

0909497 [2010] RRTA 6 (4 January 2010)

DECISION RECORD

RRT CASE NUMBER: 0909497

DIAC REFERENCE(S): CLF2009/130930

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Amanda MacDonald

DATE: 4 January 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
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 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 and the Tribunal's case file. 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 set out his claims in a statutory declaration attached to his application. He stated:

Introduction

1. I was born in China [address] in [City A] in the Fujian province in China.
2. I am a Chinese citizen by birth.
3. My family and I lived on [property] at the above mentioned address which my family owns; my father was also born on that [property].
4. My mother, father and I [activity].
5. I was married on the [date] and I have [number] children, [ages given].
6. Although I worked on the [property], I also worked in City A City as [activity] to supplement my income.

The country to which I fear returning

7. China, because I am Roman Catholic and China does not allow this.

Why I left that country

8. In the summer of [year], my [relative] who is a Roman Catholic, introduced me to my now wife who was also Roman Catholic. My wife and I courted for four years and were married on the [date] at an underground church service.
9. My wife went to church once or twice a week and I, when ever I had the opportunity I would attend. The church we attended was an underground family church. The church was not held at any fixed place because we were frightened of being discovered by the authorities. We would move the location but it was often held at our house. My wife organised masses by contacting the other worshippers and informing them of the times of the services. She also organised activities such as group bible study. My wife was also responsible for contacting people outside our local area who were priests unrecognised by the government and inviting them to speak at our services. We conducted our activities in secret and only contacted other people whom we knew well and who were reliable.

10. My [child] was born on the [date] but my wife didn't want [child] baptised because she was scared that the police would find out.
11. My wife continued going to church regularly and I also from time to time. I attended church as often as I could but because I was the main provider for the family I could not attend as often as my wife. I would say that I attended about once a week.
12. Early [2000's], my wife became pregnant and my [child] was born on the [date]. We were told that my wife might need a [surgery] and I was very worried. I prayed that my wife should have a safe labour and all of a sudden I saw the cross and I knew that God was there to protect me. My wife had a very successful birth and I knew that this was because God had come to my aid.
13. My wife and I had often spoken about me also becoming Catholic and joining the Catholic Church. I was often feeling depressed and empty, looking for myself. However the experience of my's [child] birth helped me to make the decision.
14. I began to attend Church activities more often.
15. The Underground church only held baptism ceremonies once a year and it was not until June [date] that I was able to take part in this formal ceremony and be baptised.
16. On or about the evening of the [date], the police raided the church and arrested [number] people, my wife and I included. We were all taken to the City A municipal police station. The men were separated from the women and put in adjoining "rooms". We were all detained for two days. The reason the police gave us was that we were Roman Catholics conducting an illegal gathering.
17. I shared the "room" with another six people. On several occasions the police entered and physically assaulted us. They kicked and punched all of us. I was badly beaten. My [injury] from where I slashed it on a piece of metal furniture as I was trying to escape the blows. I could hardly walk. I still have the scars from these wounds.
18. Upon being released from detention, I went to a public clinic to obtain medical attention for my [body part]; this clinic was located in the [place] My [treatment] by the doctor and I went home. This Doctor didn't have any formal training; he was known as "a Barefoot Doctor" These are the only doctors we can get in the villages, my wife was also beaten but not as badly.
19. I was released and about [period] later, I received a letter at home telling me that I was charged for organising an illegal gathering had to appear in court at City A Local Court.
20. I am aware of people who have charged with the same offence went to court and received sentences between four to six years so, I didn't want to go to court and I ran away from home hiding in various places. I haven't seen my wife or my children since then other than on the internet but I did and do talk to them as often as I can on the telephone.
21. I hid in the houses of friends and other churchgoers. I felt I could trust my fellow church members like brothers. I did not work because I was frightened that if I went to work I would be discovered by the police. My friends supported me.

22. I continued to attend underground church services while I was in hiding. I knew this was a risk but once I had been baptised I could not give up this practice.

23. I stayed in hiding from [month, year] until I left China [date]. I was always trying to find a way to escape China Eventually I contacted an agent and used another person's passport to get a tourist visa to Australia I did not have to pay the agent as the arrangement was that I would pay off the cost after I got to Australia.

24. I have spoken to my wife on the phone since I have been in [place] and she tells me that the police still come to our house and interrogate her about my whereabouts. The police continue to be suspicious of my wife's involvement with the church. She and her fellow churchgoers try to avoid any activities in the day time and hold their services late at night.

What I fear may happen to me if I return to China

25. I fear that I will be seriously harmed by the authorities in China because of my commitment to practicing my faith as a Roman Catholic in the underground Church. I fear that I am at an increased risk of harm because I have not complied with the order for me to attend court.

Who I think may harm / mistreat me if I return to China and why

26. The Chinese police because there probably is a warrant for my arrest given that I am a Roman Catholic and a member of a house church and that I have been charged with participating in an illegal gathering.

Do I think that there is a place in that country where I could be safe

27. No, because I am an underground Roman Catholic and this is not approved by the Chinese government. I have found my path in life and I wish to continue being a Roman Catholic. I will never consider changing. I would not have left my wife and children if I were not afraid of persecution.

28. I would not consider attending the official Catholic Church in China because the official church is purely for the purpose of spreading government propaganda. People who attend the official church do not treat their fellow men like brothers and sisters. How can the Chinese Communist Party run a church when they do not believe in God? Only the underground church is truly religious.

29. I am [activity] I am relieved to be able to go to church whenever it is available, unhindered and free to do so. I have attended services every day while I have been at [place]

Interview with the Department

21. In an interview with a Departmental officer, the applicant confirmed his identify and other details in his visa application. The applicant said that before coming to Australia he worked as a casual worker and did not have a fixed position. He said he worked in food preparation, earning some thousand RMB per month when he had a job. When asked about how much he paid the 'snakeheads' to bring him to Australia, the applicant said it was about 30,000RMB initially and he will have to continue to pay them, with the total being about 200,000RMB.
22. The applicant said he came to Australia to "spread the good news". He said he could not do it in China because he was part of an underground family church. The applicant confirmed

he was in hiding from mid 2000's to the late 2000's because the Government authorities were trying to arrest him because they said he was involved in illegal gatherings. When asked what he meant by 'illegal gathering', the applicant said the Government did not recognise the church to which he belonged. The Departmental officer said the authorities in Fujian were the most liberal in terms of religion. The applicant said that was in possible. The officer noted that the applicant had given one address his visa application for 10 years. The applicant said it was his birth place. The Departmental officer noted it was where he stated he lived. The applicant agreed and the officer said it did not fit the profile of someone who was in hiding. The applicant said it was his home address and when they wanted to arrest him he ran away. The Departmental officer noted that the country information indicated that when the authorities wanted to arrest someone they take their identity card and passport but this had not happened to the applicant. The Departmental officer confirmed when the applicant's current identity card was issued, which did not accord with him being in hiding from mid 2000's to late 2000's and of interest to the Chinese authorities as claimed. The applicant said he was telling the truth. The applicant's representative asked for an opportunity at the end of the interview to confer with the applicant. The applicant said he was earning enough in China to support his family.

23. The applicant said he was beaten by the police and he still has the scar from the beatings from the police. The applicant confirmed he arrived in Australia with several others all claiming persecution in Fujian province with limited education and low income. The Departmental officer said there was available evidence that men with such profiles pay snakeheads to bring them to Australia for financial reasons. The applicant said the main purpose of coming to Australia was to spread the good news not to work, although he would need to work to support himself and his family. The applicant said he had been to a church service that morning. The applicant said in his application he had talked about the miracle of Christ. The Departmental officer said there were credibility issues which he had put to the applicant for response. The applicant's representative said he would like the opportunity to talk to the applicant and respond. The interview was adjourned.
24. When the interview resumed, the applicant's representative said the applicant wished to submit something about his passport and identity card. The applicant said he had said he paid 30,000RMB, which covered the cost of his passport and the identity card. The representative stated the applicant's false passport was taken by the Department at the airport. The representative pointed to a number of RRT decisions which include contrary country information. In terms of the identity card is not a travel document and should not be a measure of his fear of harm and he referred the applicant's statutory declaration about his fear of harm. The representative stated the applicant said he had paid the snakehead for the identity card and he submitted it would not have been issued without the payment of the bribe. The representative stated he did not know the others who came with him and he does not know there reasons for coming to Australia.

Submission from representative

25. The applicant's representative provided a submission stating that the applicant continued to rely on the claims made in his statutory declaration. The representative made submissions about the treatment of underground Christians in Fujian province quoting various sources including Tribunal decisions.

Hearing

26. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
27. The Tribunal set out the definition of a refugee as set out above and the applicant said that the only Convention reason is his religion.
28. When asked why he fears returning to China now, the applicant said it is because he is a member of a family church. When asked to which church he belongs, the applicant said he was a member of an underground family church, which is not approved by the State. When asked about the religion, the applicant said Christianity. When asked to clarify, the applicant said there is just Christianity in China. When asked what he believes the applicant said he believes in God and Lord Jesus. When asked to tell the Tribunal about his religion, the applicant asked for clarification. When asked when he first joined his church, the applicant said it was in mid 2000's. When asked how he joined the church, the applicant said his wife believed in the religion before him and he joined because of his wife. When asked when he first started attending church, the applicant said it was around mid 2000's. When asked what happened when he went to Church, the applicant said he was caught by the police. When asked what happened at the services, the applicant said they sang hymns. When asked whether anything else happened at the church services, the applicant said it did not. He said he had attended a couple of times before being arrested. When asked what type of Christian religion his wife believed in the applicant said she was a Christian also. The Tribunal noted there are different Christian religions. The applicant said there are not.
29. The Tribunal noted he had stated in his statutory declaration that he was a Catholic. He said he believes in Christianity. The Tribunal noted that throughout his statutory declaration he had talked about being a Catholic. The applicant said he was Christian and said that Catholics do not believe in God. The Tribunal said they do. The applicant said he believes in Lord Jesus. When asked why his statutory declaration would state that he and his wife are Catholics, the applicant said he did not know and said that they were Christian. The Tribunal said it did not know why there would be such a discrepancy between his statutory declaration and his evidence at hearing. The applicant said he always said he was Christian and would never convert. The Tribunal noted that Catholicism is a Christian religion. The applicant said that he attends a Christian church. The Tribunal noted that the applicant had said in his statement he was a Catholic and such a significant discrepancy may lead it to not accept that the applicant was telling the truth. The applicant said that if there is no difference between Catholicism and Christianity, they must have written down Catholic when he said Christian.
30. When asked what it means to be a Christian, the applicant said it means believing in God and you can get your sins forgiven and you can get eternal life. When asked about any Christian festivals he celebrated in China, the applicant said he had not been baptised yet and just sang hymns. When asked to confirm when he was baptised, the applicant said he has not been baptised yet. The Tribunal noted that in his statutory declaration he stated he was baptised in mid 2000's. The applicant said "no". The Tribunal noted that it was stated in the statutory declaration. The applicant asked why it was so different and the Tribunal asked the applicant to explain the inconsistency. The applicant said he had decided to be baptised here.
31. When asked whether he knew of any Christian festivals, the applicant said that when you are baptised you can drink the wine and eat the wafers. When asked about the life of Jesus

Christ, the applicant said he was born 5 to 6 years before the calendar year. When asked whether there was anything else, the applicant asked what the Tribunal meant. The Tribunal said that if the applicant was a Christian in China it would expect him to have some knowledge of Jesus Christ.

32. The applicant said the first miracle was turning water into wine. When asked where this is written down, the applicant said this happened at a person's wedding. When asked about the death of Jesus Christ, the applicant said he died so our sins can be forgiven. When asked about the story of the death of Jesus Christ, the applicant hesitated and then said Jesus was crucified on a cross and he left his precious blood to wash away our sins. When asked when it is commemorated by Christians, the applicant said it is Easter. When asked when that is, the applicant asked if it was Christmas. When asked about Christmas, the applicant said it celebrates the birth of Jesus on 25 December 2009. When asked for more details, the applicant said "no" When asked whether there was anything else around Christmas, the applicant said Easter and Thanksgiving. When asked about Thanksgiving, the applicant said it was about remembering that Christ died for us. The Tribunal noted that Thanksgiving is an American celebration. When asked about more details about Easter, the applicant said Jesus rose on the third day and rose to heaven after staying on the ground for 40 days. When asked again later in hearing when Easter is celebrated, the applicant didn't answer for some time and then said it was December and then said he could not remember. The Tribunal said it was not celebrated in December and the applicant said he cannot remember.
33. When asked whether he could recite the Lord's Prayer, the applicant said he could. He stated:
 - Our father in heaven we would all respect your sacred name.
 - May your orders be carried out on earth
 - Just as if they were in heaven
 - Please give us our daily food and drink
 - Please remove our debts and those of others
 - Let us not encounter temptation
 - Get rid of evil because the world's glory belongs to you forever.
34. The applicant said he also knows the apostle's creed. When asked whether he said the Lord's Prayer in China, the applicant said he did.
35. When asked whether there was a significant book for Christians, the applicant said the Bible. When asked to describe it, the applicant said it had the New and Old Testament. When asked to explain, the applicant said the Old Testament is the agreement between Jesus Lord and the Israeli people. When asked about the New Testament, the applicant muttered to himself for a while and then said he was talking about the New Testament. When asked to explain, the applicant again muttered to himself and then said it is the precious blood left by Jesus and the agreement between that and the people in the whole world. When asked who is said to have written the New Testament, the applicant said Matthew and John, who are apostles of Jesus. When asked what he could tell the Tribunal about them, the applicant said Matthew expressed in the books about Jesus miracles.

36. When asked about becoming a Christian, the applicant said there was some unhappiness in life when his wife needed assistance when their child was born. The applicant said his wife asked him to kneel down and pray. When asked whether this is when he started to go to church the applicant said it was but he did not often go. When asked about the difference between underground and registered churches in China, the applicant said that the registered church people are atheists and don't believe in the resurrection.
37. When asked about the important figures in Christianity, the applicant said Lord Jesus. When asked if there was only one, the applicant said there was. When asked if there was someone other than Lord Jesus, the applicant said there was not.
38. The Tribunal noted that the applicant's knowledge of Christianity was basic and that there were some inconsistencies in his evidence. The applicant said he does not have a very good brain and he forgets things. He said he only had basic education. The Tribunal said that even for someone with limited education, it would expect them to be able to tell the Tribunal more about their religion and for there not to be significant inconsistencies with an earlier statutory declaration. The Tribunal said it thought it was significant that in the statutory declaration the applicant had said he was a Catholic and that he was baptised. The Tribunal said it was significant that the applicant was unable to give basic information such as when Easter is celebrated, had said that Thanksgiving is one of the Christian festivals and that his description of the Old and New Testaments was puzzling. The Tribunal acknowledges that the applicant had demonstrated knowledge of the Lord's Prayer but said he could have learnt this from going to church in Australia. The Tribunal said it may find the sole purpose of the applicant's church attendance in Australia was to strengthen his claims to be a refugee and if so, it would be required to disregard this attendance in determining whether he had a well founded fear of persecution. The Tribunal said the applicant seemed to know only a small amount about Christianity which may lead it to doubt his evidence.
39. The applicant said that in China no one preaches they just sing hymns and read the Bible. The Tribunal noted the applicant's description of the contents of the Bible did not seem to be quite right. The applicant said they just sang hymns. The Tribunal said even so it would expect the applicant to know when Easter is celebrated and about the story of Christmas, an important Christian festival, apart from saying that Christmas was when Jesus was born and that Easter is celebrated around that time. The Tribunal said it was happy for the applicant to give any further details about his religion or about the inconsistencies but it was having difficulty accepting he was telling the truth and accepting his claims he was a Christian and that he was persecuted because of his faith. The applicant said it is true and he has scars from being caught. The Tribunal said the scars may not relate to him being Christian. He said he does not have a good brain and he forgets things. The Tribunal said it acknowledged it is difficult in the hearing environment to remember everything but it would expect someone who has been involved with the church for as long as he claimed to know basic information about when Easter is celebrated and about the story of Christmas. The Tribunal said that if the applicant's claims were true it would not expect such inconsistencies about being Catholic and being baptised. The Tribunal noted the applicant claimed significant involvement by his wife in the church but the applicant's lack of knowledge may not satisfy it that this was the case. The applicant said he does not have a very good brain and he only went to junior high. The Tribunal noted that the applicant had been able to tell it those things he knew which indicated that he was able to give evidence and was able to remember things. The applicant said he did read about things but he had forgotten.

40. When asked about the Holy Trinity, the applicant asked what it was. The Tribunal asked whether there was any one else other than Jesus in his religion. The applicant asked the Tribunal to explain. The Tribunal noted that the Holy Trinity is God the Father, God the Son and God the Holy Spirit. The applicant's response was that in Christianity you share glory, equality and equal respect.
41. The Tribunal said it was having difficulty accepting the applicant's claims with his lack of knowledge combined with the inconsistencies in his evidence, which would make it difficult for the Tribunal to find the applicant was a Christian for the period claimed and to accept that anything happened to him in China. The applicant said he was not lying.
42. When asked whether there was anything else he wished to tell the Tribunal, the applicant said he just wished the Tribunal a Merry Christmas.

FINDINGS AND REASONS

43. The applicant stated he left China on a People's Republic of China passport in his own name, although he arrived in Australia on a false passport in a false name. He claims to be a national 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.
44. In the statutory declaration attached to his protection visa application, the applicant claimed he feared returning to China because he is a Roman Catholic. He claimed his aunt, who is a Roman Catholic, introduced him to his wife who is also a Roman Catholic and they were married in an underground Church service. He claimed his wife went to Church once or twice a week and he went when he had the opportunity to do so. He claimed his wife was involved in organising masses and other activities such as group Bible study and inviting priest from outside their local area to speak at services. He claimed that the birth of his child helped him to make the decision to become a Catholic and started attending Church services more often. He claimed that because the underground Church only held baptism ceremonies once a year, it was not until the mid 2000's that he was baptised. He claimed that on a specified date, the police raided the Church and he and his wife were arrested and detained for several days. The applicant claimed the reason the police gave them for their detention was that they were Roman Catholics conducting an illegal gathering. He claimed he and his wife were badly beaten and after he was released he was charged with organizing an illegal gathering and had to appear in City A Court. He claimed he stayed in hiding until he left China. The applicant's representative confirmed in a submission that the applicant continued to rely on the claims made in this statutory declaration.
45. However, at hearing with the Tribunal, the applicant claimed he feared returning to China because he is a member of an underground family church. He claimed he and his wife are Christians and are not Catholics as claimed in the statutory declaration attached to the protection visa application. He claimed he first joined the church in the mid 2000's and had been arrested at a church service. He claimed he has not been baptised.
46. In considering these claims, the Tribunal has taken note of the views expressed by the High Court in the context of refugee decision-making. The High Court has emphasised in *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 and *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 that the legislation to be applied requires that the Minister must be 'satisfied' that a person is a refugee. As Kirby J noted in the latter case (at 596):

‘the mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is “well-founded” or that it is for reasons of political opinion. It remains for the minister in the first place to be “satisfied” and, where that decision is adverse and a review is sought, for the applicant to persuade the reviewing decision-maker that all of the statutory elements are made out.’

47. This is not read as placing any onus of proof on an applicant, but does require that a decision maker examine the material available to reach the required level of satisfaction.
48. In the Tribunal’s view, the applicant has not provided a truthful account of his experiences or beliefs in China. In particular, the Tribunal does not accept that the applicant or his wife ever had any involvement with an underground Catholic Church or an underground family church while in China, nor that such involvement caused him to leave the country. The Tribunal does not accept that the applicant or his wife regularly attended worship or gatherings at an underground Catholic Church or an underground family church as claimed or that he was a member of an underground Catholic Church or an underground family church in China.
49. It follows that the Tribunal does not accept that the applicant or his wife ever came to the attention of the Chinese authorities for attending worship in an underground Catholic Church or an underground family church as claimed. It also follows that the Tribunal does not accept that the applicant was detained as claimed for participating in activities of an underground Catholic Church or an underground family church or for any association with an underground Catholic Church or an underground family church. It also follows that the Tribunal does not accept that the applicant has been charged for organising an illegal gathering or that he was required to appear the City A Local Court The Tribunal also does not accept that the applicant would face persecution as claimed if he returned to China. The Tribunal’s reasons follow.
50. The applicant has given inconsistent evidence about his claims and has either not explained these inconsistencies or the explanations are not credible. In the statutory declaration attached to his protection visa application the applicant claimed that he and his wife had suffered serious harm because they are Roman Catholics. He also claimed that he was baptised in mid 2000’s However, in evidence before the Tribunal the applicant denied he was a Catholic or that he had been baptised. He claimed that he and his wife were Christians and had suffered serious harm because they were members of an underground family church. The applicant could not explain the inconsistency about being baptised and said that maybe when he said he was a “Christian”, they wrote down “Catholic”. The Tribunal does not accept this explanation. The statutory declaration was declared and signed before a solicitor and registered migration agent and a registered migration agent assisted the applicant with the completion of his protection visa application. In the Tribunal’s view these inconsistencies are of such significance as to lead it to doubt that the applicant is a witness of truth.
51. In addition at hearing the applicant displayed minimal knowledge of Christianity. The Tribunal acknowledges that it may be difficult for an applicant during a hearing situation to articulate the principles and beliefs associated with their particular religion, particularly when they have limited education. However, the Tribunal would expect someone who claims to have been involved with Christianity for a significant period and a practicing Christian for a significant period to be able to articulate detail in relation to the practice of Christianity and

the particular beliefs. The Tribunal finds that the applicant's limited understanding of Christianity is highly inconsistent with his claim to have been a practicing Christian in China.

52. The applicant thought Thanksgiving was a Christian festival where it is remembered that Christ died for us and although he knew that Christmas related to the birth of Christ, he was unable to give any additional details. He had a basic understanding of Easter but thought it was celebrated around Christmas time. He demonstrated knowledge of the Lord's Prayer and the Apostle's Creed but was only able to demonstrate a basic knowledge of the Bible. He said the Old Testament was an agreement between Jesus and the Israeli People and told the Tribunal that Lord Jesus was the only important figure in Christianity. He did not appear to have any understanding of the Holy Trinity.
53. When asked about his lack of knowledge of Christianity, the applicant said that in China no one preaches, they just sing hymns and read the Bible. However, when the Tribunal noted the applicant's apparent lack of knowledge of the Bible, he said they just sang hymns. The applicant said he had limited education, does not have a good brain and forgets things. The Tribunal accepts that a lack of education and differing practices may result in a less detailed knowledge of Christianity. However, the Tribunal does not accept that this accounts for the applicant's inability to some of the most basic details about Christianity to the Tribunal, particularly when he was able to display he could remember the elements of the Lord's Prayer. As the Tribunal said to the applicant at hearing, it would expect someone who was claiming to be a Christian in China for the period claimed would be able to provide basic details about Christianity, including when Easter is celebrated, the story of Christmas and that Thanksgiving was not a Christian festival. The Tribunal would also expect that if the applicant's claims are true there would not be such significant inconsistencies as to whether the applicant was a Catholic and whether or not the applicant had been baptised. The Tribunal does not therefore accept that the applicant is a Christian or that he and his wife practiced Christianity in China.
54. The Tribunal does not accept that the applicant or his wife ever had any involvement with an underground Catholic Church or an underground family church while in China, nor that such involvement caused him to leave the country. The Tribunal does not accept that the applicant or his wife regularly attended worship or gatherings at an underground Catholic Church or an underground family church as claimed or that he was a member of an underground Catholic Church or an underground family church in China.
55. It follows that the Tribunal does not accept that the applicant or his wife ever came to the attention of the Chinese authorities for attending worship in an underground Catholic Church or an underground family church as claimed. It also follows that the Tribunal does not accept that the applicant was detained as claimed for participating in activities of an underground Catholic Church or an underground family church or for any association with an underground Catholic Church or an underground family church. It also follows that the Tribunal does not accept that the applicant has been charged for organising an illegal gathering or that he was required to appear the City A Local Court. The Tribunal also does not accept that the applicant would face persecution as claimed if he returned to China.
56. The Tribunal has considered the applicant's claimed practice of Christianity in Australia. The applicant claims to have attended church services whilst in detention. The Tribunal is prepared to accept that the applicant may have attended church services whilst in detention in Australia. However, in determining whether actions taken in Australia are relevant in considering the well-foundedness of an applicant's claims to fear persecution, regard must be

had to the provisions of s.91R(3) of the Act. Section 91R(3) provides that in determining whether a person has a well-founded fear of being persecuted for one or more of the Convention reasons, any conduct engaged in by the person in Australia must be disregarded unless the person satisfies the Tribunal that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee. Given the Tribunal's findings in relation to the applicant's knowledge of Christianity, the Tribunal does not accept that the applicant is a Christian and did not practice Christianity in China. The Tribunal is not satisfied for the purposes of s.91R(3) of the Act that the applicant attended church services in Australia otherwise than for the sole purpose of strengthening his claims to be a refugee.

57. The Tribunal does not accept that the applicant or his wife has been or is perceived to have been associated with Christianity in China or that he has suffered serious harm in China as a result of this association. Nor does the Tribunal accept that if the applicant returns to China now or in the reasonably foreseeable future, that there is a real chance he will be perceived to be a Christian or a member of a Christian religious organisation. The Tribunal also does not accept that the applicant will be persecuted for reasons of any real or imputed religious beliefs or political opinions or membership of any particular social group for the purposes of the Convention on the basis of his claimed involvement with Christianity. As the applicant has not claimed any other reason for fearing to return to China, the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason if he returns to China.
58. The Tribunal therefore does not accept that the applicant has a well-founded fear of persecution for a Convention reason if he returns to China.

CONCLUSION

59. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

60. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

<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</i> 1958. Sealing Officers ID: PMRT01</p>
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