

071920575 [2008] RRTA 25 (23 January 2008)

DECISION RECORD

RRT CASE NUMBER: 071920575

DIAC REFERENCE(S): CLF2007/133787

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Bruce MacCarthy

DATE DECISION SIGNED: 23 January 2008

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

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).

The applicant, who claims to be a citizen of China (PRC), arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that that decision is an RRT-reviewable decision under s.411(1)(c) of the Act and that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, "the Refugees Convention," or "the Convention"). Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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; ...

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person. These provisions were inserted on 1 October 2001 and apply to all visa applications not finalised before that date.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act.

The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

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

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if he has genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the probability of the persecution occurring is well below 50 per cent. In addition, an applicant must be unable, or unwilling because of his fear, to avail himself of the protection of his country or countries of nationality.

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.

Credibility

When determining whether a particular applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the claims he or she has made. This may involve an assessment of the credibility of the applicant. When assessing credibility, the Tribunal should recognise the difficulties often faced by asylum seekers in providing supporting evidence and should give the benefit of the doubt to an applicant who is generally credible but unable to substantiate all of his or her claims. However, it is not required to accept uncritically each and every assertion made by an applicant. Further, the Tribunal need not have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been

made out. Nor is it obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

If the Tribunal were to make an adverse finding in relation to a material claim made by an applicant but were to find itself unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* (1999) FCR 220).

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file [CLF2007/133787] relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

Protection visa application

According to information provided by the applicant in her protection visa application forms and accompanying documents, the applicant is a widow from China. She was educated to high school level, and was self employed for a number of years. Prior to coming to Australia, she resided at one address for many years and then at a second address for a similar number of years. Her only close relative is her child, who resides in China.

She left China legally and travelled to Australia with a passport. The photograph and biographical details in a passport consistent with those she gave in her application. She had no difficulty in obtaining travel documentation. She said that she had never previously held any other passport. She said that prior to her current journey to Australia, she had made one prior journey outside China, to Country A. Entries in her passport (copies of the pages of which she had provided with her application) indicated that she left China and travelled to Country B and then Country A, leaving Country A and returning to China via Country B. She said that she had never been convicted of any crime or offence and, to the best of her knowledge, she was not the subject of any criminal investigation or any pending criminal charges.

The applicant said that she was seeking protection so that she would not have to return to China. She set out her reasons in a brief accompanying statement, which was undated and unsigned. Her claims were as follows (with minor editorial amendments to spelling, grammar, etc):

I learnt Falun Gong from my [child]'s teacher in [year] when he visited my home to talk about my [child]'s studies. After the meeting, he stayed and introduced Falun Gong to me when he heard that my health was not very good. After [duration] learning from him, I became very fond of Falun Gong and followed him to have different meetings. In [date], the teacher was sentenced to imprisonment. I was sent for classes. I was warned and threatened not to continue to practise Falun Gong anymore because Falun Gong was banned in July 1999.

I stopped for about six months, and I found my health was not very good, so I resumed practising Falun Gong in [year]. I practised secretly. Early in [year], police came to search my home, they took away some Falun Gong books and I was taken to the police station for [duration]. They physically and mentally persecuted me. I realise that I would not be safe in China anymore. I made preparation to leave China from then on. Now I am in Australia, I have been enjoying the freedom of belief in Australia. I don't worry about my safety here as I worried in China. I hope that the Australian Government can protect me.

Question 12 in application form B, invited the applicant to list all documents being provided with the application. In response to this question, the applicant wrote, “*Copy of my passport.*” Question 13 invited the applicant to list all documents the applicant is “not providing with this application, but will be providing later.” In response to this question, the applicant wrote, “N/A.” Question 14 invited her to list any relevant documents she was unable to provide and to explain why those documents could not be provided. In response to this question, the applicant also wrote, “N/A.” The Tribunal understands this to mean that the applicant was not aware of any documentation which might support her claims.

Although the applicant stated in her application that she only speaks reads and writes Mandarin, she stated that she had received no assistance in completing the form and there is no indication that any interpreter was used. However, a Departmental note indicates that she advised an officer of the Department that “a Chinese student she met on the street” had assisted her with her application and that she had paid that person for doing so. She said she did not know the student’s name or contact details. The note states that the applicant had brought a type authorisation note (in English) with her, and claimed that she had typed it herself. However she was unable to reiterate the first line of the note when asked to do so and later said that “a friend” had assisted her to write that as well.

When questioned further, she said that the person who assisted her to write the note was the same person who helped her with the application. When asked how she came to meet a person again without her contact number, the applicant said that both the note and the application were completed together before the lodgment of the application. However she was unable to explain why the note was dated with the current date, if it was prepared at the same time as the application. The applicant was also unable to recall accurately her postal address. The applicant was told that the matters which were discussed related to possible offences under the Migration Act concerning “unregistered migration agent malpractice.”

The decision under review

The delegate who considered the application set out her reasons for refusing the application, as follows (again, with minor editorial amendments to spelling, grammar, punctuation etc):

The applicant has made serious claims. However, they are general in nature, and no evidence has been provided by the applicant to support claims.

The applicant was invited to attend an interview on [date]. She did not respond to this invitation, nor did she attend an interview as scheduled. The interview invitation letter was sent to the applicant’s postal address on the [date] registered post. The letter has not been returned to the Department by Australia Post as at the date of this decision.

As the applicant has chosen not to attend an interview to discuss her claims, then it is not possible to determine that she faces persecution upon return to China. Their fear of persecution upon return to China cannot be examined. Subsequently I cannot be satisfied as to the veracity of the applicant’s claims. In these circumstances, it is not reasonable to be satisfied that the claims that have been made are true claims, or that they have occurred as has been claimed, or that the offence occurred reasons relating to a Convention reason, i.e., the applicant’s claimed Falun Gong beliefs and practices. As a decision maker I am not obliged to accept uncritically any and all the allegations made by an applicant has noted in *Randhawa’s* case (5:3). I have considered the information on the evidence before me. I do not accept the claims that have been made by the applicant. Given the particular circumstances noted above, I am unable to be satisfied that the applicant faces convention related persecution upon return to China

Application to the Tribunal

The applicant made no further claims when applying to the Tribunal, and did not comment on the decision under review. When acknowledging receipt of her application, the Tribunal advised her that she should immediately send “any documents, information or other evidence” she wanted the Tribunal to consider. Similarly, when writing to her at a later date to invite her to a hearing, the Tribunal advised her to submit any requests or new information she wished the Tribunal to consider. She did not submit any further information in response to these requests prior to the scheduled hearing.

Independent Information - Falun Gong

Falun Gong, also known as Falun Dafa, is one of China’s 84,000 schools of self-cultivation. Drawing on concepts taken from Qigong, Buddhism, Taoism and Confucianism, its stated aim is the improvement of moral character through increased self-awareness. The founder says it is not a religion. It was first introduced to the Chinese in 1992 by Li Hongzhi and gained legitimacy by registering with the Qigong Research Association of China. Qigong is a traditional meditation and martial arts movement and, like Falun Gong, draws upon the Taoist techniques of meditation, yoga and breathing.

There are five sets of movements, or exercises of Falun Gong, known as “*Buddha Showing a Thousand Hands*,” the “*Falun Standing Stance*,” the “*Penetrating the Two Cosmic Extremes*,” the “*Falun Heavenly Circulation*,” and the “*Strengthening Divine Powers*” exercises. Some of the elements of these exercises also have special names. Falun Gong Literature indicates that, before commencing an exercise, practitioners should recite a short verse, there being a unique verse for each exercise.

In 1996 Li Hongzhi withdrew Falun Gong from the Qigong Association, claiming that Falun Gong’s goal of “genuinely guiding people to higher dimensions” and offering “spiritual salvation” could not be achieved by remaining with the Qigong Association. This decision left Falun Gong without legal protection or legal status in the PRC.

Falun Gong is based on the concept of *Zhen-Shan-Ren* (Truth-Compassion-Forbearance). The goal of its practitioners is to become enlightened to the truth of human life. The focus is on an individual’s self-examination and self-improvement rather than on the development of an organization or a group.

Falun Gong’s main book of teachings was written by Li Hongzhi, and is called *Zhuan Falun* (Turn of the Wheel of Law). Followers believe that Li telekinetically implants a falun -- a “wheel of law” or miniature of the universe -- into their bellies, where it spins constantly, absorbing and releasing energy, expelling bad forces, keeping the person aligned and making them spiritually and physically healthy. These beliefs are represented by the Falun Gong emblem, which is a swastika encircled by four yin-yang circles in constant rotation, turning in time with the universe.

In *Zhuan Falun*, Li teaches (page 20) how civilization has been annihilated 81 times and then rebuilt by a few survivors. Vermander cites an interview with *Time Magazine*, in which Li claimed that aliens had introduced computers and aeroplanes onto earth and planned to clone human beings.

While Chinese authorities claim that Falun Gong is highly organised, Falun Gong practitioners insist that the organisation has no formal hierarchy. A worldwide Falun Gong network is assisted by a complex web of Internet sites and bulletin boards. Falun Gong denies that it is a religion or cult as practitioners have complete individual freedom. Information on the official website also claims that Falun Gong is non-commercial, non-political non-religious and “completely free of charge.”

After publishing *Zhuan Falun* at the end of 1994, Li announced that he had completed his teachings in China. He then travelled to Europe, Asia, North America and Australia, speaking at conferences and expanding his movement and, in 1996, decided to establish himself in America. Li first visited Australia in August and November 1996 and again in April/May 1999.

In reference to Falun Gong practitioners seeking asylum, the following statement was issued on the Falun Gong Bulletin Board June 8, 1999.

The issues on current situation in China are between Falun Gong practitioners and China's Public Safety Department, and are not associated with issues about political asylum. If genuine Falun Gong practitioners sought political asylum, they would obtain proofs through local Falun Gong assistance centres and local Falun Dafa Societies. Therefore, if any individuals claim themselves Falun Gong practitioners and seek political asylum by themselves without proofs in the United States, they are either fake Falun Gong practitioners or those who intentionally damage Falun Gong's reputation with their ulterior motives.

Falun Gong practitioners staged a major demonstration, at Zhongnanhai in Beijing, on 25 April 1999. According to the *Xinhua* newsagency, Li was in China immediately prior to this. The protest caught the Chinese leadership as much by surprise as it did the foreign press. It was held only about six weeks before the 10th anniversary of the Tiananmen Square massacre and most eyes, local and foreign, were fixed firmly on that date.

The genesis of the April 25 demonstration was actually in nearby Tianjin. On April 11th a small magazine aimed at youngsters called *Teenage Science and Technology Outlook* published an article by a prominent physicist, He Zuoxiu, entitled “*I'm opposed to qigong practice by teenagers*” which made some criticisms of qigong, and Falun Gong in particular. In response, several thousand Falun Gong practitioners protested outside the offices of the magazine at Tianjin Teachers University on 21 April. Their protests were met with action by police, and some people were detained. The response of Falun Gong was to seek redress from the leadership of the country by going in even greater numbers to Zhongnanhai on Sunday 25 April.

The immediate official reaction to the demonstration was very different from their reaction to the democracy protesters of ten years before. The US Department of State says that the Government allowed the peaceful protest to continue for more than twelve hours. On the Tuesday, the official Chinese newsagency declared that the government had never banned “any health fitness activities.” It described the protest, not as a “demonstration,” but as a “gathering.” But it also warned that “those who jeopardize social stability under the pretext of practising any gong shall be dealt with according to law.” Nonetheless, adherents still felt able to speak to foreign journalists at that stage.

In June, the Government warned the group about “disturbing social stability,” banned it from holding large demonstrations, and ordered party members and civil servants to leave Falun Gong. After demonstrations continued, the Government began a crackdown by arresting Falun Gong leaders on 20 July 1999, and formally banned the organisation on 22 July. A warrant for Li's arrest was issued on 29 July.

With Falun Gong officially outlawed the Chinese authorities pursued a range of measures to ensure that the ban was enforced. On 23 July the Chinese Government issued a promise not to punish any ordinary Falun Gong practitioners as long as they broke ties with the Falun Gong organisation and ceased to participate in Falun Gong activities. A Chinese government announcement on the same day emphasised that ordinary Falun Gong practitioners would be treated differently to organisers and key members of Falun Gong. Non-party members were also allowed to continue to practice their exercises but could not publicly acknowledge Falun Gong. The Communist Party asked all members currently practicing Falun Gong to separate themselves from Falun Gong, and called for the launching of an education program against Falun Gong for the entire party.

Allegations regarding arrests and detentions vary. Reports claim that thousands of Falun Gong practitioners were reportedly detained and held in stadiums around the country. Media reports maintain that 1,200 Government officials, who are practitioners of Falun Gong, were sent for re-education sessions where they were required to write self-criticism and to study Marxist documents. In addition, Falun Gong leaders were arrested, while tutors and ordinary practitioners were detained. Those arrested faced charges of obstructing public order, which could mean jail sentences. DFAT assesses that ordinary adherents of Falun Gong who practise privately are unlikely to be the subject of particular attention by the authorities.

A spokesman for Falun Gong in Australia contacted by the Refugee Review Tribunal in January 2000, has advised that, while there is no standard to distinguish a genuine practitioner of Falun Gong from those trying to use the name for their own purposes, generally speaking:

A genuine Falun Dafa practitioner would have a healthy life style and a righteous mind, and a compassionate heart toward everyone and everything.

A practitioner of Falun Dafa would know that *Zhen* (Truth), *Shan* (Compassion/kind/benevolence) and *Ren* (Forbearance) is the quality/characteristic(s) of the universe that guiding practitioners' cultivation/practice.

A practitioner would know that Falun Dafa is of non-profit, are open to everyone, and of no political interest, no compulsory activity or formality, does everything in a "free to come and free to go" way and, never use violence.

A practitioner would know "*Zhuan Falun*" is the guiding test for Falun Dafa cultivation/practice.

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- O'Neill, Mark "*Million reasons for official fear*," in *South China Morning Post*, 24 July 1999
- E-mail response received from Qiwen Yao on 12 January 2000
- CX38557 *Falun Gong aka Falun Dafa in China* DFAT Circular 397/99 9 November 1999
- CX39773 Update information on Falun Gong DFAT Circular 58/00 4 February 2000)

Evidence given at the hearing

At the commencement of the hearing, the applicant submitted her passport for perusal, and the Tribunal took copies of those pages which had entries in them. The Tribunal explained to the applicant the procedures of the hearing. In particular, the Tribunal explained that the applicant had the right (under s. 424AA) to seek additional time to comment on, or respond to, any potentially adverse material which might be put orally to her by the Tribunal at the hearing.

The Tribunal said it had read the answers given in the applicant's application forms, and had also read her statement of claims. She said she had satisfied herself that the information given in those documents was the truth. The Tribunal asked how she was able to do that, specifically asking if someone had translated the questions in the application forms for her. She did not answer this question but commenced what seemed to be a recitation of her statement of claims. The Tribunal interrupted, saying it would get to the detail of the claims in due course, but wanted to establish how the claims came to be expressed in English, given that she did not have command of the language. She said that a person known to her as Miss Z had translated the questions in the application forms into Mandarin for her, and had translated her responses into English.

To confirm its understanding of the key elements of the applicant's claims, the Tribunal read out the following précis of them:

You have been a Falun Gong practitioner for many years.

You were told to stop practising by the Government, and sent for re-education classes. Because of this you stopped practising, but only for a relatively short period.

Several years later, you were again arrested and detained briefly by police. This made you decide to leave China and come to Australia.

The applicant accepted this as a fair summary of her situation and claims, and confirmed that there was no other basis for her claim for protection.

The Tribunal asked why the applicant had not attended the interview requested by the Department, commenting that her failure to attend could suggest that she was not serious about pursuing her application. She said that she had not received any letter from the Department inviting her to such an interview, and would have attended the interview had she received the invitation. The Tribunal pointed out that the letter in question had been dispatched to her nominated mailing address by registered post, and there was no indication on the Department's file to suggest that the letter had been returned unclaimed.

On the subject of her mailing address, the Tribunal noted that the applicant resided in one suburb, but her mailing address was in a different suburb some 2 km away. The Tribunal asked who resided at that address. She said that the person she had previously mentioned, Miss Z resided at the address and that she and some other people use the address as a mailing address. The arrangement is that, if a letter arrives for her, she pays Miss Z. She said she does not know Miss Z's proper name. The Tribunal asked if Miss Z gave her any advice about her application for protection but she said she did not. Miss Z helped her only because she understands English.

The Tribunal said that, in order for it to make a favourable decision in the present case, it would need to be satisfied that she had been a Falun Gong practitioner in China. On the basis of the evidence before it at that time, it was not so satisfied, and that was why it had invited her to the hearing – to give her the opportunity to present evidence and arguments which might satisfy it of that.

The Tribunal asked if it was before or after she became a single mother that she first learned about Falun Gong. Initially, she said she first learned about Falun Gong before she was a single mother. However, when the Tribunal sought to confirm this, she said that it was after she became a single mother. She was introduced to Falun Gong by her child's teacher, whom she named.

The Tribunal asked for how long she had been practising Falun Gong before the Chinese government banned the practice. She said she had been practising for “more than [duration]” when the government banned Falun Gong. She said that, at that time she had an injury to her body (she showed a scar), and said she then stopped practising. The Tribunal confirmed that she was saying that she ceased practice shortly after she first started. She re-commenced her practice again a few years later. She then referred to a further injury.

She was asked how long after she had resumed practising Falun Gong, she had next encountered any difficulties with the authorities because of her involvement in Falun Gong. She said that, a few months later, police started searching for Falun Gong material and arrested her and held her briefly. She said that, after that she suffered physically and mentally, and did not want to stay in China. The applicant confirmed that she was talking about being arrested.

Referring to the injuries she had just mentioned, the Tribunal asked her when she sustained the injury to her body. She said it was in the late 1990s. The Tribunal asked when she sustained further injury. She said it was in the early 2000s. The Tribunal asked the circumstances in which these two injuries were sustained. She said one was sustained at home and the other outside the home. She confirmed that neither injury had anything to do her being arrested. They were sustained in the course of her daily life.

The Tribunal reiterated that she had said she was arrested and held for a few days. The Tribunal asked if that incident and the alleged arrest were the only incidents in which she was arrested by Chinese authorities. She said that they were.

The Tribunal asked why, if she had been found to be involved in Falun Gong, she was released so quickly on the second occasion. Initially, she did not answer this question, saying that she had been sick and that was the reason she took up Falun Gong to improve her “*xinxing*.” She said she would not lie. The Tribunal repeated its question, and she said she was released quickly because nobody knew she was learning Falun Gong. The Tribunal asked why she would have been arrested if nobody knew about her Falun Gong involvement. She said that perhaps someone had informed the police.

The Tribunal asked why, given that she had obtained a passport, she did not leave China immediately but waited for a long time afterwards. She said that she had wanted to go to Country C at first, but that country's authorities had refused her a visa. The Tribunal commented that the matter would not have taken several years, but she said she had also sought to go to Country D, again unsuccessfully.

The Tribunal asked if police had done anything harmful to her apart from questioning her and telling her not to practise Falun Gong. She said the police also asked the locals to monitor her behaviour. The Tribunal said that it assumed, from her answer, that nothing bad had happened to her since her second arrest, apart from her being monitored. She confirmed that understanding.

The Tribunal asked if the applicant was aware, after 2000, that Falun Gong practitioners were being subjected to serious harm amounting to persecution. She said she was aware that, in Beijing, the authorities killed students who were protesting. The Tribunal understood her to be referring to the Tiananmen Square massacre of 1989, and said that that had occurred before 2000. She agreed. The Tribunal said it wanted to know if she was aware after 2000, that the government was causing harm to Falun Gong practitioners, because of their involvement in Falun Gong. She said she did know Falun Gong was illegal but was not particularly aware of what was happening. She just wanted to leave China.

The Tribunal commented that her passport indicated that she in fact did leave China, but had returned there. It asked why she had gone back to China if she feared persecution. She said she went to Country B and Country A “for travelling.” The Tribunal again asked why she returned to China. She said there was no refugee protection in Country B. The Tribunal asked if she was forced to leave Country B she said she was not. The Tribunal said that that suggested to it that she returned to China voluntarily and was therefore not afraid to return to China. She said that, when she went to Country B, she went under sponsorship of a person who had been a classmate of hers. She said that classmate and her husband could not let her stay, so they sent her back. The Tribunal said it would need to think about that response.

The Tribunal advised the applicant that discrepancies between what she had said in her oral evidence and what she had said in her written statement claims. These discrepancies were significant and could lead the Tribunal to disbelieve her claims, and therefore affirm the decision under review. The first discrepancy related to when she was allegedly arrested. In her oral evidence, she said that she had been arrested in particular years. However, in her written claims, she said she was arrested in two completely different years.

The second discrepancy related to the manner in which she was allegedly treated by police. Her oral evidence was that the only thing which happened to her was that she was questioned and told not to practise Falun Gong, and that police later had her activities monitored. This contrasts with her written claims which suggested she had been physically abused by police. The Tribunal said the two contradictions could indicate that her story did not reflect any actual experiences she had had. The Tribunal sought the applicant’s response to this information. In response, the applicant said, *“I just want the Australian government’s protection. Otherwise, if I come back it will be just like a death.”* She did not elaborate further.

The Tribunal then said that it wished to ask a number of questions to assess her knowledge of Falun Gong. It noted that she had not submitted any evidence to corroborate her claim to be associated with Falun Gong and asked if there were any such evidence. She asked if the Tribunal was talking about witnesses. The Tribunal said evidence from witnesses would have been one form of such evidence, but there were others. She said she did not speak English, but had been to suburb where there were Falun Gong practitioners. She said however, that she needed to work to live and did not have a lot of time to practise Falun Gong. She said she did practice for two hours once a week in the mornings at a local suburb.

At this point, the applicant asked for a short adjournment, which was granted. After the adjournment, the Tribunal asked what she could tell it about Falun Gong, and its history and

philosophy. In response, the applicant said that Falun Gong was good for one's body and good for one's mind. When she said that more than this, the Tribunal asked again what she could say about its history. She said Falun Gong was started by "the master," Li Hong Zhi around the late 1990s.

Given her response that Falun Gong was started in the late 1990s, the year she said she started to learn, the Tribunal asked if she was one of the first to join it, but she said she was not. The Tribunal asked, therefore, how long it had been going when she started to learn about. Her response was, "*I think, a long time, I can't remember exactly.*" The Tribunal asked her to try to quantify this period, reminding her of the date that she had said that she started to learn Falun Gong. She then said that her child's teacher had been "*the first practitioner to do Falun Gong,*" and so perhaps Falun Gong had been founded in 1993 or 1994.

The Tribunal commented that, initially, Falun Gong was officially sanctioned by the authorities and was registered with the Qigong Research Association of China. Later, Li Hong Zhi withdrew Falun Gong from that association. It asked in what year that happened. The applicant did not address this question, but speculated as to the reasons why Li Hong Zhi may have done that. When brought back to the point, she said she was not sure when it happened.

Referring to the big demonstration which was the catalyst for the banning of Falun Gong, the Tribunal asked when and where that demonstration was. She said that, at that time the Falun Gong was seen as being anti-government, so the government stopped it. The Tribunal said it understood that, but it was asking about the demonstration which prompted the government to act against Falun Gong. She said it was a long time ago when she could not remember. The Tribunal said she must have some approximate idea. She said that Li Hong Zhi had done "something related to anti-government" so they banned Falun Gong and tried to arrest him. However he had left China by that time. Finally, she said the demonstration was around 1997.

The Tribunal advised the applicant that the demonstration in fact was held in April of 1999, and that led to the banning of Falun Gong in July 1999, and not in 1997 or 1998. The Tribunal said that it would have expected a person who was practising Falun Gong for some years in China would have been well aware of when Falun Gong was banned. In response, the applicant said she just wanted protection. The Tribunal said it understood that but she had so far not demonstrated that she knew very much about Falun Gong.

The Tribunal asked the significance, in Falun Gong thought, of the wheel of law - the "falun." she said she could not explain that because her brain was "blank." She said she was scared and couldn't organise her words properly.

The Tribunal asked the applicant if she had studied Master Li's major book. She said she had only briefly read about a book entitled "Jiu Pin," which is about Falun Gong. However she said, she did not understand some of the characters in that book. The Tribunal said that it did not recognize the name of the book she had given, and said it was not one of the two major books of which it was aware. She said she knew that it was not the main book, but it was a new revised book which was coming out this year. She had not read the original book by Li Hong Zhi, and could not name it.

The Tribunal asked the applicant to recite the verse one is supposed to recite right before one performs the second exercise. Again, she did not answer this question directly but said she wanted to improve her body, mind and spirit. The Tribunal again asked if she knew the words.

She said that the master would help her “to do something,” and that practitioners had “truthfulness, benevolence and forbearance.”

The Tribunal said that all she had been able to tell it about Falun Gong could be learnt with a few minutes research on the Internet. She had mentioned the name of Li Hong Zhi, the concept of “truthfulness, benevolence and forbearance,” and the fact that Falun Gong was supposed to be good for one’s mind and body. This was not sufficient to convince the Tribunal that she had been a Falun Gong practitioner for many years.

The Tribunal asked if she wished to put any other matters before the Tribunal. She said she wanted to practise Falun Gong every day. The Tribunal again commented that she did not seem to know very much about Falun Gong. She did not respond. The Tribunal said that this lack of knowledge plus the contradictions in her claims made it difficult for it to conclude that she had been a Falun Gong practitioner in China. It asked again if she wanted to comment on this point.

She said she had nothing else to say. She just wanted to stay in Australia and did not wish to return to China. She then said she thought she had “a mental disease.” The Tribunal asked if she had consulted any medical practitioner about this, but she said she had not. She said she didn’t know anyone in Australia and didn’t have any money to pay a doctor. The Tribunal reminded her that she said she knew the person, Miss Z, and suggested that that person ought to be in a position to assist her to find a doctor. She said that Miss Z was just a student and had no time and she did not wish to trouble her.

The Tribunal asked the applicant if she wished further time to respond to any of the matters raised at the hearing. She said she was not sure. The Tribunal asked if she would like to take a short adjournment to consider further. She said she wished for a further short adjournment, which was granted.

After the adjournment, the applicant said she was a Falun Gong practitioner and she wanted to demonstrate how she did a Falun Gong exercise. The Tribunal asked her which exercise she proposed to demonstrate. She said it was called, “close your arms, improve your spirit” [though this is not one of the names of the five Falun Gong exercises -see page 6 above.]

She proceeded to demonstrate a series of arm and hand movements while in a seated position. At two points in the series of movements, she was stationary with her left forearm held vertically to the side of her head with a palm about 20 cm away from the head. At the same time her right forearm was held horizontally in front of her body. This is a position which is not part of the first Falun Gong exercise and indeed, does not appear in the illustrations of any of the five exercises.

The Tribunal noted that amongst the various positions she adopted were two positions which are part of the first Falun Gong exercise, namely that called “*He Shi*” (which is illustrated in Fig 1-5 in *Chapter IV: Falun Gong Practice System* of the book “*Falun Gong*” cited above) and that called “*Jin Hou Fen Shen*” (illustrated in Fig 1-10 in *Chapter IV: Falun Gong Practice System* of the book “*Falun Gong*.”) However, the overall demonstration did not resemble the first exercise, which is performed in a standing position.

The Tribunal told the applicant that her demonstration did not appear to be the first Falun Gong exercise or indeed any of the five. The Tribunal said that what she seemed to be demonstrating was simply generalised Chinese Tai Chi movements. The Tribunal asked again if the applicant had anything else she wished to put before it. She said, “that’s all the information I can provide.”

FINDINGS AND REASONS

The applicant claims to fear persecution in China because she is a Falun Gong practitioner. She claims that her involvement with Falun Gong became known to the police and that she was arrested and told to cease her practice. She claims she ceased practising for a short period but later resumed only to be discovered again and detained.

The applicant's claim to be associated with Falun Gong is unsupported by any corroborative evidence. At the hearing, the applicant displayed only a rudimentary knowledge of Falun Gong history, theory and practice. Her level of knowledge was extremely sketchy, and could have been obtained from the internet with minimal research. The Tribunal would have expected someone who had been practising Falun Gong for a number of years in total, to have a significantly higher level of knowledge than that displayed by the applicant, taking into account her description of the circumstances in which she claimed to have learned about Falun Gong and practised it. Those circumstances included a period of initial tuition, followed by a period of attending "meetings" for several months before being required to stop by the authorities. They also included, she claimed, several years of private practice in China, and a period of weekly practice with a group in a local suburb.

In particular, the Tribunal would have expected a practitioner who had had the experience she claimed, to know the name of the first Falun Gong exercise and to be able to demonstrate it proficiently. However, as noted above [see page 13], she did not know the correct name and did not demonstrate the exercise. Even if she had only practised Falun Gong on a weekly basis since arriving in Australia, the Tribunal would have expected her to have known the correct name of the first exercise and to be able to demonstrate that exercise.

The Tribunal has noted the applicant's comment, at the hearing, that she thought she was suffering from some mental disease, and the inference that such a disease may have impacted upon her ability to respond to the Tribunal's questions. However, the applicant said that she has not sought any medical treatment for such a condition. While the applicant was unable to answer a number of its questions, the Tribunal is not satisfied, in the absence of medical diagnosis, that the applicant does in fact suffer from any medical condition which would have impacted upon her ability to answer the Tribunal's questions, or demonstrate her ability to perform Falun Gong exercises.

Further, there are inherent contradictions between the applicant's oral evidence and the written claims. These were discussed with the applicant at the hearing [see page 11 above]. They go to key elements of the applicant's claims, namely when she was allegedly detained and questioned by police, and the nature of any adverse treatment. In these circumstances, the Tribunal does not accept that the applicant's claims relate to incidents which she actually experienced.

Had the applicant been arrested and detained as she claimed, the Tribunal would not have expected her to have returned to China when she had the opportunity to leave the country. However, as indicated by her passport and her oral evidence, she returned to China. This suggests to the Tribunal that she had no fear of persecution in China at that time. Had she been a Falun Gong practitioner in China, the Tribunal would have expected her to be very much aware of the risks she faced and that she would not have returned to that country voluntarily. In all the circumstances, the Tribunal finds that the applicant was not a Falun Gong practitioner in China. It therefore finds that she does not have an adverse profile with the PRC authorities because of any past involvement in Falun Gong practice.

The Tribunal finds that she has not practised Falun Gong in Australia. It finds that the scant level of knowledge she has displayed about Falun Gong has been acquired by research in Australia to assist her to respond to questions about Falun Gong. The Tribunal finds that the applicant has no genuine commitment to Falun Gong and that, were she to return to China in the reasonably foreseeable future, she would have no reason to involve herself in Falun Gong in any way. The Tribunal therefore finds that, she will not face persecution in China because of any association with Falun Gong.

As the applicant has made no claims other than those related to Falun Gong, the Tribunal finds that she does not have a well founded fear of persecution in China. She is therefore not a refugee.

CONCLUSIONS

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

DECISION

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

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 Officer's I.D. PRRRNP