

0902792 [2009] RRTA 627 (21 July 2009)

DECISION RECORD

RRT CASE NUMBER: 0902792

DIAC REFERENCE(S): CLF2009/1481

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Amanda MacDonald

DATE: 21 July 2009

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), arrived in Australia [in] November 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2008. The delegate decided to refuse to grant the visa [in] March 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

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

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

CLAIMS AND EVIDENCE

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

Protection visa application

20. The applicant submitted the following statement with his protection visa application:

I am [name], male, the Han nationality, born in Kaifeng, Henan Province on [date] 1966.

I went to primary school in Sep. 1973 and graduated from the major of livestock product processing in [College] In July 1987, I was assigned to work in [factory]. I was awarded the qualification of engineer and became the deputy director of the branch factory (at deputy division level). After that, I worked in Kaifeng [companies] subsequently.

After starting to work, I practised Tai Chi Ba Gua Quan as exercises. In 1994, Chinese people developed intense popular interest in practising Kung Fu. I subsequently practised Shiang Kung Fu, Dong Yi Kung Fu and China Wisdom Enhancement Practice which were introduced by relatives and friends. At the end of 1995, I practised Falun Gong. In 1999, when Chinese government banned Falun Gong, the leaders in my work place persuaded and guided me and promised that I would not be held responsible for what I had done. I submitted all the relevant books and material and stopped practising Falun Gong. At the end of 1999, I applied to retain my position retained and suspend my salary and went to other place to work. During that period, I was asked to provide all my whereabouts and be prepared to be investigated and supervised by the local public security bureau. Moreover, I must go back to the place of my registered residence and wait for investigation. In 2000, I got a serious warning since I could not make my way back home in time. Due to these matters I could not live an ordinary life. My work place was unsatisfactory about my situation. That was why I always lost my job. During that period, I spent a lot of money, time and energy to ask others to put in some good words for me.

After a while, I found that my health condition deteriorated. I often suffered from headache, insomnia, constipation and cold. I received treatment for a long time but got no obvious recovery, which was so different from that in the past. I went to do a general health check in hospital in 2005 but everything was fine. Later, my symptoms were more and more serious. I got inflammation and pains in some parts of my body. I did another health check in 2006, but still found nothing wrong with my body. Finally, I developed iritis and my eyesight declined to be worse than 0.1. My eyes were so painful. I was hospitalized at the beginning of 2008 and gradually recovered after a long rest. Being asked the cause of the disease, the doctor explained that the main reason was the negative emotions such as anxiety, worry, nervousness and anger. These negative emotions led to the deterioration of your immunity. You must change the situation. Otherwise, your condition will be more serious. You may

develop cerebral apoplexy or die of a sudden death at last. This reminded me of [name], my fellow brother that I met when practising Kung Fu. He was only 42 years old when he died of a sudden death in 2007. The reasons of his death were that he was too nervous normally and the negative emotions had too much effect on him. I was so afraid, so I consulted psychologist regarding how I could get rid of these negative emotions. Knowing my life and work condition, the psychologist said, "You must get rid of the factors that may cause your negative emotions. Changing an environment is your best choice. For example, you can go to a place that is not against Falun Gong. All your matters will be settled. I have met many patients like you. They recovered after changing a living environment. You are still young in age. With skills and experiences, you can make a better life in other place."

So I listen to my doctor's advice and look for opportunities. Finally I am here. I plead that the Australian government can grant me protection visa. I do not want to live in China any more because the repression that the Chinese government exerts on Falun Gong makes my illness worse and will endanger my life.

21. [In] February 2009, the Department sent the applicant a letter by registered post both to his nominated post office box and his residential address inviting him to attend an interview [in] March 2009. The applicant did not attend the interview.

Hearing [in] July 2009

22. The applicant appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of interpreters in the Mandarin and English languages. The Tribunal adjourned the hearing when it became uncertain about the quality of the interpreter and completed the hearing with the assistance of a telephone interpreter.
23. When asked why he fears returning to China now, the applicant said he practiced Falun Gong before with his spouse from 1994 until it was banned on 20 July 1999. He said he did not practice in a systematic manner because he was had many things to do.
24. When asked whether he practises now, the applicant said he practices by himself occasionally. When asked to explain, the applicant said in China he did not practice systematically and then it was banned. He became ill when he ended up in hospital, he decided to go abroad.
25. When asked when he came to Australia, the applicant said he came [in] November 2008. He said he only practises Falun Gong in his own room and does not wish to have contact with other Falun Gong practitioners. When asked to explain, the applicant said that he became ill because the PSB and his workmates visited him. He was warned that if he met with more than 3 Falun Gong practitioners he would be arrested. He said he is scared this will happen here and he suffers from insomnia and other symptoms.
26. When asked what he knows about Falun Gong, the applicant said he read Zhuan Falun and has practised the exercises. When asked about the exercises, the applicant said there are 5 exercises. When asked whether he practises the 5 exercises, the applicant said he does. He explained that it is like the Tai Chi he practised before but they are easier.
27. The applicant correctly named each of the 5 exercises explained the significance of each exercise. He made comparisons with Tai Chi and detailed requirements in practising the exercises.

28. When asked what it means to practise Falun Gong, the applicant said it benefits his health and because the practice is very systematic it is very easy to learn. At first he started to practise because his father-in-law encouraged him to do so. The applicant said he talked to others and then concluded the exercises were very good.
29. When asked why he does not practise Falun Gong publicly in Australia, the applicant said he practised publicly in China and is afraid the situation that existed in China will be repeated here. When asked why he came to Australia, the applicant said that the Government still believes he is a practitioner and his relative is a practitioner here and was granted a visa. Even if he doesn't practice in China, the authorities still think he is a practitioner. The applicant said he practises privately 2 or 3 times a week to make him feel better.
30. When asked who the relative is, the applicant said it was his wife's younger brother. When asked why he did not come with him to the hearing, the applicant said he wasn't sure what was required for the hearing and could provide his details.
31. When asked why he did not attend the interview with the Department in March 2009, the applicant said because the migration agent was arrested and his friends told him not to contact anyone and he did not get the letter on time.
32. The Tribunal noted there was no migration agent's name on the visa application. The applicant said he is not a migration agent. He is the person who organised the visa to go abroad and his name is [deleted in accordance with s.431(2) of the Migration Act as this information could identify the applicant]. When asked how he met that person, the applicant said he got to know him through an advertisement in the newspaper. When asked what happened, the applicant said that at the time a dozen people came out and only a few returned. The agent arrested in December and was convicted in March. He was sentenced to 9 years in gaol and he was fined 100,000. The applicant said the provincial leader said he should be punished more severely for bringing Falun Gong practitioners out of China. When asked whether he is in contact with the people he came with, the applicant said he was not.
33. When asked about the history and philosophy of Falun Gong, the applicant said it opened its public classes from 1992 and comes from Buddhism. He said that through practising people can achieve the principles of truth, kindness and tolerance and that these principles should apply to every country of the world. When asked how Falun Gong began, the applicant said it started with class teaching from about 1993 and 1994. He explained that Qigong was very popular at the time, as were other similar practices and Falun Gong organised many classes.
34. He explained that Li Hongzhi gave lectures and then at the practising spots skilled instructors helped people to learn the 5 exercises. Students exchanged their feelings with one another. When asked about Zhuan Falun, the applicant said Master Li discussed the history of the 5 exercises. He believed it was published in 1995, as this is when he purchased his copy. When asked about the structure, the applicant said he could not recall the introductory statement but he knows what it says about the exercises, what it says in the middle, and explained the significant of the last section. When asked about the structure, the applicant described the content in each of the 9 chapters. When asked he explained what Zhuan Falun says about killing and about eating meat.
35. When asked about the Falun, the applicant said that when it is turns inside, then you can see yourself and if it is turning outside, then you can see others. The applicant explained that when doing the second exercise the wheel, issued by Master Li, will turn according to how

you are feeling. When asked to describe it or draw it, the applicant described it and then correctly drew it for the Tribunal and explained the components. The applicant said the Falun comes from Master Li's body and genuine practitioners can have it placed in them.

36. The applicant said that Falun Gong was banned in July 1999. When asked about the banning, the applicant said that Falun Gong practitioners appealed to Beijing because they wanted to correct the statement that Falun Gong practitioners were psycho. He said more and more practitioners gathered in Tian Jing City and something bad happened, which irritated the government. He said there was an appeal to Beijing and there were over 10,000 people who protested. The applicant said the government said they were attacking the government but they were only sitting quietly.
37. The applicant said he did not attend the protests because he was involved with other issues from 1994 to 1999. The applicant said that in 1994 he purchased a property and started to renovate it. He moved in 1996 and was married in 1994. He was named as an assistant to the manager of the factory and in 1995 he became the deputy leader and needed to work very hard. In 1997, his factory was merged with another and in 1998 he had his child. Because of his work and personal issues he could not attend the Falun Gong protests and because he did not attend these activities, when the investigations began he was not high profile and did not become high profile until 2002 when his brother-in-law was detained in 2002. The applicant and his father-in-law were found to be conducting a family practise. The worse time for him was after 2002 and in 2005 they visited him most frequently and he started to become ill.
38. The Tribunal noted this was different to what the applicant had included in his statement attached to his protection visa application. The Tribunal noted that the applicant had not included information about his brother-in-law in this statement. The applicant said he had not wanted to include information about others in the statement. The applicant said the agent told him he would be interviewed.
39. The applicant explained that after Falun Gong was banned and the authorities started cracking down on the practitioners. The authorities required all practitioners to hand in all their books and material and promise they would not practise Falun Gong. The applicant's employer also asked him to not practise Falun Gong anymore. The applicant said he handed in his materia and followed the instructions. The authorities continued to investigate possible practitioners and in 2002 they found that his brother-in-law was distributing Falun Gong material. His brother-in-law's name is [deleted: s431(2)] and he was arrested in 2002 and detained for a few days. He was away working at the time and he was asked to return home. His brother-in-law came to Australia in 2005 and was granted a protection visa in 2006. He was not aware whether his brother-in-law had to appear before the RRT.
40. The applicant explained that after his brother-in-law was arrested, the authorities started to pay attention to him and he was working in the company. They investigated him and went to his company to ask what he was doing. When asked whether he lost his job, the applicant explained that his employment relationship ended in 2005 due to his history and because he was not a Communist Party member. The applicant said that after 2005 he became of greater interest to the Government and to the local police because they believed he was a Falun Gong practitioner and to stop influencing other practitioners. He said because of the pressure he was under his headache condition worsened and later on he suffered from inflammation of the throat and eyes and other organs. He said he nearly lost the sight in his left eye and the medical documents he provided to the Tribunal are about those conditions. He was

hospitalised for these conditions and left China because of the effect the interrogations were having on his health.

41. The Tribunal asked the applicant to demonstrate the fourth exercise and to explain the movements. The applicant correctly demonstrated the fourth exercise and clearly explained the movements to the Tribunal, including how many times particular movements are to be repeated.

Independent Evidence

42. The practice/philosophy/religion that is known as Falun Gong was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese cultivation system known as qigong, but it is novel in its blending of qigong with elements of Buddhist and Taoist philosophy. Other terms such as Falun Dafa and Falungong are used in relation to the movement. The term Falun Dafa is preferred by practitioners themselves to refer to the overarching philosophy and practice (UK Home Office 2002, *Revolution of the Wheel – the Falun Gong in China and in Exile*, April). There is no question that Falungong promotes salvationist and apocalyptic teachings in addition to its qigong elements. Despite its own protestations to the contrary, it also has a well-organised and technologically sophisticated following and has deliberately chosen a policy of confrontation with authorities (Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, pp.14-24, pp.91-95).
43. Falun Gong first came to the attention of PRC authorities after demonstrations by Falun Gong adherents in April 1999 in Tianjin, and later that month outside the Zhongnanhai in Beijing. The initial government crackdown against Falun Gong began in late July 1999, when a number of government departments implemented restrictive measures against the movement, banning Falun Gong and issuing an arrest order for Li Hongzhi. The movement was declared an “evil cult” and outlawed in October 1999 (Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.8-10).
44. According to the website <http://www.falunau.org/aboutdafa.htm>, Falun Gong is described as:

Falun Dafa is a self-cultivation practice that has brought better health and inner peace to millions around the world. We call it a cultivation practice: "cultivation" refers to the improvement of one's heart and mind through the study of universal principles based on Truthfulness, Benevolence, and Forbearance; "practice" means doing exercises and meditation to energise the body.

Learning Falun Dafa is easy. The practice is simple, powerful, and absolutely free. The main principles of Falun Dafa are explained in their entirety in the book *Zhuan Falun*, and in the beginner's text, *Falun Gong*, both written by Falun Dafa's founder, Mr. Li Hongzhi. Also essential to the practice are the five gentle exercises, including a sitting meditation, which you can learn quickly and easily at any of the thousands of practice locations around the world.

45. The five Falun Gong exercises are named, pictured and explained in the Falun Dafa website at <http://www.falundafa.org/eng/exercises.htm#EX1>. Adherents undertake five exercises, four standing one sitting. Details are as follows:

- Exercise 1 – Buddha showing a thousand hands
- Exercise 2 – Falun standing stance
- Exercise 3 – Penetrating the two cosmic extremes
- Exercise 4 – Falun heavenly circulation
- Exercise 5 – Strengthening divine powers

46. The website shows each of the parts within the exercise and indicates that each of the exercises has a number of parts.

Information on Treatment of Falun Gong Practitioners in China

47. In a report released in February 2002 Human Rights Watch stated in relation to the persecution of Falun Gong practitioners in China that:

‘Chinese government persecution has not been limited to key organizers, big-time publishers, major distributors, or small-scale proselytizers. It has been directed against scores of low profile practitioners - rank and file followers - willing to publicly defend Falungong. Penalties for this latter group have typically been lighter, but its members have been subjected to grave mental and physical abuse including torture and mistreatment. At the start of the crackdown, most detained protesters were held for only a few days of “reeducation,” in part because the government appears to have misjudged the depth of commitment, in part because there were insufficient permanent facilities for long-term incarceration of tens of thousands of practitioners. As it became evident that dismantling Falungong could not be accomplished quickly, and as demonstrations became daily occurrences, officials apparently grew impatient with briefly detained practitioners who, as soon as they were released, rejoined public protests in Tiananmen Square. In October 2000, China’s policy changed. Instead of the Public Security Bureau rounding up protestors and escorting them home or detaining them for a few days or weeks, “relevant Beijing departments...decided to practice a ‘close style management’ on stubborn Falungong members.” In the hope of facilitating the permanent “transformation” of identified “recidivists,” such individuals were to be immediately sentenced administratively to reeducation through labor, in some cases for as long as three years.

According to some estimates, since the start of the crackdown as many as 10,000 followers may have been sentenced administratively to reeducation terms.’ (Human Rights Watch, *Dangerous Meditation - China’s Campaign Against Falungong*, February 2002, Chapter V, ‘Falungong in Custody: Competing Accounts’ ‘Reeducation through Labor; Transformation Centers’).

48. In its International Religious Freedom Report 2005 in relation to China the US State Department said that:

‘During the period covered by this report, government repression of the Falun Gong spiritual movement continued. At the National People’s Congress session in March 2004, Premier Wen Jiabao’s Government Work Report emphasized that the Government would “expand and deepen its battle against cults,” including Falun Gong. There were credible reports of torture and deaths in custody of Falun Gong practitioners.’ (US State Department, *International Religious Freedom Report 2005* in relation to China, Section II. Status of Religious Freedom - Restrictions on Religious Freedom).

49. The US State Department said that:

'According to Falun Gong practitioners in the United States, since 1999 more than 100,000 practitioners have been detained for engaging in Falun Gong practices, admitting that they adhere to the teachings of Falun Gong, or refusing to criticize the organization or its founder. The organization reports that its members have been subject to excessive force, abuse, detention, and torture, and that some of its members, including children, have died in custody. For example, in 2003, Falun Gong practitioner Liu Chengjun died after reportedly being abused in custody in Jilin Province. Some foreign observers estimate that at least half of the 250,000 officially recorded inmates in the country's reeducation-through-labor camps are Falun Gong adherents. Falun Gong places the number even higher. Hundreds of Falun Gong adherents were also incarcerated in legal education centers, a form of administrative detention, upon completion of their reeducation-through-labor sentences. Government officials denied the existence of such "legal education" centers. According to the Falun Gong, hundreds of its practitioners have been confined to psychiatric institutions and forced to take medications or undergo electric shock treatment against their will.

FINDINGS AND REASONS

50. The applicant travelled to Australia on a People's Republic of China passport, and claims to be a national of the People's Republic of China. The Tribunal accepts that the applicant is a national of the People's Republic of China and has assessed his claims against China as his country of nationality.
51. The Tribunal found the applicant to be a credible witness. His account of how he became involved in practising Falun Gong and the benefits he believes he has obtained from practising Falun Gong is typical of accounts given by genuine Falun Gong practitioners. At the hearing the applicant was able to demonstrate a detailed knowledge of the theory and practice of Falun Gong, including accurate knowledge of Zhuan Falun. The Tribunal accepts that the applicant is a genuine Falun Gong practitioner.
52. The Tribunal accepts that the applicant commenced his practice of Falun Gong in 1994/1995 and practised in China until it was banned in 1999 when he handed all his Falun Gong material into the authorities and agreed to stop practising. The Tribunal accepts that although the applicant stopped practising Falun Gong, the authorities, including the local PSB and his employer, continued to interrogate and investigate him for his possible practice of Falun Gong.
53. Although, the applicant did not mention it in the statement attached to his protection visa application, the Tribunal accepts that the applicant's brother-in-law was arrested and detained in 2002 for being a Falun Gong practitioner. This evidence is consistent with the evidence the applicant's brother-in-law gave to the Tribunal (differently constituted) on 2 occasions in 2006 (see 0653231 and 060944288). On the last occasion, the Tribunal accepted that the applicant's brother-in-law was a genuine Falun Gong practitioner. The Tribunal accepts the applicant's evidence that he will continue to be identified as a Falun Gong practitioner if he were to return to China whether or not he continues to practice.
54. The Tribunal accepts the applicant's evidence that he has continued to practise Falun Gong 2 or 3 times a week since arriving in Australia. The Tribunal is satisfied for the purposes of subsection 91R(3) of the Act that the applicant's conduct in practising Falun Gong in Australia has been engaged in otherwise than for the purpose of strengthening his claims to be a refugee.

55. As referred to above, the Chinese Government's repression of Falun Gong continues unabated and it extends to followers of Falun Gong who are not prepared to renounce their beliefs (US State Department, *International Religious Freedom Report 2005* in relation to China, Section II. Status of Religious Freedom - Restrictions on Religious Freedom; Human Rights Watch, *Dangerous Meditation - China's Campaign Against Falungong*, February 2002, Chapter V, 'Falungong in Custody: Competing Accounts' - 'Reeducation through Labor; Transformation Centers').
56. The Tribunal is of the view that if the applicant were to return to China now or in the reasonably foreseeable future there is a real chance that the Chinese authorities would continue to identify him as a Falun Gong practitioner and he faces being detained and tortured for reasons of his actual and perceived beliefs. The Tribunal accepts that the persecution which the applicant fears involves 'serious harm' as required by s.91R(1)(b) of the Migration Act in that it involves a threat to his life or liberty or significant physical harassment or ill-treatment. The Tribunal is of the view that the applicant's religion, that is his belief in Falun Gong, is the essential and significant reason for the persecution which he fears, as required by s.91R(1)(a). The Tribunal is also of the view that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c).
57. For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reason of his religion if he returns to China now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail herself of the protection of the Government of the People's Republic of China. There is no material which indicates the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, the People's Republic of China. The applicant is also outside his country of nationality.
58. The Tribunal is therefore 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

59. 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.

<p>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 <i>Migration Act 1958</i>. Sealing Officer's I.D. RCHADW</p>
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