

060819216 [2006] RRTA 215 (22 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060819216

DIMA REFERENCE(S): CLF2006/80510

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Richard Derewlany

DATE DECISION SIGNED: 22 December 2006

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

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

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

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

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged, in this case 20 July 2006, although some statutory qualifications enacted since then may also be relevant.

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

Definition of 'refugee'

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Protection visa application

In her protection visa application, the applicant stated that she was born in City G, in China and on what date. The applicant stated how much schooling she had completed. She stated that she was married and had children. Her spouse and children resided in China. The applicant stated that she had worked as a farmer and during what period.

In a statutory declaration submitted with the protection visa application, the applicant stated that she had been a rice farmer. She and her family had rice fields. In recent years the Chinese authorities decided to build a highway from area D to area J, and a length of the highway had to go through area H. This meant that a number of villages were affected including her home village, and her husband's village, where she lived with her family. Most of the rice fields worked by the farmers from these villages were confiscated by the government. The applicant estimated that thousands of people lost their main source of income because of the government's action.

The applicant stated that the government only provided a small compensation for each family. The government did not provide any other support, such as creating employment opportunities or assisting the villagers to find new sources of income. The villagers were told "to seek ways for survival by ourselves". The applicant strongly believed that the government's action was unfair and that she and her fellow farmers should strive for their basic human rights. She organised farmers in her own village as well as other villages in the area, to lodge appeals with the local government, including the village administrative committee and the government authorities in area H. The appeals asked the officials to recognize the farmers' basic human rights and to provide them with reasonable compensation for the loss of their rice fields. The applicant stated that the officials refused to offer any help, and indeed warned them not to make any trouble with the authorities, otherwise they would be severely punished.

Later that year, the local government decided to have a ceremony in the applicant's village to celebrate the completion of part of the highway near the village. Many senior officials from the government of area H attended the ceremony, as well as some reporters from local TV, radio stations and newspapers. The farmers were very angry about this ceremony because they had endured difficult conditions for a number of months, and the applicant and many other farmers protested against the government. They stopped the ceremony by shouting slogans and distributing petitions. They asked the senior officials from area H to give them reasonable compensation, and they talked to reporters from the local TV and radio stations, asking them to expose the truth to the public so that they could get wider support. However, the protest was suppressed by many armed policeman, and the applicant, together with a group of other farmers, was arrested.

The applicant was regarded as a leader of the protest by the authorities, because she had previously organised farmers to lodge appeals with the authorities. Most of the farmers who were arrested with her were released after a short time, after paying a penalty, but the applicant was not. Soon after, the applicant was sent to undertake manual labour at a highway construction site, some distance away from her home village. This occurred without any legal procedure having taken place. She had to work long hours each day and had to live in labourers' quarters in very poor conditions. She was not allowed to contact her family. Some months later, her husband bribed some officials in area H in order to secure her release. Even after she returned home, her freedom and livelihood were significantly restricted, because she had been regarded as a "dangerous person" who had strong "anti-government" ideologies and a record of organising anti-government protests. She was consequently threatened, questioned and interrogated by policemen and local officials on a number of occasions. This treatment by the authorities caused her to become depressed, and she even tried to commit suicide. Her husband therefore arranged for her to leave China so that she could escape the persecution she had suffered and start her life again.

Tribunal hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter.

The applicant was represented in relation to the review by her registered migration agent. The representative did not attend the Tribunal hearing.

At the hearing the applicant provided her passport to the Tribunal. The Tribunal took copies of the information pages of her passport, as well as pages containing her Australian visa. The applicant also submitted documents indicating that she had received money as "land allowance payment", as well as a document from the City G prison stating the date on which she had been detained for the reason that she had organised anti-government protests, and that she was released some months later.

The applicant told the Tribunal that after she came to Australia she learned about applying for a protection visa as a means of staying in Australia. She told her agent about her case, and her agent assisted her in making the application. She stated that she cannot go back to China, because the authorities took away the land on which she relied to make a living. The applicant's land was acquired by the authorities in recent years. The authorities gave each family only a small sum as compensation and no other assistance was provided. She and other farmers found that to be unreasonable, so she organised the farmers to make claims to the authorities on a number of occasions. Firstly, they applied to the village authorities. Nothing happened, so they then went to the local government authorities. The local government authorities did not accept their claims, so the next level they approached was the district or regional level in City G. They were told by some officials that the matter was not in their area of responsibility and they were referred to an 'Industrial' Department. There, they were told to go to another Department, which also told them that it was not their area of responsibility, and they were referred to a third Department. This Department sent them back to the city officials. It was clear that the authorities were not going to help them, and during this time they received warnings not to make too much trouble, otherwise they would face serious punishment.

Later that year construction work on the highway near her village was completed, and the applicant and other farmers learned that the county government would celebrate the

completion of the work. A ceremony was to take place in a local centre. The farmers felt that this would be a good opportunity to voice their protests about what the government had done. The farmers wrote some pamphlets or petitions because they knew officials from various levels of government would be attending, as well as people from the media. Around this time they went to the place where the celebration gathering was due to commence. The farmers divided into various groups and tried to approach officials from the different levels of government but they could not gain access to them. The only means they had to present their case was to shout loudly. They demanded their rights and demanded that the land be returned to them or that they be compensated. A number of guards were at the gathering to ensure public order, but the authorities later called additional police and after the police came a group of the farmers, including the applicant, were arrested.

After some days most of the farmers were released from detention after paying a bond. The authorities considered the applicant to be a leader of the protest activities, so she was not released. She continued to be detained, and soon after she was sent some distance away to a construction site where a public road was being constructed. She was forced to do hard manual labour. She was also threatened and badly treated by a female officer who had the task of guarding her. She was not allowed to contact her family and was not allowed to go home. The conditions where she stayed were very poor. The applicant's husband bribed the woman who was guarding her, and as a result the woman treated her more kindly. He also bribed the officials in City G and she was eventually released some months later. She thought that her life would return to normal when she went home but this was not so. Officials came to her home every few days and threatened her with serious consequences if she considered any further protest activities. Sometimes the police came to get her and locked her away for a number of hours without any reason; they interrogated her and asked if she had been organising protest activities. She was driven to despair by their actions, although during this time she also thought that further protests by the farmers against the government authorities should be organised. She was so miserable that on one occasion she even drank some poison.

Her husband saw that she was in despair and wanted to get her out of China. He asked his friends to assist her to get out of China. He and her family paid a lot of money in order to get her a visa for Australia. Her husband paid a large sum for the visa and the family borrowed money for this. The family had to raise additional funds after the visa was obtained, including money for her plane tickets. Her husband had to resort to other measures in order to raise funds for her plane ticket to Australia.

The Tribunal asked the applicant why she had applied for and obtained a passport at a time before she had been arrested at the ceremony which took place a short time later. She stated that before she was arrested she had been involved in organising activities to protest against the land acquisition. Her husband had asked her many times not to engage in such activities. He asked her many times not to get involved in protest activities, because she had children to look after. Her husband wanted her to leave China so that she would not be involved in such activities, as he believed that if she continued her protest activities, she would end up in trouble with the authorities. She did not want to leave China, because she wanted to stay and "fight" the actions of the authorities. She did not want to listen to her husband or her family. Her husband arranged the passport for her for the sake of her family, and she only needed to sign the back of the passport application form. The Tribunal raised with the applicant its concerns about her evidence that she signed documents to obtain a passport if she was so intent on staying in China to protest against the actions of the authorities. The applicant

stated that her husband had asked her to leave for a short period of time to go somewhere else. At the time she could not think of a reason not to comply with his wishes. Her husband had also told her that she needed the document so that a visa could be arranged, although at that time it had not been decided that she would seek to travel to Australia.

The applicant stated that her husband and other family members were not involved in petitioning the authorities regarding the land acquisition. She decided to be involved because she thought the actions of the authorities were unfair. She thought that the compensation they were given was so small that they would not be able to survive. She organised farmers to write petitions to the government authorities, and they approached different levels of government to present their petitions. She was involved with a group of farmers from a number of villages which were affected by the land acquisition. The farmers discussed the content of the petitions and then wrote them. The petitions asked the government authorities to compensate the farmers more adequately, and to at least provide other employment or additional training opportunities or education assistance for their children. The farmers raised the issue of education assistance, because it was more difficult for them to pay school fees as a result of their reduced income. They presented the petitions to officials at the village level, but were referred to the next level of government. When they did so, they could not meet the official in charge, and staff said to leave the petition with them and they would be handed to the relevant official. After some time they went back to this office, but were told that it was not their area of responsibility. Usually a group of a few farmers went to deliver the petitions.

When the farmers learned about the special ceremony they were angry and decided to make a public protest. The protest was not arranged by any particular person, but it was a general feeling among the farmers that a protest should be made. The applicant stated that a large group of persons were involved in the protest. The farmers were aware of the ceremony because there were posters advertising it, and it was also a National day. The farmers, of their own initiative, decided to take part in a public protest. The farmers discussed the matter with a few of their number who had previously organised petitions. They grouped together a short time before in the applicant's home village. A large group of farmers attended. They decided to write a petition. They decided that not enough petitions had been made previously. They decided that petitions should be written to inform the general public about what the government authorities had done. They thought that if they just wrote further petitions to the government, then the issues would only be read by government officials. In the petition for the general public, they wrote down details of the problem, including the lack of compensation, and the importance of the government recognizing their rights and giving them support.

The Tribunal stated that it had country information which indicated that land acquisition was happening on a wide scale in China. The Tribunal said this might indicate that the land acquisition which had occurred in these villages would have been widely known about by the public. The applicant stated that they wanted the government authorities to give them more compensation and more assistance. They wanted to appeal to the government authorities, even though they had failed previously, and they also wanted the public to know about their appeals.

At the gathering they were not able to gain access to the government officials. They were trying to gain access to the officials because even though they had presented petitions to different offices previously, they did not know whether senior or top officials had read these petitions. They wanted to deliver petitions by hand to the senior officials. The Tribunal

asked the applicant why only a small number of farmers were arrested when the group was considerably larger. The applicant stated that at the time it was chaotic and many people ran away when they saw the second group of guards, comprising military guards, arriving. The small group of farmers who did not run away were arrested.

The Tribunal told the applicant that there appeared to be little in her evidence to indicate that she was an organiser of the protests. She stated that the authorities considered that she had been organising the petitions. She had always been present when petitions had been delivered to various government offices. She does not know why she was considered to be a leader of the protests.

The applicant gave further evidence about the period when she was detained and forced to undertake manual labour. She stated that she slept in a construction shed near the construction site. She stated again that when she was sent away at that time, the authorities did not undertake any legal procedures. The Tribunal asked the applicant why the certificate of her release was from City G prison, when she said she had always stayed at the construction site some distance away. The applicant stated that because her husband had bribed officials, the officials needed to make up some formal reason for her release. The Tribunal raised with the applicant that there was country information which indicated that false documents could be easily obtained in China. The applicant stated that when she was released from detention she was given the certificate by the police.

The Tribunal asked the applicant why, in the period after her detention, she thought further protests should be organised, given that she had stated she had endured difficult conditions, and had been driven to despair by the questioning and surveillance of authorities after her release. She stated that at the time she was just thinking that there should be further protests, even though the authorities were keeping an eye on her and were putting pressure on her.

The Tribunal raised with the applicant the issue that if she had been an organiser of anti-government protests, this might indicate that she would have difficulty being cleared by the authorities on her departure from China. She stated that the authorities who were most aware of her activities were from Area H. Her passport was arranged through City G. All she knew was that she had to use bribes to get released at the time she was released, and that she was considered to be anti-government. The Tribunal raised with the applicant its concerns about her evidence of being an organiser of anti-government protests, and about being detained. The applicant stated again that she had been arrested, and that she did organise farmers to present petitions to different levels of government. She does not know why the government authorities considered that she was the only person to have organised these petitions. She stated that she did not wish to return to China and she did not know what would happen to her if she returned; she thought that she would die if she returned.

Evidence from external sources

The Tribunal also has had regard to external material from a range of sources, as follows:

- US Department of State, Country report on Human Rights Practices, 2005: China, March 2006
- Passport and Exit Permit issuing procedures, DFAT Country Information report No. 64/98, 17 February 1998, CX27863

- Passport and exit procedures: PRC, DFAT Country Information report No. 12/03, 15 January 2003, CX72393
- 2005, “Communism, Capitalism and Authoritarianism in China”, Seminar by Professor David Goodman, Institute of International Studies, University of Technology, Sydney for Members of the RRT in Sydney, 23 February 2005. Transcript dated 30 March 2005)
- China’s land is up for grabs, Washington Post, 6 October 2004 (FACTIVA)
- Selling out the family farm, Far Eastern Economic Review, October 2005, CX138360
- China village democracy skin deep, BBC News, 10 October 2005, CX137249
- Groundswell of protest feared by party officials, The Guardian, 10 October 2005, CX136656
- Conflicts mar Guangdong dream, BBC News, 17 January 2006
- Chinese PM warns on rural unrest, BBC News, 20 January 2006

The country information indicates that demonstrations have increased throughout China over the last few years against problems that have resulted from China’s rapid economic growth. Protests have been held in relation to a number of issues, including land acquisition, the demolishing of homes for new residential developments or other projects, working conditions in factories, pollution, and the corruption of local officials. The Minister for Public Security is reported to have stated that in 2004 the number of protests had risen dramatically to 74,000, involving 3.6 million people (CX138360, CX136656). The US Department of State reports on the issue as follows:

At times police used excessive force against demonstrators. Demonstrations with political or social themes were often broken up quickly and violently. The vast majority of demonstrations during the year concerned land disputes, housing issues, industrial, environmental, and labor matters, and other economic and social concerns. During the year over 87 thousand "public order disturbances" were reported, according to government statistics, up 6.6 percent from 2004. Some of these demonstrations included thousands of participants. Incidents described as mob violence rose by 13 percent over 2004, according to the Ministry of Public Security, which said that the number of demonstrations continued to grow and protesters were becoming more organized. Land protests involving thousands of residents occurred throughout the year, including violent incidents in Hebei Province's Shengyou village and in Guangdong Province's Nanhai District, Dongzhou and Taishi villages (see section 1.a.). In April thousands of villagers in Zhejiang Province's Huaxi village battled with security thugs in demonstrations over polluting factories, while in October, 10 thousand workers in Chongqing took to the streets to protest corruption surrounding the bankruptcy of a local steel plant.

Authorities detained potential protesters before the June 4 anniversary of the Tiananmen massacre, after the death of former Premier Zhao Ziyang in January, at the time of the NPC session in March, and during the August visit by UN High Commissioner for Human Rights Louise Arbour. Dissidents were

detained around the time of other sensitive events to head off public demonstrations (see section 1.d.). Labor protests over restructuring of state-owned enterprises' (SOEs) and resulting unemployment continued, as did protests over environmental degradation and major infrastructure projects, such as dams. Protests, some of which included thousands of participants, were also widespread and usually concerned land, housing, and forced evictions. All concerts, sports events, exercise classes, or other meetings of more than 200 persons required approval from public security authorities. In practice much smaller gatherings also ran the risk of being disrupted by authorities.

...

Persons petitioning the government continued to face restrictions on their rights to assemble and raise grievances. Hundreds of thousands of petitions were filed each year, according to domestic experts, but only a small fraction received any action by authorities. Most petitions mentioned grievances about land, housing, entitlements, the environment, or corruption. Petitioners largely sought to present their complaints at national and provincial "letters and visits" offices but also targeted foreign embassies and media to bring attention to their complaints.

Petitioners continued to face harassment, detention, and incarceration. According to a published report, in April a petitioner was beaten to death while petitioning in Beijing. In July Shanghai petitioners Yang Weiming and Liang Yuling were detained for protesting the new petition regulations, and petitioner Wang Qiaojuan was sentenced to one year of reeducation. Police said she assaulted them, but eyewitnesses said police beat her for protesting forced evictions and left her bleeding and unconscious. In September Shanghai petition leader Xu Zhenging was tried in connection with his work on forced evictions and his attempt to attend a memorial service for Zhao Ziyang. Over 100 other petitioners, many of whom were Xu's supporters, reportedly were detained shortly after the trial and some were threatened with the possibility of being sent to psychiatric hospitals. Among them was activist Mao Hengfeng, who had been released from a reeducation facility earlier in September. Beijing and provincial officials moved petitioners out of the capital at the time of the March NPC session and again in April just before the new regulations took effect. Some were reportedly sent to psychiatric facilities.

In December 2004 Beijing-based petitioner leader Ye Guozhu was sentenced to four years in prison for attempting to hold a rally to protest forced evictions. He was not permitted to meet with family members or meet with lawyers to file an appeal, and his whereabouts remained unknown.

On May 1, new regulations urging local officials to resolve petitioners' legitimate problems and protect their legitimate rights came into effect. State-run media said that more than 80 percent of petitions were reasonable and could be, but were not, resolved by local governments. The regulations were accompanied by a public relations campaign in which public security chiefs nationwide were urged to meet petitioners face-to-face. Although the

regulations banned retaliation against petitioners, reports of retaliation continued. This was partly due to incentives provided to local officials by the central government to prevent petitioners in their regions from raising complaints to higher levels. Incentives included provincial cadre evaluations based in part on the number of petitions from their provinces. This initiative aimed to encourage local and provincial officials to resolve legitimate complaints but also resulted in local officials sending security personnel to Beijing and forcibly returning the petitioners to their home provinces. Such detentions occurred both before and after the enactment of the new regulations and often went unrecorded. (US Department of State, 2006)

Other reports also indicate that protests by farmers appear to be common and have been increasing in frequency (BBC News, 20 January 2006).

Information before the Tribunal indicates that there is often a discrepancy between the regulations detailing procedures on how cultivated land can be converted to non-cultivated land, and what occurs in practice, particularly as local governments see the supply of land to business as a means of increasing their income, and in circumstances where local officials may also seek personal gain (CX 138360). The complaints of farmers regarding unfair land acquisition and lack of compensation has found wide support at central Government level. It is reported however that Party and government officials at the village, county township and provincial levels use their powers to exploit the provisions in Chinese law relating to land acquisition (China's land is up for grabs, Washington Post, 6 October 2004).

There have been a number of protests and disputes in Guangdong province:

For more than two decades it has set the pace for China's economic development. It used its closeness to Hong Kong and the commercial instincts of its people to become the richest province in the country, and the workshop of the world. But a series of protests, disputes and scandals have turned this glittering jewel in the reformists' crown into something closer to a blot on the political landscape - the grim embodiment of all that is going wrong with China's unique blend of capitalism and communism. In the latest incident, last weekend, many casualties were reported when police broke up a rural protest over compensation for land acquired for a new road in Sanjiao township (BBC News 17 January 2006)

Other reports also indicate that protests and demonstrations are often suppressed with force, leading to casualties among protesters (CX136919, CX139915, CX137249).

FINDINGS AND REASONS

The Tribunal accepts that the applicant is a citizen of China (PRC), based on the evidence of her passport. The Tribunal accepts that the applicant worked as a farmer in her husband's village.

The Tribunal finds that the applicant has given a generally consistent account of the events and her circumstances leading up to her departure from China. The Tribunal accepts the applicant's evidence that the government authorities acquired land in her village and in neighbouring villages, and that this included land used by her family to farm rice. The Tribunal could find no specific reference in the country information to the acquisition of land in the applicant's village. The country information does confirm however that rural land

acquisition is occurring on a wide scale in China for, among other things, public works, residential development and industrial development.

The Tribunal finds that the applicant was able to give a consistent account of how she participated as a member of a group of farmers in petitioning various levels of government to protest about the land acquisition that occurred in recent years. The evidence does not establish that she was a leader or leading organizer, but the Tribunal accepts that she was one of a number of farmers who decided that action should be taken to protest the way in which land was acquired and the inadequacy of compensation and other support. She gave credible evidence at the hearing that the petitions arose from group discussions. The Tribunal finds her evidence indicates that there was no single person who took the leading role in organizing the protest petitions, and the approaches to government officials or departments. The Tribunal accepts however that the applicant regularly participated in discussions about protest action, and was a regular member of the group which visited different government offices to lodge petitions.

The applicant provided the Tribunal with her passport at the hearing and the Tribunal took copies of relevant information pages, including the main page showing when and where the passport was issued. The Tribunal had some concerns about why the applicant would have agreed to apply for a passport sometime earlier (which was then issued soon after) if she was intent on continuing protest actions against the government authorities on the issue of land acquisition and inadequate compensation. The applicant told the Tribunal that her husband wanted her to get a passport so that she could leave China temporarily, as he feared she would get into trouble with the authorities if she continued with her protest activities. The applicant told the Tribunal that she did not want to leave China, but ultimately she could not think of a reason not to comply with her husband's wishes, and just signed the passport application form, so that her husband could then arrange her passport. The Tribunal accepts in the context of her husband's concerns and suggestion that she consider leaving China for a short period, that the applicant decided to sign the passport application to ease his concerns, despite her desire to continue protest action.

The Tribunal is satisfied that the applicant was involved in a public protest at an official gathering at her village. The applicant told the Tribunal that a large group of farmers met just before that date and it was decided that they should write petitions to inform the public about their views on the government's actions, and matters such as the inadequacy of compensation. They decided that they should not just write further petitions to government officials because they needed to publicise the problems more widely. At the hearing the Tribunal asked the applicant why the group felt the need to inform the public, given that land acquisition was occurring on a wide scale, and that it seemed the public would know about the issues relating to the land acquisition in the applicant's and neighbouring villages. The Tribunal also asked the applicant why the farmers had decided on the day they did that they wished to approach officials soon after with further petitions, if previous petitions had been unsuccessful.

The applicant stated that they wanted to appeal to the government authorities even though their previous appeals had failed, and they wanted the public to know about their appeals. They were seeking to gain public support to pressure the authorities in relation to their case. The Tribunal accepts that the applicant and fellow farmers may have wished to pursue their petitions of government even though they had not had any success previously, and that in view of their previous lack of success they would wish to enlist wider public support.

The Tribunal accepts the evidence regarding the applicant's detention and forced labour for the period stated, and her treatment by the authorities after her release. The Tribunal accepts that she had to undertake hard manual labour, and that she was intimidated by labour camp guards. Her account is consistent with country information confirming the harsh conditions that detainees must often endure in detention. The Tribunal accepts that the applicant was released after the payment of a bribe and that this was the reason she obtained a formal certificate of release from City G. The Tribunal also accepts that the applicant was harassed and interrogated by the police in the period after her release. The Tribunal accepts that although the applicant was one of a group of farmers who were involved in protesting to the authorities, it is possible that she was perceived as an organizer of the protests given her regular attendance at government offices, and was therefore singled out for further detention and labour, and harsh treatment.

The Tribunal asked the applicant why she stated she was still thinking about being involved in protests in the period after her release, when she had told the Tribunal the interrogations, threats and surveillance during that period had driven her to despair. The applicant stated that despite the pressure she was under she still felt that protests needed to be made against the authorities because of their unreasonable treatment of the farmers. The Tribunal accepts that the applicant was still committed to the issues which had originally made her decide to be involved in protests, even though she had suffered harsh treatment by the authorities.

The Tribunal has considered the documents provided by the applicant to the Tribunal including a certificate from a villagers' committee, from her village, and which was dated, that the applicant received a small sum of money as a 'land allowance payment'; and a certificate issued by City G Prison which was dated stating that the applicant was detained previously for organizing anti-Government activities, and that she was subsequently released. Although the country information indicates that that false documentation is particularly easy to obtain in China (Goodman, 2005), given the Tribunal's other findings regarding the applicant's evidence, the Tribunal accepts the documentary evidence relating to her detention and the amount of compensation she was paid.

As indicated above the Tribunal had some concerns about aspects of the applicant's evidence, and it raised these concerns at the hearing. The Tribunal has considered the applicant's responses, and in the context of the other evidence provided the Tribunal is satisfied that its concerns have been largely resolved.

The Tribunal accepts that the applicant's detention in China, the harsh conditions she endured during detention and the fact she was forced to undertake hard manual labour, as well as the surveillance and interrogations she was subject to after being released, constitute serious harm amounting to persecution. The Tribunal accepts that the significant and essential reason for the serious harm was the applicant's imputed political opinion, as a person who protested against rural land acquisition by the authorities, and as a person perceived by the authorities as being a protest organizer, and therefore anti-government. The Tribunal is satisfied that the persecution involved systematic and discriminatory conduct.

The Tribunal is satisfied that there is a real chance that the applicant would suffer serious harm amounting to persecution because of her imputed political opinion if she returns to China. The Tribunal is satisfied that there is a real chance that the applicant would continue to be perceived as a person who was anti-government and consequently continue to be placed under surveillance and be subjected to intimidation and interrogation. The Tribunal is satisfied that the essential and significant reason for the persecution would be her imputed

political opinion, as required by paragraph 91R(1)(a) of the Act. The Tribunal is satisfied that the persecution would involve systematic and discriminatory conduct. The Tribunal is also satisfied that there is no place within China to which the applicant could reasonably relocate where she would not have a well founded fear of persecution on account of her imputed political opinion.

The Tribunal has considered the evidence that the applicant was able to leave China as the holder of a passport issued in her own name. There is country information which indicates that persons of interest to the authorities such as political and religious dissidents would have difficulty in obtaining required travel documents, but the information also indicates that it is generally easier for citizens to obtain a passport travel overseas (US Department of State 2006). The Tribunal accepts that the applicant was able to leave even though she had been detained and then been subject to surveillance and interrogation by police

The Tribunal finds that the applicant is outside her country of nationality, the People's Republic of China. For reasons given above, the Tribunal finds that she has a well-founded fear of being persecuted for reasons of her imputed political opinion if she returns to China. The Tribunal finds that the applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the Government of the People's Republic of China. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country apart from her country of nationality. The Tribunal therefore finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

CONCLUSIONS

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

DECISION

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

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

Sealing Officers ID: PRRTIR