

1110882 [2012] RRTA 223 (4 April 2012)

DECISION RECORD

RRT CASE NUMBER:	1110882
DIAC REFERENCE:	CLF2011/118252
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Suseela Durvasula
DATE:	4 April 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration 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), applied to the Department of Immigration for the visa [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2011.
3. The delegate refused to grant the visa [in] September 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Departmental and Tribunal files relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision.
20. The applicant is a Chinese national from Gansu Province, aged in her early twenties.
21. The applicant arrived in Australia [in] November 2006 on a Subclass 571 student visa. This visa ceased [in] July 2007 and she was granted another Subclass 571 student visa on the same day. The applicant departed Australia [in] June 2008 and returned [in] July 2008. Her student visa ceased [in] March 2009. She was granted another Subclass 571 student visa [in] April 2009, which ceased [in] August 2009.
22. The applicant applied for another student visa [in] August 2009 and was granted a Bridging A visa on the basis of this application. Her student visa was refused by the Department [in] October 2009 and she sought review at the Migration Review Tribunal (MRT). [In] June 2011 the MRT affirmed the decision to refuse the applicant a student visa. The applicant's Bridging A visa ceased [in] November 2009.
23. The applicant was granted a Bridging B visa [in] November 2009 which ceased [in] July 2011. She departed Australia [in] November 2009 and returned [in] January 2010. She applied for a protection visa [in] July 2011.

Protection visa application

24. In her protection visa application the applicant provides the following information:
 - she was born in [Town 1], Gansu Province;
 - she is single;
 - her religion is Catholic;
 - her parents live in China;
 - she lived at the same address in [Town 1] from at least July 2001 to November 2006;
 - she completed primary school and middle school in [Town 1]; and
 - she studied in Australia from December 2006 until July 2011.
25. In her protection visa application the applicant states that she applied for a student visa [in] August 2009. [In] October 2009 the visa was refused and the refusal was affirmed by the Migration Review Tribunal [in] June 2011. She wanted to continue studying in Australia and intended to seek judicial review. She was advised she would not be successful with judicial review.
26. She cannot return to China as she would be arrested by the Public Security Bureau (PSB) and would be subjected to persecution by the Chinese government.
27. Before she came to Australia in November 2006 she joined the Roman Catholic Underground Church in China and became a Catholic.
28. At high school, she had a close friend and classmate, [Ms A]. [Ms A's] grandmother, [Ms B], was a devout Catholic. The applicant spent time at [Ms A's] home and was influenced by her grandmother's Catholic beliefs.
29. In July 2005 the applicant followed [Ms A] to a secret training class organised by the underground church. The teacher was [Ms C] who was a nun of the underground church. [Ms C] pretended to run an English class but they actually studied Catholicism. [Father D] of the underground church also gave them some lectures.
30. The applicant was baptised in December 2005. The applicant and other members of the secret training class became members of a secret youth group of the underground church. The group leader was [Ms E]. She organised secret meetings on the weekends. The applicant's parents were unaware of these meetings. The applicant told them she was attending English classes or meeting friends.
31. Not long after her arrival in Australia in November 2006 she started attending the Roman Catholic Church.
32. Her home town of [Town 1] is in an area where there are very few Catholics or Christians. The development of the underground church is relatively slow and did not come to the attention of the local government for quite a long time.
33. The applicant returned to China in June 2008. She took back some Catholic materials published overseas to support the development of the underground church in [Town 1]. She also met her friend [Ms A].

34. She returned to China a second time in November 2009 and took further overseas Catholic materials to the underground church. She again met [Ms A] in Beijing. They discussed a plan on how to make more Catholic materials available to the underground church.
35. [Ms A] obtained a job at the International Department of the Post Office in December 2010 and mainly dealt with international mails and parcels. The applicant began to send Catholic materials according to the names and addresses provided by [Ms A]. The applicant sent the materials 4 times until May 2011.
36. [In] June 2011 [Ms C] and [Father D] organised a new secret training class in the applicant's home town of [Town 1]. They were discovered by the PSB and all 7 participants were arrested by the police. [Ms A], [Ms E] and more underground church members were arrested [in] June 2011.
37. [In] June 2011 the applicant's parents were interrogated by the PSB. The police told her parents that the arrested people had confessed that the applicant was actively involved in the Catholic church and had sent illegal Catholic materials from overseas to China. The police warned the applicant's parents that she would be big trouble if she failed to stop sending illegal overseas materials. Her parents were interrogated a further two times and her home in [Town 1] was searched by the police.
38. The applicant claims she will be immediately arrested by the PSB on her return and will be subjected to persecution by the Chinese government.

Supporting documents

39. With her application, the applicant provided the following documents:
 - A letter from Father [name deleted: s.431(2)] from the Chinese Catholic [Community], dated [September] 2011, confirming the applicant's church attendance every Sunday at [Church 2] since arriving in Sydney in December 2006;
 - A letter from [name deleted: s.431(2)], [of the Catholic] Chinese Community at the church in [Suburb 3], confirming the applicant's church attendance at a church in [Suburb 3] and [Suburb 4]. This person claims to have known the applicant since December 2006 and states she is a devout Catholic;
 - A letter from [name deleted: s.431(2)], president of the [Catholic] Chinese Community, stating that applicant attends mass every Sunday and Bible study every Friday; and
 - A letter from [name deleted: s.431(2)], [Suburb 3] Chinese Catholic Church Leader, stating that the applicant has been a member of the church at [Suburb 3] since 2006.

Departmental interview

40. The applicant was interviewed by the delegate [in] September 2011. Relevant evidence provided at that interview is set out below.
41. The applicant was baptised [in] December 2005 in China. She described the baptism ceremony and the significance of baptism. She was introduced to Catholicism through her friend's grandmother. She had a headache and her friend's grandmother cured it through

prayer and touching sacred water. She was curious to know more. The applicant described her understanding of Christian beliefs.

42. The applicant was asked what distinguishes Catholicism from other types of Christianity. She stated that Jesus had passed on from generation to generation. Christianity is a break away denomination in the mid chapter of the century. The Catholic denomination can share the Bible with other Christian denominations but we cannot quote directly from the Bible. The applicant was asked about the Eucharist and the Sacraments.
43. The applicant was asked about her church activities in China. At her youth groups in China they shared the Bible, the rosary and mass every one or two months. There was no particular church. They mainly had gatherings at people's homes. She attended church once every one or two months. Later in the interview the applicant stated that she attended her Catholic youth group activities for 2 hours every Sunday.
44. The applicant was asked several questions as to when she first started attending church. She could not give a specific date and she later stated that it was 25 December 2005, the date she was baptised. She did not have a particular role in the church.
45. The applicant was asked how she practices her religion. Every day at home she reads and recites the rosary and recites the kindness and wording of Jesus's teaching. She has her own Bible and reads it at home. She shares her understanding with her other practitioners. When reading the Bible she reads the 'quote of the day' She later qualified that the quotes are not from the Bible, but from booklets issued by the church. At church they read only certain passages from the Bible selected by the church.
46. The applicant described her church activities in Australia. The church she attends in [Suburb 4] is the 'Enlightening' church. She does not know the address but she knows how to get there. It is near the train station. The church in [Suburb 2] is named after a saint but she does not remember the name of the church. It is located at [address deleted: s. 431(2)].
47. She has been attending both churches since December 2006. She discovered the [Suburb 4] by herself and the [Suburb 3] church through a fellow Catholic, [name deleted: s.431(2)]. She explained why she considered herself to be a devout Catholic and why she attends church.
48. Her family in China are not religious. She did not have a religion before she became Catholic. She did not tell her parents that she joined the Catholic church. She later stated that her parents knew she attended the Catholic church when they were last summoned by the Chinese police for an interview.
49. If she returns to China she will be arrested and will be in danger. The police summoned her parents and told her that they would arrest her. The police told them they had gathered some evidence against her. She sent some material back to China.
50. The applicant was asked about the materials she sent to China. She stated that she sent some guidelines for prayers which included sensitive material about the differences between the Catholic church and the Patriotic Church and about abortion. She put herself at risk by sending the books back to China as the Catholic Church in China is still very backward and her Catholic fellows are in need of materials.

51. She sent the material four times through a souvenir gift shop. They sent the materials on her behalf after she paid them. She sent the materials in January 2011, March 2011, April 2011 and May 2011.
52. The applicant was asked why she only decided to send the materials after 4 ½ years in Australia. She stated that she always planned to do it but did not do so for safety's sake. The first time she went back to China she met her good friend who told her they badly needed Catholic materials. After her friend graduated and started working for the Chinese post office in the international mail section, she told the applicant it was safe to send material via mail. The applicant sent the material to different addresses her friend gave her. The applicant did not know whose addresses they were. The addresses were not the same each time. Her friend checked that it was safe for her send the materials.
53. She does not know why her parents were summoned to the police station. The police told her parents they had enough evidence against her, but she does not know what this evidence was. Her parents contacted a cousin who worked in the police department. Her cousin told her parents that some nuns in her area were arrested. The applicant was asked how the arrest of the nuns would have been linked to her, given that no one knew she was attending a Catholic church. She stated that her good friend was also arrested.
54. The applicant was asked about her two trips back to China. In 2008 she returned to China to see her good friend and to take certain material with her. She attended mass there. She took a New Testament Bible and 3 Catholic Weekly newspapers. She left the newspapers in China. She took these materials as they were lacking in religious materials in her area.
55. In 2009 she returned to China as her mother was sick. She also went to Beijing and discussed with her friend the safest way to send back materials. Her friend was attending school in Beijing. They thought it was too dangerous to send material by post or by the internet. They finally came up with a plan to send the materials with old clothes. She has no evidence that she sent the parcels. She moved houses a few times and she does not have the receipts.
56. The applicant was asked about the arrest of her friends. She does not know why they were arrested. When she was in China they had all previously attended prayer meetings and Catholic youth groups. She does not know how this arrest was linked to her. The police just told her parents they had evidence against her. Maybe someone doxed her in.
57. She took the risk of sending the materials as she wanted her friends in China to get more material about the Catholic church.
58. She has never encountered any problems entering or departing China.
59. She fears she will be arrested if she returns to China. Her friends (a friend and a priest) have not yet been released after being arrested. Her parents told her not to go home. She thinks her friend will make a confession and disclose her activities.

Tribunal hearing

60. The applicant appeared before the Tribunal [in] March 2012 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 was represented in relation to the review by her registered migration agent. The applicant presented her passport at the hearing.

Fear of persecution

61. The Tribunal asked the applicant why she could not return to China and what she feared would happen if she returned. The applicant stated that she had sent some documents back to China and her parents told her not to return. They were called for an interview by the PSB. She will be arrested if she returns for reasons of her religious activities.

Activities in China

62. The applicant stated that she became a Catholic in May or June 2005. Her good friend's grandmother influenced her. Catholics are different from other people. The applicant had a headache and her friend's grandmother prayed for her. She served her holy water for her and she felt better.
63. She started attending secret religious training classes in July/August 2005 during the school holidays. She attended every day from 1pm to 3pm. After September 2005 when school started, she attended 1pm to 3pm on Sundays. About 12 people attended and the classes were held at a church friend's home. She attended the classes until December 2005.
64. At the classes a nun taught them about the Ten Commandments, the 'meaning of Catholic', 'the four rules', how to pray, how to read the rosary, the seven holy events that happened to Jesus and some hymns.
65. The Tribunal asked the applicant if she had any problems from the authorities when she was attending the religious training class. She stated they did not as they pretended it was an English training class. When asked how they did this, she stated that the nun who took the class understood English and gave her some material. When asked if she could be more specific, the applicant stated that they spoke English in class and had homework. The Tribunal put to the applicant its concerns that she could not be more specific about how they kept the classes secret. The applicant stated that they were learning English. They closed the windows while singing and nothing happened.
66. The applicant's parents are not religious. She did not tell them she was attending religious training classes. She tried to tell her mother that she was friends with a Catholic girl but her mother became very angry and said 'your father will disown you' The applicant lives in an isolated area where party members do not believe in God. If she is connected with these religious people it will be very dangerous. When asked why it would be dangerous she stated that government will persecute people who are religious and are from the underground church.
67. The applicant stated that after she was baptised in December 2005, she attended underground church meetings until just before she came to Australia in November 2006. The Tribunal asked her to provide details about these meetings. She stated that she attended a secret youth underground training class arranged by a nun called [Ms E]. The meetings were held in a church friend's home every Sunday afternoon from 1pm to 3pm. About 16 young, unmarried people attended. The location varied. At the meetings they shared the Bible and read the rosary. They discussed 'about something we did not quite understand' and sang hymns. The Tribunal put to the applicant its concerns that she could not provide more details about what happened at the underground church meetings, given that she had attended them for almost a year. The applicant repeated that they shared the Bible, read the rosary and prayed.

68. The Tribunal asked the applicant to provide more information on where the underground church meetings were held. She stated that when one class finished they would be notified where the next meeting took place. The applicant stated that her area is a poor area and is different from a coastal area. It is quite behind in the religious area. There are more Buddhists and Muslims and not many Catholics. The development of the church was very slow. The Tribunal put to the applicant that she still had not answered the question about where the meetings were held and how they were arranged. The applicant stated that they went to a youth group and the houses varied.
69. The applicant stated that her underground church group did not have any problems with the authorities. They did not have any problems until members were arrested in June 2011. The Tribunal put to the applicant that it did not seem credible that she was able to attend the underground church for almost a year without any difficulties, given her earlier evidence that it was very dangerous to practice in the underground church in her town. It did not seem credible that her church friends were only arrested in June 2011 and did not have problems with the authorities before this. The applicant stated that they were very careful by changing venues.
70. The applicant did not attend the registered church in China. She knew nothing about the registered church in China. She just followed her friend. After she came to Australia she learned that the registered churches are controlled by authorities. They do not believe in the Pope. They manage their internal affairs. They nominate their own Fathers. She got to know this when she accessed the internet in Australia.

Coming to Australia

71. The applicant came to Australia for study. After she came to Australia she realised that the religious life in Australia cannot compare to the religious life in China. The first time she went to church in Australia she was really moved. In China they were doing things secretly. They would not dare to sing out loud. They cannot read Bible and do it openly. In Australia religion is free and she can express herself.
72. She started attending church in Australia since December 2006. She found the [Suburb 4] church by herself as it is obvious from the train station. When attending a mass in [Suburb 4] she met someone who wanted her to join the church choir in [Suburb 3]. She joined the [Suburb 3] church about two weeks later. When asked the name of the church in [Suburb 3], she stated they just call it the '[Suburb 3] church'. It is called 'Saint something' but she cannot remember the name. The Tribunal put to the applicant its concerns that the applicant could not remember the name of a church she claims to have been attending for 5 years. The applicant stated that they just call it the '[Suburb 3] church'. The church in [Suburb 4] is called [Church 2].
73. When asked why she attends two churches the applicant stated that she would like to attend many churches. As a Catholic follower the belief is for life.
74. The applicant stated that she returned to China in June 2008 to visit her mother and her friend for the summer holidays. She took some religious materials to her friend in the underground church. She was aware that World Youth Day was held in Sydney from 15 to 20 July 2008. She was in China at the time and did not return to Sydney for the event. The Tribunal asked the applicant why she was not present in Sydney for this important event in the Catholic church, particularly when the Pope was visiting Sydney. The applicant stated that she had

been in Sydney since December 2006 and her parents wanted her to return. She felt it was a great pity and regrets missing out on World Youth Day. The Tribunal put to the applicant its concerns that she did not return to Sydney for World Youth Day. The Tribunal put to her that this casts doubt on her claims that she is a devout Catholic who had been regularly attending church in Australia since 2006. The applicant had no comment on this issue.

75. The Tribunal put to the applicant that it would have to disregard her conduct in attending church in Australia if it was satisfied that she had engaged in this conduct solely for the purpose of strengthening her refugee claims. The Tribunal put to the applicant that if it did not accept that she attended church in China, if it did not accept she had been attending church since 2006, and if it had concerns about her credibility, it may find that she had attended church in Australia solely for the purpose of strengthening her refugee claims.
76. The applicant responded that her purpose in coming to Australia was to study. She wanted to pursue her case with her student visa. She started attending church when she first came. It had nothing to do with student visa being rejected. Before [June] 2011 when her parents were interviewed she had always wanted to return to China. Now she has no other options.
77. The Tribunal put to the applicant that her evidence that before [June] 2011, she was willing to return to China, appeared to contradict her claim that she had engaged in risky activities (attending the underground church and sending back illegal religious material). It suggested that her fear of persecution was not well-founded. The applicant commented that the [June] 2011 incident (when her parents were interrogated by the PSB) was serious and had an impact on her parents. Her parents' telephone was monitored. They rang her to say it was dangerous to return home. They lost their jobs.

Taking materials back to China

78. The Tribunal asked the applicant what materials she personally took back to China. In 2008 she took back a bilingual New Testament Bible in English and Chinese and three *Catholic Weekly* newspapers. She left them with her friend's grandmother. She took the material back as her friend wanted to get a Bible and it was very hard in China. Catholic materials like Bibles are very scarce. She wanted to share information about the Catholic religion.
79. In 2009 she took two *Catholic weekly* newspapers and two brochures called 'Peaceful Pray' distributed monthly by the church. She also left these with her friend's grandmother.
80. When asked what happened to the materials the applicant stated she did not know what her friend did with materials. She just passed it on to other people to read. The Bible was left to read and share. The Tribunal put to the applicant its concerns that she did not take more interest find out what had happened to the material she had smuggled in at such personal risk to herself. The applicant stated that the purpose was for her to take those things for her friend to share and read. Every year they have church classes and a secret youth group. They don't have a Bible in English and they need an English Bible for study.
81. She did not have any problems taking back the material. Customs did not search her suitcase although they were conducting random searches. She prayed they would not search her bag and she was very worried about the danger.

Sending materials back to China

82. In relation to the material sent by post, this was sent in January, March, April and May 2011. She sent the material from a souvenir gift [shop] called [name deleted: s.431(2)] .
83. She sent back a church guide containing sensitive information on how to distinguish the Catholic church from other divisions, how to tell a genuine Catholic, and information on pregnancy terminations, birth control and suicide. She copied some parts of the book. Each time she sent back part of the book. The applicant showed the Tribunal the book she sent copies of. It was borrowed from a church friend called [name deleted: s.431(2)].
84. The Tribunal asked why the applicant only decided to send materials in 2011, given that she had been in Australia since 2006 and was aware that her area in China needed Catholic materials. The applicant stated that there was a shortage of new material in China. Her friend did not demand it from her. She decided to take it back myself. She wanted to send it back when she first got to Australia but it was too risky. She needed to devise a plan first with her friend. She discussed the plan with her friend during her visit in 2009.
85. The Tribunal put to the applicant that it was more of a risk for her to personally take material back in person in 2008 and 2009. The applicant stated that the material she took back in person was not sensitive information. She packed it carefully. The Tribunal put to her that this appeared to contradict her earlier claims that she was very worried about being discovered with the religious materials in her suitcase in 2008 and 2009. The applicant had no comment on this issue.
86. The Tribunal asked the applicant why she waited until 2011 to send the materials if she discussed the plan with her friend in 2009. This appears to have coincided with her student visa refusal in 2011. The applicant explained that in 2009 her friend was still at University. After she graduated she joined the international post office. The Tribunal asked the applicant how her friend would have known in 2009 that she was going to get a job at the post office two years later. The applicant explained that while she was at university her friend was aiming to work at the post office and had registered to do this job.
87. The Tribunal asked the applicant for more information about the 'plan' with her friend. The applicant stated that for material sent from overseas there was a post inspection section. Its job it was to check parcels. After her friend found a job in that division, they had a safe way of finding the materials sent from overseas. Her friend made sure the parcel was delivered successfully. Her friend would give her random addresses to send the parcels to. In her home town's local post office there were not many international parcels or mail. When her friend spotted the addresses she would pick them out and take the parcels and deliver them. The Tribunal asked the applicant who the friend delivered the parcels too. The applicant stated that she had no idea what happened. The Tribunal put the applicant its concerns that she had no knowledge of what happened to the parcels, despite her claim that she would face harm in China because she had sent this material. The applicant stated that her friend just collected the materials.
88. The applicant did not remember the addresses she used. They were addresses that did not exist. Her name was not on the parcel. The Tribunal put to the applicant that even if the parcels were opened, the applicant would not face harm as there was no way the parcels could be linked to her. The applicant had no comment on this issue.

Return trips to China and delay

89. The Tribunal put to the applicant that she made two trips to China without difficulty, despite her claim that she had taken sensitive religious material with her. The Tribunal put to her that this indicated that she was not of interest to authorities and her fear of persecution not well-founded.
90. The applicant responded that she was lucky those materials were not discovered. Her church friends and a nun were discovered in June 2011. The authorities spoke to her parents and told them she had been attending illegal church activities. People claimed she was the one who had sent the materials.

Arrests in China

91. The Tribunal asked the applicant for more information about the arrest of her friends in China in June 2011. The applicant stated that on 5 June 2011 her friend's boyfriend and 7 other people were arrested. She is not sure where they were when they were arrested and she does not know the circumstances of the arrest. She only found out from her parents afterwards. Her parents told her the Father and a nun were arrested. She has not tried to find out more about the arrest or the status of her friends from other church contacts in China. If she rings China now it would be very risky.
92. The Tribunal put to the applicant its concerns that her evidence about the arrest was very vague and that she had not made more efforts to find out what had happened to her friends given that it was the basis of her claim for fearing harm if she returned to China. The applicant stated that someone has named her as attending the underground church. She does not know who. When asked what evidence the police had against her, the applicant stated she does not know. If she keeps sending materials back her parents will get into trouble. She understands her friends were arrested while attending underground church activities but she does not know the details.

Witness Evidence and other documentary evidence

93. At the hearing the applicant provided photographs of her involvement in church activities in Australia; letters of support from church members [names deleted: s.431(2)], and reports about the situation of Christians in China.
94. The Tribunal took evidence from the following four witnesses who confirmed the applicant's church attendance in Australia:
 - [name deleted: s.431(2)] stated that has known the applicant since 2008 when he started to attend her church. She had told him she had been attending the church since 2006. When they pray she always participates.
 - [name deleted: s.431(2)] stated that she got to know the applicant at the end of 2006. The applicant attends the choir managed by her.
 - [name deleted: s.431(2)] stated that the applicant is a genuine Catholic. She has known the applicant since August 2007 where they both attend the [Suburb 3] church.

- [name deleted: s.431(2)] stated that she first met the applicant in 2008 at [Suburb 3] church. The applicant is an outstanding sister in the choir. She sings in English. The applicant told her that she attended the underground church in China.
95. The Tribunal put to the applicant that it would consider the supporting written and oral evidence from members of her church. The Tribunal put to the applicant that if it had concerns about the credibility of other aspects of her evidence (such the evidence of her underground church activities, sending materials back to China and when she started attending church in Australia), it may give little or no weight to this evidence. The witness evidence may not overcome the Tribunal's concerns about her other evidence. The applicant had no comments on this issue.
 96. The Tribunal asked the applicant if there was any other reason she feared harm of returning China. The applicant stated that she did not fear harm for any other reason. When asked if she had anything else to say, the applicant stated that she believes there were problems with the interpreter at the Departmental interview. She clarified that there were no problems with the interpreter at the hearing.

FINDINGS AND REASONS

97. The Tribunal accepts, based on a copy of the applicant's passport, that she is a national of China and has assessed her claims on that basis.
98. The applicant's claims may be summarised as follows: The applicant claims she will be persecuted if she returns to China as she is a practising Catholic who attended the underground Catholic church in China since 2005. She claims that she attended a secret training class in May or June 2005, that she was baptised in December 2005 and attended the underground church until she came to Australia in November 2006. She claims that after she came to Australia she started attending the church from December 2006. She claims that on return trips to China in 2008 and 2009 she took back religious materials for her friend in the underground church. She claims that in 2011 she sent back illegal religious materials to her friend on four occasions. She claims that her friends in the underground church were arrested in June 2011. She claims that her parents were interrogated by the PSB [in] June 2011. Her parents were told that the police had evidence against her. She claims that her parents have been subject to investigation by the police. The applicant claims that if she returned to China she would be arrested and detained because of her religious activities.
99. The Tribunal does not accept the applicant's claims for the reasons outlined below.

Claim of underground church attendance in China

100. Firstly, the Tribunal does not accept the applicant's claims that she attended the Catholic underground church in China between 2005 and 2006.
101. The Tribunal finds the applicant provided vague evidence about the 'secret' religious training classes she claims to have undertaken in 2005. She claims the classes were held in secret and were disguised as English classes. She was not able to provide any further details on how the classes were kept secret and hidden from the authorities, other than stating that they spoke in English, had homework and kept the windows closed. The Tribunal considers that if the applicant had been involved in such training classes at risk to her personal safety, she would

have been able to provide more details on how the classes were kept hidden from the authorities and how she kept her attendance at the classes hidden from her parents.

102. The Tribunal finds that the applicant's evidence about what happened at the underground church services she attended in China was vague and lacking in detail. She was unable to describe what happened at those gatherings other than stating that they read the Bible and the rosary, sang hymns and 'discussed something we did not quite understand' She was unable to describe what the discussions were about. She was unable to explain to the Tribunal where the church meetings were held and how they were arranged, other than stating that they went to a youth group and the houses varied. The Tribunal considers that if the applicant had been attending these meetings every week for almost a year, she would have been able to provide more information about what she actually did at these gatherings, where they were held and how they were arranged.
103. The Tribunal finds it is not credible that the applicant would have been able to attend underground church meetings and a secret training class for more than a year, without any difficulties from the authorities. The Tribunal has had regard to the applicant's evidence that they were careful and kept changing the venues. The Tribunal does not accept this explanation, given the applicant's own evidence that it was 'very dangerous' for people in her area to practice in the underground church and that the government persecuted church practitioners on regular basis. Given these circumstances, the Tribunal also finds it is not credible that the applicant's friends had been able to practice in the underground church without difficulty for several years and did not get arrested until June 2011.
104. For the reasons set out in the preceding 3 paragraphs, the Tribunal finds that the applicant's vague descriptions of her underground church attendance in China leads the Tribunal to doubt that she actually attended an underground Catholic church in China.

Claim of sending religious materials back to China

105. Secondly, the Tribunal does not accept the applicant's claims that she took religious material back to China on two occasions and that she sent illegal religious material to China on 4 occasions.
106. At the hearing, the applicant was unable to explain what her friend did with the religious material she took back with her to China, other than stating that she believed her friend passed it on to other people to read. The Tribunal considers that if the applicant had actually taken back religious material at great personal risk to herself as she claims, she would have had more of an interest in finding out how the material was used.
107. The Tribunal finds that the applicant's evidence on how and why she sent religious material back to China was vague and unconvincing. She claims that the parcels were sent to random addresses, but she cannot remember what addresses were used. She claims that her friends collected the parcels, but she had no idea of what happened to the parcels after this and where her friend took them or who she delivered them too. The applicant was unable to explain how the religious materials were used. The applicant was unable to explain how the parcels would have been linked to her, given that her name did not appear anywhere on the parcels.
108. Given the applicant's claimed concern about the shortage of religious material in her area and the fact that sending the illegal religious material forms a key part of her protection claims,

the Tribunal considers she would have demonstrated greater knowledge, and interest in, how the religious materials were sent and what her friend did with them.

109. The applicant only decided to send religious materials to China in 2011, despite the fact that she had been in Australia since 2006. She claims to have been actively attending the Catholic church since 2006 and was acutely aware that there was a shortage of Catholic materials in China, yet she took no steps to send this material back until 2011. Even after discussing a plan with her friend in 2009 it took her another two years to send the material back.
110. The Tribunal does not accept the applicant's explanation that it was too risky to send the materials back until she devised a plan with her friend and her friend had obtained a job in the post office. This explanation is contradicted by the applicant's own actions. The applicant returned to China in 2008 and 2009 and claims to have personally taken back religious materials at that time, which is a greater risk to her personal safety than sending materials by post. She states that the materials she took back were not sensitive, yet she had to pray that customs officials did not search her luggage and she was worried about the danger.
111. The Tribunal finds it is not credible that the applicant would have waited for 5 years to send religious material back to China, if she was actively involved in the underground church in China and had a genuine commitment to providing materials for the underground church. This factor, combined with the applicant's vague and unconvincing evidence as to how she sent the materials and what her friend did with them, leads the Tribunal to not accept the applicant's claims that she posted and personally took religious materials back to China.

Claimed arrest of underground church friends and interrogation of the applicant's parents

112. Thirdly, the Tribunal finds the applicant's evidence as to the circumstances of her friends' arrest and detention and the subsequent claimed interrogation of her parents to be vague and unconvincing. The applicant was unaware of the circumstances of her underground church friends' arrests or what happened to them afterwards. She had made no efforts to find out what had happened to her friends, despite her claim that their arrests were closely linked to her own claimed fear of persecution by the Chinese authorities. She was unable to provide any detailed information about what the PSB told her parents when they interrogated her. The applicant claimed the police told her parents they had evidence against her, but she was unable to describe what this evidence was, other than guessing that one of her friends may have revealed her involvement in the underground church.
113. The Tribunal does not accept the applicant's explanation that if she rang China now it would be too risky, given that she has already had contact with her parents who are in China. The Tribunal finds it is not credible that the Chinese authorities would have been interested in the applicant's attendance at an underground church in China from 5 years ago. The applicant was only able to provide limited information on how the arrest of her friends could be linked to her and how this would put her in danger if she returned to China.
114. Given the applicant's vague and unconvincing evidence about her underground church friends' arrest and the PSB's interrogation of her parents, the Tribunal does not accept that underground church members linked to the applicant were arrested and have revealed her activities. The Tribunal does not accept that the PSB has interrogated the applicant's parents about her claimed activities in the underground church.

Return trips to China

115. Fourthly, the Tribunal finds the applicant made two return trips to China to see her family in 2008 and 2009, as confirmed by her passport which she provided at the hearing. She had no difficulties during both trips, despite her claim that she had taken sensitive religious material with her and was previously involved in the underground Catholic church in China. The Tribunal has had regard to the applicant's explanation that in 2008 and 2009 no incident had occurred to her family as her parents were not questioned until June 2011. The applicant nevertheless claims to have been involved in the underground Catholic church in China, was aware of the risks of practising in an underground Catholic church and was apparently taking back 'illegal' religious materials to China which she claims put her at risk. She claims to have the profile of someone who would be of interest to the Chinese authorities. The Tribunal considers that had she actually been undertaking these activities, she would have been reluctant to return to China for fear of coming to the attention of the authorities. The return trips to China lead the Tribunal to doubt the applicant's claims that she had a well-founded fear of being persecuted.
116. Fifthly, at the hearing, the applicant told the Tribunal that she would have been willing to return to China before 10 June 2011. This evidence leads the Tribunal to not accept the applicant's claims that she was of interest to the Chinese authorities and had a well-founded fear of being persecuted because of her religion. The Tribunal has had regard to the applicant's explanation that the [June] 2011 incident was serious and had an impact on her parents. The applicant nevertheless claims to have been involved in the underground Catholic church in China and was aware of the risks of practising in an underground Catholic church. She had apparently sent illegal religious material back to China on 4 occasions and personally taken materials back to China on 2 occasions, which she claims put her at risk. The Tribunal considers that had she actually been undertaking these activities, she would have been reluctant to return to China even before her parents were questioned by the PSB. The applicant's evidence that she was willing to return to China before [June] 2011 contradicts her claim that she has a well-founded fear of persecution.

Church attendance in Australia

117. The Tribunal has had regard to the 4 letters of support from other church members provided with the protection visa application; the 3 letters of support from other church members provided to the Tribunal; the photographs of the applicant undertaking church activities; and the oral evidence of the 4 witnesses who attended the Tribunal hearing. The Tribunal accepts that the applicant demonstrated some knowledge and understanding of Catholic beliefs and practices at the Departmental interview and at the hearing. Based on this evidence, the Tribunal accepts that the applicant has attended church in Australia.
118. However, for the reasons set out below, the Tribunal does not accept that the applicant has attended church since her arrival in Australia in 2006.
119. Firstly, the applicant could not remember the name of the church she attends in [Suburb 3]. She could only remember that it was called 'Saint something' but she could not remember the full name. The Tribunal considers that if the applicant had been attending the church for 5 years, she would be able to remember its full name.
120. Secondly, the applicant did not stay in Australia for the World Youth Day event in July 2008, despite the fact that she was studying here at the time. She instead chose to return to China

and did not come back in time for the event. As put to the applicant at the hearing, this was a very important event for the Catholic church and an opportunity to be close to the Pope. The Tribunal considers that if the applicant had been a devout Catholic she would have made every effort to stay in Sydney for the World Youth Day event, or at least return from China earlier. At the hearing the applicant was unable to give the Tribunal a plausible explanation as to why she chose not to attend World Youth Day, other than stating that she regretted not being there. This casts doubt on the applicant's claims that she had been attending church since 2006 as she claims and that she has been a devout Catholic since 2005.

121. Thirdly, as stated above, the applicant claims she waited 5 years to send religious material back to China, despite also claiming to be actively involved in the church in Australia since 2006 and being acutely aware of the need to provide materials for the underground church in her area. Her claimed delay in sending back religious materials to China casts doubt on her evidence that she has been actively involved in the church in Australia since 2006.
122. The Tribunal has had regard to the written and oral evidence of the witnesses who claim that the applicant had been attending church since 2006 or that they had known the applicant at church since 2007 [name deleted: s.431(2)] or 2008 [name deleted: s.431(2)]. The Tribunal does not accept that this evidence in itself demonstrates that the applicant has regularly attended church since her arrival in Australia. Given the Tribunal's stated concerns about the credibility of the applicant's evidence, the Tribunal gives less weight to the evidence of the witnesses. This evidence does not overcome the Tribunal's concerns about the applicant's evidence about her church attendance and the other adverse findings about her credibility.
123. For these reasons, the Tribunal does not accept that the applicant has been attending church in Australia since 2006. The Tribunal considers that she started attending church at a later date in order to strengthen her refugee claims.

Overall credibility findings

124. Having regard to the findings and consideration of the evidence above, the Tribunal does not accept that the applicant has given a credible account of all aspects of her claims and does not accept that she is telling the truth about why she cannot return to China. The Tribunal finds she is not a credible witness.
125. For the reasons outlined above, the Tribunal does not accept that the applicant attended an underground Catholic church in China, was baptised in December 2005 and attended a secret training class in May or June 2005. The Tribunal does not accept that the applicant started attending church in Australia from December 2006. The Tribunal does not accept that the applicant took back religious materials for her friend in the underground church in China in 2008 and 2009. The Tribunal does not accept that she sent back illegal religious materials to her friend in China on four occasions. The Tribunal does not accept that her friends in the underground church were arrested in June 2011 or that her parents were interrogated by the PSB on 10 June 2011. The Tribunal does not accept that the police told her parents that they had evidence against her or that she would be arrested on her return.

Section 91R(3)

126. As stated above, the Tribunal has had regard to the oral and written evidence of the applicant and the other witnesses and accepts that the applicant has attended church in Australia. The Tribunal has had regard to the applicant's evidence that she came to Australia to study and

started attending church when she first came. However, the Tribunal has found that the applicant is not a credible witness and has not accepted her claims that she has been attending church since December 2006. The Tribunal considers that she started attending church at a later date in order to strengthen her refugee claims. Therefore, the Tribunal does not accept that the applicant attended church in Australia because she is a genuine committed Catholic.

127. Given these findings, the Tribunal finds that the applicant has attended church solely for the purpose of strengthening her claim to be a refugee. The applicant has not satisfied the Tribunal that she has engaged in her conduct in Australia in attending church, otherwise than for the purpose of strengthening her refugee claims. Therefore, the Tribunal is required to disregard her conduct engaged in Australia in accordance with subsection 91R(3) of the Act, for the purpose of determining whether the applicant has a well-founded fear of persecution for a Convention reason and is owed protection obligations under the Refugees Convention.

Future harm

128. In relation to the applicant's future conduct, the Tribunal does not accept that the applicant would practice Catholicism in an underground church on her return to China, as the Tribunal has not accepted that she was previously a genuine practitioner in China. The Tribunal does not accept that the applicant would be perceived as being a Catholic who practices in an underground church if she returned to China. The Tribunal does not accept that she would be involved in distributing religious material to underground church members if she returned to China. The Tribunal does not accept that the applicant will be arrested, detained or subject to further persecution because of her religion if she returned to China.
129. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution for reasons of her religion or any other Convention reason, now or in the reasonably foreseeable future, if she returns to China.

Complementary protection obligations

130. The Tribunal has also considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that she will suffer significant harm as defined in subsection 36(2A) of the Act. The Tribunal has had regard to the evidence and claims put forward by the applicant, including her church attendance in Australia. The Tribunal is not satisfied on the evidence, that such a risk exists for the applicant. The Tribunal does not accept that the applicant is a person to whom Australia has protection obligations under paragraph 36(2)(aa) of the Act.

CONCLUSIONS

131. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
132. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

133. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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