicant did not respond. The applicant was asked if she applied for a visa to the United States or the United Kingdom. The applicant stated 'America' The applicant confirmed that she had applied to go to the United States and stated that she was sorry. When asked what visa she applied for, the applicant stated that it was a student visa. The application did not succeed. The applicant was asked how she made arrangements to come to Australia on a student visa. The applicant stated that the information before the Department indicates that she intended to return to China to her job and to be with her family. The applicant stated that she was sorry but if she did not do that she could not get the visa.

The applicant was asked how she could depart China if her mother and most of her family members had been persecuted because of their Falun Gong practise. The applicant stated that she was not on the "black name" list. The applicant was asked who from her family was not on the black list. The applicant stated that her second sister and her child and her father were not on the list. The applicant confirmed that she is claiming to have previously been detained because of her practise of Falun Gong. The applicant was not on a black list because they did not get to Beijing. The applicant was arrested at the Xi'an [location]. The applicant was asked why she applied for a student visa to come to Australia. The applicant stated that she knows the category she applied for, a Subclass 570, was for people who wanted to study English. When asked whether she studied when she came to Australia, the applicant stated that she did and she completed her studies. It took the applicant 30 weeks to complete her studies. When asked what she did after the 30 weeks, the applicant stated that after she finished her course she did some work but from January she stopped working. The applicant made a mistake because she thought that she could not work after her visa finished. The applicant does the 'dafa' every day and her sister and child came to Australia [date] January 2012. From that time she has been busy with them.

The delegate stated that after she finished her studies there were several months before she lodged her protection visa application. When asked why it took her so long, the applicant stated that in June 2012 she made an appointment with RACS but they cancelled her appointment [date] July 2012 and she made telephone calls but could not get an appointment. In the beginning when she called them they told her that if she applied for a protection visa her other visa would be cancelled and she wanted to complete her course. It took her 2 months and she still could not get an appointment. The applicant made telephone calls because they would only take calls on Tuesdays and Thursdays. The applicant started preparing the application for herself and she felt the time was right because she did not want it to affect her studies. When asked again if she had come to Australia to study, the applicant stated that it was not the reason and she had paid her fees and thought she should complete her studies. The applicant felt she should be a good person and not miss her classes.

The applicant was asked how she came to know about applying for protection. The applicant stated that she knew many countries protect Falun Gong practitioners. When asked when she graduated, the applicant stated that it was in 2001. The applicant had some temporary work, but her family needed her a lot. The Tribunal queried why the applicant would have spoken to her boss about Falun Gong going against the communist party. The applicant stated that she was well respected and earned the trust of her colleagues and felt that she should tell the truth to people around her. The applicant was asked why she did so if Falun Gong was banned. The applicant stated that she would still do the same. The delegate commented that she had difficulty understanding why her boss would not have informed on the applicant. The applicant stated that she used herself as an example to show them that she excelled in her work performance. She told them that because she practised Falun Gong that is why she was like that. The delegate again queried why the applicant would tell people in her work place that she is a Falun Gong practitioner. The applicant stated that it is important to tell them the truth about Falun Gong. When asked whether she told them she was a practitioner, the applicant stated that she told them those things because she wanted to tell them the truth about Falun Gong. The applicant was asked whether she feared consequences or repercussions due to telling people at work about Falun Gong. The applicant stated that she got along with them for several years and knows them well. The factory had more than 200 people. The applicant was asked whether her last employer knew of her reasons for departing China. The applicant stated that they did not. She did not tell them she was Falun

Gong. The applicant confirmed that she did not tell her last boss that she was involved with Falun Gong, but she did tell some of her colleagues. The applicant's company has to go through annual inspections every year. If she told the boss, the boss would have felt pressure. The applicant was asked who she told that she practised Falun Gong. The applicant stated that she told her colleagues.

When asked if she has been working in Australia, the applicant agreed and stated that she has been working in [suburb]. The applicant's landlord knows the owner of a restaurant in [suburb] and that person is a Falun Gong practitioner. The applicant has not worked anywhere else. The applicant was asked about her work for [Media Company 4]. The applicant stated that it is not a job, it is a Falun Gong project and they are all volunteers. When asked how she came to know this person, the applicant stated that the second day she went to Chinatown and met a Falun Gong person. As soon as she arrived she purposefully went there because she knew there were Falun Gong students there. The applicant then met her current landlord at that place. It was the anniversary of 25 April. When asked what relationship she has with [Mr B], the applicant stated that he is very familiar with her landlord. When asked why he wanted the applicant to work for him, the applicant stated that all Falun Gong people contribute their own time and money to work for him. The applicant has not been there for a while because she has been busy. The applicant has been in contact with her mother and sister since her arrival in Australia. She speaks to them every week or 2. She speaks to her family through Skype and telephone. When asked the situation of her family members in China, the applicant stated that they are at home. When asked if anything adverse has happened to them since her departure, the applicant stated that it has not, but 2 of her schoolmates were arrested.

When asked when her family first began practising Falun Gong, the applicant stated that her mother found out in 1996 that Falun Gong is good and hoped they would all practise Falun Gong. When asked about her first experiences in relation to Falun Gong, the applicant stated that she read *Zhuan Falun* at home. When asked why she read it, her mother said it is good. When asked how old she was at the time, the applicant stated that she was in [year] of her senior high school. The applicant was asked why she went with her mother and sister to Beijing. The applicant stated that it was in 1999 and she had graduated from [school]. Before that time, she was very busy studying and reading books. After reading that book, she felt that it was a very good book. The applicant was asked what she understands about life since reading *Zhuan Falun*. The applicant indicated she did not understand. The applicant was asked where or how a person's life exists as a Falun Gong practitioner. The applicant stated that she knows a person's life comes from a beautiful world and a higher level of universe. There were also groups in that space so some people would become not so good and they drop to a human world. The applicant was asked whether she believes that this is how people exist. The applicant agreed.

The applicant was asked about her detention during the 15 days in 1999. The applicant stated that on the first night they were not allowed to sleep and were interrogated. They threatened them whilst they interrogated them. The applicant and others were told to do physical work. When asked where they were detained, the applicant stated that their factory had a security section and they were detained at the factory. The applicant was asked how the factory was related to the police station. The applicant stated that they were a big state owned enterprise and it has its own police station. The applicant was asked whether she is referring to a company or an enterprise. The applicant confirmed that it was owned by the state. The applicant was asked how it was that she came to be detained and how they knew they were going to Beijing. The applicant stated that ever since the Chinese communist party started the campaign against Falun Gong they made an edict that if anyone wanted to go to

Beijing the head of that area would be demoted. The local people made a lot of effort to catch people and bring them back.

When asked when her mother was in prison in China, the applicant stated it was “many times” and she cannot remember. When asked when her sister was imprisoned, the applicant stated that it was 2001. When the applicant’s sister was arrested she was not at home. The applicant was asked about her claims that when her mother and sister were in prison she had to run around giving them items. The applicant stated that she had to take them clothing and pay them visits. The applicant was asked what happened to her mother and sister and how they came to be on the *Clearwisdom* website. The applicant stated that it has a lot of stories about people being persecuted and maybe some people wrote about it. The applicant was again asked whether she knows how it came to be on the website. The applicant stated that several years ago some other Falun Gong people wrote about it and in China it is impossible for people to write about it. The delegate agreed and queried why her mother and sister would allow that to happen. The applicant stated that they wanted to expose the persecution and they are not afraid of danger and want to write up these things. The applicant was asked if she has any other information to show that is her mother who was written about in the *Clearwisdom* website. The applicant stated that her mother had a sentencing document.

The applicant was asked how she was able to set up an organisation producing Falun Gong materials. The applicant stated that she downloaded from the website, the *Clearwisdom*, and printed out material. The applicant was asked whether the website was available to anyone living in China. The applicant stated that it was not and they used software to get on that website. The applicant was asked why she would do that. The applicant stated that she wanted people to know the truth. The applicant confirmed that she was able to use that software to infiltrate security barriers and use that website. She stated that the software was developed by American Falun Gong people and she could only get on for a short period of time. When asked how she got access to this software the applicant stated that she applied for it. When asked where the place was where she produced the Falun Gong material to distribute, the applicant stated that it was where she and her eldest sister lived and rented in Xi’an. The applicant was asked whether she had any evidence she produced such material. The applicant indicated that she could not prove it. The applicant was asked how she conducted such an activity without coming to the attention of the authorities. The applicant stated that there are numerous family producing places and many were arrested whilst others were not arrested. The applicant stated that it has to do with the status of practising and whether you take safety precautions. The applicant also moved their address because of the safety issue. The applicant was asked what she meant by status of her practise. The applicant stated that some people practised and others were not practised. The applicant was asked for details as to the safety precautions and what she did to avoid detection. The applicant stated that first of all she made the material but did not tell others about it and there was a single line contact. She did not tell everyone she was producing the material. The applicant stated that they would move as soon as something happened. When asked how long she produced those materials, the applicant stated that it was from 2007 until she left.

When asked how she applies the principles of Falun Gong in her life, the applicant stated that in her work she is earnest and responsible and provides good service to customers. When she is with colleagues she does not compete with them and shows tolerance. The applicant always believes that they should apply the principles of truthfulness, compassion and forbearance but she did not apply those principles when she made the application to Australia. The delegate queried whether a genuine practitioner would always tell the truth. The applicant stated it should be like that.

The applicant was asked what Li Hong Zhi promises a practitioner will develop when they cultivate. The applicant stated “sorry, what do you mean” The applicant was asked, besides the Falun Gong exercise, whether there is an important practise which is done in order to develop character. The applicant stated that it is cultivating and practising because they emphasise not only the improvement of nature but also life. The applicant was asked how often a person can cultivate. The applicant indicated that she does not understand. The applicant was asked how often she cultivates. The applicant does the exercise part for 2 hours in the morning. To study the law, she does it every day in the evening and studies 1 lecture. The applicant was asked what happens when a person reaches a high level of cultivation. The applicant stated that they achieve complete success. The applicant was asked whether she knows what the practise of cultivation involves. The applicant stated that cultivation involves 2 parts – one is within the law of the world, whilst the other is above the law of the world. When asked how a person knows if they have achieved a high level of cultivation, the applicant stated there would be changes to the body. The applicant stated that when you achieve the higher level of cultivation you will have the lower body.

The applicant was asked when she commenced her Falun Gong practise in Australia. The applicant stated that it was the second day after she arrived. When asked why photographs were taken of her participating in Falun Gong events, the applicant stated that the second day after her arrival in Australia Falun Gong people told her that she will need to see photographs. When asked where she practises Falun Gong in Australia. The applicant stated that it is once every month and there is a big group activity in [suburb] and she usually just practises at home together with other Falun Gong practitioners. When asked if she practises in the park, the applicant stated that in the morning they need to go to the Consulate and give out newspapers. The applicant was asked why she goes to Consulate. The applicant stated that it is part of the truth activity. The applicant was asked if she is a member of any Falun Gong practise group in Australia. The applicant stated that there is only one Falun Gong group in Australia. The delegate explained that she is referring to an association. The applicant stated that there is a registration authority but anyone can come or go and there is no registration. A person who is Falun Gong does not have to be a member of a particular organisation.

The applicant was asked how she would practise Falun Gong in China. The applicant stated that if she lived with her sister she would do her exercises and after work learn the law. The applicant was asked what she hopes to achieve by being a Falun Gong practitioner. The applicant stated that what their Master tells them is that if a person is good and abides by tolerance, compassion and forbearance that person can live in a beautiful world and that is their home. The applicant was asked whether Falun Gong is a branch of any religion. The applicant stated that it is not a religion and it is an exercising part of Buddhism. The applicant was asked why she could not practise Buddhism in China which is approved and asked why she practised a banned practise. The applicant stated that first of all there is no religious freedom in China and Buddhism and Taoism is under the leadership of the Chinese government. After she learned Falun Dafa she realised what the Master told them. The Master told them that peace law can only be used to improve people of simplified thinking. Buddhism can no longer save people as those religions are in decline. After the applicant learned the Dafa she felt it really helped to purify people’s thinking. It is the true law for cultivation.

The applicant was asked what she believes will happen if she returns to China. The applicant stated that she is Falun Gong and she must participate in the truth activities. The truth clarification activities are for the purpose of telling people the truth about Falun Gong. This is what a practitioner should do. After she came here she did not

want to miss any activity. She often had to go to the Consulate to a scenic spot. When she was overseas she also heard what the person from the Chinese consulate said and she heard that there are thousands of spies in Australia and after she left, 2 of the Falun Gong people whom she had contact with in China were arrested and she is in danger if she returns.

The applicant was asked about a flatmate whom she lived with who was arrested and revealed that the applicant was a Falun Gong practitioner. The applicant stated that the person told them about her. After that time, they moved addresses. The applicant was asked why she believes she was of any interest to the Chinese authorities given that she was allowed to depart China for Australia without any difficulties. The applicant stated that "just as she said" the 2 Falun Gong people whom she knew were arrested. She was not arrested, but it did not mean she was not in danger. If they found out about her when she was distributing those materials she would be arrested. The applicant was asked what relationship she had with those people. The applicant stated that they had a practise site at her place and they were studying at her place. They were arrested after she came to Australia. The applicant was asked whether a warrant was issued for her after she came to Australia. The applicant stated that there was not.

The delegate asked whether the authorities knew the applicant's reason for going to Beijing in 1999. The applicant stated that on that day she and other Falun Gong practitioners were together and their family members reported them to the police station, and they were all arrested at the train station and brought back. The applicant was asked whether she was suspected of being a Falun Gong practitioner. The applicant agreed. The delegate stated that country information indicates that such a person would not be able to depart China with a passport. The applicant stated that what the delegate said is right but there are many Falun Gong practitioners here and many were sentenced to imprisonment and some were sentenced to re-education through labour. It has to do with the status of cultivation and protection provided by the Master. It has to do with people's different arrangements and sometimes the God's arrangement is to allow people to stay in China.

The applicant was asked whether that was the first and only time she was detained in China. The applicant agreed. The delegate stated that it is hard to believe because she had been known of and had been detained and she claims that most of her family are Falun Gong practitioners. The delegate stated that it is not believable that she had not been approached again or questioned since that time about her own Falun Gong practise. The applicant stated that in their factory there is a security section and the 610 has its office in every level. In their factory, the secretary of the committee or the factory head is the head of 610 which is the leading organisation to persecute Falun Gong practitioners. The applicant's family has many members and she went to another area to work. There were a lot of people practising Falun Gong at her home and they all belonged to a factory and all knew each other. The applicant also went out to study and worked in another area. There were so many Falun Gong people, but she was not "marked" and not on a black list. When she came back from another area she did not go to her home, she went to Xi'an and did not work close to the factory.

The applicant was asked if there is any other reason she cannot return to China, apart from her claims relating to Falun Gong. The applicant stated that there is not. When asked if there is anything further she wishes to add, the applicant stated that although her family has been persecuted as cultivators they can endure the suffering of their body, but not the suffering of their spirit and many people in their family have been persecuted for many years. When they speak on the telephone and their voices are not normal they worry about whether anything has happened. The applicant's father is an

example and before he died he dreamed that her mother was arrested. They were harassed for many years. The applicant has lived in fear and has been harmed spiritually.

When asked if there is anything further she wishes to add in relation to her claims for seeking protection, the applicant stated that she does not tell her full name to many people in Australia because someone by her name was burned. She only tells people part of her name when she is in China as well. It is not a “good” name for that reason. The applicant stated that is all she wants to say. The delegate stated that the support letters refer to her by her full name. The applicant stated that only some people know her name and it is only the people who support her who know her full name. The applicant was asked if there is any other reason she does not tell people her full name. The applicant stated that she is afraid people will have other thoughts and think her name is the same as that person.

31. Following the Department interview, the applicant provided an invitation to the delegate to the Shen Yun performance, a brochure of Shen Yun and a ‘special edition of the *Epoch Times* covering the Shen Yun performance.
32. The applicant also provided a statement to the Department in which she referred to her evidence regarding her application for a visa to the United States. The applicant states that she denied that she made that application because she is “not strict” with herself in accordance with the principles of truthfulness, compassion and forbearance and her actions bring shame on Falun Dafa. The applicant states that she has lived with fear for the last 10 years and could no longer sleep due to her concern for her family members in China. The applicant states that she initially applied to go to the United States because her master is there.

#### *Delegate’s decision*

33. In refusing to grant the visa, the delegate found that the applicant was not a reliable witness and that significant parts of her testimony were vague, evasive and that she omitted significant details. The delegate found that the applicant did not disclose the addresses of where she lived in China and that her evidence differed from the address in her student visa application form. The delegate also found that the applicant denied that she had applied for a student visa to the United States, despite being asked twice and despite claiming to be faithful to the principles of truthfulness under all circumstances. The delegate also found that the applicant’s knowledge of Falun Gong as exhibited during the interview lacked depth, despite her claims to have been a practitioner since 1997. The delegate stated that the level of detail provided by the applicant, including her responses regarding cultivation and why she became a Falun Gong practitioner, to be limited and to lack meaningful detail. The delegate was not satisfied that the knowledge exhibited by the applicant was consistent with her claim to have been a practitioner for over 14 years.
34. The delegate also found that the applicant’s evidence as to her detention on her way to Beijing was vague and that the applicant did not provide any information as to her family member’s details and there is no evidence to substantiate her claims that the persons referred to on the Falun Gong *Clearwisdom* website are her family members. The delegate also stated that the applicant’s account of telling persons at her workplace about Falun Gong to be vague and contradictory, and that her evidence as to how she had set up and established a range of truth clarification materials, including calendars, New Year picture books and other booklets, and her ability to access the Falun Dafa website in China to be vague and inconsistent with

country information regarding the Internet security procedures in place in China. The delegate also stated that although the applicant had provided letters of support from persons purporting to be Falun Gong practitioners there is no evidence that the referees are themselves practitioners or that they hold any significant profile, status or community standing which would verify the applicant's claims to be a genuine Falun Gong practitioner. The delegate also referred to the delay in the lodgement of the application and stated that the applicant's priorities appeared to be study, not seeking protection. The delegate further stated that the applicant delayed her departure from China for some 3 years following the issuing of her passport and was issued with a genuine passport in her own name which indicates that she was not of any interest to the Chinese authorities.

### **Application for review**

#### *Application by [Ms E]*

35. The Tribunal obtained the Department file in relation to the applicant's elder sister [Ms E] (born on [date deleted: s.431(2)]), and her son, [Mr F], who arrived in Australia in January 2012 and subsequently applied for protection in February 2012 (see CLF2012/12732). [Ms E]'s application is based on her claims relating to Falun Gong. [Ms E] states in her claims that her son was often slapped at school and verbally abused by his teachers and made to kneel down in front of other classmates because it was known that his family were Falun Gong practitioners and that he would often be held so tightly that he would cry from pain.
36. The Department file indicates that prior to her arrival in Australia, the tour group, [company deleted: s.431(2)], responsible for organising [Ms E] and her son's travel to Australia made some inquiries. The report by the tour group states that an employee telephoned the applicant's son's teacher to obtain more information about [Mr F]. The tour group was advised by the teacher that she is [Mr F]'s teacher and is in charge of 5<sup>th</sup> class. She stated that [Mr F] studies hard and has made some progress and in his latest test he "made 10 steps, in 5<sup>th</sup> position in class". She stated that he is a "happy and active student" and he likes sport and is a "good student" and "has reward from school" The employee from the tour group also spoke to the school Principal who knows [Mr F] and was aware that he was travelling to Australia for the school holidays.
37. The report also indicates that an employee from the tour group also telephoned [Mr G] on his mobile and he provided detailed information about his income and his wife's business and income in China. The tour group also contacted [Ms E] who provided details of her business and income.
38. The report also indicates that [Ms E] and her son absconded from the tour group following their arrival in Australia. The tour group again telephoned [Mr F]'s school who indicated that they were shocked that [Ms E] and her son had done so.
39. [Ms E]'s application was refused [in] June 2012. The delegate's decision indicates that when [Ms E] was asked about the conversations between the tour group and her son's school, she stated that she told the head of her son's class about her trip but she did not tell the head of the school. She stated that she did not want to make a "big affair" out of travelling because of her family history. In relation to the telephone call with her husband and the tour group, [Ms E] stated that it was a Falun Gong practitioner posing as her husband who answered the mobile telephone and her husband, [Mr G], is in jail.

40. The delegate found that [Ms E]'s knowledge of Falun Gong during the Department interview was limited and that when asked about the report by the tour group she denied that she had been contacted in China, until advised by the delegate that there was a report prepared by the tour group in relation to their telephone conversations with her and family members. The delegate found that [Ms E] and her son's circumstances were as described by the tour group and that the evidence of the teacher and principal did not support [Ms E]'s claims regarding her son's mistreatment. The delegate in that matter did not accept that she or her son were Falun Gong practitioners in China.
41. [Ms E] and her son have subsequently made applications to the Refugee Review Tribunal (differently constituted).

*Submission and supporting documents*

42. Following the lodgement of the application to the Tribunal, the applicant provided a detailed statement addressing the issues raised by the delegate. The applicant addresses the issues relating to her addresses and her denial that she had made an application to the United States, stating that she felt confused as to what she should say. The applicant states that if she returns to China she has been seen at the front of the Chinese consulate and tourist sites where she has clarified the truth and she will be even more negatively viewed than prior to her departure.
43. In relation to the delegate's findings about the applicant's limited knowledge of Falun Gong during the interview, the applicant states that she did not know what was expected of her and "at least I didn't make any mistakes" In relation to the fact that she did not provide details of her family members in her application, the applicant stated that she has obtained all of the original *hukou* and identification cards for her family and they show her relationship with them. The applicant states that she did not include her family members on the form because she did not understand the form. The applicant further states, in relation to the delegate's findings that the applicant's evidence as to how her family members were included in the *Clearwisdom* website to be unconvincing and maintained by Falun Gong practitioners who include information based on reports to them, that several articles on *Clearwisdom* list the persecution of her family members. The applicant refers to a number of reports, all of which are dated September and October 2010, apart from 2 reports dated June and July 2008, which the applicant claims relate to her brother in law.
44. In relation to the delegate's findings about the applicant's evidence regarding speaking to persons at her workplace about Falun Gong, the applicant states that at her first workplace she only clarified the truth verbally and did not provide people with materials, and at the second workplace she did not clarify the truth to the boss who she worked for. The applicant states that due to the persecution of Falun Gong by the government, the majority of Chinese people hate Falun Gong so they had to "let the Chinese people learn the truth".
45. The applicant also states, in relation to the delegate's findings regarding the applicant's use of the Internet to promote and publish Falun Gong, that it is easy to use software so that the government "couldn't block the truth" and "this was heaven's will" and "according to our belief gods are in control of everything; and it is gods that require us to pass on the truth to everybody". The applicant refers to an article from the *Minghua* website which reports on the significant number of material production sites set up by Falun Gong practitioners in China and the number of Falun Gong practitioners who exchange information.

46. In relation to the delay in the lodgement of the application, the applicant refers to her continuing fear following her arrival in Australia and the fact that she missed her initial appointment with RACS, and her need to prepare materials to support her application. She also refers to her involvement in several Falun Gong related activities and her studies.
47. In relation to her delay in leaving China, despite the fact that she obtained her passport in October 2008, the applicant states that her brother in law [Mr G] was arrested in June 2008 and this was a “heavy blow” as he had been living in exile for years and her family did not want her to experience similar harm and for that reason she decided to obtain a passport. However, she did not have the funds or financial status to ensure the success of her application and a teacher was willing to help her to apply for a visa to the United States, but this was not successful.
48. In addition, the applicant provided several documents to the Tribunal, including:
- *The Epoch Times*, [2012] (the applicant explained during the hearing that it has been provided because her statement to the Department is reproduced in full but with names omitted);
  - Statement by [a senior official] of the Falun Dafa Association, dated [September] 2012. [This person] states that the association will not normally write a letter of support for practitioners, but she is aware that the applicant has obtained letters of support from several veteran practitioners. [This person] states that she has known the applicant since 2011 and saw her helping with activities to clarify the facts about Falun Dafa and she has seen her join Falun Dafa parades, rallies and “candle vigils” and she has attended weekly group study and discussion groups in [Suburb 3]. [This person] refers to the recent arrests of Falun Gong practitioners in China and reports of organ harvesting of practitioners;
  - Various reports on the mistreatment of Falun Gong practitioners in China;
  - ‘Testimonial’ signed by 8 persons stating that they are Falun Gong practitioners who have formed a ‘telephone rescue’ team whereby they make telephone calls to China and call the Public Security System and 610 offices to “rescue” those illegally kidnapped and incarcerated Falun Gong practitioners. They state that from October 2010 Australian practitioners participated in shift duty arrangements on the Global RTC Platform, with the ultimate purpose being to clarify the truth about the facts of Falun Gong. They state that the applicant joined their calling team last year and she often uses her free time to make phone calls to Chinese people in mainland China;
  - Support letter from [a person] who states that she [works for] the “Rescue Calling Team.” She states that she met the applicant about a year ago and has witnessed her involvement in [holding up banners] at busy roads and passing out leaflets at the Chinese Consulate. She states that it is dangerous for Falun Gong practitioners to distribute leaflets and it is known that the Consulate has monitoring equipment. She states that she believes the applicant is a genuine Falun Gong practitioner. [This person] also states that her own passport was confiscated by the Chinese government and her mother is unable to obtain a passport and is still under surveillance because she practises Falun Gong. [This person] states that the applicant is in danger if she returns to China;

- Statement by [a senior employee] of the *Epoch Times*, dated [August] 2012. [This person] states that the applicant has been working [there] since [mid] 2012. The [senior employee] further states that since the launch of the *Epoch Times*, its staff have been subjected to several threats and unlawful scrutiny by the Chinese Consulate, including cases where its staff have been photographed and trailed when they have attended human rights rallies or forums. The editor states that the applicant is a genuine Falun Gong practitioner and she and her mother have been arrested on the grounds of their belief and her mother was imprisoned for a year and then sentenced to 3 years. Her sister was then sentenced to 3 years. The editor states that the applicant will definitely be subject to torture if she returns to China;
- Support letters from other Falun Gong practitioners, including [names deleted: s.431(2)], all of whom state that they believe the applicant is a genuine Falun Gong practitioner and every Saturday morning hands out newspapers at [Suburb 1] shopping centre and she also took part in the team delivering Shen Yun performance material to people's letterboxes. They also state that they have participated in every large event organised by the Falun Dafa Association;
- Household registration and identity documentation for the applicant's family member's;
- Notice of Arrest and Detention certificates for [Mr G];
- Marriage certificate for [Mr G] and the applicant's sister, [Ms E];
- 'Verdict of crime' certificate for [the applicant's mother];
- 'Certificate of Release' certificate, dated [in] December 2006 for [the applicant's mother];
- Article from the *Clearwisdom* website, dated [2001], stating [details relating to the applicant's mother deleted: s.431(2)].

#### *Tribunal hearing*

49. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal also received oral evidence from several witnesses, all of whom claimed to be Falun Gong practitioners. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
50. The Tribunal explained the Refugees Convention and the Complementary Protection provisions to the applicant.
51. The applicant confirmed that she is a citizen of China and no other country. The applicant was born in Henan province and moved to Shaanxi province when she was [age deleted: s.431(2)]. The applicant's mother and one sister remain living in China and she has a sister who is residing in Australia. The applicant's sisters are [Ms H] who was born on [date deleted: s.431(2)] and [Ms E] who was born on [date deleted: s.431(2)]. The applicant's [mother] was born on [date deleted: s.431(2)]. The applicant's father died [in] 2010.

52. The applicant confirmed that she attended university and studied English. The applicant gained a Diploma as a result of 3 years study. The applicant was employed for a company who assisted students to study abroad prior to her arrival in Australia.
53. The Tribunal commented that there appears to be some confusion in relation to her addresses in China and asked the applicant if she could clarify her addresses. The applicant wrote down her address in Shaanxi and stated that she resided at that address prior to her arrival in Australia. The applicant lived at the one address in China with her family until she graduated which was then the persecution commenced. The applicant and her family then moved to other places.
54. The Tribunal asked the applicant whose address is on the application form. The applicant stated that it is her second sister's address. The Tribunal queried why the applicant would have used her address and asked why she indicated on the application form that she lived at that address since [birth]. When asked how long [Ms E] had lived at that address, the applicant stated that it was from 1994. The applicant lived with [Ms E] from 1999 when she began to study at university and after she gained a job outside Shaanxi province she would stay with [Ms E] when she returned home. In 2007 the applicant got another job and during the week she and her eldest sister rented a place together and she would stay with [Ms E] at the weekends. The applicant and her sister [Ms H] moved about 6 times after they began living together. The applicant and [Ms H] lived at the same address for about 6 months prior to the applicant's arrival in Australia and [Ms H] has continued to live there.
55. When asked why she gave [Ms E]'s address on the application form, the applicant asked the Tribunal the question that she was asked. The Tribunal advised the applicant that the question on the application form asked for details of all the places where she had lived for 6 months or more in the last 10 years. The applicant stated that the reason is because most Chinese people do not regard a rental property as their family home. The Tribunal asked whose address is [Address 2]. The applicant stated that is their family home and they stopped living there in 1999 because of the persecution and she and her parents moved in to live with [Ms E]. The applicant's mother currently lives in [Ms E]'s apartment by herself, but she often stays with [Ms H].
56. The Tribunal asked the applicant why the identification cards that she provided to the Tribunal show her and her mother's address as being at the old family home. The applicant stated that the *hukou* is fixed and the address is taken from the *hukou*. The Tribunal stated that the applicant's second sister has a different address on her identification card. The applicant stated that she married and her eldest sister was divorced so their identification cards differ from hers and her mother for that reason. The applicant explained that when they were married her sisters separated their *hukou* from the other family members. When asked what happened to the family home, the applicant stated that it belongs to the factory and that they have the right to live in it but they do not own it. When asked why her eldest sister's identification card is still listed within the factory, the applicant stated that the 2008 identification card was given to her sister but it does not mean that she was living in the factory premises. The Tribunal commented that the fact that her eldest sister was given an identification card for the factory premises in 2008 indicates that she was living there. The applicant stated that her sister was working at the same place as her parents but she lost her job after the persecution began. The Tribunal again commented that it has concerns that her eldest sister continued to live at the factory in 2008 given that the identity card was issued at that time. The applicant stated that there is a deficiency with the identity cards and the second generation identity cards were based on the same information as the first identity cards. The

applicant stated that she wants to mention that Falun Gong practitioners were not treated fairly and in China there were problems with the identification cards and the *hukou* and the issuing of them was very confused. The applicant's mother tried to get a new *hukou* issued but the officers told her that she can only get one after the First National Conference and persons who are Falun Gong practitioners cannot apply for a new *hukou*.

57. The Tribunal asked the applicant whether she knew anyone in Australia before her arrival. The applicant stated that she did not have any acquaintances, but her colleague knew a person who picked her up when she arrived at the airport. The person's name is [name deleted s.431(2)] and she is a colleague of one of the applicant's colleague from China. [This person] works for a co-operating business which is associated with the applicant's business as it helps overseas students obtain visas for Australia. When asked whether her company helped students obtain visas for Australia, the applicant stated that it mainly helped students to obtain visas for New Zealand, Ireland and also to Australia.
58. The Tribunal asked the applicant when she made an application for a student visa to the United States. The applicant stated that it was in 2010. When asked if she can remember the date or the month, the applicant stated that she can remember that she was interviewed in July 2010. When asked when she started making plans to go to the United States, the applicant stated that it was in 2009. The Tribunal queried why the applicant told the delegate when she was interviewed that she had not made any visa applications to any other countries. The applicant stated that she was wrong to do this and it is one of the greatest mistakes that she has made. The Tribunal again asked why the applicant was untruthful in relation to that issue. The applicant stated that she was afraid that she would not be granted a protection visa if she told the truth about it. The Tribunal queried why she would think that would make a difference to her application. The applicant stated that the Tribunal should understand that people who have lived in China under that system have had different experiences and the Tribunal can have no "imagination" of the experiences that they have suffered. For that reason, the applicant tried to hide the fact that she had made the application to the United States. When the applicant was in China she was under great pressure and she and her sister started to work to produce Falun Gong material. The applicant's brother in law was then sentenced in 2008 to 8 years in prison. The applicant's family was very worried about her and wanted her to escape from China. For Falun Gong practitioners there are life and death decisions and the applicant made a "life and death" decision when she decided to not tell the truth about this issue.
59. The Tribunal asked the applicant why she did not mention any details of family members on her application form for the protection visa. The applicant stated that she must have misunderstood the form. The Tribunal commented that it had listened to the Department's CD Rom recording of the interview and her English is very good and it is difficult to accept that she misunderstood the form, particularly when she had provided detailed information in relation to other parts of the form. The applicant stated that she is sorry that she gave the impression that her English is good. The Tribunal commented that it has concerns that she deliberately did not provide any details of her family members and asked her to explain again why she did not do so. The applicant stated that she did not fill in those questions and she may have not understood them. The Tribunal asked the applicant why she did not ask someone to assist her. The applicant stated that she did ask someone but they did not really know. The Tribunal again queried why she would leave those 2 pages blank. The applicant indicated that she has only just become aware that she left 2 pages blank. The Tribunal stated

that the delegate had asked her about this issue. The applicant agreed that she did but stated that the delegate did not tell her that there were 2 pages left blank.

60. The Tribunal advised the applicant that it wished to ask her about her family member's detentions. The Tribunal commented that she was quite vague about this issue when she was interviewed by the delegate. The Tribunal stated that it first wished to ask her about her mother's detention. The applicant stated that her mother was first detained for 1 month in July 1999. When asked the date of the detention, the applicant stated that she cannot remember. The Tribunal asked the duration of her mother's detention. The applicant stated that it was for a month. The Tribunal asked when her mother was next detained. The applicant stated that it was in December 1999. When asked how long her mother was detained for at that time, the applicant stated that she cannot remember. When asked why she would not know, the applicant stated that it was a long time ago and she cannot remember everything that happened. The applicant can remember that her mother was detained in a labour camp in 2001. The Tribunal again queried why the applicant would have no idea how long her mother was detained for in December 1999. The applicant indicated that she did not know.
61. When asked why she had indicated in her statement to the Department that she and her mother and sisters were all only detained for 15 days, the applicant stated she did not remember the details of that detention and her sister recently reminded her that her mother was detained for a month. The Tribunal queried why she would have only recently learned that her mother was detained for a month. The applicant stated that it is perhaps because of the pressure her family was under and she is not a very cautious or careful person and she chooses what to remember. The applicant stated that an example is of a person who once treated her very badly and the applicant forgot about the bad treatment. The Tribunal advised the applicant that it is difficult to accept that she would not know whether her mother was released at the same time as her or whether she remained in detention, even if it was several years ago. The Tribunal stated that the first time they were detained would have been very significant and it is very difficult to accept that the applicant would not remember whether she was released and her mother stayed in detention or whether she came out of detention with her at that time. The applicant indicated that the events occurred many years ago.
62. When asked about her mother's other detentions, the applicant stated that her mother was locked up for a year in 2001. In 2002 her mother was given a 3 year sentence. The Tribunal asked where her mother was detained during the 3 year sentence. The applicant stated that she was detained outside the prison and she was not physically detained. The Tribunal asked why [Ms A] stated in her statement that the applicant's mother was locked up in a jail for 3 years. The applicant stated that [Ms A] may have not known about her mother's situation. The Tribunal queried why the applicant's mother would be sentenced to 3 years at home rather than prison given that she had previously served jail terms. The applicant stated that the case was irrelevant and her mother was detained on that occasion because she had asked the police if they could secure the safety of the applicant's sister who was in detention at that time. The applicant's mother was told that Falun Gong practitioners' safety could not be assured and she was then sentenced to 3 years detention.
63. The Tribunal advised the applicant that it has serious concerns that she does not know the dates of her mother's detentions. The Tribunal advised the applicant that it is not credible that she would not know the dates. The applicant stated that she could not remember and any evidence she gave would just be hearsay, and her sister told her that she should memorise the dates but she did not. The Tribunal commented that it is not about memorising them but

about remembering them as a result of actual events that occurred. The applicant stated that she wanted to make the dates clear but there was insufficient preparation. The Tribunal stated that she has made an application for protection and queried why she would not have asked any of her family members about the dates. The applicant stated that she was young and did not remember everything. She did not intentionally memorise everything and she is under great pressure and threat.

64. The Tribunal advised the applicant that given the number of witnesses present that it would take evidence from the witnesses and that it would then probably be necessary to adjourn the hearing until another day. The Tribunal stated that it wished to first ask the applicant about [Ms C] whom she lives with. The applicant stated that she met [Ms C] on the second day that she arrived in Australia. The applicant went to Chinatown [in] April 2011 for the 12<sup>th</sup> anniversary of Falun Gong practitioners going to Beijing. The applicant met [Ms C] on that day. When asked where [Ms C] is from, the applicant stated that she is from Shaanxi. The Tribunal commented that it is coincidental that she met someone from the same province as her on the day after she arrived, who is also a Falun Gong practitioner and that she began living with her from that time. The applicant stated that it was due to God and destiny. The Tribunal commented that she is referring to a Christian concept which is not related to Falun Gong. The applicant stated that this is what Falun Gong practitioners believe. The Tribunal commented that it does not believe this is the case and there is nothing to indicate that this is what Master Li has said. The applicant indicated that she disagreed.
65. Following a break in the Tribunal hearing, the Tribunal asked all of the witnesses to return to give evidence. When the Tribunal asked to speak to [Mr B], the applicant advised that he had left. The Tribunal advised the applicant that he can be telephoned during the next hearing or can return for the next hearing if she wishes.
66. The applicant spoke to [Ms D]. [Ms D] stated that she met the applicant [in] April 2011 when she attended an event in Chinatown which was a grand event. [Ms D] learned about the applicant's situation and there was a journalist in attendance and she asked the journalist to report the applicant's story because of the persecution that she had experienced in China. During the interview, the applicant was asked questions and she answered them without hesitation and she believed that the applicant was very innocent and true. She was deeply touched by the very severe persecution that the applicant had suffered in China. [Ms D] stated that she was so touched that she shed a tear. [Ms D] has been a Falun Gong practitioner for over 16 years and she has read the material and is aware that the applicant's mother has been detained. The Tribunal asked [Ms D] if she could elaborate on the persecution that the applicant had told her she suffered in China. [Ms D] stated that she was very young and miserable and the whole family has been persecuted. The applicant may not have been able to memorise but this is due to pressure and fear and homelessness and the severe persecution she suffered. The Tribunal commented that she has referred to the applicant's severe persecution but has not been able to explain what this consisted of and asked again if [Ms D] wished to do so. [Ms D] stated that she was a young girl and although she was not locked up she had to experience insecurity and concern that the police may knock on her door at any time and force themselves in. The Tribunal commented that the applicant is university educated and occupied very good jobs in China and queried how she would have managed this if she was severely persecuted. [Ms D] stated that the applicant's pressure was more psychological and she could not tell anyone that she was a Falun Gong practitioner or even tell a spouse that she was a Falun Gong practitioner. [Ms D] believes that the applicant is a faithful and true Falun Gong practitioner and a good person.

67. [Name deleted: s.431(2)] also gave evidence to the Tribunal. He stated that he was a Falun Gong practitioner and he was persecuted in China. The applicant told him that his sister has been detained and persecuted and it is the responsibility of Falun Gong practitioners to publicise the truth and the applicant has attended 'truth point' sessions several times on Saturdays and he often sees her at truth activities on Saturdays. He has no doubt that the applicant is a true Falun Gong practitioner and her family has a substantial history of persecution in China.
68. [Name deleted: s.431(2)] told the Tribunal that the Master requires them to practise Falun Gong and to guide them in truthfulness and endurance. He has been involved in 'Vision China' and the applicant has done volunteer work for it. The first time he saw the applicant was when she helped deliver newspapers. The activity of persons delivering newspapers is monitored by the Chinese authorities and the first time he saw her he asked fellow Falun Gong practitioners and they told him that the applicant is a committed Falun Gong practitioner. Every Saturday he goes to [Suburb 3] and picks up the applicant, her sister and nephew and they go to a Fa study group in [Suburb 3] where they study Fa together. During these times, [he] has found the applicant to be very committed and believes that her faith in Falun Gong is very strong. He has seen many fake practitioners who have been involved in Falun Gong in order to obtain visas, but he does not believe that the applicant is one of those persons. He believes that she is very genuine and for that reason he has come to the Tribunal to support her.
69. [Name deleted: s.431(2)] also gave evidence to the Tribunal. She stated that she is from Xi'an city and she knows about the situation for Falun Gong practitioners because her family are Falun Gong practitioners. [She] is aware that the applicant's family live in a [factory] which is under the direct monitoring of the Chinese government and the persecution is much more severe for those people. [Her] aunt is a practitioner and she has suffered persecution. [She] has visited the applicant and her mother in China and is aware of the pressure they were under. [She] stated that she was studying at the Xi'an University and during that time she would visit the applicant. The Tribunal asked [her] about her status in Australia. [She] stated that she is on a student visa. The Tribunal queried whether she is a Falun Gong practitioner. [She] agreed. The Tribunal queried whether [she] has made an application for protection in Australia. She stated that she did so in April. The Tribunal commented that she would no longer be on a student visa if she had made that application. [she] stated that she was unclear about that. When asked her date of birth, [she] stated that it is [date deleted: s.431(2)]. When asked when she met the applicant, [she] stated that it was several years ago and she cannot remember. The Tribunal commented that she must have been very young when she met the applicant. [She] stated that the applicant is a very active participant in Falun Gong and the activities of overseas students are monitored in Australia and she is very worried about the applicant's security if she returns to China.
70. [Name deleted: s.431(2)] told the Tribunal that he truly believes the applicant is a committed Falun Gong practitioner and she is being persecuted in China. He knew the applicant only 2 weeks ago and he only just found out about the problems that she has experienced. He stated that he firmly believes that the applicant was persecuted in China. He stated that he first met her in April/May and he realised she is a Falun Gong practitioner. He is appearing before the Tribunal not because the applicant is young and pretty but because she has a "special temper" and this can only be gained by someone who is a genuine practitioner. [He] believes that the applicant has a strong sense and has been a very active Falun Gong participant for a few months. About 2 or 3 months ago he was sitting next to her at an event. The Tribunal queried

whether he met the applicant 2 weeks ago. [He] stated that he knew her but did not speak to her until 2 or 3 weeks ago. He heard that the applicant had applied for a protection visa and told her that he was willing to help her and a few days after he received a message from her asking if he can assist with her application. He told her that he is willing to do so because he believes she is a committed practitioner. The applicant told him the names of her family members who have been detained and he checked their names on the Internet and found that her story was true. [He] believes that he is not a person who is easily moved but he shed a tear for the applicant when he read the coverage of the plight of her family members who have been persecuted in China. He has no doubt that she is genuine and he is helping her because he feels a responsibility to do so.

71. [Name deleted: s.431(2)] told the Tribunal that she is a Falun Gong practitioner and she has attended “truth revealing” activities in China and she has seen the applicant at various other activities. She believes that the applicant is a true practitioner.
72. The Tribunal also spoke to [Ms C], with whom the applicant currently resides. The Tribunal queried whether [Ms C] has previously appeared before the Tribunal. [Ms C] stated that she had been before the Tribunal several times. When asked why she had appeared so often before the Tribunal [Ms C] stated that she knows a lot of Falun Gong practitioners. When asked when she first met the applicant, [Ms C] stated that it was the day after she arrived in Australia and it was very much coincidental. [Ms C] was attending a special event [in] April 2011 and she met the applicant. [Ms C] confirmed that the applicant began living at her home about 5 days later and on that day she asked her to live at her home. The Tribunal commented that it is somewhat unusual that she would ask the applicant to live with her on the day that she met her. [Ms C] stated that she could see by the applicant’s facial features that she is a genuine Falun Gong practitioner. [Ms C] talked to the applicant and she told her about her [relative] who has been persecuted and [Ms C] had read a list of people who had been persecuted and read his name. The Tribunal queried how [Ms C] could recall someone’s name from a list she had read. [Ms C] stated that she types in key words online and she remembers that she read his name in about 2005. The Tribunal commented that it is strange that she would have remembered his name. [Ms C] stated that she was not memorising the name but when she checked it the name matched with what the applicant had told her. [Ms C] keeps a notebook and often writes down the names of Falun Gong practitioners who have been persecuted in China. [Ms C] also remembers the name of other people who have been persecuted in China.
73. When asked if there was anything further she wished to add, [Ms C] stated that the day after she moved in with her, she and the applicant went to the Chinese Embassy at 6.00am to protest and they spent more than an hour at the front of the Embassy protesting. The Chinese Embassy has CCTV and takes photographs of people who go there and only true Falun Gong practitioners have the courage to go to the front of the Embassy.

*Resumed hearing – [in] September 2012*

74. At a resumed hearing, held [in] September 2012, the applicant indicated that she has asked her mother for the details of her detentions in China and has written them down. The applicant stated that her mother was arrested in August 2002 and detained at [a Detention Centre]. In January 2003 she was transferred to [another] Detention Centre and in 2003 she was sentenced to 3 years imprisonment with a suspended sentence. During that time she was monitored by the 610 office and [a] detention centre. In May 2004, the [610 office] came to arrest her and the applicant’s father fainted and they did not continue with the arrest. In

September 2005, the 610 office again came to arrest the applicant's mother but her sister stopped them from arresting her. When asked whether she has been arrested again since that time, the applicant stated that there are "sensitive days" and [in] April and [July] brainwashing classes are held and her mother has been forced to take part in it.

75. When asked about her mother's arrest in December 1999, the applicant stated that she did not ask her mother how long she was detained for at that time. The applicant stated that her mother had gone to Beijing to petition with other persons and when she returned home she was arrested. When asked how many other people the applicant's mother went with to Beijing, the applicant stated that she did not ask her mother about the details. The Tribunal asked the applicant whether she is aware what happened to the other people who went with her mother to Beijing. The applicant stated that she did not know. The Tribunal commented that the document that she provided to the Department indicates that one of the people, [Ms J] (spelled out by the Tribunal and the interpreter) who went to Beijing with [the applicant's mother] was beaten to death and died in prison. When asked why she would not have spoken to her mother about this incident, the applicant stated that maybe her mother thought it was too horrible to talk about. The applicant then stated that she knows that person and she misunderstood the Tribunal's pronouncement and it is someone from the factory who died in prison. The Tribunal also commented that the document indicates that the person [with the same name as the applicant's mother] was [age deleted: s.431(2)] years old, whereas her mother would have been [four years younger] at that time. The applicant stated that the information is passed by "word of mouth" to *Clearwisdom* and that is the reason for the inconsistency. The Tribunal stated that when it asked her before about what had happened to the persons who went with her mother to Beijing she indicated that she did not know. The applicant stated that she knows that [Ms J]'s body was returned to Xi'an and her relatives were not allowed to see her and it was cremated without a proper funeral.
76. The Tribunal advised the applicant that it wished to discuss her involvement in Falun Gong activities whilst she has been in Australia. The applicant stated that she has been working with the *Epoch Times* since June 2012. Prior to that time she worked between January and May 2012 in promotional activities for Shen Yun Performing Arts. When asked what that involved, the applicant stated that they would go into different districts, particularly those where "rich people" live and put flyers in their mailbox. The applicant did that every Saturday and Sunday and between Monday and Friday she would hand out flyers to people whilst she was in the City. During the performance which was held [in] 2012, the applicant distributed pamphlets and flyers relating to the performance.
77. In relation to her work for the *Epoch Times*, the applicant confirmed that she has worked there from June 2012. The applicant works every day from [details deleted: s.431(2)]. The paper is produced 5 days a week. The applicant is paid \$100 per week to cover her transport costs. When asked what work she did before that time, the applicant stated that she worked in a restaurant and she is now living on the savings from her work. The applicant also had a cleaning job for a family which she did on Saturdays but that is now finished. When asked what work she does for the *Epoch Times*, the applicant stated that she [works] for the Chinese edition of the news. The Tribunal queried whether her name is on the newspaper. The applicant stated that she uses the name [Alias K] when she is [working]. The Tribunal commented that if she is not using her real name that it may not be known that she works there. The applicant stated that some practitioners know and she also told the people whom she worked for as a cleaner that she was working there because they wanted to know why she could only work for 2 hours as a cleaner. When asked whether she is continuing to work as a

cleaner, the applicant stated that she does office cleaning between 7.30am and 9.30am, but she sometimes finishes at 10.00am.

78. The Tribunal queried why the applicant uses the name [Alias K] when working at the *Epoch Times*. The applicant stated that when she went to work there it was impossible to key into the computer her real name and she then used the name [Alias K] because it is significant for them. The Tribunal commented that it had difficulty accepting her evidence and she may not want her name on the *Epoch Times* because she is fearful that it would create problems for her in China. The Tribunal queried why the applicant is not worried or concerned about the safety of her family in China. The applicant stated that the Tribunal is right and when she was interviewed the day after she arrived in Australia the interviewer did not use her name because she was afraid for the safety of her mother and sister.
79. The Tribunal queried what other Falun Gong activities the applicant has been involved in since her arrival in Australia. The applicant stated that when she first arrived she would practise Falun Gong out the front of the Chinese Consulate and she would also hand out [pamphlets]. The applicant and her roommate would also go to the Botanical Gardens every Sunday. On Saturdays, the applicant “guards” the *Epoch Times*. When asked to explain what she means by “guards”, the applicant stated that sometimes the Communist party officials appoint someone to steal the newspapers and she stops them from taking them.
80. When asked where she practises the Falun Gong exercises, the applicant stated that she practises the exercises every morning for 2 hours at the park near [Suburb 1] station. The applicant began doing the exercises at [Suburb 1] park about 3 weeks ago. Before that time she practised at home because her room mate is a Falun Gong practitioner and another person, [name deleted: s.431(2)], with whom she lives, is also a Falun Gong practitioner. When asked about her practise in front of the Consulate, the applicant stated that she practises there because there is a lady who has been practising there for many years and is very committed. The applicant would arrive at the Consulate at about 6.50am 3 times per week. When asked when she first went to the Chinese Consulate, the applicant stated that it was the third or fourth week and [Ms C] previously lived near the Consulate. The Tribunal commented that [Ms C] had provided a statement to the Department whereby she stated that she took the applicant to the Chinese Consulate the day after she moved in with her, which was only a week after the applicant arrived in Australia. The applicant stated that she cannot remember the exact time. When asked whether she has any photographs to show that she practised in front of the Consulate, the applicant stated that the Chinese lady would be disgusted if anyone took a photograph.
81. The applicant also attends Falun Dafa study sessions every Saturday in [Suburb 1]. [Details deleted s.431(2)]. In addition, the applicant is involved in telephoning China. When asked to explain, the applicant stated that this involves using software called Sonat and it is called International RTC Platform and Falun Gong practitioners register to tell the truth. The practitioners in Australia telephone random numbers in China and encourage people to denounce the Chinese Communist party. The Tribunal commented that they could be creating problems for people in China by doing so. The applicant stated that it is true that there is some supervision of telephones in China, but they do not talk about the specific practise of Falun Gong. When asked what they do talk about, the applicant stated that they say that they are calling from overseas and that they should use an anonymous name to withdraw from the Chinese Communist Party. After they have finished doing that they talk to them and tell them the truth about Falun Gong. The Tribunal commented that the applicant had previously said that they do not talk about Falun Gong to them. The applicant stated that if a person is not a

Falun Gong practitioner they will talk to them about it. The applicant stated that there are millions of people in China and the government cannot monitor everyone's telephone calls. The RTC platform is mainly for telling the truth and is opposed to re-education. It has saved many people's lives.

82. The Tribunal advised the applicant that it wished to discuss some of its concerns regarding aspects of her evidence and concerns that she was not a Falun Gong practitioner in China. The Tribunal commented that she appears to have been well educated and to have good jobs in China, despite her claims to have been heavily involved in Falun Gong activities and her claims that members of her family were frequently detained and mistreated. The Tribunal stated that the evidence before it indicates that Falun Gong practitioners are very badly treated in China and that family members can also be subject to mistreatment. The applicant stated that she accepts that some family members can have problems, but she entered university before the persecution of her family members started and went to a university that anyone can attend if they pay. The applicant stated that all of the Tribunal's concerns are because of the "mistakes" that she made. The Tribunal queried how the applicant was able to avoid detention for some 12 years after her initial detention given her active involvement in Falun Gong. The Tribunal stated that the applicant would have had a significant profile as a Falun Gong practitioner given that she was detained in 1999; several family members had been detained; she promoted Falun Gong in her workplace; and her flatmate informed on her. The applicant stated in July 1999 she was frightened and under significant pressure and she signed a statement saying that she will no longer practise Falun Gong. When the applicant was released from detention, she published a personal statement on *Clearwisdom* saying that she is a Falun Gong practitioner. When asked if her name is on that statement, the applicant stated that it is not. The Tribunal again queried why nothing ever happened to her again despite having a very significant profile. The applicant stated that when she spoke about Falun Gong to her colleagues it was only to those she trusted and who knew her well and with whom she had a good relationship. The applicant's boss was very good and treated her well and knew that she performed well at work.
83. After a break in the hearing, the Tribunal asked the applicant about her flatmate in China informing the authorities about her Falun Gong involvement. The Tribunal queried why the applicant would not have been detained at that time. The applicant stated that she heard from a Falun Gong practitioner that the PSB in China has 2 different systems and her friend was being questioned by a different part of the PSB. The Tribunal commented that it is difficult to accept that the PSB would not have taken action if they had been informed about the applicant's involvement in Falun Gong, particularly because of her family's connections. The applicant stated that the person who exposed her was involved in the democratic movement and the PSB did not connect it with the applicant's involvement in Falun Gong. The Tribunal commented that it had difficulty accepting her evidence.
84. The Tribunal advised the applicant that it wished to discuss with her other problematic aspects of her evidence. The Tribunal stated that the applicant and her sister have both claimed that the applicant's nephew was very badly treated at school due to the family's Falun Gong association. However, prior to her sister's and nephew's departure from China to Australia the tour group telephoned her nephew's school and the teacher and principal both advised the tour group that her nephew is a good student and he was coming to Australia with his mother for a holiday as a reward for his good grades. The applicant stated that the tour group was very angry and left abusive messages for her sister. The applicant stated that when her sister and nephew made the application they had to provide telephone numbers for the

school and the numbers that they gave for the principal and teacher were actually Falun Gong practitioners. The Tribunal commented that her sister's record of interview with the Department did not indicate that she told the Department that it was Falun Gong practitioners who pretended to be the teacher and the principal. The Tribunal stated that her sister had in fact denied that any such telephone calls were made. The Tribunal stated that it does not accept her evidence and her continued willingness to provide untruthful evidence is of considerable concern. The applicant stated that no-one called the two numbers before they left China. The Tribunal stated that her sister did not say when interviewed by the Department that a Falun Gong practitioner was posing as the teacher and the principal. The Tribunal also stated that the tour group telephoned the school after her sister and nephew absconded from the tour group and they were shocked. The Tribunal stated that they certainly did not ever tell the tour group that her sister and nephew were Falun Gong practitioners.

85. The applicant queried whether the Tribunal would accept the word of an organisation over her word. The Tribunal commented that it is not only this issue, but there are several other issues which are of concern. The applicant stated that her sister told her after her interview with the Department that her brother in law worked for a tyre company but this information was never provided. The Tribunal commented that the tour group also telephoned her brother in law and spoke to him, despite the fact that he is meant to be in jail. The applicant stated that the person whom the Department spoke to was a Falun Gong practitioner pretending to be her brother in law. The Tribunal commented that it must have been very difficult for the family to organise all of those Falun Gong practitioners to pretend to be the applicant's family. The applicant stated that the Tribunal should make inquiries to confirm that her brother in law [Mr G] is in prison. The Tribunal advised the applicant that it would not make these inquiries and even if a person called [Mr G] is in prison it does not mean that he is her brother in law. The Tribunal commented that there are many thousands of people in China who share the same name.
86. The Tribunal advised the applicant that it has raised several concerns about her evidence and it may lead the Tribunal to conclude that her application has been carefully planned and manufactured to assist her and her sister and nephew to obtain visas. The applicant stated that she could possibly have extended her visa and she and her sister had many advantages in China. In Australia they have to do cleaning positions earning very little money.
87. When asked if there was anything further she wishes to add, the applicant stated that she wishes to say that the CCP is evil and a "rotten apple" and brings harm. She believes that it is important to tell the truth about the CCP. When asked about the copy of the *Epoch Times* she has provided to the Tribunal, the applicant stated that it contains her statement in full. When asked whether it has her name or her family's name on it, the applicant stated that it does not and she has used the name that she uses when she [works] for the *Epoch Times*.
88. The Tribunal also spoke to the applicant's sister, [Ms E], who stated that she and her sister have thought about the refusal and believes that they made mistakes in the application before the Department. [Ms E] believes that this is due to the extreme fear that they faced in China.

### **Independent evidence**

#### *Falun Gong and the treatment of practitioners*

89. Falun Gong first came to the attention of PRC authorities after demonstrations by Falun Gong adherents in April 1999 in Tianjin, and later that month outside the Zhongnanhai in Beijing.

The initial government crackdown against Falun Gong began in late July 1999, when a number of government departments implemented restrictive measures against the movement, banning Falun Gong and issuing an arrest order for Li Hongzhi. The movement was declared an “evil cult” and outlawed in October 1999.<sup>1</sup>

90. The crackdown on Falun Dafa was triggered by a large-scale demonstration that was held in Beijing on 25 April 1999, where an estimated 10,000 Falun Dafa practitioners from across China peacefully gathered outside the Zhongnanhai, the compound of the Communist Party leadership in Beijing, to demand official status for Falun Dafa. The demonstration was the first major public manifestation of Falun Dafa’s popularity in China and is reported to have caught the Chinese Government by surprise. In 2002, Amnesty International assessed that the Chinese authorities were mainly concerned by the capacity of the Falun Dafa group to mobilise large numbers of followers, unnoticed, for a public demonstration.<sup>2</sup> Following the demonstration, the Chinese Government declared Falun Dafa an ‘evil cult’ and a ‘threat to social and political stability’ prompting a ban on the group. According to Human Rights Watch, once preparations for the ban had been finalised, the Chinese Government:

Moved quickly and decisively on several fronts, rounding up leaders and practitioners; issuing a series of directives that would allow the government to later claim its crackdown had a legal basis; destroying Falungong material including books, tapes, photographs, and posters; and issuing a steady stream of invective against Li Hongzhi and Falungong.<sup>3</sup>

91. During the past decade the Chinese Government has maintained its campaign against Falun Dafa.<sup>4</sup> In 2010, the US Department of State reported that the great majority of Falun Dafa practitioners convicted by the courts since 1999 have been sentenced under Article 300 of the *Criminal Law of the People’s Republic of China 1997* for ‘organizing or using a sect to undermine the implementation of law’<sup>5</sup> The same report notes that since 1999, most practitioners have been punished administratively, including through re-education through labour (RTL) camps (described below).<sup>6</sup> In 2010, however, Falun Dafa’s official press office, the Falun Dafa Information Centre reported that although incarceration in RTL camps remained the most common method of punishment, in 2009 there was a ‘notable’ increase in the use of judicial avenues to imprison Falun Dafa practitioners.<sup>7</sup>
92. In 2010, the Falun Dafa Information Centre quoted researcher Ethan Gutmann<sup>8</sup> as saying that an estimated 450,000 to one million Falun Dafa practitioners are in detention at any given time. The same report notes that it is aware of 2,513 cases of Falun Dafa practitioners

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<sup>1</sup> Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.8-10.

<sup>2</sup> Amnesty International 2000, *People’s Republic of China: The Crackdown on Falun Gong and other So-Called “Heretical Organizations”*, 23 March <http://www.amnesty.org/ailib/aipub/2000/ASA/31701100.htm> - Accessed 25 February 2000.

<sup>3</sup> Human Rights Watch 2002, *Dangerous Meditation: China’s Campaign against Falungong*, January, p.19 <http://www.hrw.org/reports/2002/china/> - Accessed 16 August 2007.

<sup>4</sup> UK Home Office 2011, *Operational Guidance Note: China*, 11 October, p. 9 <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogms/china.pdf?view=Binary> – Accessed 14 October 2011

<sup>5</sup> US Department of State 2010, *2009 Country Reports on Human Rights Practices: China (includes Tibet, Hong Kong, and Macau)*, 11 March [www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm) - Accessed 12 March 2010

<sup>6</sup> US Department of State 2010, *2009 Country Reports on Human Rights Practices: China (includes Tibet, Hong Kong, and Macau)*, 11 March [www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm) - Accessed 12 March 2010

<sup>7</sup> Falun Dafa Information Centre 2010, *2010 Annual Report*, 25 April, Section 1 – Part 1: Falun Gong Persecution and Activism in 2009, <http://www.faluninfo.net/topic/166/> - Accessed 14 November 2011

<sup>8</sup> Ethan Gutmann is an Adjunct Fellow of the Foundation for Defense of Democracies. He has published several works on the China including on the *Laogai* system and internet surveillance in China.

abducted and placed in detention during 2009, with the largest numbers in the Hebei and Shandong provinces.<sup>9</sup>

93. Independent and Falun Dafa sources report that family members of known Falun Dafa practitioners have been targeted by the Chinese authorities. In 2011, the US Department of State reported that family members of Falun Dafa practitioners are targeted for arbitrary arrest, detention and harassment.<sup>10</sup> Falun Dafa sources such as the Falun Dafa Information Centre, Clear Wisdom and the Falun Gong Human Rights Working Group provide reports of the Chinese authorities 'persecuting' the relatives of Falun Dafa practitioners.<sup>11</sup> In 2008, Falun Dafa's official press office, the Falun Dafa Information Centre summarised the types of 'persecution' against relatives of Falun Dafa practitioners as including:

- Spouses are pressured to divorce and threatened with repercussions such as an end to their careers if they do not.
- Relatives are dismissed from their workplaces after their family members petition the government to end the persecution or distribute informational material.
- Sons and daughters are expelled from schools if one of their parents remains an active Falun Gong practitioner.
- Young children have become orphaned or parentless because their mother and father have been killed, arrested, or forced to run from place to place to avoid arrest and torture...some children live with their grandparents or other relatives, while others have been left to fend for themselves<sup>12</sup>

94. A representative of the Falun Dafa Association of Canada was also quoted in a 2007 Immigration Review Board of Canada response as saying that the Chinese authorities use family members as 'hostages' to force practitioners to give up the practice. If practitioners do not cooperate with the authorities, their family members are subject to punishment as well, including harassment by the police, arbitrary interrogation, losing their job or promotion or losing their social benefits.<sup>13</sup>

## FINDINGS AND REASONS

95. The applicant has provided a passport from the People's Republic of China. The Tribunal accepts that the applicant is a citizen of China and has assessed her claims against China as her country of nationality. The Tribunal also finds that China is the 'receiving country' for the purposes of assessing Complementary Protection.

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<sup>9</sup> Falun Dafa Information Centre 2010, *2010 Annual Report*, 25 April, Section 1 – Part 1: Falun Gong Persecution and Activism in 2009, <http://www.faluninfo.net/topic/166/> - Accessed 14 November 2011. Also see: UK Home Office 2011, *China: Country of Origin Information (COI) Report*, 24 August, p. 97

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/china/> - Accessed 26 August 2011.

<sup>10</sup> US Department of State 2011, *2010 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)*, 8 April, p. 22 <http://www.state.gov/documents/organization/160451.pdf> - Accessed 11 April 2011

<sup>11</sup> Clear Wisdom (undated), *Persecution Accounts*, <http://www.clearwisdom.net/html/cate-107/> - Accessed 15 November 2011 ; Falun Gong Human Rights Working Group (undated), *Cases*,

<http://www.falunhr.org/index.php?option=content&task=section&id=12&Itemid> – Accessed 15 November 2011; Falun Dafa Information Centre 2008, *Family and Loved Ones*, 17 May, <http://faluninfo.net/topic/34/> - Accessed 15 November 2011

<sup>12</sup> Falun Dafa Information Centre 2008, *Family and Loved Ones*, 17 May, <http://faluninfo.net/topic/34/> - Accessed 15 November 2011

<sup>13</sup> Immigration and Refugee Board of Canada 2007, *China: Treatment of Family Members of Falun Gong Practitioners by the Chinese Authorities*, 11 July, Refworld Website, <http://www.unhcr.org/refworld/country,,IRBC,,CHN,,46c4037e1a,0.html> – Accessed 2 March 2010

96. The applicant claims, essentially, that she is a Falun Gong practitioner and that she was detained in June 1999 for a short period. The applicant claims to have been extensively involved in Falun Gong activities in China, but to have avoided any further arrest or detention since June 1999. She claims that following that time her family members, including her mother, her eldest sister and her brother in law have been detained on several occasions as a result of their involvement in Falun Gong. The applicant claims that as a result of her fear of persecution that she fled China. The applicant claims to have had extensive involvement in Falun Gong activities in Australia. The applicant claims that she will be persecuted in China not only as a result of her and previous involvement in Falun Gong in China and her family's adverse profile as Falun Gong practitioners, but also because of her extensive involvement in Falun Gong activities whilst in Australia.
97. The Tribunal does not accept that the applicant is a truthful witness. The Tribunal acknowledges the significant involvement by the applicant in Falun Gong activities in Australia and whilst this would ordinarily be strong evidence that the applicant is a genuine practitioner, for the reasons that follow the Tribunal is strongly of the view that the application has been contrived for the purposes of the applicant obtaining protection in Australia and to assist other family members, who have also made protection visa applications, to obtain protection in Australia. The Tribunal considers that all of the involvement by the applicant in Falun Gong activities has been for the sole purpose of strengthening her claim to be a refugee. The Tribunal has first considered the applicant's claims against the Refugees Convention and has also considered her claims against the Complementary Protection provisions.

*Refugees Convention*

98. As stated above, the Tribunal has first considered the applicant's claims pursuant to the Refugees Convention. In considering this issue, the Tribunal is of the view that several aspects of the applicant's evidence are highly problematic. The Tribunal considers that the highly problematic nature of the evidence is indicative of the fact that the application has been contrived prior to the applicant's arrival in Australia and that she continued to contrive evidence to support her application following her arrival in Australia. In this respect, the Tribunal firstly considers that the applicant's evidence in relation to her mother's detentions is highly unpersuasive. Thus, although the applicant has claimed that her mother has been detained as a Falun Gong practitioner on 5 occasions and to have experienced severe mistreatment, the applicant was unable during the Department's interview to provide anything other than limited details about her mother's detentions and indicated when asked when her mother was detained that it was "many times" and she could not remember. Similarly, when asked during the first Tribunal hearing about her mother's detentions the applicant altered her evidence in relation to the length of time that her mother was detained in July 1999 claiming that it was for a month, whilst she had previously claimed in her statement and to the Department that she and her mother and sisters were detained for 15 days at that time. The applicant claimed during the hearing when the Tribunal discussed the inconsistency that she had only recently been reminded by her family that her mother was detained for an additional period of time in July 1999 following the applicant's release. The applicant also indicated during the first Tribunal hearing that she did not know even the approximate dates of her mother's detention or how long she was detained for following the July 1999 detention. The applicant stated during the first Tribunal hearing that she did not "intentionally memorise" everything and is under great pressure and had not prepared sufficiently well. Additionally, the applicant provided a [report] from the *Clearwisdom*

website, which referred to a person named [name deleted: s.431(2)] (the same name as her mother) being detained in December 1999 when she went to Beijing with other practitioners indicating that the practitioners were detained for 20 to 40 days. However, when asked about her mother's December 1999 detention the applicant did not know when asked at the how long her mother was detained for at that time. Furthermore, although the report from *Clearwisdom* states that one of the 10 practitioners, a [woman] named [Ms J], who went to Beijing in December 1999, allegedly with the applicant's mother, was subsequently beaten to death the applicant did not know what happened to the practitioners when initially asked by the Tribunal. The applicant first stated, when advised by the Tribunal that one of the practitioners had been beaten in jail, that her mother did not tell her everything about the December 1999 in order to protect her. However, she subsequently claimed that she had recalled that [Ms J] was an employee at the factory where her mother worked and indicated that she did not understand the Tribunal's previous question due to the Tribunal's pronunciation of the person's name, even though it had been pronounced and also spelled out to the applicant by the interpreter.

99. The Tribunal considers that the applicant's evidence in relation to her mother's detentions is highly problematic. As discussed with the applicant during the first Tribunal hearing, the Tribunal was not expecting her to recall the exact dates or times of her mother's detentions. The applicant was simply asked to give at least an approximate account of when they occurred and for how long her mother was detained on each occasion. The Tribunal does not accept that the applicant would not be aware of such issues and to be able to recount them in some manner and considers her evidence that she did not "memorise" them to be indicative of the fact that her claims were manufactured. The Tribunal also considers it highly lacking in credibility that the applicant would not know whether her mother was released at the same time as her in July 1999 or whether she remained in detention for a longer period of time. The Tribunal also does not accept that the applicant would not have known the plight of the elderly Falun Gong practitioner who was beaten to death in prison, who had allegedly accompanied her mother to Beijing and was a fellow employee at the factory where her mother and sister were employed. The Tribunal considers it evident that the applicant altered her evidence during the hearing in response to the Tribunal's concerns that she did not know the plight of one of the persons who allegedly went to Beijing with her mother. The Tribunal does not accept, in such circumstances, that the person named in the 2001 document is the applicant's mother. In the Tribunal's view, the highly problematic nature of the evidence in relation to this issue raises serious concerns that the applicant has manufactured her claims relating to her mother's detentions. Whilst the Tribunal accepts that the applicant had the dates of her mother's detentions written down during the second hearing, the Tribunal does not accept that her ability to do so overcomes the problematic nature of her earlier evidence in relation to this issue.
100. Secondly, the Tribunal also considers that the applicant's evidence indicating that she was only detained on one occasion in July 1999, despite claiming to have been associated with a family of well known Falun Gong practitioners who had been detained on numerous occasions for lengthy periods, to be not credible and highly inconsistent with the independent evidence set out above. As indicated above, the applicant has not only claimed that her mother, sister and brother in law were arrested and detained on numerous occasions and subject to lengthy periods of detention, she also claimed in her statement to have actively promoted Falun Gong in her workplace by talking to her boss and colleagues about Falun Gong and asking them to participate in the "Three Withdrawals" and that "through my performance they all identified with Falun Gong" She has also claimed that her telephone

was monitored because she kept talking about Falun Gong and her flatmate disclosed to the National Security Department that the applicant was involved in Falun Gong. She has claimed that after her sister was released from a 5 year period of imprisonment that they produced “truth clarification” material which was distributed in parks, universities and other residential areas and set up a “truth clarification material site” whereby they produced booklets, flyers, posters, calendars, New Year pictures and cards and sent material to the *Clearwisdom* website. The applicant claims that she was able to avoid harm by moving to different addresses, despite the fact that she only had 2 different jobs during that period and that it was due to “heaven’s will” and the belief in the “gods” that they were able to use the Internet to distribute and produce material despite the heavy controls placed on the distribution of such materials in China. The applicant has, after concerns were expressed by the delegate and the Tribunal as to this aspect of her evidence, subsequently sought to alter her evidence regarding her involvement in speaking and promoting Falun Gong at her workplace, and has claimed that she only spoke to people she trusted and her boss trusted and supported her due to her high work performance. During the hearing, although asked several times as to why she was able to avoid harm during such a lengthy period despite her family’s extremely adverse profile and her own extensive involvement, the applicant was only able to state that she has attended university because it was a paid university which she had commenced prior to the “persecution” and her employer trusted her. The applicant also claimed that the persons who arrested her flatmate were concerned with his involvement in pro democracy activities and were from a different section of the PSB and the information about her involvement with Falun Gong would not have been passed on to the section of the PSB concerned with Falun Gong.

101. The Tribunal considers it highly lacking in credibility that the applicant would, given her claims regarding her active and considerable involvement between 1999 and her departure in April 2011 to have avoided harm from the authorities for a period of some 12 years. The independent evidence indicates that both Falun Gong practitioners and their family members and associates are subject to considerable monitoring. The Tribunal does not accept that the applicant would have avoided the scrutiny of the authorities over a period of some 12 years given her claimed extensive involvement in promoting Falun Gong and producing Falun Gong materials between 2007 and 2011 whilst living with her sister whom she claims had recently been released from prison. The Tribunal further considers it highly lacking in credibility that the applicant’s sister would, upon her release from prison after a 5 year sentence, immediately establish a Falun Gong production site at her own home. The Tribunal also does not accept that the applicant would have actively promoted Falun Gong at her workplace given the dangers of doing so, particularly given her claims to be from a family of well known practitioners. The Tribunal considers it evident that she has attempted to alter her evidence in relation to this issue in response to concerns raised by the delegate and the Tribunal. Nor does the Tribunal accept that the applicant would not have come to the adverse attention of the authorities if she was promoting Falun Gong in her workplace. The Tribunal also does not accept that she would have avoided questioning and detention if her flatmate had informed the PSB or the “National Security Department” that she was involved with Falun Gong. The Tribunal considers that had the applicant been from a family of known Falun Gong practitioners, many of whom had been detained for lengthy periods, had herself been detained in 1999, and had considerable involvement in the production and distribution of Falun Gong material that she would have been under considerable scrutiny and monitoring and would have been arrested and detained on at least one or more occasions between 1999 and 2011. The Tribunal considers that such a person would have had an extensive profile as a Falun Gong practitioner and would have been unable to have avoided scrutiny, arrest and

detention for some 12 years. The applicant's evidence indicates that she not only avoided such scrutiny and harm, but was able to complete a university qualification in English and was also able to maintain employment in relatively senior and well paying positions. The Tribunal considers that her ability to avoid harm and to maintain employment given her claims regarding her family's involvement and that of her own is highly lacking in credibility and in complete contrast to the independent evidence regarding the plight of Falun Gong practitioners and their family members. In the Tribunal's view, the applicant's evidence in relation to this issue is highly indicative of the fact that her claims relating her experiences and those of her family in China have been manufactured.

102. The Tribunal further considers that the evidence indicating that the applicant was granted a passport in 2008 and had been working for an organisation which organised student visas for Australia, New Zealand and Ireland since about that time to be further indicative of the fact that the applicant did not fear harm in China. The applicant has claimed that she did not leave China until 2011 due to financial concerns and a teacher helped her with the application to the United States, and it was only later that a friend helped her with the visa application for a student visa for Australia. The Tribunal does not accept that the applicant, who is university educated and had been employed for several years, would not have been able to leave China at a considerably earlier time if she had genuinely been fearful of harm in China, particularly given that she was working for an agency which assisted people to leave China. The Tribunal also notes that the applicant's student visa file contains several bank statements from 2009 indicating that the applicant's financial position was good and that she had savings in bank accounts in China. The Tribunal considers that the fact that the applicant waited 3 years after obtaining her passport to be indicative of the fact that she did not fear harm in China and that her claims to fear harm have been manufactured.
103. In addition to the above, the Tribunal considers that other aspects of the applicant's evidence lack credibility and are indicative of the fact that her claims have been manufactured. In this regard, the Tribunal considers that the applicant's denial to the delegate during the interview that she had made any applications for visas to any other places in circumstances where she had made an application for a Student visa to the United States in 2010 to be indicative of her willingness to provide untruthful evidence. The applicant has claimed that this was a "mistake" and she did so due to her fear and confusion and as a result of her experiences and those of other Falun Gong practitioners. The Tribunal does not accept the applicant's explanation and does not accept that there is any credible reason as to why the applicant would not have disclosed this information to the delegate during the Department interview when initially asked about it. Similarly, the evidence also indicates that although the applicant responded to other questions on the application form, she failed to provide any details of any family members and has claimed that she misunderstood that aspect of the form and gave a different address on the application form to the one where she subsequently claimed to have resided at with her eldest sister. The applicant stated on the application form that she had lived at the same address since [birth] and provided no other details of addresses, despite her claims to have had to move to different addresses continually because of her fear. The Tribunal does not accept the applicant's evidence and considers it evident that she has deliberately omitted details of her family members on the application form. The Tribunal also does not accept her explanation for providing an address where she only visited and on her own evidence had lived only since 1999. The Tribunal does not accept that the applicant who has a degree in English from a university in China and who completed all other parts of the form would have misunderstood a basic question relating to family members or misunderstood a basic question in relation to her address. The Tribunal considers that the

evidence in relation to this issue is further indicative of the applicant's willingness to provide untruthful evidence.

104. The Tribunal also considers that evidence in relation to the applicant's sister and her nephew's applications for protection visas (see above) is problematic and indicative of the fact that the applicant's claims are manufactured. As set out above, the applicant's sister, [Ms E] and her son arrived in Australia on visitor visas in January 2012 and subsequently applied for protection visas soon after their arrival. The applicant and her sister have claimed that her sister's son (the applicant's nephew) was subject to bullying and harassment at school because he is from a family of well known Falun Gong practitioners. However, the evidence on the applicant's sister's file indicates that the tour group telephoned her sister's son's school prior to their departure from China and both the principal and the teacher spoke positively about the applicant's nephew, stating that they were aware that he was visiting Australia for a holiday as a reward for his good work performance. The tour group also telephoned the applicant's sister's husband, [Mr G], who was allegedly in jail at that time, and he responded on his mobile telephone call. The applicant's sister's file indicates that her sister initially denied any knowledge of the calls, but then stated that it was a Falun Gong practitioner who had answered the mobile telephone call and pretended to be [Mr G]. When this issue was discussed during the Tribunal hearing, the applicant claimed that it was not only a Falun Gong practitioner who had pretended to be [Mr G], but also Falun Gong practitioners posing as a teacher and a principal.
105. The Tribunal firstly considers that the applicant's evidence is inconsistent with that of her sister who only claimed that it was another Falun Gong practitioner posing as her husband and specifically told the Department that she had only told the teacher about the trip and not the head of the school. The Tribunal also considers it not credible that the family was aware that the tour group would make telephone inquiries with her nephew's school such that they would be prepared for 2 Falun Gong practitioners to pose as a teacher and a principal. The Tribunal does not accept that the evidence from the school supports the applicant's or her sister's claims that the applicant's nephew was bullied and harassed at school because the family were well known Falun Gong practitioners and instead considers that it indicates that he was known as a good student and accepted as part of the school community. The Tribunal considers that the applicant manufactured an explanation during the hearing in an attempt to overcome the concerns raised by the Tribunal in relation to this evidence. The Tribunal considers that this is further indicative of the applicant's willingness to continue to provide untruthful evidence when she considers it convenient to do so.
106. Importantly, the Tribunals further considers that the applicant's evidence as to her knowledge of aspects of Falun Gong when asked by the delegate during her Department interview to be inconsistent with her claims to have been a committed Falun Gong practitioner since 1996, a period of over 15 years at the time of her interview. The Tribunal does not accept that the applicant did not know what was expected of her and considers that her responses to questions posed by the delegate were not consistent with her claims to have been a committed Falun Gong practitioner for many years. The Tribunal instead considers that the applicant's evidence to the Department was indicative of someone who had learned some aspects of Falun Gong but does not genuinely have an interest or commitment to Falun Gong.
107. As stated above, the Tribunal is of the view that the applicant's application is contrived and that preparations were made by the applicant to manufacture evidence to support an application for protection well before her departure from China. In this regard, the Tribunal considers that the applicant's evidence as to her initial arrival in Australia to be indicative of

the fact that the application was contrived prior to the applicant's arrival in Australia. The applicant has claimed that the day after her arrival in Australia she went to Chinatown and met [Ms C], who coincidentally comes from the same town and province as the applicant. She claims that [Ms C] saw the applicant holding a banner promoting Falun Gong, and invited the applicant to live at her home, where the applicant has continued to reside and where her sister and nephew now reside. When this issue was discussed during the hearing, [Ms C] claimed that she invited the applicant to stay in her home because of her "friendly face" and because the applicant told her about [Mr G] (the applicant's brother in law) whose name she had read about on *Clearwisdom* several years earlier.

108. The Tribunal considers it beyond coincidence that on the day after her arrival in Australia the applicant would meet someone from her own province and town and that she would begin living with her a week after that time and remain living with her following that time. The Tribunal does not accept [Ms C]'s evidence that she would have recognised a name on the *Clearwisdom* website in circumstances where the names of hundreds of Falun Gong practitioners appear every year. The Tribunal considers that the applicant's evidence indicates that she and [Ms C] had planned prior to the applicant's arrival for her to live with [Ms C] whose own evidence is that she supports persons who are Falun Gong practitioners to obtain protection in Australia. Whilst the Tribunal accepts that Falun Gong practitioners from China may have contact with practitioners in Australia, the applicant's evidence is that she did not know [Ms C] prior to her arrival in Australia. The Tribunal does not accept that the applicant and [Ms C] have provided truthful evidence in relation to the circumstances in which they met and in which the applicant came to be living with [Ms C] a week after her arrival in Australia. The Tribunal considers that the evidence in relation to this issue is indicative of the fact that the applicant's application had been contrived prior to her arrival in Australia.
109. The Tribunal further considers that other aspects of the applicant's evidence are indicative of the fact that the application has been contrived and evidence manufactured prior to the applicant's arrival in Australia. In this regard, the Tribunal firstly considers that the delay of some 7 months following the applicant's arrival in Australia is indicative of the fact that she does not fear harm in China. The Tribunal does not accept that if the applicant is from a family of known Falun Gong practitioners who had been persecuted over the course of many years that she would have failed to seek protection soon after her arrival in Australia and instead spent her time working and pursuing her studies. The Tribunal also does not accept that the applicant, who was living with a Falun Gong practitioner, who has assisted other persons to obtain protection in Australia, would not have been aware of the importance of lodging an application soon after her arrival in Australia and would have been able to assist the applicant to do so. The applicant's own evidence indicates that she had photographs of herself taken holding up a Falun Gong banner the day after her arrival in Australia, for the purposes of obtaining evidence for the lodgement of the application. The Tribunal does not accept that there is any credible reason that she would then delay the lodgement of the application by some 7 months and does not accept her account of doing so because of her problems with RACS. The Tribunal is drawn to the conclusion that the delay in the lodgement of the application following the applicant's arrival is indicative of the fact that she did not fear harm in China and was using the time to make preparations for her application for protection, in order to involve herself in Falun Gong activities and to attempt to establish a profile for herself as a Falun Gong practitioner prior to the lodgement of the application.
110. The Tribunal also considers that much of the documentation provided from the *Clearwisdom* website which refers to her family members arrests, many of which occurred many years ago,

were placed on the *Clearwisdom* website in 2010 at approximately the same time that the applicant was making preparations for her application to the United States and then to Australia. The evidence before the Tribunal indicates that the information on *Clearwisdom* is based on reports from persons in the community or Falun Gong practitioners and that the reports are not verified by *Clearwisdom*. The Tribunal considers, in light of the problematic evidence set out above, that almost all of the information purportedly about the applicant's family members has been placed on the website in 2010, by the applicant or family members in an attempt to support an application by the applicant for a protection visa. The Tribunal accepts that other documentation has been provided purporting to be arrest warrants and detention certificates. However, given the prevalence of fraudulent documentation and the ease for which such documentation can be obtained,<sup>14</sup> the Tribunal does not accept that this documentation overcomes the highly problematic nature of the applicant's evidence in relation to several issues. Nor does the Tribunal accept that a report in 2008 which refers to [Mr G], whose name may be the same as the applicant's brother in law, is the applicant's brother in law who had allegedly been in exile in another part of China at the time.

111. The Tribunal has identified several areas which indicate that the applicant's evidence has been contrived prior to her arrival in Australia. The Tribunal does not accept, having regard to all of that evidence, that the applicant is a genuine Falun Gong practitioner, or that she is from a family of Falun Gong practitioners who have been detained and mistreated for several years in China. The Tribunal considers that the applicant's circumstances indicate that she is well educated and was employed in good jobs in China and that her circumstances are in no way indicative of someone who was from a family of well known Falun Gong practitioners. The Tribunal does not accept, therefore, that the applicant left China for the reasons that she claims and considers that the entirety of her claims have been manufactured in an attempt to provide a basis for protection in Australia.
112. Having found that the applicant is not a genuine Falun Gong practitioner, the Tribunal has considered the applicant's involvement in Falun Gong in Australia. The Tribunal accepts that this involvement is significant and that she has provided numerous documents attesting to her involvement and commitment to Falun Gong and that various Falun Gong practitioners genuinely believe that she is a committed Falun Gong practitioner. Although the Tribunal has concerns as to the genuineness of some aspects of the evidence provided by the several Falun Gong practitioners who appeared before the Tribunal, the Tribunal accepts that many practitioners believe that the applicant is a committed Falun Gong practitioner. As stated above, the Tribunal would generally accept that this is extremely persuasive evidence as to the applicant's genuine commitment to Falun Gong. However, the Tribunal has found above that the application was contrived and planned prior to the applicant's arrival in Australia. In such circumstances, the Tribunal is strongly of the view that the applicant's involvement in activities in Australia is a continuation of her attempts to manufacture and contrive evidence to support her application. The Tribunal considers it evident that the day after arriving in Australia that the applicant became involved in Falun Gong activities such that she was holding up a banner and having her photograph taken a day after her arrival in Australia and a week later attending the Chinese consulate to hand out pamphlets with [Ms C]. The Tribunal

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<sup>14</sup> Sources indicate that fraudulent documentation is widely available in China – see US Department of State 2012, 2011 *Country Reports on Human Rights Practise* – China, 24 May, Section 4. A 2007 report by the Economist Intelligence Unit on document fraud in the immigration process cites a China-based United States consular official as saying that document fraud is so extensive that “you can't trust any [personal] documents in China' and documents are assumed to be fraudulent unless verified - see Economist Intelligence Unit 2007, *Paper Chase: Document Fraud in the Immigration Process*, September, p. 18.

also considers it evident that following the Department's refusal the applicant increased her activities such that she sought employment with the *Epoch Times* in June 2012. The Tribunal does not accept that the applicant, whom the Tribunal has found was not a Falun Gong practitioner in China, has become committed to Falun Gong in Australia and, as stated above, considers that her extensive involvement is simply a continuation of the applicant's attempts to obtain residence outside of China, first in the United States and following the refusal of that application, to Australia. The Tribunal considers that she has done so to support her own application and to assist her sister and nephew who have also made applications for protection. The Tribunal considers that she is willing, in such circumstances, to make serious and concerted efforts in Australia to involve herself in Falun Gong to support her application for protection. The Tribunal is satisfied, therefore, that the applicant has been motivated to become involved in Falun Gong activities in Australia solely to strengthen her claims to be a refugee. In accordance with s.91R(3) of the Act, the Tribunal has disregarded the applicant's involvement in all Falun Gong activities in Australia in determining whether she has a well founded fear of persecution in Australia.

113. The Tribunal is not satisfied that the applicant would seek to have any involvement in Falun Gong upon her return to China and having disregarded her activities in Australia is not satisfied that there is a real chance that the applicant will suffer serious harm for reasons of her political opinion, imputed political opinion, membership of a particular social group or for any other reason upon her return to China. Accordingly, the Tribunal finds that the applicant does not have a well founded fear of persecution if she returns to China, now or in the reasonably foreseeable future. The Tribunal finds, therefore, that the applicant does not meet s.36(2)(a) of the Act.

#### *Complementary Protection*

114. Having found that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative provision in s.36(2)(aa): the Complementary Protection provision. In considering this provision, the Tribunal is mindful that s.91R(3) does not apply to the Complementary Protection provisions and only requires the Tribunal to disregard conduct in Australia when determining whether an applicant has a well founded fear of persecution. The Tribunal cannot, therefore, pursuant to s.36(2)(aa) disregard the applicant's conduct in Australia in relation to her involvement in Falun Gong, despite its findings as to the contrived nature of such conduct. It is, therefore, necessary to consider whether the applicant's activities in Australia are such that the Tribunal is satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China (the receiving country), there is a real risk that she will suffer significant harm.
115. In considering this issue, the Tribunal has accepted that the applicant's involvement in Falun Gong activities in Australia has been considerable and extensive since her arrival in April 2011 and that her claims as to her involvement in Australia are supported by several Falun Gong practitioners, as well as [a senior employee] of the *Epoch Times* and [a senior official] of the Falun Gong Association. The Tribunal accepts that these activities include the applicant's volunteer [work] for the *Epoch Times* since June 2012, where the applicant works 6 days per week, several hours each day. Although the applicant's evidence indicates that her name does not appear on the newspaper, the Tribunal accepts that several staff know her by her real name and that the reference provided from the editor refers to the applicant by her real name. The Tribunal also accepts the evidence of the [senior employee] of the *Epoch Times* who states that the activities of staff of the *Epoch Times* are monitored and their

attendance at various human rights events is also monitored. Although no formal link has been admitted, the *Epoch Times* has many Falun Gong staff members and its publications cover many Falun Gong stories and display a strong sympathy towards Falun Gong.<sup>15</sup> The Tribunal accepts, therefore, that the applicant's work at the *Epoch Times* may well be known to the Chinese authorities in Australia, and that this information may have been passed onto the authorities in China.

116. The Tribunal also accepts the evidence of [a senior official from the Falun Gong Association], several practitioners and [an employee of Media Company 4] that the applicant has been actively involved in distributing pamphlets and other promotional material for the Shen Yun (Falun Gong performance) held in April 2012. She has also been involved in regularly handing out the *Epoch Times* at various different sites in Sydney. She has also attended various major events; been [photographed] performing Falun Gong exercises; "guarded the *Epoch Times*" at [Suburb 3]; been actively involved in various Falun Dafa workshops and other events, and has attended the Chinese Consulate to demonstrate on various occasions.
117. The Tribunal accepts, on the basis of the applicant's extensive involvement in Falun Gong activities in Australia since April 2011, particularly her frequent appearances in front of the Chinese Consulate and her considerable involvement with the *Epoch Times*, which is linked by many to the Falun Gong (Falun Dafa) organisation, that there is a real risk that her conduct will be known by the Chinese authorities in Australia or China. The Tribunal has had regard to the independent evidence which indicates that there is monitoring of Chinese persons residing in Australia on temporary visas. That evidence indicates that Chinese students have been pressed by consular officials to monitor the political behaviour of fellow students and that there some commentators have stated that the Chinese official surveillance of Chinese Australians has at times been "widespread". The evidence indicates that the "five poisonous groups" which the Chinese authorities monitor in Australia includes the Falun Gong movement.<sup>16</sup> The Department of Foreign Affairs and Trade (DFAT) has also consistently noted that it is likely that persons such as Falun Gong activists who participate in Falun Gong activities in Australia will be monitored and questioned upon their return to China.<sup>17</sup> The Tribunal also accepts the evidence of practitioners, [a senior official from the Falun Gong Association] and [a senior employee] of the *Epoch Times* who state that her involvement in Australia is dangerous for the applicant upon her return to China.
118. Thus, although the Tribunal has found that the applicant's claims to be a genuine Falun Gong practitioner are contrived and that she will not practise Falun Gong upon her return to China, the Tribunal accepts that there are substantial grounds for believing that she will have been identified as a Falun Gong practitioner and will be *perceived* to be a Falun Gong practitioner by the Chinese authorities upon her removal from Australia to China. The Tribunal is, therefore, satisfied, having regard to the considerable level of the applicant's involvement, and the independent evidence indicating the monitoring of Falun Gong activists in Australia, that there are substantial grounds for believing that the applicant's involvement in Falun

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<sup>15</sup> See Zhao, Yuezhi 2004, 'Falun Gong, Identity and the Struggle over Meaning Inside and Outside China' in *Contesting Media Power: Alternative Media in a Networked World*, eds. N. Couldry and J. Curran, Rowman and Littlefield, pp. 218-220)

<sup>16</sup> See <http://www.theage.com.au/articles/2007/11/10/1194329562764.html> – Accessed 1 July 2008.

<sup>17</sup> See DIAC Country Information Service 2006, Country Information Report No.06/053: *China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September. See also Amnesty International Canada 2005, *Amnesty International concerns on Uighur asylum seekers and refugees*, June which also refers to Falun Gong dissident groups and their monitoring by the Chinese authorities in different countries.

Gong activities in Australia will be known by the Chinese authorities and that she will be perceived to be a genuine Falun Gong practitioner. The Tribunal accepts that the independent evidence set out above indicates that Falun Gong practitioners are at considerable risk of serious mistreatment including arrest, detention, harassment and physical harm. The Tribunal is satisfied that such mistreatment amounts to significant harm as it may include torture, cruel or inhuman treatment or degrading treatment or punishment. Accordingly, the Tribunal is satisfied that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, in this case China, there is a real risk that she will suffer significant harm. The Tribunal finds, therefore, that the applicant meets the Complementary Protection provisions in s.36(2)(aa).

## **CONCLUSIONS**

119. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal considered the alternative criterion in s.36(2)(aa). The Tribunal has found that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

## **DECISION**

120. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.