

**1105918 [2011] RRTA 932 (4 November 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1105918

**DIAC REFERENCE(S):** CLF2011/41482

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

**TRIBUNAL MEMBER:** Denis O'Brien

**DATE:** 4 November 2011

**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), first arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2008. She applied to the Department of Immigration and Citizenship for the visa [in] March 2011. The delegate decided to refuse to grant the visa [in] May 2011 and notified the applicant of the decision.
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 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).
4. The applicant applied to the Tribunal [in] June 2011 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 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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. Secondly, 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, if the 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 unable to be controlled 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 (see *Chan* per McHugh J at 430; *Applicant A* per Brennan CJ at 233, McHugh J at 258).
14. Persecution also 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.
15. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified 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. Fourthly, 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 he or she has genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded when 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
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.
20. The applicant appeared before the Tribunal [in] October 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

### **Protection visa application**

21. The applicant is [age deleted: s.431(2)]. She is single and is from Fuqing City, Fujian Province. Her father and mother and a younger sister and brother live in China. She gives her religion as Roman Catholic.
22. She arrived in Australia [in] January 2008 on a student visa and commenced her studies at [college deleted: s.431(2)], Melbourne. She lived in Melbourne from January 2008 to January 2011 and has lived in [Suburb 1] in Sydney since February 2011. Entries in her passport, a copy of which was supplied with her protection visa application, show the following movements:
  - Arrived in Australia [in] January 2008
  - Departed Australia [in] January 2009
  - Arrived in Australia [in] February 2009
  - Departed Australia [in] November 2009
  - Arrived in Australia [in] January 2010
  - Departed Australia [in] January 2011
  - Arrived in Australia [in] February 2011.
23. In the interview the delegate conducted with the applicant after she had lodged her protection visa application, the applicant said that her previous migration agent had put some false information in the application without her knowledge. In the delegate's decision, a copy of which the applicant supplied with her application for review, the

delegate summarised the remainder of the applicant's claims, along with the claims made in her testimony at interview, as follows:

She was born into the Roman Catholic faith and has attended the underground Catholic Church in China. She was baptised a Catholic in September 1990 and confirmed in August 2001. The applicant claims to have been a member of a secret underground youth group set up by two friends attending university in Fuqing. The applicant kept in contact with her friends while studying in Australia. She claims that while attending the secret youth group meetings she studied Catholicism. On her return trips to China the applicant claims to have brought back Catholic promotional material which she photocopied and gave to youth group members. On her last return to China the applicant participated in a 5 day retreat which began on [date] January 2011. On [date] February 2011 the applicant left for Australia via Baiyun airport without incident.

24. At the Tribunal hearing the Tribunal read this summary out to her and asked her to confirm that it constituted her corrected claims as made to the delegate. She said that it did.

### **Declaration dated [in] July 2011**

25. Prior to the Tribunal hearing the applicant supplied to the Tribunal a written declaration purporting to be a statutory declaration but not in the form of a statutory declaration and not made before any witness. The declaration reads as follows:

This statutory declaration provides additional information about why I fear harm if I was to return to China. I also write this statutory declaration to address some of the issues raised in the decision of Department of Immigration and Citizenship ("DIAC") on [date] May 2011.

#### *False claims in Protection visa application*

As I explained at my DIAC interview, my previous migration agent put some false information in my protection visa application without my knowledge. The information was incorrect and exaggerated. The migration agent did not go through the application with me and submitted information without my consent. I don't know why the migration agent did this.

I met with the migration agent three times. On the first time I told the migration agent my problems and the second one I was require to sign the application and handed in the application to the immigration and the migration agent arranged for a third meeting. On the third meeting, migration agent he said he provided additional information for me, and required me to sign the application without reading it. The migration agent said he was very busy, I had assumed that the application was correct.

After I had left the migration agent's office I read the statement, which was in Chinese. I realised that it was for the main part incorrect. I told [Priest A] of [Church 2] that the statement was incorrect. He arranged for me to meet with a migration lawyer called [Ms B].

I told [Ms B] that my statement was incorrect, but only had the Chinese language version of my statement, and I did not have any other documents from migration agent, which [Ms B] could not read. [Ms B] rang my migration agent while I was with her and asked my migration agent to fax through the statement. I signed a

consent form given to me by [Ms B]. I believe that this was so that the documents could be sent to her.

She received the documents while I was there. We went through the statement as best we could without an interpreter. As I do not speak good English and [Ms B] did not speak mandarin it was difficult. Once I pointed out the problems, I understood that [Ms B] wanted me to tell the DIAC officer that parts of the statement was incorrect.

[Priest A] attended the interview with the DIAC officer and pointed out to me afterwards several problems with the interpreter.

#### *February 2011 Raid*

In the DIAC interview, I was very nervous because I was trying to correct the errors in my statement. My migration agent did not attend the interview. Because of this, I forgot to mention an event which happened on [date] February 2011. On this day, 8 members of my youth group arrested by the Fuqing Police while they were at a religious gathering at a church member's house. Two members were detained for two weeks.

Although I was in china at the time, I did not attend that youth group activity on that day, I was attending another church activity. However, I provide some religious materials for that gathering.

As a result of this raid, my father feared for my safety and arranged for me to leave china for Australia. My father knew I was a member of the youth group and I had been bringing the materials back from Australia and gave it to my friends.

After I arrived back in Australia, I rang a friend of mine who was also a member of youth group. We worked together before, and I gave her the religious materials. My friend told me the police confiscated the religious materials that I had provided in that gathering and youth group schedules. My friend said the police was interested in the religious materials as it was from Australia and through investigation, they found that I had brought the material from Australia.

#### *June 2011 Raid*

After the DIAC interview, I was informed by my family by telephone that on [date] June 2011, a mass was held at my family's home and around 30 people participated. The mass started at 9 o'clock and the church members attended gradually. The doors of my home were left open to welcome all the church members. Some people were praying and reading the rosary, some were preparing for the confession.

While they were waiting for the priest, 6 polices officers came and raid the house. Several members escaped through the back door and the others were arrested by the police. My mother was taken by the police and detained.

The police searched the house and found and took away various religious materials and related documents. Some church members who were arrested were interrogated by the police. My mother was detained for 2 weeks and interrogated.

My father was working in [town] at the time when my mother was arrested, so he was unaware of her arrest. Another church member rang my father and told him

that my mother had been detained. My father then returned as soon as possible and attended the police station.

My father was required by the police to pay a fine of 5000 Yuan. He was not issued with any receipt. When my mother was released, the police warned my parents to stop attending religious gatherings otherwise they would be subject to further arrest and detention.

During the interrogation, my mother was not allowed to sleep; they were in a long war. She told my father this and he told me. My mother's health deteriorated while she was detained and my father was concerned for her health. She is now taking medication and is recovering.

Through the interrogation, the police also found out that I used to be the leader of the youth group and still play an active role in the underground church. The police had seized youth group schedules from my parents' house which showed my name as a leader. My mother did not say anything.

I fear that my parents will continue to be subjected to arrest and detention because of their faith. They have an obligation to their faith and the church to continue to help promote the catholic faith and are not able to comply with the threats and warning of the police.

My church had existed for a long period of time before it was targeted. It is not clear as to how or why the police decided to or were able to target our group as we are always very careful to avoid attracting police attention. However, I believe that the targeting with continue because of the events that took place at my house and the information gathered by the police.

### *Religious Beliefs*

I am genuine Christian and a member of the underground Catholic Church in China. At my DIAC interview, the interpreter was not familiar with a lot if religious terms and some interpretations were not clear. Frequently was not able to understand the questions given by the DIAC officer because of the poor interpretation.

I am a devoted catholic and have been attending church since I was a child. I was baptized on [date] September 1990. I have my baptism certificate and confirmation certificates which I annex it to this statement. I did not bring them to the DIAC interview.

I attend church regularly and participate actively in youth group gatherings. Before I came to Australia to study I was also the leader of my youth group. Whenever I returned to China I would help organize gatherings and talk to church members about upcoming events such as visiting the orphanage and nursing homes. I pray at home every day.

When I arrived in Australia I lived in Melbourne and attended [Church 3] in [suburb], Victoria. Fortnightly on Wednesday I would also attend choir practice at some choir members home. I annex a statutory declaration of [Ms C], who I met at [Church 3].

I then moved while in Melbourne and started attending [Church 4] in Melbourne city. I only attended Mass on Sundays as far from where I was living. Because

[Church 4] was close to my school. I would attend after class or when I had spare time in order to pray.

In Sydney I started to attend [Church 2] I now attend [Church 5] in [Suburb 1]. I attend [Church 5] for Sunday Mass. On Wednesday nights I attend [Church 5] church for prayer and Mass. I try to attend at other times I can do so. On Friday nights I attend the [church] in [suburb].

On [date], June, 2011 I took part in the Walk with Christ, which is a walk from St Patrick' s church to St Mary' s church in the city. There were many people who participated in this activity. Through the procession of the Blessed Sacrament, It enriched my spirit and strength my faith.

#### *Visits to China*

I had not experienced any problems with bringing religious materials back to china from Australia.

However, after the February raid the police became aware that I was bringing religious promotional material back to china. I believe if I was to return to China now, I will be arrested and detained by the police because of this.

#### *Delay in lodging protection visa*

I did not consider applying for protection until members of my youth group were arrested.

I initially came to Australia to study and planned to return to China after my graduation. In December 2010, after my graduation, I bought a one way ticket to China. I did not plan to return to Australia. However, events that happened in 2011 force me to flee China and seek protection in Australia. I now know my life and liberty is at risk because of the information the police gained about me from my mother and other church members.

I make this declaration, all the statements contained in this declaration to be true in every particular.

26. The statutory declaration of [Ms C] annexed to the applicant's declaration stated that [Ms C] was the convenor of one of the choirs at the parish of [Church 3], [suburb deleted: s.431(2)], Victoria, that the applicant had lived in the parish from January 2008 to January 2009, that she had attended Mass there and was a member of the choir before she moved to [suburb deleted: s.431(2)] and that she had frequently spoken to [Ms C] about having attended Mass at [Church 4] in the city.
27. In replying to the Tribunal's invitation to attend a hearing of the Tribunal, the applicant forwarded a letter dated [in] August 2011 from the parish priest of [Church 5], [Suburb 1], saying that the applicant regularly attended 8 am Sunday Mass and the Wednesday Novena and Mass and that she had been living in the parish for almost 7 months.

#### **Tribunal hearing**

28. At the Tribunal hearing the applicant handed up:
  - Bundle of photographs mainly showing the applicant's participation in various Catholic church events in Sydney;



- Original baptism and confirmation certificates (in Mandarin);
  - Certificate (in Mandarin) given by the office of the Archbishop of Fuzhou Archdiocese [in] September 2011 certifying, amongst other things, that the applicant is a member of the Archdiocese;
  - Testimonium, dated [in] September 2011 and written mainly in Latin, of baptismal records of the Archdiocese of Fuzhou relating to the baptism of the applicant. The Testimonium appears to be signed, in shaky handwriting, by “Episcopus [ie, Bishop] [name]”. The testimonium is on letterhead bearing the following (in Italian) “Il Vescovo [ie, Bishop] della Diocesi di Mindong”.
29. The Tribunal asked the applicant what some of her early memories were of growing up in the Catholic faith. She replied that she still remembers her siblings and her joining their parents for religious activities. Very often they had to get up at 3 or 4am to go to a house of one of the believers, sometimes for Mass and at other times to recite the rosary and pray. The applicant described the latter activities as “Tongong” She said that Tongong would be held if there was no Mass. Mass was not always available because the numbers of clergy were limited. The applicant wondered as a child why they had to get up so early and act so secretively to attend the devotions. Later, as she grew up, she attended by herself. The Tribunal asked her whether she ever attended Mass at a church. She replied that the church was the group of believers and recited the words of Jesus Christ: “Where 2 or 3 gather in my name, I am with you.”
  30. The Tribunal asked her where she had obtained the baptism and confirmation certificates annexed to her statement [in] July 2011. She said that the current priest in her area, [name deleted: s.431(2)], had supplied them. It was his signature that appeared in the second last panel on both of the documents, with the date on which he signed them appearing on the last panel. The applicant said that she was not in contact with the priest. She had asked her mother to contact others in the group who knew how to contact [name deleted: s.431(2)]. For security reasons there were only a few people to whom the priest’s contact details were known.
  31. Asked why she had not produced these documents to the Department, the applicant said that she did not know she had to supply them. She handed to the Tribunal the originals of the documents.
  32. The Tribunal asked her to tell it about her confirmation ceremony. She said that she was confirmed [in] August 2001. There were various candidates for confirmation. Representing parents led the way. The priest used holy oil to make a cross on the applicant’s forehead, touched her face with his hand and then prayed, calling down on her graces from God. The applicant was given the name of “[name]”. One of the faithful from the group, [name deleted: s.431(2)], was the applicant’s sponsor. The priest who performed the ceremony was [name deleted: s.431(2)]. His name appears on the third last panel of the certificate.
  33. Asked the meaning of confirmation, the applicant said that through confirmation she became a witness and soldier of Jesus Christ and would not betray Him no matter what difficulties she faced. Her preparation for confirmation included learning the essential principles of the ceremony. Making her confession was also part of the preparation. She

had made her First Confession when she was about 8 and it was after her First Confession that she received the Eucharist for the first time.

34. Asked what was meant by the gifts of the Holy Spirit, the applicant struggled to answer but said that one of them was Wisdom and that there were 7 gifts.
35. The Tribunal asked the applicant why it should believe anything in her statement [in] July 2011 given that she now said that what was in her first statement was mostly untrue. She replied that she had sworn before God to tell the Tribunal the truth. Her first statement had been organised by her former agent and she had signed without reading it. The Tribunal put to her that it was finding it hard to accept the credibility of her account that the agent made up most of what was in her previous statement, given that each paragraph of the statement was written in both English and Mandarin and she had signed the foot of each page. She replied that she went to see the agent 3 times and on the second occasion he asked her to sign a statement he had prepared following her first visit. She did that but later he called and asked her to come into the office to re-sign. When she came in he said he was very busy and asked her to re-sign without giving her an opportunity to read the document. She did that. The Tribunal said that surely she would have read some of the document, especially as what was written was also written in Mandarin. She replied that there was no time. She understood that what she was now saying to the Tribunal was hard to believe but that was what happened. She did not see the agent sign the document and was not sure if he had signed in advance of her or afterwards.
36. As to her latest statement, the applicant said that she wrote it herself. She typed it up in English and had someone go through it and check the English.
37. The Tribunal referred her to that statement and asked her to recount what happened in February 2011. She said that [in] February members of her youth group were at a Bible sharing party at [Mr D]'s house when the police broke in. This was a newly established group in Fuqing City. [Mr D] goes by the nickname within the group of "[name]" The youth group operates in such a way that different groups within the group conduct gatherings, inviting newcomers to attend and, in this way, more believers are attracted. Because the applicant was studying in Australia, when she returned to China, she used to help with the organization of groups and the planning of venues.
38. The Tribunal pointed out to her that the movement records indicated that she had arrived back in China only a few weeks before the incident [in] February. She replied that, when she returned, she contacted her friends in the group and started resuming activities with the group, such as activities that were easy to fit in like visiting the elderly.
39. [In] February 2011 she was not with those of the group who were at [Mr D]'s house but was instead was attending a different group activity where a benediction service was being conducted.
40. The Tribunal asked her how her name could have been connected with the gathering at [Mr D]'s house. She said that she had supplied various materials which she had brought with her from Australia that were being used at the gathering. These materials were found by the police. One of the materials was a journal in Mandarin produced in Melbourne called "Voice of Our Lady ("Yongyuan") of Perpetual Help". After the

police questioned members of the youth group, they found out that the applicant had supplied this publication. The applicant's father later found out that the police had made this connection and he rang the applicant, who by then had returned to Australia, to tell her.

41. The Tribunal asked the applicant to tell it what happened in June 2011 following her return to Australia. She said that [in] June 2011, after she had returned to Australia, a Mass was due to be held at 9 am at her parents' house. About 30 of the church members were in attendance, some praying the rosary and some preparing for confession, Confession was normally offered by the priest after Mass was over. The priest had not yet arrived. Those present were all gathered in the family living room on the ground floor. Suddenly someone saw 6 police arriving and those present tried to flee. Many managed to escape out the back door. However, the applicant's mother was arrested.
42. The Tribunal asked the applicant how she knew about this incident. She said that shortly after the incident she had rung home and her father told her that he had learned that her mother was being held at the police station. The Tribunal queried why her father would not have immediately rung the applicant himself after this incident. The applicant replied that her father was afraid and did not want the applicant to worry. The Tribunal asked the applicant what happened to her mother at the police station. The applicant became emotional as she replied that her father later told her that her mother had told him that she was mentally tortured at the police station by not being allowed to sleep, by having limits placed on when she could go to the toilet and by being monitored by a male guard when she did go to the toilet.
43. The Tribunal said that what it was having difficulty understanding was how this incident raised any danger for the applicant, given that she was in Australia at the time. She replied that, when the police raided the house, they found a schedule of the applicant's youth group planned activities which had the applicant's name on it. The schedule showed such things as planned visits to orphanages and other activities of this kind. The police showed this schedule to the applicant's mother and accused the applicant of being an active church member.
44. The applicant said that, when she had returned to China in January, it was her intention to remain in China. She intended to share with her youth group members the religious freedom she had experienced in Australia. However, when she left China in a hurry in January, she had forgotten to delete this material.
45. In reply to the Tribunal's question as to what were some of the things that distinguished the Catholic Church from other Christian churches, the applicant said that the Catholic Church was the church established by Jesus Christ and inherited from the apostles. The Pope was the rock on which Christ established the church.
46. In reply to the Tribunal's question as to what the rosary was, the applicant drew from her hand bag a set of rosary beads and said that the rosary was a prayer to the Holy Mother which focussed on the life of Jesus Christ. She said that there were 5 joyful, 5 sorrowful and 5 glorious mysteries of the rosary. In response to the Tribunal's question whether she could recite the "Hail Mary", the applicant did so.

47. The Tribunal asked her what the sacrament of Confession involved. She replied that it involved recollecting one's sins, expressing remorse for them and promising to change. It involved the priest forgiving you your sins.
48. The Tribunal asked the applicant whether she was aware of Pope Benedict's encyclical letter to the Catholic Church in China. She said that she was. The Tribunal asked what the theme of the encyclical was. She replied that it expressed hope that the registered Catholic Church in China and the underground church could become united. The Tribunal asked her why, in light of the Pope's letter, she could not practise her religion in the registered church. She replied that any unification of the registered and unregistered church in China could only be on the basis of unification under the authority of the Pope in Rome. He was the leader of the underground church. For the registered church, the leadership was the Communist Party of China. The underground church had been inherited from the apostles. Believers could not find salvation for their souls in the registered church. Jesus Christ had warned that His followers would be attacked but believers could not step back because of this.
49. The Tribunal put to the applicant that country of origin information suggested that authorities in Fujian Province tolerated underground church activities and that this information might cast doubt on evidence she had given about raids by the PSB on underground church activities involving the applicant's youth group and her family. The applicant responded that her personal experience contradicted this country information. She queried how it was, if freedom existed, that she could not have regular Mass, that believers could not choose the time and venue for their gatherings, that regulations prohibited persons under 18 from participating in religious affairs on their own and that a priest could not wear his robe in public.
50. The Tribunal said to the applicant that s.91R(3) of the Act required it, in assessing her claim to be a refugee, to disregard conduct engaged in by her in Australia, such as attending church activities, unless the Tribunal was satisfied that she had engaged in the conduct otherwise than for the purpose of strengthening her claim to be a refugee. The Tribunal asked her why she had engaged in church activities in Australia. She replied that a responsible Catholic had to fulfil their obligations as a Catholic and that the Third Commandment required service to be given to the Lord. She said that serving the Lord was also a joyful thing for her to do and it was a normal thing for her to do here in Australia where she was on her own and practise of her religion comforted her. The sacrifice of Our Lord on the Cross would be wasted if she practised her religion merely as a means of strengthening her refugee claim.
51. She showed the Tribunal her name tag as member of the [church deleted: s.431(2)] Prayer Group, which was a prayer group in [suburb deleted: s.431(2)] she attended once a week.
52. The Tribunal asked the applicant about the document she had supplied in Mandarin certifying her as a member of the Fuzhou Archdiocese. She said that the document stated that she was a member of the church and that it had been signed by a church administrative officer because there had been no bishop there for some time following the death of the previous bishop. As to the testimonium signed by the bishop of the diocese of Mindong, she said that this document too stated that she was a member of the church. It had been signed by the bishop of Mindong in the absence of a bishop in

Fuzhou. The document recorded her village as [village deleted: s.431(2)] because that was where her family lived when she was a child.

53. The Tribunal said to the applicant that overall it might have difficulty believing her claims to have fear of returning to China because of the delay in the making of her protection visa application. She replied that her original purpose in coming to Australia was to study. She did not at that time give any thought to making a refugee claim, and had in her mind an image that refugee status was relevant to people in Africa affected by war. Her intention was only to finish her studies and return to China, the country she loved. She had not at that time had any direct experience of government persecution in China. It was only after the events in February and June 2011 that she realised the seriousness of her situation and that the suffering of her mother had been sent to test both her mother and herself. It was God's will that she seek protection.
54. The Tribunal again raised with her that the circumstance that she had changed her story might lead it to doubt the story she was now telling. She responded that she had sworn before Almighty God to tell the truth. It would have been an option for her to stick with her original story but Jesus Christ had told Christians that they must tell the truth and she was not willing to sacrifice her soul by not doing so.

## **Country of origin information**

### ***State-sanctioned and underground Catholicism***

55. The 2010 US Department of State *International Religious Freedom Report* states that:

The constitution states that Chinese citizens "enjoy freedom of religious belief." It also bans the state, public organizations, and individuals from compelling citizens to believe in, or not believe in, any religion. The constitution and laws protect "normal" religious activities," which are overseen by the five (Buddhist, Taoist, Muslim, Catholic, and Protestant) state-sanctioned "patriotic religious associations." By law only they may register religious groups and places of worship. Chinese Communist Party (CCP) members are discouraged from participating in religious activities. The government permits proselytizing in registered places of worship and in private settings. Proselytizing in public, unregistered places of worship, or by foreigners is not permitted. Some religious or spiritual groups are outlawed, including the Falun Gong. Other religious groups, such as Protestant "house churches" or Catholics loyal to the Vatican, are not outlawed, but are not permitted to openly hold religious services unless they affiliate with a patriotic religious association. In some parts of the country, authorities have charged religious believers unaffiliated with a patriotic religious association with "illegal religious activities" or "disrupting social stability." Punishments for these charges range from fines to imprisonment.<sup>1</sup>

56. Chinese Catholicism – state-sanctioned and underground – is generally more conservative than in other parts of the world, having largely bypassed the reforms of the Second Vatican Council of 1963-4, which modernised Catholicism. The conservative nature of Chinese Catholicism derives from the counter-Reformation version of Catholicism that Jesuit missionaries brought to China in the late 16<sup>th</sup> century, which emphasised the contrasts between it and Protestantism.<sup>2</sup> Notwithstanding this, there is

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<sup>1</sup> US Department of State 2010, *International Religious Freedom Report for 2010 – China (includes Tibet, Hong Kong, Macau)*

<sup>2</sup> Madsen, R. 2003, 'Catholic Revival During the Reform Era', *The China Quarterly*, vol. 174, p. 476-7

little definitive information available on the beliefs and practices of the official Catholic Church, and even less definitive information on those of the underground Catholic Church in China. Furthermore, on doctrinal matters, there appears to be little difference between the two churches and it is difficult to distinguish members of the underground and open churches solely on the basis of their practices and rituals<sup>3</sup>

57. In terms of the broader Catholic community in China, practising Chinese Catholics would normally be exposed to the Catholic practices of baptism and communion. Baptism is seen as important for Chinese Catholics, and they believe that only baptised Catholics can go to heaven. In areas where there is a shortage of priests, parents or grandparents are known to conduct a *provisional baptism* (daixi) for newborn infants by pouring water over the child's head and uttering the ritual formula "I baptise thee in the name of the Father, the Son, and the Holy Ghost".<sup>4</sup> When a priest becomes available, the child will be formally baptised. There are no standardised baptismal certificates issued within underground Catholic churches, nor are certificates issued as a matter of course. Such certificates might be an informal, hand-drawn document written in Chinese.<sup>5</sup>
58. The three most popular devotions in mainland China are to the Sacred Heart of Jesus, Our Lady, and St. Joseph.<sup>6</sup> Devotions can be understood as external practices of piety that are not part of the official liturgy of the Catholic Church but are part of the popular spiritual practices of Catholics. Of these three, devotions to Our Lady (Blessed Virgin/Mary) figure prominently in Chinese Catholic practice. Marian apparitions play an important part in the Chinese Catholic spiritual imagination and in many Catholic homes portraits of Mary as a brown-haired European woman dressed in blue can be found. Because Catholic doctrine teaches that Mary acts as a direct intermediary between the adherent and God, for many Chinese Catholics, Marian devotion provides a legitimate way to circumvent the politics surrounding the breach between the official and underground churches.<sup>7</sup> In addition to the above traditional devotions, which are part of the core identity of Chinese Catholics, most Chinese Catholics pray the Holy Rosary daily.<sup>8</sup> In particular, reciting the Rosary is central to Marian devotion; one colloquial name for Catholics in the countryside of north China is *Old Rosary Sayers*<sup>9</sup>
59. The Government's reaction to the existence of unregistered churches varies. There are some areas where, if an illegal (unregistered) Catholic Church is established, the local

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<sup>3</sup> Madsen, R. 1998, *China's Catholics: Tragedy and Hope in an Emerging Civil Society*, University of California Press, Berkeley and Los Angeles, pp. 86-7.

<sup>4</sup> Madsen, R. 1998, *China's Catholics: Tragedy and Hope in an Emerging Civil Society*, University of California Press, Berkeley and Los Angeles, pp. 54-56, 86-88.

<sup>5</sup> Immigration and Refugee Board of Canada 2004, *CHN42650.E – China: Whether underground Catholic Churches issue baptismal certificates; if so, in what language*, 8 June [http://www.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=416315](http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=416315) – Accessed 1 August 2008

<sup>6</sup> Clark, A.E., 2006, 'Two Chinese Churches? Or One? An Interview with Fr. Daniel Cerezo, Comboni Missionaries of the Heart of Jesus', Ignatius Insight website, June [http://www.ignatiusinsight.com/features2006/aclark\\_chinesechurch\\_jun06.asp](http://www.ignatiusinsight.com/features2006/aclark_chinesechurch_jun06.asp) – Accessed 1 September 2009

<sup>7</sup> Madsen, R. 1998, *China's Catholics: Tragedy and Hope in an Emerging Civil Society*, University of California Press, Berkeley and Los Angeles, p. 88

<sup>8</sup> Clark, A.E., 2006, 'Two Chinese Churches? Or One? An Interview with Fr. Daniel Cerezo, Comboni Missionaries of the Heart of Jesus', Ignatius Insight website, June [http://www.ignatiusinsight.com/features2006/aclark\\_chinesechurch\\_jun06.asp](http://www.ignatiusinsight.com/features2006/aclark_chinesechurch_jun06.asp) – Accessed 1 September 2009

<sup>9</sup> Madsen, R. 1998, *China's Catholics: Tragedy and Hope in an Emerging Civil Society*, University of California Press, Berkeley and Los Angeles, p. 90

officials immediately destroy the building, disband the community, issue fines or place people under detention. In other areas there are prominent unregistered Catholic churches that are simply ignored by officials and are allowed to exist as a parish without interference. In urban settings, however, the Chinese Government is less willing to tolerate religious activity that openly contradicts Party lines.<sup>10</sup>

60. The Chinese Constitution states that Chinese citizens “enjoy freedom of religious belief” It also bans the state, public organisations, and individuals from compelling citizens to believe in, or not to believe in, any religion. The Constitution and laws protect only “normal religious activities” that are overseen by the five state-sanctioned PRAs and officials have wide latitude to interpret the phrase *normal religious activities*. By law only the PRAs may register religious groups and places of worship. The Government permits proselytising in registered places of worship and in private settings, but does not permit it in public, in unregistered places of worship, or by foreigners.
61. The Chinese Government and Communist Party continue to affirm basic policies of control over religious practice. In both 2009 and 2010, authorities softened some rhetoric toward religion by articulating a positive role for religious communities in China, but used this sentiment to bolster support for state economic and social goals. At the same time, officials and central government directives continued to warn against foreign groups “using religion” to “interfere” in China’s affairs and “sabotage” the country.<sup>11</sup>
62. In 2010, officials in some parts of China charged religious believers who were unaffiliated with a PRA with *illegal religious activities* or *disrupting social stability*. Punishments for these charges range from fines to imprisonment. There are also reports that, in some locations, “local authorities... pressured unregistered Catholic priests and believers to renounce ordinations approved by the Holy See”.<sup>12</sup> While no detail on the punishments for non-compliance are provided in the US Department of State 2010 *International Religious Freedom Report*, similar incidents occurred in 2009 and punishments for non-compliance included fines, job loss, detentions, and having their children barred from school.<sup>13</sup> Ongoing harassment of unregistered bishops and priests was reported in 2010, including government surveillance and repeated short detentions and some unofficial Catholic clergy remained in detention, in particular in Hebei Province, traditionally home to many unregistered Catholics.<sup>14</sup>
63. According to a 2006 Human Rights Watch report on religion in China, the key to avoiding arrest is discretion. As long as meetings of Catholic congregants remain small,

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<sup>10</sup> Clark, A.E., 2006, ‘Two Chinese Churches? Or One? An Interview with Fr. Daniel Cerezo, Comboni Missionaries of the Heart of Jesus’, Ignatius Insight website, June  
[http://www.ignatiusinsight.com/features2006/aclark\\_chinesechurch\\_jun06.asp](http://www.ignatiusinsight.com/features2006/aclark_chinesechurch_jun06.asp) – Accessed 1 September 2009

<sup>11</sup> US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p.15  
<http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf> – Accessed 2 November 2009 US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October

<http://www.cecc.gov/pages/annualRpt/annualRpt10/CECCannRpt2010.pdf> - Accessed 28 October 2010

<sup>12</sup> US Department of State 2010, ‘Legal/Policy Framework’, *International Religious Freedom Report 2010: China*, 17 November

<sup>13</sup> US Department of State 2009, ‘Abuses of Religious Freedom’ *International Religious Freedom Report 2009: China*, 26 July

<sup>14</sup> US Department of State 2010, ‘Abuses of Religious Freedom’, *International Religious Freedom Report 2010: China*, 17 November

discreet and apolitical, “officials often turned a blind eye” The report further noted that detentions followed the celebration of masses that attracted large numbers for public celebration of important Catholic feast days and during pastoral retreats”.<sup>15</sup> The attitude of local officials is also a key determinant of the ability of underground Catholics to practice their faith. Britt Towery, a Southern Baptist missionary who spent over 40 years in Taiwan, Hong Kong and China, observed in 2000 that harassment is rarely part of a nationwide policy but “local in nature”, usually implemented by “an uninformed cadre or someone with a grudge against someone in the group” Similarly, in 2006 Tony Lambert, Director of China Research at the Protestant Christian missionary organisation OMF International and author of several books on Christianity in China, noted that where local cadres remain tethered to a Maoist outlook, officialdom is obstructive and churches are almost always refused planning permission. In such cases little can be done, as appeals to the distant central government are usually ineffective.<sup>16</sup>

### *Treatment of practitioners in Fujian*

64. In Fujian province, as in the rest of China, there is an official Catholic Church (the CPA), which owes its allegiance to the Chinese Communist Party; as well as an underground Catholic Church which maintains its allegiance to the Vatican. Estimates of the number of Catholics in Fujian vary between 200,000<sup>17</sup> and 400,000.<sup>18</sup> Fujian is generally regarded as one of the areas of China that has applied regulations on religion more liberally than others, but police and local officials have arrested underground Catholic priests and, although not recently, police and officials have arrested parishioners and demolished churches<sup>19</sup> Chinese authorities appoint bishops to dioceses in Fujian without the approval of the Vatican, and there are allegations that local authorities take action against underground Catholics to serve the interests of local officials.<sup>20</sup>
65. A September 2005 *Gospel Post* report claims that in Fujian, as in other provinces, it is the local authorities and not the central government who have been responsible for implementing official policy on religion. At that time, local officials reportedly “enjoy wide latitude” in acting against underground church groups, and “anecdotal accounts suggest[ed] that local authorities... [had] perpetrated religious freedom violations to serve the financial and political interests of local officials”.<sup>21</sup>

<sup>15</sup> China: A Year After New Regulations, Religious Rights Still Restricted  
Citation: Human Rights Watch 2006, ‘China: A Year After New Regulations, Religious Rights Still Restricted’, 1 March [http://hrw.org/english/docs/2006/03/01/china12740\\_txt.htm](http://hrw.org/english/docs/2006/03/01/china12740_txt.htm) - Accessed 17 March 2006

<sup>16</sup> Lambert, T. 2006, *China’s Christian Millions*, Monarch Books, Oxford, pp .82-84 .

<sup>17</sup> Lambert, T. 2006, *China’s Christian Millions*, Monarch Books, Oxford, p 241 .

<sup>18</sup> ‘China’ 2010, Operation World website, 15 January <http://www.operationworld.org/country/china/owtext.html> – Accessed 11 May 2010

<sup>19</sup> For example, see: ‘Another underground priest arrested in Fujian’ 2010, *Asia News*, 24 March <http://www.asianews.it/news-en/Another-underground-priest-arrested-in-Fujian-17965.html#> – Accessed 20 April 2010 ‘Church destroyed in Fujian, another to follow shortly’ 2006, *Asia News*, 4 September <http://www.asianews.it/index.php?l=en&art=7112#> – Accessed 21 April 2010

<sup>20</sup> Hornemann, M. 2005, ‘China: Is central or local government responsible for religious freedom violations’, *The Gospel Post*, 5 September <http://www.gospelpost.com/article/editorial/246/section/china.is.central.or.local.government.responsible.for.religious.freedom.violations/1.htm> – Accessed 21 October 2005

<sup>21</sup> Hornemann, M. 2005, ‘China: Is central or local government responsible for religious freedom violations’, *The Gospel Post*, 5 September



66. A 24 March 2010 article on the Catholic news website *Asia News IT* reports the arrest of Friar Liu Maochun, an underground Catholic priest from the diocese of Mindong in Fujian, for being involved in the organisation of a camp for university students. Another priest involved in the camp, Friar John Baptist Luo Wen, is reported to have previously been arrested and released after 15 days imprisonment. The article further notes that two other priests involved in the camp “received a notice of detention and expect to be taken into custody in the near future”.<sup>22</sup>
67. An August 2005 report from *BBC News* describes the death at the age of 88 of Xie Shinguang, the bishop of the diocese of Mindong in Fujian. He had served four separate prison terms during his life, totalling 28 years, and “according to the Vatican was kept under surveillance by the authorities until his death”. His diocese was said to number 75,000 followers.<sup>23</sup>
68. In July 2005, *Asia News IT* reported the arrest of Friar Lin Daixian, “an underground Roman Catholic priest belonging to the Pingtan parish of the Fuzhou diocese (Fujian)”, along with a seminarian and nine parishioners. The arrests took place during a Mass at a private home, and parishioners were reportedly severely beaten by police while trying to prevent the arrest of Friar Lin.<sup>24</sup>
69. An Immigration and Refugee Board of Canada (IRB) response to an information request dated 7 September 2005 comments on the situation of Catholics in Fujian province, reporting the arrest of underground Catholic clergy in Changle in 2003 and parishioners attending catechism classes in 2002. The IRB response draws on information from the Cardinal Fung Foundation, an advocate for the unofficial Catholic Church in China:
- Human Rights in China (HRIC) commented in 4 August 2005 correspondence to the Research Directorate that the treatment of Christians is poor in southern China, particularly in the rural areas, though the organisation could not elaborate, citing a lack of available information. In 2002, the Cardinal Kung Foundation reported that unregistered Catholics were arrested while attending catechism classes in Fujian (n.d.). In 2003, a group of seminarians in Changle, near Fuzhou, were also arrested while reading the book containing the day’s service during a picnic (Cardinal Kung Foundation n.d.).<sup>25</sup>
70. The 2005 IRB report also cites a 2005 report from the Executive Secretary of the Hong Kong Christian Council, which states that “reports had been received of a few arrests of Catholic priests in the years 2003 to 2005, but overall most Christians in Fujian – Protestant and Catholic – were able to practise their faith according to their conscience”.<sup>26</sup>

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<http://www.gospelpost.com/article/editorial/246/section/china.is.central.or.local.government.responsible.for.religious.freedom.violations/1.htm> – Accessed 21 October 2005

<sup>22</sup> ‘Another underground priest arrested in Fujian’ 2010, *Asia News*, 24 March <http://www.asianews.it/news-en/Another-underground-priest-arrested-in-Fujian-17965.html#> – Accessed 20 April 2010

<sup>23</sup> ‘Underground Chinese bishop dies’ 2005, *BBC News*, 28 August

<sup>24</sup> ‘Underground priest arrested in Fujian; parishioners beaten and wounded’ 2005, *Asia News*, 29 July <http://www.asianews.it/index.php?l=en&art=3816#> – Accessed 21 April 2010

<sup>25</sup> Immigration and Refugee Board of Canada 2005, *CHN100386.E – China: Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong (2001-2005)*, 7 September (REFINFO)

<sup>26</sup> Immigration and Refugee Board of Canada 2005, *CHN100386.E – China: Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong (2001-2005)*, 7 September (REFINFO)

71. In May 2005 the United States Commission on International Religious Freedom reported that “[c]lergy in Hebei, Fujian, and Heilongjiang provinces were harassed, detained and arrested during the past year”. The report also noted that in 2004-05, nationally there were at least 20 Catholic bishops or priests under arrest, imprisoned or detained.<sup>27</sup>
72. A July 2002 report from *Agence France-Presse* states that “thirty Roman Catholic worshippers, including 25 children, were detained for holding an illegal summer vacation church service in southeastern China’s Fujian province”.<sup>28</sup>
73. An article sourced from the *Miami Herald*, dated 14 January 2007, claims that the Chinese Communist party has “partially relaxed its grip on religious activity” and that in Nanping, in Fujian, “religion thrives”. The article also indicates that in Nanping “[a] state-controlled Catholic Church draws new members, as does a parallel but underground Catholic Church that’s loyal to the Vatican”.<sup>29</sup>
74. A May 2006 report from *The Times* notes the installation of a Catholic bishop in “Mindong diocese in southeastern Fujian province, where the Catholic Church is particularly strong but where most of the faithful are members of an underground church loyal to Rome” The appointment was controversial “because it was sanctioned by China’s state approved church but...[had] not been blessed” by the Pope.<sup>30</sup> A May 2006 report by the Catholic news website *Asia News IT* comments on the installation of the new bishop: “yesterday’s gesture reflects the intention of the Patriotic Association (PA) to reaffirm its power over the official Church, filling vacant Episcopal offices in China with personnel it can trust”. The new bishop, Zhan Silu, was “recognised neither by the Vatican nor by the faithful of Mindong” and his masses had been “deserted by the faithful” and were attended only by “a few of his relatives and the odd PA employee”. The installation was also characterised as “an attempt to stand in the way of the choice made by the Vatican for another candidate” who was “a bishop of the underground church” and “much loved and respected”.<sup>31</sup>

## FINDINGS AND REASONS

75. The applicant travelled to Australia on what appears to be a valid PRC passport and claims to be a citizen of the PRC. The Tribunal finds that she is a citizen of the PRC and has assessed her claims against that country as her country of nationality.
76. The applicant claims to fear persecution in China for reasons of her religion as a practitioner in the underground Catholic Church.
77. The applicant has given two fundamentally contradictory accounts of events in China which led to the making of her protection visa application. The first account was given

<sup>27</sup> United States Commission on International Religious Freedom 2005, *Annual Report of the United States Commission on International Religious Freedom*, May  
<http://www.uscirf.gov/countries/publications/currentreport/2005annualRpt.pdf#page=1> – Accessed 20 October 2005, p.58

<sup>28</sup> ‘30 Catholics in southeastern China detained for underground services’ 2002, *Agence France-Presse*, 21 July

<sup>29</sup> Johnson, T. 2007, ‘In China, Christianity rises again; RELIGION’, *The Miami Herald*, 14 January

<sup>30</sup> Macartney, J. 2006 ‘China provokes Pope by naming bishop without Vatican’s blessing; Factbox’, *The Times*, 15 May

<sup>31</sup> ‘Monsignor Zhan Silu installs himself as bishop and condemns himself to isolation’ 2006, *Asia News*, 15 May, <http://www.asianews.it/view.php?l=en&art=6168> – Accessed 15 June 2006

in her statutory declaration dated [in] April 2011 and prepared on her behalf by her former migration agent. The second account was given in her declaration dated [in] July 2011 made after the date of the decision made by the delegate. She had in the interview with the delegate told the delegate that most of what was written in the earlier statement was untrue.

78. Her later statement [in] July 2011 included a description of an event which occurred [in] June 2011 after her interview with the delegate. That statement also referred to an event [in] February 2011 which had occurred before her interview with the delegate but which she said she had omitted to tell the delegate because of her nervousness before the delegate in trying to correct the errors in her previous statement.
79. The Tribunal has significant misgivings about the explanations the applicant has given for her contradictory written statements and for her omission to tell the delegate about the event [in] February 2011. As the Tribunal put to her at the hearing, it is difficult to understand how she could not have noticed that the document she signed on her third attendance at the agent's office was not correct, despite the explanation she gave as to the hurried circumstances in which she signed the document. She frankly said to the Tribunal that she appreciated that this was hard to understand, though what she was saying was correct. It is also difficult to understand how the applicant could have omitted to tell the delegate about the incident [in] February 2011 that caused her to return to Australia to seek protection, although it does seem that she was concerned and nervous before the delegate because of the need she felt to retract the untrue parts of her story. It is possible in these circumstances that she may genuinely have omitted to mention this incident.
80. Another aspect of the applicant's claims that raises the issue whether she has a well-founded fear of persecution is that she at no time claims to have suffered serious harm at the hands of the Chinese authorities for reasons of her religion. Her fears are based, first, on her claim that a gathering of the youth group which she did not attend was raided by the police [in] February 2011, that certain members of the group were detained as a result and that the police associated her with certain religious material which she had brought back from Australia and which the police found during the raid. Her fears secondly derive from an incident [in] June 2011 when a gathering of believers for Mass at her parents' home was raided by the police, her mother was taken away, detained, ill-treated and warned about attending religious gatherings and the police associated the applicant with her youth group through schedules of youth group activities they seized at the house. If the applicant has not herself suffered serious harm in the past at the hands of the authorities for reasons of her religion, the question arises whether she has genuine fear founded upon a real chance of persecution in the future (*MIEA v Guo* (1997) 191 CLR 559 at 574-5).
81. The Tribunal has weighed all the above considerations in making its assessment.
82. The Tribunal has also weighed the evidence the applicant gave at the hearing about her practice of the Catholic faith in China and the evidence she gave demonstrating her knowledge of her religion and its practices. Her evidence in this regard was impressive and detailed. She was particularly impressive in describing her confirmation ceremony and in the knowledge she displayed of what was involved in the sacrament of confession and of what the rosary entailed. Her producing at the hearing of a set of rosary beads when explaining the rosary to the Tribunal seemed to be impromptu. She

referred at times to teachings from the New Testament (“Where 2 or 3 gather in my name, I am with you”; Peter as the rock on which Christ established His church). The evidence she gave about these matters is indicative of a person who is committed to her faith and who has been practicing for a long time. It would seem to be impossible for the applicant to have gained in Australia the knowledge and understanding of the Catholic religion she displayed merely for the purpose of making a refugee claim. Furthermore, the baptism and confirmation certificates she produced at the hearing seemed to be genuine and the form of the testimonium, written as it was mainly in Latin and Italian, testifying to the applicant’s baptism according to the archdiocesan records also suggest that it is a genuine document.

83. On the basis of all this evidence the Tribunal accepts that the applicant is a member of the ‘underground’ or unregistered Catholic Church in China. Given the level of detail that the applicant was able to provide about her faith, the Tribunal is further satisfied for the purposes of subsection 91R(3) of the Act that she has attended church services and other church activities in Australia otherwise than for the purpose of strengthening her claim to be a refugee within the meaning of the Convention.
84. Whilst the country of origin information referred to above suggests that the authorities in Fujian take a liberal approach to the underground Catholic Church, the Tribunal accepts that, as the country information also suggests, there are occasional crackdowns by the local authorities on unregistered Catholic churches in Fujian. The Tribunal further accepts that there may be heightened risk for a person who is associated with the bringing into China of foreign material to promote unregistered religion.
85. Since the Tribunal accepts that the applicant was a member of the ‘underground’ or unregistered Catholic Church in China and that she actively practices her religion, it accepts that she would wish to continue to practice her religion in that church if she were to return to China now or in the reasonably foreseeable future. The Tribunal accepts that, despite the degree of tolerance exercised by the authorities in Fujian towards the ‘underground’ or unregistered Catholic Church, there have been incidents in which members of that church have been arrested, detained and physically mistreated when carrying out ordinary religious activities. The Tribunal therefore accepts that, if the applicant returns to Fujian now or in the reasonably foreseeable future, there is a real chance that she will be arrested, detained and physically mistreated as has happened to other members of the church in Fujian.
86. The Tribunal considers that the persecution which the applicant fears involves “serious harm” as required by paragraph 91R(1)(b) of the Act in that it involves a threat to her liberty and significant physical harassment or ill-treatment. The Tribunal also considers that her religion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a). The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves the selective harassment for a Convention reason, namely, her religion. Since the Chinese Government is responsible for the persecution which the applicant fears (and since, as referred to above, Fujian is reputed to be one of the provinces in China that has applied regulations on religion more liberally), the Tribunal considers that there is no part of China to which the applicant could reasonably be expected to relocate where she would be safe from the persecution which she fears.

## **CONCLUSIONS**

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

## **DECISION**

88. 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.