

**0903569 [2009] RRTA 712 (13 July 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0903569

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

**TRIBUNAL MEMBER:** Denis O'Brien

**DATE:** 13 July 2009

**PLACE OF DECISION:** Sydney

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of the Peoples Republic of China (PRC), arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter of the same date
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the 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 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
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.

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 files relating to the applicant's protection visa application. The Tribunal also has had regard to the material referred to in the delegate's decision relating to the applicant's protection visa application, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from Ms A, a nun who is described in a reference from Father B as Spiritual Director of Church Y in Sydney. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
21. The applicant was represented in relation to the review by her registered migration agent.

### **Application for protection visa**

22. The following details of the applicant and her written claims are contained in her protection visa application and in a statutory declaration lodged with the Department in connection with her application.
23. The applicant was born in Fujian Province, China.
24. Her parents are from two different religions. Her father is a traditional Buddhist and her mother is Roman Catholic.
25. The applicant was baptised secretly by her mother at the age of one. Her father was not aware of the baptism. She claims that both she and her mother belonged to an underground Catholic church loyal to the Vatican which was considered illegal by the Chinese authorities.
26. The applicant's mother told the applicant that the applicant was very sick after she was born but her father refused to take her to hospital because of his "feudal ideology of regarding baby girl as a minor". After her baptism she was healed and as she grew up her mother encouraged her to believe in God and she was brought up in the Catholic religion. Both she and her mother attended religious activities of the underground church on Sunday mornings without her father's knowledge. On the occasions when her father found out that she had been attending these activities he would lock her in her room and abuse her verbally. He would beat her mother.
27. Prior to her arrival in Australia both she and her mother attended a catechesis class which had been organised by the church in the village. On the seventh day of study, a group of police officers entered the premises. They said that those present were attending an illegal gathering and they confiscated religious materials and equipment. They took several church members (including the applicant's mother) to Police Station C. The applicant and some others were not taken to the station as they were under 18 years of age. The police, however, recorded

their names, dates of birth, addresses and details about their parents. The applicant's father was then contacted to take her home.

28. The applicant states that after she arrived home her father started to kick and punch her. He tore her textbook and hymnbook apart. After a few days her father paid a fine to the police to release her mother. Upon her mother's return the applicant claims that her father beat both her and her mother for an hour until he was exhausted.
29. In order to save the applicant from this abuse, her mother decided to send her overseas temporarily as her mother did not want the applicant's future ruined by her abusive father. The applicant claims that her father did not provide any financial support for her to travel abroad and that he did not object to her travelling abroad as he regarded her as an unnecessary girl in the family.
30. The applicant arrived in Australia. She claims to have been actively involved with church activities whilst in Australia such as prayer group on Fridays and Mass on Sundays. She claims that she is happy in Australia as she can practice her religion without repression from authorities.
31. While in Australia the applicant attended World Youth Day in Sydney. She states that she maintained regular contact with her mother and rang her every night to tell her about World Youth Day events. Her mother told her that she and other Church members were longing to see photos and other materials relating to World Youth Day and the Pope's visit.
32. The applicant travelled to China after her arrival in Australia to visit her mother
33. The applicant claims that during her stay in China she was approached by Father C (the underground priest at her parish) who asked her to assist with the organisation of a spiritual retreat. With the assistance of her mother and other church members the retreat began on a property belonging to her mother. During this retreat the applicant shared her experience of World Youth Day 2008 with the group.
34. The day after the retreat began, a group of about 10 police officers raided the gathering and interrogated the participants, ransacked the premises and confiscated religious materials and equipment. The applicant panicked and provided the police with a false identity belonging to her relative. She told the police that she was younger than she actually was. She was warned by the police not to attend any more underground Church activities and left the premises with a few other minors. Her mother and other group members were taken away.
35. After she left the premises the applicant hid at a friend's house. She then contacted a relative who advised that she should fly back to Sydney as soon as possible. He helped her confirm the flight back to Sydney on the night of the following day.
36. Her uncle drove her to Guangzhou airport and she arrived in Sydney the next day.
37. The applicant claims that after her arrival in Australia she was advised by her relative that her father was threatening to punish both her and her mother for ruining the family's reputation repeatedly. The applicant was also advised that all of the church members had been released except for her mother and another person. She realised that her mother was not released because she had provided the venue for the underground Catholic gathering.

38. The applicant claims that the police have identified her from the materials which were obtained during the raid. She claims that the police are furious at her for providing a false identity and for bringing religious materials relating to World Youth Day 2008 and the Roman Catholic Church to China. She claims that the police will arrest her if she returns for having connections with the Catholic Church overseas, for providing a false identity and for spreading illegal religion in China.
39. Her mother is still being held in the detention centre
40. The applicant fears that if she returns to China she will be arrested and persecuted by the police who she believes are under the control of the Chinese Communist Party (CCP). She claims that if she were to return to China she would continue to practice her Catholicism and that she would be treated violently by the CCP. She also claims to be afraid of her father.

#### **Department interview of applicant in connection with her protection visa claim**

41. The delegate interviewed the applicant in connection with her protection visa claim. In that interview the applicant said, amongst other things:
  - Her mother had belonged to the Catholic Church for as long as the applicant could remember and the applicant began attending Church services at about the age of 6 or 7
  - She would not attend the open Catholic Church in Fujian because the registered Church is controlled by the Chinese authorities who do not admit the authority of the Pope. Attending this Church could not lead to eternal salvation
  - She had been attending Church Z for Mass on Sundays since her arrival in Sydney and also attended a church in Suburb B for other activities on a Friday.
42. The delegate put to her that it was strange that the authorities in Fujian seemed not to have done anything in relation to the applicant's Church group in Fujian while she was in Australia for the first time but had raided the gathering after her return to China. The applicant responded that nothing had happened to her mother while the applicant was away but others may have been detained. It was only after the applicant returned following her experience of World Youth Day in Sydney that Fr C had decided to organize an event.

#### **Evidence given at the Tribunal hearing**

43. At the Tribunal hearing the applicant said that, on advice from a friend in the Church in Sydney, she had initially written out the statement of her refugee claims in Mandarin. Her migration agent had later translated the document into English and had interpreted the document back to the applicant in Mandarin. The applicant said that she was satisfied that what was written in her statutory declaration was correct.
44. The applicant said that she had not brought her baptismal certificate to Australia with her but had been advised by her migration agent that she should seek to obtain it, so she arranged for one of her church friends in Fujian to obtain a copy and bring it to Australia with her. A copy of the certificate and a translation is on the Department file. The applicant said that the signature on the certificate is the signature of Fr C. In response to a query from the Tribunal

the applicant said that a group mentioned in the comments made by Fr C on the copy of the certificate was a local youth community group in Fujian.

45. The applicant said that the first three photos she had supplied to the Department had been taken at a Mass in China held in a Church member's house. The priest in the first photo is Fr C. Other photos the applicant supplied show her with groups of friends at World Youth Day events in Sydney.
46. The applicant confirmed that she had started attending Church with her mother in China from an early age. She had made her first confession at around 13 years' of age and made her first communion at around the same time. She described making her first communion with 2 other girls and all of them being dressed in white. She said that she was generally able to attend Mass on Sundays with her mother when her mother would say to her father that they were heading out to buy some groceries.
47. In response to a question from the Tribunal as to how her mother as a Catholic had come to marry a strict Buddhist, the applicant said that at the time her mother did not have much say in the union as the applicant's father's family was the more powerful. The applicant said that her father maintained a Buddhist shrine at home and burnt incense there.
48. The applicant said that on the times her father found out about the applicant and her mother attending Mass he would scold them for cheating on him and would beat them. He accused the applicant of being useless.
49. The applicant described the raid by the police on the catechesis class in terms that were consistent with the description in her statutory declaration. In response to the Tribunal's question as to how the applicant and her mother could have been away from home during consecutive days without the applicant's father being aware of what they were doing, the applicant said that it was school holidays and it was therefore quite normal for mothers and children to be away from home during the day. The applicant said that, after the arrest of her mother at the gathering and after the police had called the applicant's father to collect the applicant, her father had taken her home. Once home he gave her a beating and tore up her textbooks and hymnbook. After bailing her mother out, the applicant's father was furious with both of them and physically assaulted them. He slapped the face of the applicant's mother and kicked her in the stomach. He told her she was responsible for his losing face and money. He beat the applicant and yelled that she was not his daughter.
50. The Tribunal put to the applicant that information on the applicant's visa file was at odds with her claim that her father did not support her financially to come to Australia to study. The Tribunal pointed out that the family income certificate on the file was in the name of the applicant's mother and father and that there were documents on the file indicating that the family business which the applicant's mother ran was owned by the applicant's father. The applicant replied that in fact the store was run by her mother and most of the family income was earned by her mother. Her father worked for a nearby company. The applicant said that it was natural in China for the father to be shown on documents as the owner but in fact the business was her mother's.
51. The applicant described some of the World Youth Day events she had attended in Sydney, including the opening Mass at Darling Harbour.

52. The applicant gave a description of the police raid on the retreat the Church members were conducting that was consistent with the account given in her statutory declaration. The applicant confirmed that her mother and another person remain in detention. The applicant has not been able to contact her mother. The applicant said that she dared not return home to her father after the raid. She had left all her important documents at the home of her relative so she rang him and he helped her make the return trip to Australia. The applicant understands through information she obtained through one of the Church members that the police discovered her true identity from the World Youth Day photos of her which the police took away from the venue.
53. In response to a question from the Tribunal as to whether Fr C had been arrested in the raid, the applicant said that he had not attended the gathering. It was not common for priests in China to attend such gatherings because they had duties to perform in many villages. Fr C had left the organisation of the gathering to the applicant together with her mother and Sister D.
54. The applicant said that she had had no contact with her father since her return to Australia and had not contacted her mother because she did not know where she was being held. She also had had no contact with her sibling because she did not have a good relationship with them.
55. The Tribunal asked the applicant who was the head of the Catholic Church. She replied that the Pope was the head and gave the full name of the present Pope. The Tribunal asked her what was meant by the sacraments in the Catholic Church. She said there were seven of them and named them as baptism, eucharist, confession, confirmation, matrimony, holy orders and the anointing of the sick. To a question as to what Catholics believe occurs at the consecration in the Mass, she responded that the bread and wine becomes the body and blood of Jesus. To a further question as to what the significance of Easter was in the Christian church, she said that it commemorated Christ's crucifixion and resurrection from the dead. In response to the Tribunal's question as to what her favourite New Testament story was, she recounted Satan's temptation of Jesus in the desert (Matthew 4: 1-11) and was able to recount the dialogue set out in the New Testament between Jesus and Satan.
56. The Tribunal asked the applicant why it was that she had only lodged her protection visa application at a time when she was having difficulty complying with her original visa. She said that, after her return to Australia from China, there was no longer financial support from her family and that is why her inability to pay fees related to her visa was a problem. She made her protection visa application as a result of what had happened to her in China immediately before her return to Australia.
57. The Tribunal put to the applicant that country of origin information suggested that the authorities in Fujian took a liberal attitude to underground Christian churches. The applicant denied that a liberal attitude was taken. She said that there were crack downs from time to time and, in particular, evangelising to juveniles was not tolerated. She further said that Church members were only able to have contact with their priest at Mass. After that the priest would disappear into the community and was unable to be found.
58. The Tribunal further put to the applicant that she could practice her religion in the registered Catholic Church in China and the Tribunal referred to the Pope's encyclical letter of 2007 to the faithful of China in which he stated that recognition of the registered Church from the civil authorities did not compromise communion with the universal Church. The applicant

said that the purpose of the encyclical was to urge members of the registered Catholic Church and of the underground Catholic Church to come together and cooperate with one another. He also urged members of the underground Church not to give up their faith in the face of government oppression. The applicant said that she could not practice in the registered Church because it was controlled by the government not the Pope and she would not be able to obtain salvation through it.

### **Evidence of Ms A and others**

59. Ms A gave evidence that she had been baptized a Catholic in China and had practiced her religion there before coming to Australia. She said that she had been a Nun in China. She was now engaged in various pastoral activities in Church Z. She attested to the applicant's involvement with the Church in Sydney since the applicant's arrival in Australia.
60. The Tribunal also has before it various written statements of people from China claiming to be colleagues of the applicant and fellow worshippers at Church Z. The statements support the applicant's claims that she is a practising Catholic.

### **Country of origin information**

61. It was said in a 2005 article that, according to the Chinese Government, about 5 million Chinese Catholics belong to government approved patriotic churches that reject the Vatican's full authority. The same article said that the Vatican estimates that 8 million other Catholics in China worship in illegal underground churches that have defied the Communist Party by remaining loyal to the Pope ("Up from the Underground", *The Washington Post*, 29 April 2005). The existence of "official" and "unofficial" Catholic churches in China is further referred to in a 2007 encyclical letter of Pope Benedict XVI to the faithful in China ("Letter of the Holy Father Pope Benedict XVI to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China").  
([http://www.vatican.va/holy\\_father/benedict\\_xvi/letters/2007/documents/hf\\_benxvi\\_let\\_20070527\\_china\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/letters/2007/documents/hf_benxvi_let_20070527_china_en.html))
62. One commentator has referred to the orthodox Catholic practices followed by the underground Catholic Church as follows:

Religious organisations that either cannot or are unwilling to obtain government approval are automatically deemed illegal. Once an organisation has been classified as illegal, all its activities are automatically considered to be illegal and subversive. As Joseph Kung, an advocate of the underground Catholic community in China, stated, activities such as celebrating the mass and prayers for the dying – which are orthodox Catholic practices – immediately become illegal and unorthodox if they are undertaken by a priest who has not been permitted by the state to perform these activities. (Hornermann, Magda 2004, "Religious distortion and religious freedom", Forum 18 News Service, 25 November)  
([http://www.forum18.org/Archive.php?article\\_id=462](http://www.forum18.org/Archive.php?article_id=462))
63. The U.S. Department of State's *International Religious Freedom Report* for China for 2008 assessed that, during the period covered by its report, "the Government's repression of religious freedom intensified in some areas". The report said:

The Constitution and laws provide for freedom of religious belief and the freedom not to believe, although the Constitution only protects religious activities defined by the state as "normal." The Constitution states that religious bodies and affairs are not to be "subject to any foreign domination," and that the individual exercise of rights

"may not infringe upon the interests of the state." The Constitution also recognizes the leading role of the officially atheist Chinese Communist Party.

The Government restricted legal religious practice to government-sanctioned organizations and registered religious groups and places of worship, and sought to control the growth and scope of the activity of both registered and unregistered religious groups, including "house churches." Government authorities limited proselytism, particularly by foreigners and unregistered religious groups, but permitted proselytism in state-approved religious venues and private settings.

During the period covered by this report, the Government's repression of religious freedom intensified in some areas, including in Tibetan areas and in the Xinjiang Uighur Autonomous Region (XUAR). Unregistered Protestant religious groups in Beijing reported intensified harassment from government authorities in the lead up to the 2008 Summer Olympic Games. Media and China-based sources reported that municipal authorities in Beijing closed some house churches or asked them to stop meeting during the 2008 Summer Olympic Games and Paralympic Games....

The Constitution and laws provide for freedom of religious belief and the freedom not to believe. The Constitution protects only religious activities defined as "normal." The Constitution states that religious bodies and affairs are not to be "subject to any foreign domination" and that the individual exercise of rights "may not infringe upon the interests of the state." The Constitution also recognizes the leading role of the officially atheist Chinese Communist Party. The Government sought to restrict legal religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of the activity of both registered and unregistered religious groups, including house churches. The Government tried to prevent the rise of religious groups it viewed as constituting a source of authority outside of the Government and the Chinese Communist Party (CCP). The Government strongly opposed the profession of loyalty to religious leadership outside of the country. Nonetheless, the treatment of religious groups varied significantly from region to region, and membership in many faiths continued to grow rapidly.

Government officials at various levels have the power to determine the legality of religious activities by deciding whether they are "normal." Public Security Bureau (PSB) and Religious Affairs Bureau (RAB) officials monitor unregistered facilities, check to see that religious activities do not disrupt public order, and take measures directed against groups designated as cults. Registered religious groups enjoy legal protections of their religious practices that unregistered religious groups do not receive, and unregistered groups are more vulnerable to coercive and punitive state action. The five PRAs [Patriotic Religious Associations] are the only organizations registered with the Government at the national level as religious organizations under the Regulations on Social Organizations (RSO), administered by the Ministry of Civil Affairs (MCA). Leaders of the five PRAs sometimes serve in the Chinese People's Political Consultative Conference (CPPCC), an advisory forum that is led by the CCP and consults with social groups outside the Party or the National People's Congress (NPC). The State Administration for Religious Affairs (SARA) and the CCP United Front Work Department (UFWD) provide policy "guidance and supervision" on the implementation of regulations regarding religious activity, including the role of foreigners in religious activity. Employees of SARA and the UFWD are primarily Communist Party members who are directed by Party doctrine to be atheists....

(U.S. Department of State, *China, International Religious Freedom Report 2008*)

64. An earlier report mentioned an instance where adherents of the unofficial Catholic Church in Fujian had been subject to arbitrary arrest when engaged in ordinary religious activities. [News report removed pursuant to s.431 of the Act]
65. The references in the two above reports to Fujian Province may be contrasted with a report that local authorities usually tolerate the activities of unregistered Christian groups in Fujian (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).

## **FINDINGS AND REASONS**

66. The applicant travelled to Australia on a PRC passport and claims to be a citizen of the PRC. On the basis of the evidence of her passport and her evidence at the hearing before the Tribunal, the Tribunal finds that she is a citizen of the PRC.
67. On the basis of the detailed and knowledgeable answers the applicant gave to questions the Tribunal asked her about articles and practices of the Catholic faith, the Tribunal further finds that she is a devout Catholic. The Tribunal accepts that her mother arranged for her to be baptised at an early age and that she has practised in an underground Catholic Church in Fujian.
68. The Tribunal further accepts that the applicant is a member of Church Y and is an active parishioner of Church Z in Suburb A. The Tribunal is satisfied that the applicant has engaged in this conduct otherwise than for the purpose of strengthening her claim to be a refugee (cf. s.91R(3) of the Act). The Tribunal finds that the applicant engaged in the conduct because of her commitment to her religion.
69. The Tribunal accepts the applicant's evidence that a Church gathering in Fujian which the applicant was attending with her mother prior to her arrival in Australia was disrupted by the police. The applicant's evidence that she and other juveniles were allowed to go home while the adults were detained is consistent with country of origin information that, whereas underground churches may be tolerated by the Chinese authorities to some extent, they tend to be more concerned when proselytising to the young is involved. The applicant further gave credible evidence about the circumstances in which, when she returned to China, she was invited by Father C to take part in a retreat and share her experiences of World Youth Day and about the circumstances of the raid on the gathering by the police. The Tribunal accepts the applicant's evidence that her mother has remained in detention since the raid. The applicant's inability to pay fees relating to her visa following her return to Australia lends support to her story that her mother has been in detention since the raid and that her father has no interest in her because of her continued involvement with the Church.
70. On the basis of the Tribunal's finding that the applicant is a member of the underground Catholic Church, the Tribunal must determine whether she has a well-founded fear of being persecuted for reasons of her religion if she were to return to China. She has not herself been detained in China for practicing her religion. She has, however, twice been held and briefly questioned by the police when they have broken up Church gatherings. Her mother remains in detention by reason of her involvement in Church activities. Detention clearly amounts to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal considers that, given the circumstances in which the applicant escaped from the police on the last occasion and given what the police now know about her identity, there is a real chance that she will

similarly be detained for practicing her religion if she returns to China. The Tribunal is further satisfied that the applicant's religion is the essential and significant reason for the persecution which she fears, as required by s.91R(1)(a) of the Act, and that the persecution which she fears involves systematic and discriminatory conduct, as required by s.91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.

## **CONCLUSION**

71. 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**

72. 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.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PMRT01