

**1000864 [2010] RRTA 519 (25 June 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1000864

**DIAC REFERENCE(S):** CLF2009/111752

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

**TRIBUNAL MEMBER:** Deborah Jordan

**DATE:** 25 June 2010

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC) arrived in Australia [in] August 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees.
4. The applicant applied to the Tribunal [in] February 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
  - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

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

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

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file CLF2009/111752 (folio 1-130) 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.

#### **Department file**

20. The Department's decision, dated [in] January 2010, states that the applicant arrived in Australia [in] August 2009 on a tourist visa.
21. [In] August 2009, she lodged a protection visa application, in which she states that she was born in Hegang, China on [date deleted: s.431(2)]. She has never been married or in a de facto relationship and was a shop owner before she came to Australia.
22. She states that she lived in China until July 2008 when she went to Singapore. She lived in Singapore, where she worked, from July 2008 until August 2009.
23. The applicant states that she completed 7 years of schooling, from September 1975 until February 1982.
24. She claims that she worked in sales, in China, from January 1985 to December 1992. She was a business owner in China from February 1993 until September 2005. She states that she worked as a leaflet distributor for a printer company in Singapore, from October 2008 until August 2009.
25. She states that her mother is widowed and lives in China. She also states that three brothers, all of whom are married and living in China.
26. The applicant provided a statement (Df30-37) in which she provides the following information:
  - a. She is a Falun Gong practitioner and has suffered persecution in China because of this. She wants to live in Australia until the ban on Falun Gong in China is removed.
  - b. After three or four years of running her own business, she began to have headaches, which she was told would be incurable unless she changed her lifestyle to reduce her stress levels.
  - c. [In] June 1997, she accompanied one of her friends to a park and started to practise Falun Gong. Her health started to improve, she became more relaxed and the frequency of her headaches decreased. Her practice improved her "spiritual mind" and changed her attitude to the things she faced.

- d. She practised at a park at 6am every day with others. She says “Before Falun Gong was cracked down, we could practice [sic] with no pressure, we could go to work in high spirits and we could have a happy life”.
- e. She states that “The two years she practised Falun Gong in China were the most wonderful years in my life. Since Falun Gong benefited me and gave me my internal energy and power, I have loved my life more and cherished my life more. Unfortunately the Chinese Government banned Falun Gong and we could not practice [sic] Falun Gong in China anymore, and our members were persecuted and tortured if we insisted to continue our belief”.
- f. She was detained by local police twice and treated inhumanely during her time in the detention centre, where she was taken twice. While in detention, she was told to watch anti-Falun Gong propaganda every day.
- g. She was asked to write her “confession and repentance letters” and when she refused to write anything, her hair was pulled violently and her head was struck against a wall. For a few days, she was questioned “non-stop, day and night” and not allowed to sleep during that time.
- h. After about three weeks, she was released from detention. Her mother and brother told her that she was released after they paid a large fine and they agreed to sign a guarantee that the applicant would not be involved in Falun Gong in the future. She did not want to give up her practice of Falun Gong.
- i. She was detained a second time, on a Sunday in September 2005 at about 8 o’clock at night. She was having a group study with a few Falun Gong members at her shop. Several police officers demanded entry and she was taken by her hair and dragged into a police car. She and the others were all taken to the Security Office and questioned.
- j. A policeman “beat [her] with feet and fists severely” and she was asked to admit her wrongdoing for distributing her “evil religion”. She refused to write a statement of repentance. She was beaten and knocked to the ground. She was “tortured again and again and ... felt seriously hurt”. She does not know how many hours passed before she lost consciousness.
- k. She was detained and questioned and they tried to force her to sign a statement that she would not longer practise Falun Gong but she refused and was punished. She was pulled by the hair and someone stood on her back. She has scars on her head.
- l. She was eventually released but could not open her business again She left her home town to try to earn a living elsewhere. She could not find a good job and could not openly practise Falun Gong. In February 2007, she returned to her hometown.
- m. Her brother suggested that she go overseas as it is possible to practise Falun Gong in other countries. She did not want to leave her family or her country but she knew she could not keep living in China because Falun Gong

practitioners are suppressed, persecuted and imprisoned. She felt there was nowhere in China that she could survive.

- n. She obtained a working visa and went to Singapore in July 2008. She was able to practise Falun Gong in public in Singapore.
  - o. Singapore's government is close to the Chinese government and while it does not persecute Falun Gong practitioners, it does not really support Falun Gong either. She understood that it was not a place in which she could stay forever.
27. In August 2009, the Department received information to the effect that the visa applicant would be travelling to Australia from China with the intention of remaining in Australia to work as a prostitute and would apply for a protection visa in order to remain in Australia.
28. A copy of the applicant's Chinese passport is at folio 82-106 of the Department file.
29. The applicant's tourist visa application and supporting documentation is also in the Department file.
30. The applicant was interviewed by a Department delegate [in] November 2009 and again [in] November 2009. The applicant was advised, in writing [in] January 2010, that she would not be granted a protection visa.

#### **Tribunal file**

31. The applicant lodged a review application with the Tribunal [in] February 2010. No additional information was lodged with the application.
32. The file was constituted to the presiding member [in] February 2010 and [in] February 2010, the Tribunal invited the applicant to attend a hearing listed [in] April 2010. The Tribunal subsequently re-listed the hearing [in] June 2010.

#### **Hearing**

33. The applicant appeared before the Tribunal [in] June 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
34. Although the applicant was represented by a registered migration agent in relation to the review, the agent was not present at the hearing, as she was overseas.
35. The applicant confirmed her account of how and why she came to practise Falun Gong in China. She said Falun Gong is a good influence on health, benefits people and does no harm.
36. She stated that she reads from the Zhuan Falun, a few pages at a time, and that she has probably read two thirds of the book. She explained that it is set out in 9 chapters and is written by Li Hongzhi. She said it has a two page preface called "Lunyu" Her copy of Zhuan Falun was given to her by her friend in Singapore and she brought it with her to Australia.
37. The applicant told the Tribunal that she started primary school in 1975 and stopped going to school in 1982. She said she understands what she reads.

38. She explained that the main teaching of Falun Gong is to practise truthfulness, kindness and tolerance. One must be moral and keep healthy.
39. The Tribunal asked her if she could talk about the contents of chapter four of the Zhuan Falun, which is about loss and gain. While the interpreter had some difficulty understanding the concepts the applicant spoke about, the Tribunal was satisfied that the applicant had read and understood the concept of loss and gain in chapter four, as well as the concept of transforming karma which is also dealt with in that chapter.
40. The Tribunal asked the applicant what chapter seven says about eating meat, drinking alcohol and smoking tobacco. She said she does not think she has read this chapter, but it is permissible to eat meat. She said the main diet should be vegetables and it is good not to eat meat, but it is not banned. She said no Falun Gong practitioner she knows either drinks alcohol or smokes. She said smoking and drinking alcohol were bad things to be gotten rid of.
41. She said she does not practise the exercises every day because she is busy with work. She said she works fixing gyprock in buildings, but she injured her ankle in a fall at work more than a month ago and it is still sore. She said while she is injured, she is cooking three meals a day for the other workers, as she needs to earn a living.
42. She said she sometimes practises her exercises in a park in the city, but mostly, she practises at home. The Tribunal asked the applicant if she would mind demonstrating some of the exercises for the Tribunal and she indicated that she was happy to do so. At the Tribunal's request, she performed exercise one and exercise three (she explained that each part of exercise three was to be done 9 times and asked if she should just do it once, to which the Tribunal agreed).
43. The applicant told the Tribunal about the first time she was arrested and detained in China. She said it happened [in] December 1999. She said at that time, she practised Falun Gong at home, in secret. She was not even game to practise at home every day in case she was discovered.
44. She and others were putting up Falun Gong posters to promote Falun Gong in her home town. She had done this before. This was after Falun Gong had been banned in China and the posters were to tell people about places they could go to practise indoors. They knew they were not supposed to promote Falun Gong so when a police officer arrived, everybody ran away.
45. She was the only one arrested and she was taken to a detention centre outside the city and was kept for 21 or 22 days. She said the authorities did not notify her family that she was in detention. After her release, her family told her that one of the women who was putting up posters with her telephoned her family and told them what had happened.
46. The Tribunal noted that the authorities are supposed to notify a person's family if they are in administrative detention. She said that is the case, but sometimes the authorities do not do so, and they did not on this occasion.
47. She told the Tribunal of physical mistreatment in detention and how efforts were made to brainwash the Falun Gong practitioners. She said they were sent to lectures and were given newspaper articles about how Falun Gong ruined people's lives and practitioners were "bad people" but she did not believe these things.

48. She said she was released after her family wrote a letter promising that she would no longer practise Falun Gong. After she was released, she returned to live with her mother. She continued to practise Falun Gong at home and at secret gatherings. She sometimes secretly put up posters in remote places.
49. She knew the police were watching her and she could not practise Falun Gong openly. She was not harassed by the police because her family promised she would no longer practise Falun Gong.
50. She said this detention left a psychological impact on her: she continued with her business but her motivation decreased. Business turnover was not as good as it had been before the detention. She let her one employee go because business was not very good. She then ran the business on her own.
51. One evening, in September 2005, she closed her shop and called some Falun Gong practitioners to come to her shop. The doors and windows were closed and she did not think they would be discovered. They talked and read from Zhuan Falun. A police car pulled up outside her shop and they banged on her door. When she opened the door, the police took her by the hair and put her in the car. The other four people were taken away as well.
52. They were taken to the same detention centre, and this time, she was kept there for 40 days. She was badly mistreated again. She was released because they could not find any evidence that she had continued to practise Falun Gong.
53. She closed her shop after this period of detention. She was afraid that if she stayed in her home town, the police would continue to harass her. She went to Harbin where she has brothers and aunts. She stayed there for six months and then went to Inner Mongolia for 12 months. She supported herself on money her family gave her and what she earned doing casual work.
54. In February 2007, she went back to live with her mother. She had been unable to find much work and her family could not keep sending her money. She told the Tribunal that even if she had no money, her mother could provide a roof over her head.
55. Her family suggested that she should go overseas to avoid further trouble from the authorities and she went to Singapore in November 2007.
56. The Tribunal asked why she did not go to Singapore until 9 months after she returned to her home town. She said her family did not know where she should go, or how to arrange it. Her brother's friend suggested she go to Singapore and helped her brother with the visa application for Singapore on her behalf.
57. She said she went to Singapore on a visitor visa and once there, her friend helped her extend that visa. She returned to China in December 2007 because she could not stay longer on a visitor visa. While in Singapore, she was able to practise Falun Gong in public. She could not go to big gatherings, but small groups of four or five people were no problem.
58. The Tribunal asked the applicant how she obtained her passport. She said she went to a passport office and completed the application and paid the fee. The Tribunal noted that the Department's decision indicates that the applicant said her brother obtained her passport for her and she did not know what he did to obtain it. She said that is not what she told the



delegate. She said there were some problems with the Chinese interpreter, who was a “westerner” and that the interpreter got some things wrong. The applicant said she obtained her own passport, but her brother and his friend got her Singapore visa for her.

59. She returned to Singapore on a work visa in July 2008 and remained there until she came to Australia in August 2009. While she could practise Falun Gong openly in Singapore, she was aware that the Singapore government and the Chinese government had a close relationship.
60. While she was in Singapore, she was worried that she might lose her job and would no longer be able to remain in Singapore. In Singapore, she worked for a company that sold [brand deleted: s.431(2)] photocopiers. She could not say the name of the company because it was an English name and she does not speak English. She first distributed pamphlets in letter boxes and later worked in sales.
61. In December 2008, she applied for a visitor visa to come to Australia but it was refused. She did so because Singaporean Falun Gong practitioners told her she could not stay in Singapore forever and there are other places where she could openly practise Falun Gong without fear of persecution. They told her Australia was one such place.
62. The Tribunal asked the applicant what Falun Gong said about being deceitful. She said Falun Gong teaches that one must tell the truth and not tell lies. The Tribunal noted that it had her most recent visitor visa application in which she said she wanted to visit Australia for a holiday. The Tribunal asked if this had been the truth.
63. She said she was telling the truth. She had been working for one year without a holiday and she did not believe she could get a protection visa in Australia. She only learned that after she arrived here.
64. The Tribunal asked if she came to Australia on a visitor visa to see if she could get a protection visa here. She said she did not: she came to Australia to see if what she was told (about being able to practise freely) was true and to see if there were many practitioners in Australia.
65. She said she went to Chinatown and was told where she could find other Falun Gong practitioners. They told her it could be possible for her to claim protection in Australia and a friend put her in touch with her agent.
66. The Tribunal asked the applicant what she thought would happen to her if she had to return to China. She said if she does not practise Falun Gong she might be alright, but if she had anything to do with Falun Gong, she would be arrested again and put in jail.
67. The Tribunal asked her why she returned to China after her first trip to Singapore. She said there were two reasons: she had to wait for a work visa and her mother was very ill.
68. The Tribunal told the applicant that the Department had information that she was coming to Australia on a visitor visa with the intention of working as a prostitute and that she would make an application for a protection visa when she arrived. The Tribunal explained that this information suggested that she was not a refugee and, subject to her comment, the Tribunal may decide that she was not entitled to protection and might affirm the Department’s decision not to grant her visa. The Tribunal invited the applicant to comment, pursuant to s.424AA of the Act. She indicated that she did not need time to consider her response.

69. She told the Tribunal that, when she was in Singapore, her friend introduced her to a Singaporean man. She knew him in Singapore for 6 months and he helped her to apply for an Australian visa. He wanted them to have a relationship but they were different types of people and he was not the right person for her.
70. She said she did not travel from Singapore to Australia with anyone else. She came alone. She said this man telephoned her after she arrived in Australia and asked her for her address so he could visit her. She is a “straight forward person” and she told him she did not want to see him. She did not give him her address in Australia.
71. She knew this man by the name he told her in Singapore, but the Department delegate told her that was not his real name. He did not tell her the truth. He does not deserve to be her friend because friends treat each other properly. She said she does not understand what he was thinking: she cannot say he is a bad person, but he has some problems. When the Tribunal asked what she meant, she said he lies.
72. The Tribunal asked her who paid for her travel to Australia and she said she paid from her savings from her work in Singapore. The Tribunal noted that a “friend” is named in the visitor visa application as the person sponsoring the holiday package from the travel agency. She said this person did not sponsor her travel and she paid for it herself.

## **COUNTRY INFORMATION**

### **China**

#### *Falun Gong practitioners*

73. The following is a summary of information contained in the US Department of State, 2010, Country Reports on Human Rights Practices 2009 – China, 6 March, Section 2c ‘Freedom of Religion’ (<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm> accessed 12 March 2010):

*Authorities continued a general crackdown on groups considered to be “cults.” These “cults” included not only Falun Gong and various traditional Chinese meditation and exercise groups (known collectively as “qigong” groups) but also religious groups that authorities accused of preaching beliefs outside the bounds of officially approved doctrine.*

*Public Falun Gong activity in the country remained negligible, and practitioners based abroad reported that the government’s crackdown against the group continued. In the past the mere belief in the discipline (even without any public practice of its tenets) sometimes was sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment. Falun Gong sources estimated that since 1999 at least 6,000 Falun Gong practitioners had been sentenced to prison, more than 100,000 practitioners had been sentenced to RTL, and almost 3,000 had died from torture while in custody. Some foreign observers estimated that Falun Gong adherents constituted at least half of the 250,000 officially recorded inmates in RTL camps, while Falun Gong sources overseas placed the number even higher.*

*Falun Gong members identified by the government as “core leaders” were singled out for particularly harsh treatment. More than a dozen Falun Gong members were sentenced to prison for the crime of “endangering state security,” but the great majority of Falun Gong members convicted by the courts since 1999 were sentenced to prison for “organizing or using a sect to undermine the implementation of the law,” a less serious offence. Most*

*practitioners, however, were punished administratively. Some practitioners were sentenced to RTL. Others were sent to “legal education” centers specifically established to “rehabilitate” practitioners who refused voluntarily to recant their belief in public after their release from RTL camps. Government officials denied the existence of such “legal education” centers. In addition, hundreds of Falun Gong practitioners were confined to mental hospitals, according to overseas groups.*

*Police continued to detain current and former Falun Gong practitioners and used possession of Falun Gong material as a pretext for arresting political activists. The government continued its use of high-pressure tactics and mandatory anti-Falun Gong study sessions to force practitioners to renounce Falun Gong. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend anti-Falun Gong classes or were sent directly to RTL camps. These tactics reportedly resulted in large numbers of practitioners signing pledges to renounce the movement.*

74. The following information is from, *Amnesty International Report 2010: China*, June (RRT: \\ntssyd\REFER\Research\AMNESTY\2010 Annual Report\CHINA.pdf accessed 12 March 2010):

*The severe and systematic 10-year campaign against the Falun Gong continued. ... Police and security forces detained, harassed and abused lawyers representing politically sensitive HRDs, Falun Gong practitioners ...*

*... Former RTL prisoners reported that Falun Gong constituted one of the largest groups of prisoners ... The authorities used a variety of illegal forms of detention, including “black jails”, “legal education classes”, “study classes” and mental health institutions to detain thousands of people.*

*... The government campaign against the Falun Gong intensified, with sweeping detentions, unfair trials leading to long sentences, enforced disappearances and deaths in detention following torture and illtreatment.*

*Chen Zhenping, a Falun Gong practitioner, was sentenced to eight years in prison during a secret trial in August 2008. She was charged with “using a heretical organization to subvert the law”. Before, during and after her trial, Chen Zhenping was denied access to her lawyer. In September, prison guards told her family that she had been transferred to another location, but refused to say where. Chen Zhenping’s lawyers have been unable to obtain any additional information concerning her whereabouts.*

#### *Passports and exiting China*

75. Advice provided by the Australian Department of Foreign Affairs and Trade (DFAT) in August 2005 noted that the Chinese Ministry of Public Security (MPS) had “wide powers to interpret who may be denied a passport” (DIMIA Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August):

*Local public security organs could conceivably deny a known Falun Gong practitioner a passport.*

*If a person was detained and tortured by the Chinese authorities for practising Falun Gong it is conceivable that the local public security authorities would deny him or her a passport should the person apply.*

76. Evidence cited in a research report from October 2005 by the Immigration and Refugee Board of Canada on the treatment of Falun Gong practitioners following detention included evidence both of Falun Gong practitioners having been permitted to obtain passports and leave China and evidence of practitioners being unable to obtain passports. The report stated (Immigration and Refugee Board of Canada 2005, 'Treatment of Practitioners Following Detention' in CHN100726.EX – China: Situation of Falun Gong practitioners and treatment by state authorities (2001 – 2005), 31 October):

*Both Gail Rachlin [spokesperson for the New York-based group of Falun Gong practitioners known as the Falun Dafa Information Center] and Stacy Mosher [the communications director at Human Rights in China (HRIC)] stated that their respective organizations were aware of some former Falun Gong detainees who have been able to leave the country (Mosher 30 Mar. 2005; Rachlin 23 June 2005). In particular, it is possible for those with family members overseas to leave China on family reunification grounds (Mosher 30 Mar. 2005), or else through connections or "contacts with officials who are sympathetic" (Rachlin 23 June 2005). In contrast, the former detainee from Guangzhou profiled in The Age claimed to have been told by police that she would be unable to obtain a passport to leave China (16 Oct. 2004). According to Country Reports 2002, some Falun Gong practitioners allegedly had difficulty obtaining passports that year (31 Mar. 2003, Sec. 2). Grace Wollensak [a representative of the Falun Dafa Association of Canada (FDAC)] stated that there was a high likelihood that practitioners who had undergone re-education would face difficulties in obtaining passports, as well as securing state housing or pensions (4 Apr. 2003).*

77. In its annual report for 2008, the United States Congressional-Executive Commission on China reported on the treatment of Falun Gong practitioners, including the intensification of the central government's "campaign of persecution" in the months preceding the 2008 Beijing Olympic Games (at pages 87-93 and 143). The report also observed that the authorities had, in the previous year, "arbitrarily issued, confiscated, revoked, or denied the application for passports to activists deemed to pose a 'possible threat to state security or national interests'" (at page 114). The report did not, however, make any specific reference to passports being denied to known Falun Gong practitioners or restrictions on their departing China (Congressional-Executive Commission on China 2008, Annual Report 2008, 31 October).
78. In December 2008, DFAT reported advice from Ministry of Public Security sources that only persons considered Falun Gong "leaders" would be refused passports, but also noted anecdotal evidence indicating that persons identified as Falun Gong "followers" were effectively prevented from obtaining a passport through confiscation of their identity documents. DFAT advised (Department of Foreign Affairs and Trade 2008, DFAT Report No. 943 – China: RRT Information Request: CHN34077, 16 December):

*In regard to members of Falun Gong, we have been advised by sources within the Ministry of Public Security that only those considered to be Falun Gong leaders are refused passports and hence would be prevented from leaving China legally. However, there is anecdotal evidence to suggest that the Chinese Government does act to prevent identified Falun Gong followers from leaving China. In many cases, Chinese citizens who have been identified by the Government as Falun Gong followers have their Chinese identity cards confiscated and hence are unable to obtain a passport and leave the country legally. Those that have not been*

*identified by the Government as Falun Gong followers can obtain passports and leave the country legally.*

79. The US Department of State's most recent report on religious freedom in China, released in October 2009, included mention of the departure from China of a Falun Gong practitioner after he had undergone a period of "re-education through labour" (US Department of State 2009, *International Religious Freedom Report 2009 – China*, October):

*In December 2009 [sic; from the context, probably December 2008], Bu Dongwei left the country after serving two and a half years at a re-education through labor facility; he maintained that he was tortured because of his Falun Gong activities. Before his arrest, he worked for The Asia Foundation, a U.S.-based organization...*

80. The US Department of State's report on human rights practices in China for 2009 indicates that "[m]ost citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and ethnic minorities, were refused passports or otherwise prevented from traveling overseas" US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – China (includes Tibet, Hong Kong, and Macau)*, February, Section 2(d))."

## **Singapore**

### *Public practice of Falun Gong*

81. A 2007 news article states that even though "Falun Gong is not outlawed in Singapore", the fact that "public assemblies require prior permission from police" has resulted in numerous arrests of Falun Gong members on charges of protesting without permits ('Falun Gong followers stand trial in Singapore over alleged protest' 2007, *The Star*, 31 January).
82. For example, four Chinese Falun Gong practitioners were arrested in October 2009 for publicly displaying signs which highlighted the persecution of Falun Gong practitioners in China. Despite travelling to Singapore to avoid persecution and torture in China, the protesters may now face deportation back to China (Herman, R. 2010, 'Principles for U.S. Engagement of Asia: Testimony to the Subcommittee on East Asian and Pacific Affairs Senate Foreign Relations Committee', Freedom House website, 21 January, p. 21).
83. Amnesty International's annual report for 2008 similarly claims that throughout the year, "Falun Gong practitioners [in Singapore] were fined or jailed for holding peaceful public demonstrations against the Chinese government" (Amnesty International 2008, 'Amnesty International Report 2008', 28 May).
84. In April 2006, six ethnic Chinese, Singapore-based women and Falun Gong followers were charged with participating in "an unauthorised assembly" held on Orchard Road in October 2005, which aimed to publicise "the alleged atrocities committed against Falun Gong followers in China". During the trial, the women represented themselves as no lawyers willing to defend them could be found ('Falun Gong followers stand trial in Singapore over alleged protest' 2007, *The Star*, 31 January).
85. In July 2005, three Falun Gong protesters were arrested outside the Chinese Embassy in Singapore during a meditation session for displaying a banner which read "Stop Persecution of Falun Gong in China" While one of the protesters was deported, the remaining two, Ms Ng Chye Huay and Mr Erh Boon Tiong were sentenced on charge of harassment to 15 and 10

days imprisonment respectively after refusing to pay respective fines of 1,500 and 1,000 Singapore dollars (Albany, S. 2006, 'Banner Declared 'Harassment' by Singapore Court', *The Epoch Times*, 1 December).

### *Singapore and Refugees*

86. Singapore is not a party to the 1951 UN Convention relating to the Status of Refugees and therefore does not provide for the grant of asylum in accordance with the Convention or the 1967 Protocol. Nevertheless, the government has implemented a system for provision of protection to refugees on an individual case basis, and has "provided protection against [the] return of refugees to countries where their lives or freedom would be threatened"; although in practice this may refer simply to resettling refugees in third countries (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Singapore*, 25 February, Section 2d).
87. For example, describing Singapore's approach to potential Rohingya refugees from Myanmar (Burma) in early 2009, Senior Minister of State for Foreign Affairs Balaji Sadasivan outlined the country's long-standing policy on refugees, declaring that due to "limited land and natural resources, Singapore is not in a position to accept persons seeking political asylum or refugee status"; however, assistance in departing for a third country would be provided ('Singapore cannot accept Rohingya refugees' 2009, [channelnewsasia.com website](http://www.channelnewsasia.com/stories/singaporelocalnews/view/417415/1/.html), 24 March <http://www.channelnewsasia.com/stories/singaporelocalnews/view/417415/1/.html> – Accessed 1 March 2010).
88. A news article dated 7 January 2010 emphasises Singapore's "long history of turning away even those in desperate need" (Bland, B. 2010, 'Singaporeans Seek Asylum Elsewhere', *Asia Sentinel website*, 7 January [http://www.asiasentinel.com/index.php?option=com\\_content&task=view&id=2226&Itemid=164](http://www.asiasentinel.com/index.php?option=com_content&task=view&id=2226&Itemid=164) – Accessed 1 March 2010).

### *Treatment of Falung Gong practitioners in Singapore*

89. The US Department of State human rights report published in 2007, and reports on international religious freedom published in 2007 and 2003, all similarly identify cases where Falun Gong practitioners in Singapore have been arrested and charged with illegal assembly after publicly gathering without permits. For example:
  - On July 15 [2006], nine persons associated with Falun Gong were charged with illegal assembly for gathering without a permit in October 2005. On August 18 [2006], one foreign member of the Falun Gong was asked to leave Singapore after prosecutors dropped a public nuisance charge against her for protests outside the Chinese embassy in July (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Singapore*, 6 March, Sections 2a, 2b ).
  - On December 31, 2000, police arrested and later charged 15 Falun Gong practitioners for conducting a protest without a permit; only 2 of those arrested were citizens. The 15 persons arrested had participated in an assembly of 60 Falun Gong practitioners who sought to draw attention to the arrest and killing of Falun Gong practitioners in the People's Republic of China (PRC). The group had not sought a permit, asserting that police had not responded to their previous efforts to obtain permits; the authorities stated that these assertions were untrue. In March 2001, seven members of

the group [including six Chinese citizens] were sentenced to 4 weeks in jail for refusing to hand over placards to the police. The other eight, who were charged with assembling without a permit, were fined S\$1000 (\$540) each (US Department of State 2003, *International Religious Freedom Report for 2003 – Singapore*, 19 December, Section II).

90. Singapore also has a history of deporting foreign nationals residing in Singapore who are involved in unauthorised demonstrations and protests. For example, Burmese nationals who held permanent residence status in Singapore were forced to depart Singapore for third countries in 2008 when their visas expired, due to their alleged attempts to organise unauthorised protests (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Singapore*, 25 February, Section 2d).
91. Similarly, five of the six Chinese citizens and Falun Gong practitioners who were imprisoned in March 2001 for “conducting a protest without a permit”, had their immigration status cancelled and were forced to depart Singapore. One of these five individuals was a permanent resident in Singapore, and the sixth member of this group had previously departed the country (US Department of State 2003, *International Religious Freedom Report for 2003 – Singapore*, 19 December, Section II).
92. Furthermore, on 24 September 2006, a journalist with the Falun Gong-affiliated newspaper *The Epoch Times* was denied entry to Singapore and was subsequently deported (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Singapore*, 6 March, Sections 2a, 2b).
93. The reporter, Jaya Gibson, was detained while trying to re-enter Singapore to resume reporting on the trial of the two Falun Gong practitioners who were arrested for displaying a banner in front of the Chinese Embassy in Singapore, which called for an end to the persecution of fellow Falun Gong members in China. Gibson claimed that the Singapore authorities had been monitoring him on a regular basis since he began covering the trial. The trial defence lawyer who was planning to discuss the trial with the UN Human Rights Commission in Geneva was also detained before he was able to depart Singapore (‘Singapore detains reporter covering sensitive trial’ 2006, *The Epoch Times*, 25 September and ‘Journalist detained and deported, prevented from covering trial’ 2006, *Southeast Asian Press Alliance*, 25 September).
94. The Falun Gong Human Rights Working Group claims that during the trial of the two Falun Gong practitioners charged with “displaying insulting writing, likely to cause harassment”, based on their display of a banner calling for an end to Chinese persecution of Falun Gong members, “the arresting officer agreed that if Falun Gong practitioners were actually persecuted in China, the accusation on the banner would not be considered “insulting.” The court, however, found all evidence that practitioners were actually persecuted in China to be “irrelevant”...[and] found the defendants guilty”. The group argues that “with its rejection of evidence in court and with its denial of the truth that China is committing this brutal persecution of 100 million of its citizens, Singapore has become complicit in the cover-up” of Chinese persecution of Falun Gong practitioners. Furthermore, it is argued that Singapore’s accommodation of official Chinese visitors in order to improve business and economic relations between the two countries, along with numerous incidents of arresting and charging Falun Gong practitioners, is indicative of Singapore’s support for the Chinese regime (Falun Gong Human Rights Working Group (undated), ‘The Spread of China’s Tentacles: Part I – Singapore’, Newsletter Issue 26, Falun Gong Human Rights Working Group website

<http://www.falunhr.org/index.php?option=content&task=view&id=1592&Itemid=> – Accessed 4 March 2010).

95. In protest over the arrest of the six ethnic Chinese women on Orchard Road in October 2005, Falun Gong practitioners in Hong Kong delivered a letter to the Consulate-General of Singapore highlighting the delay from the initial arrest and eventual charge some nine months later of the six women, which it claims occurred during a visit to Singapore of Li Lanqing, “former Chinese Vice Premier and head of the 610 Office, which was established to persecute Falun Gong” The Hong Kong protesters alleged that the Singapore authorities were acting “as an accomplice of the Chinese Communist Party” (‘Hong Kong Practitioners Admonish Singapore Authorities to Cherish Themselves by Treating Falun Gong Fairly’ 2007, Clearwisdom.net, 24 January <http://www.clearwisdom.net/emh/articles/2007/1/24/81999.html> – Accessed 8 May 2007).
96. The article by the Falun Gong Human Rights Working Group cited above also emphasises the nine month gap between the arrest and trial of the Orchard Road women, which it attributes to Singapore’s desire “to stop Falun Gong practitioners from exercising their right of free speech in Singapore, and to prevent their friend, the Chinese Communist Party, from being embarrassed” (Falun Gong Human Rights Working Group (undated), ‘The Spread of China’s Tentacles: Part I – Singapore’, Newsletter Issue 26, Falun Gong Human Rights Working Group website <http://www.falunhr.org/index.php?option=content&task=view&id=1592&Itemid=> – Accessed 4 March 2010).
97. In addition, an article in *The Epoch Times* similarly argues that Chinese authorities “exerted great pressure and used economic benefits to induce Singapore to be their accomplice to an illegal persecution”, and that Singapore has consistently proven unable “to stand up to China in the face of potential economic gains” (Zhang, J. 2006, ‘Singapore Government Influenced by Chinese Communist Regime?’, *The Epoch Times*, 23 July <http://www.theepochtimes.com/news/6-7-23/44179.html> - Accessed 4 March 2010).

## **FINDINGS AND REASONS**

98. The Tribunal is satisfied, from a copy of her passport in the Department file, that the applicant is a citizen of the People’s Republic of China. Her passport was issued [in] April 2007 and is due to expire [in] April 2017.
99. The evidence she gave at the hearing corresponded with her written statement on the Department’s file and the applicant responded to the Tribunal’s questions without hesitation and with confidence. The Tribunal therefore considers that her evidence is reliable and credible.
100. The applicant was able to talk about the teachings of Falun Gong and also demonstrated some exercises for the Tribunal. The Tribunal therefore finds that the applicant is a Falun Gong practitioner.
101. The Tribunal accepts her claims that she began practising Falun Gong in China in 1997 and practised in secret after its public practice was banned in China in 1999. The Tribunal accepts that she continued to promote Falun Gong after it was banned and that she was detained in 1999 and again in 2005 for her continued involvement with Falun Gong. The Tribunal accepts that she was mistreated during both periods of detention.



102. The Tribunal accepts that, after she was released from detention for the second time, she stayed away from her home for a period of about 18 months because she was afraid she would be harassed by the police if she stayed there. The Tribunal accepts that she had difficulty supporting herself and returned to her mother's home in February 2007.
103. The Tribunal accepts that she was assisted to travel to Singapore because her family thought she should leave China and that the delay in travelling to Singapore was because she did not know where she should go.
104. On the basis of the country information set out above, the Tribunal accepts that the applicant was able to practise Falun Gong in public in Singapore, as long as she was part of a small group.
105. The Tribunal accepts that the applicant was in Singapore on a working visa which does not give her the right to remain in Singapore indefinitely or to return to Singapore now that she has left.
106. On the basis of the country information set out above, the Tribunal accepts the applicant did not feel that she would be able to continue to live in Singapore indefinitely and practise Falun Gong. Her submission that Singapore would not have granted her asylum on the basis of religious persecution in China appears to be supported by the country information cited above.
107. In China, the applicant is known to the local police because she is a Falun Gong practitioner. On the basis of country information set out above, the Tribunal accepts that if the applicant were to return to China and continue to practise and promote Falun Gong, there is a real chance that she would be persecuted for doing so. The Tribunal is satisfied that this persecution would amount to serious harm in accordance with 91R(1)(b) of the Act.
108. The Tribunal is satisfied that the applicant's membership of a particular social group (Falun Gong practitioners) is the essential and significant reason for the persecution which she fears, as required by Section 91R(1)(a) of the Act. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by Section 91R(1)(c), in that it is deliberate or intentional and involves selective harm for a convention reason.
109. The Tribunal accepts the applicant has a well founded fear of persecution under the Convention because there is a "real chance" of persecution. 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 is well below 50%.
110. Given that the Tribunal accepts that the applicant is a Falun Gong practitioner who has practised in China and Singapore, the Tribunal also accepts that the applicant has engaged in Falun Gong activities in Australia for reasons "otherwise than for the purpose of strengthening her claim to be a refugee within the meaning of Convention" for the purposes of s91R(3).
111. The Tribunal is of the view that the applicant could not relocate to another part of China in order to avoid persecution because Falun Gong is banned in all of China and is considered an "evil cult". As it is the authorities who have banned the religion and the authorities who have

subjected the applicant to persecution for because of her practise of Falun Gong, the applicant is unable to access protection anywhere in China.

112. For the reasons set out above, the Tribunal finds that the applicant has a well-founded fear of persecution, by reason of her membership of a particular social group, if she were to return to China now or in the reasonably foreseeable future.

### **CONCLUSIONS**

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

### **DECISION**

114. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.