

0800278 [2008] RRTA 108 (18 March 2008)

DECISION RECORD

RRT CASE NUMBER: 0800278

DIAC REFERENCE(S): CLF2007/145394

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Amanda MacDonald

DATE DECISION SIGNED: 18 March 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the spouse of the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of China (PRC), arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

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

The applicants applied to the Tribunal for review of the delegate's decisions. Although the second named applicant's name does not appear on the application for review, he signed the form and the Tribunal was of the view that he was included in the application for review.

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 applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

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).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and, 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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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

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

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

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

persecution even though the possibility of the persecution occurring is well below 50 per cent.

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

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants, which includes the protection visa application, in which only the first named applicant (hereafter referred to as the applicant) made claims.

Statement attached to the Protection Visa Application

In a statement attached to the protection visa application, the applicant claimed the following:

My name is [name] and I was born on [date] at the place of Village [A], Town [A], Sujiatun District, Shenyang City. It was the time that China was in turmoil and the life in the rural areas was extremely tough. I had only [number] years' schooling at primary school and was forced to stop my education to do the farming work. I helped with my family for whatever I was able to do to reduce my parents' financial burden. Though I was young, I had always tried to do the same job as other adults. I worked harder and distinguished myself in farming work. The village chief usually assigned me light or easy work, as I was small and short without much strength in his eyes. However I didn't accept this consideration because I wanted to accumulate more work credits so that at the end of year I would receive a bit more grain and cash from the village. At the end of the year, I was always nominated as the model farmer and was rewarded the trophy (a piece of printed red paper) as the encouragement for my performance. I also received the recommendation from the rural leaders in Town [A]. In [year] when I was 19 years old, I was nominated the "Production Model" of the whole town and was appointed as the "Head of Woman's Committee" of Village [A] and the Leader of the "Family Planning Officer". In [month] of that year, I joined the Chinese communist party and became a CCP member. It was something of great honour at that time. I was an honour not only to my family but also to my village. On the day when I became a CCP member, my mother happily made a chicken meal from the family poultry stock to celebrate this event and our whole family had a big feast.

In [date], I married [name] in the same village. We had been child sweethearts since young. We understood each other. After we married, we had very close relation and a happy family life. I gave birth to my first child in [year]. After my birth of my first child, my physical health had not been very well. I suffered the back and leg troubles that gave me a lot of pain. Sometimes, I couldn't even walk. As I had so many things to do both at home and in the farmland, I still had to endure the pain to carry on such work. At the time of seeking the medical treatment, I continued my work duties. Sometimes I felt so tired that I couldn't even go to sleep or physically get on to the brick bed (Translator's note: A special bed made of bricks in Northern China and it can be warmed up by a fire underneath in winter.) Due to my poor physical health, I

wasn't able to continue my duty as the village cadre. I resigned and stayed at home. In order to recover from my illness, I visited all the large hospitals in [name] City. I tried various medical treatments such as prescription medicine or clinic treatment. I spent all my savings but with little result. I suffered the illness of [name] and it was a kind of chronic disease. The doctors all advised me that I needed a lot of rest and minimum work to reduce my pain. I was wondering if this would be the only solution. Would my whole life be wasted at this age? Was it really true that there was no cure to this illness? I was so sad that I faced my husband and child with tears in my eyes. I had nothing to say and only wished that Heaven would show pity on me so that I could recover from my illness and stand up again to live a life as a normal person.

In the Chinese New Year holiday season in [year], a relative visited my home and told me that a practice called "Falun Gong" now became very popular and this practice proved effective to various illnesses. So after Chinese New Year, my husband took me to the town clinic by a bicycle. By the time we got the clinic, there had already been many people inside. I approached a person in charge in the clinic - [name] I told her my purpose of visiting the clinic. She was quite enthusiastic in teaching me how to do the practice. At first, it was very hard for me to do such practice as instructed. I had stiff legs and arms with harsh pain. However for the sake of my recovery from illness, I had to endure such pain. So each day my husband helped me visit the clinic by letting me sit on his bicycle. After about one month's practice, there was obvious improvement in my leg. After that, both of legs were able to bend while I was sitting on the floor as the practice required. The pain was much less and finally disappeared. I would also be able to walk half the way from home to the clinic (total distance is about [number] kilometres). On many occasions, I could walk to the clinic by myself. It took me about [number] minutes. Elder [name]ji was impressed by my earnest attitude in practice and the obvious improvement in my physical health and she gave a book "Zhuang Falun" to read.

When my husband saw that I was able to walk, his joy was beyond description. Falun Gong indeed can cure the illness. I have no slightest doubt about this. I thought that I must continue to keep this practice. After that I didn't need the help of my husband to visit the clinic.

Elder [name] told me that a good Falun Dafa believer not only needed to do practice, but also had to read the book to improve the spiritual world and to be a good person. I had some difficulties in reading. If I had some problems, I would make the note and asked Elder [name] later. She would explain to me with great patience. She also told me many things about our Master LI. I admired Master LI from my heart and was grateful for such wonderful practice that Master LI introduced to the people in the world. His practice not only offers the benefit to physical health, but also to the spiritual world so that the practitioners would elevate themselves to the higher level of universe. It is really a great practice. Spring was gone and winter came again. Year after year, I am not only fully recovered from my illness, but I started a small Falun Gong practice and learning group to teach the people in the village.

In the past, the security situation in our village was not good. There had been quite a few incidents of petty crimes and the neighbour disputes and arguments. Since the Falun Gong was introduced into village, the social morality in the village was very much improved. The harmony and peace replaced the worrying situation in the village. Falun Dafa does possess the wonderful power.

In [date], the [title] of the village, [name] came to my home and spoke to me in a serious tone that according to the instructions from the senior level, the Falun Gong

practice was banned I asked him for reason and he told me that he himself didn't understand why. All the people in the village knew that in the past the government had supported this practice and many people had their illness cured through the practice of Falun Gong. It not only saved the medical cost for people but also made them physically fit. It was something positive both for the country and for the people. At that time there were a very large population who practiced Falun Gong. It was estimated that the total number was about 60 to 70 million at that time. So this practice had saved so much medical cost for the country during the period of that time. It also contributed to the improvement of the social morality in the whole country. Just give a thought to what is confronting us now in social value of this country! The rampant corruption, debauchery, official embezzlement, first-degree crime and etc are taking root in China. The security is getting worse and worse under the rule of CCP in China The ordinary people are living a hard life sometime beyond description. What all the ordinary people need is only a good environment to carry on their lives and to live a peaceful and warm family life.

I couldn't accept the fact that Falun Gong practice was banned. The CCP must have got it wrong. How could the government blame a practice that offers benefits to physical health and encourages practitioners to be a good person? Then I just remembered that I am a CCP member. According to the party rule, all the members must obey the order of the Party. So many people came to my home at night to do the practice and to learn Falun Dafa. They did it in a very careful and discreet way for fear that the authority might be aware of this. I was worried at that time. If the authority did find this, we would be detained or arrested. However I had been practicing Falun Gong for many years. A true Falun Gong believer must not give up this practice. My fellow practitioners asked me "Did the central government get it wrong? How could we practitioners become the members of evil cult?"

I couldn't answer their questions. I just comforted them to do their own practice. As we committed no crime, we had nothing to fear. I didn't see the point that the authority would deal with us.

It was a very cold day in [date]. At about [time] PM several persons raided our home. They were the village party [title and name] and [title and name], who led three policemen. They detained all the people who were at my home for learning session. Altogether we were [number] persons. We were taken to the police station. The police chief spoke to me that the police and the village committee had kept watch on my home for quite some time. Falun Gong had been banned, but we just disobeyed the order to continue the practice. I was warned that I was a CCP member and must obey the Party order. I must not to be involved in evil cult activities any more and must gave the authority the guarantee that we would give up this practice.

I was told that due to the fact all the people were from the same village, each of us was fined [number] yuan as the mitigated punishment and would be released to home. I strongly opposed this treatment of our practitioners and held my views. My husband also persuaded me to write the letter of guarantee to promise my give-up of practice. He spoke to me if I continued to practice, it would bring the disaster to our family.

The police was furious at my non-cooperative attitude. I was hung up without food or water. The police beat me with their baton. I was tortured this way for [number] nights and days. In the end, the police still wasn't able to bring me into line. Finally the police decided to send me to labour camp. My husband was frightened at this possibility and he used the family saving with some borrowing to put together [number] yuan for the police fine without talking to me. He handed the money to the police station and took me home, My relatives and good friends all advised me to

stop my practice and to give up my fight against the government as it would be futile. For the sake of our family and our child, I had to suspend my practice.

The injustice of groundless smears and accusation against Falun Gong would be remembered in history. All the people with conscience should not sit and watch without doing anything in front of this crime. There would be a day that people would stand up for Falun Dafa. The truth would eventually be known to all the people in the world. The justice would be done to Falun Dafa.

With so much troubles, my husband and I finally came to Australia, a civilised country. Here I saw the hope and freedom. I am impressed by the warm-hearted Australian people who extend a helping hand to me so that I could do my practice here without fear.

Further Evidence submitted to the Tribunal

The applicant submitted additional evidence to the Tribunal, including 2 statements from people in Australia with whom she has practiced Falun Gong, photos of her practicing Falun Gong and protesting against the treatment of Falun Gong practitioners in China.

Hearing

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. The applicant's evidence was consistent with the details in the statement set out above.

The applicant told the Tribunal that she fears returning to China because she is a Falun Gong practitioner. The applicant's evidence was, on the whole, consistent with her statement as set out above and she gave detailed evidence about her knowledge and understanding of Falun Gong.

The applicant was aware Li Hongzhi founded Falun Gong and demonstrated a detailed knowledge of its history and philosophy. The applicant indicated she has studied Zhuan Falun and demonstrated an understanding of its contents. She demonstrated an understanding of what was contained in the opening statement. The applicant correctly named the exercises and stated that she practises them daily. She correctly demonstrated the first exercise and detailed the significance of each movement to the Tribunal, including being aware of the verses recited. The applicant demonstrated a detailed knowledge and understanding of the Falun.

The applicant gave a consistent history of the banning of Falun Gong in China. The applicant confirmed she was told about the ban by a Party Official of the village and was arrested at her home for practising Falun Gong. She confirmed that she was released after a few days with the payment of money. She continued to practice in China and moved from location to location.

The applicant told the Tribunal that she has practised publicly since arriving in Australia at two locations. She has attended numerous demonstrations about the treatment of Falun Gong practitioners in China and has submitted some photos from a couple of them.

Independent Evidence

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).

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).

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.

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

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

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’).

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).

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

The Tribunal found the applicant to be a credible witness. Her account of how she became involved in practising Falun Gong and the benefits she believes she 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 and the Tribunal accepts that she is a genuine Falun Gong practitioner. The applicant has produced evidence from other Falun Gong practitioners in Australia to verify that she is a genuine Falun Gong practitioner.

The Tribunal accepts that the applicant commenced her practice of Falun Gong in the mid 1990s for its health benefits. The Tribunal accepts that the applicant has been practising and studying Falun Gong on a regular basis since that time. The Tribunal accepts her evidence that she was detained for a few days and continued to practice privately afterwards. The Tribunal accepts the applicant's evidence that she will continue to practice Falun Gong if she were to return to China.

The Tribunal accepts the applicant's evidence that she has continued to practice Falun Gong daily since arriving in Australia. The applicant has submitted evidence from other Falun Gong practitioners in Australia confirming that she has practised Falun Gong at two sites. 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 her claims to be a refugee.

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'). 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 detect her practice of Falun Gong and she would be detained and tortured for reasons of her 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 her life or liberty or significant physical harassment or ill-treatment. The Tribunal is of the view that the applicant's religion, that is her belief in Falun Gong, is the essential and significant reason for the persecution which she 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).

For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reason of her religion if she returns to China now or in the reasonably

foreseeable future. The Tribunal finds that the applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the Government of the People's Republic of China. There is no material which indicates the applicant has a legally enforceable right to enter and reside in any country other than her country of nationality, the People's Republic of China. The applicant is also outside her country of nationality.

CONCLUSIONS

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.

No specific claims were made by or on behalf of the other applicant. However, the Tribunal is satisfied that he is the spouse of the first named applicant for the purposes of s.36(2)(b)(i). The fate of the other applicant's application therefore depends upon the outcome of the first named applicant's application. He will be entitled to a protection visa provided he satisfies the criterion set out in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the spouse of the first named applicant.

<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. PRDRSC</p>
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