

0800325 [2008] RRTA 96 (28 March 2008)

DECISION RECORD

RRT CASE NUMBER: 0800325
DIAC REFERENCE(S): CLF2007/146311
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Antoinette Younes
DATE DECISION SIGNED: 28 March 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, 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 his review rights by letter.

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 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

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 generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

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

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

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

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

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

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

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

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

In the application for a protection visa, the applicant claimed that if he were to return to China, he would be persecuted by the Chinese authorities. On many occasions in China, he has been illegally arrested, detained, tortured, and penalised.

In support of the application, the applicant provided a Statement in which he claimed that:

- In Year 1, he had his first contact with Falun Dafa through his landlord Person P, who was living in District D near Location L in City A. Prior to that, he had heard about Falun Dafa. Person P was a reverent practitioner of Falun Dafa. She gave him a book entitled "*Zhuan Falun*" ("*Turning the Law Wheel*"), as well as a CD on how to cultivate and practice Falun Gong. She urged him to take care of the material and warned him to be careful. He read, studied and contemplated the contents of the book.
- Later in Year 1, he started to practise Falun Gong under the guidance of Person P. He was hoping to alleviate some of the stress he had been suffering. Over time, he got to know a group of other Dafa practitioners at Person P's home.
- The "*July 20*" incident marked the beginning of mass suppression of Falun Gong by the Chinese Communist Party Dictatorship. As a newer Falun Dafa practitioner, he joined his fellow practitioners in peaceful activities to clarify the truth about Falun Dafa.
- In Year 2, the police raided the home of Person P. They searched the room the applicant had rented and found "*Zhuan Falun*" and the CD. They confiscated his television and DVD player. They took him to District D Police Station for questioning. They asked him about where the book and the CD came from. He kept on saying that "*someone just shoved them in my hand one day when I was walking in the street*", but they did not believe his story. They slapped him on the face several times and locked him up in a police cell for a short period without any food.
- He was later sent to a detention centre and locked up. He was released many days later after the head of the company he worked for paid a large fine
- After his release, the police started followed him to and from work every day. At work, he was watched by the security officers employed by the company. Soon after, his employer, Company C dismissed him
- In Year 3, policemen appeared at his new work place and they took him away by force. The head of the company asked them what had happened. The policemen said that they had received reports from people that the applicant had been distributing "*illegal promotional material*" near Location L on a stated date. The applicant was taken to District D Police Station. The police used Method M during questioning and pressed

him to tell them with whom he was when he was distributing Dafa material near Location L. On the day in question, he was with fellow practitioners. His main duties were to keep a look out in the surrounding area. The police showed him the surveillance video footage with the applicant loitering the area. The applicant insisted that he was only waiting for transport. They tortured him and used Method M on him several times. As he would not make any admissions, and they could not find any evidence at his home, the police had to let him go after they kept him illegally locked up for a number of days

- However, after his release, for many more days the police followed him around and watched his every movement.
- The ill treatment and torture by police over those incidents took a huge toll on him. He decided to take a holiday.
- On a morning in mid Year 3, the day after he received a visa to Australia, some policemen went to his work place. They searched his work studio and other offices for a period of time. They then attempted to take the applicant away for questioning. At the time he was busy working on an urgent job, so the head of the company tried to reason with police. However, the police would not listen and insisted on taking him away, saying that the Commander of District D Police Station needed to talk to the applicant about something.
- At the police station, the police ordered him to hand in the 'illegal publications' they believed he had. They hit and kicked him during the questioning. It appeared that they were investigating an incident some days before, when people were allegedly distributing materials about Falun Dafa outside a building complex near Location L. He had been busy working overtime just before that together, and the second in charge of the company was with the applicant all the time. The applicant had no opportunity to participate in the activities on that date at all. In the afternoon of that day, the second in charge of the Company attended the police station to talk to them. The police released the applicant with the second in charge of the company. However, before they allowed him to leave, they found some excuses and requested that the company pay a large bond.
- Very soon after, he arrived in Australia. He saw a number of fellow practitioners, all of whom he had not seen for a while. The practitioners asked him whether he would consider trying to remain here in Australia but he told them that he would not consider such a thing.
- From his fellow practitioner, he heard that Falun Gong practitioners from all over the world had organized activities to promote and preserve Falun Dafa during an important event. The prospect of being able to publicly participate in activities to promote and preserve Falun Dafa was exciting so he decided to abandon his travel plan and join in these activities.
- During this period, after participating in a suburban demonstration, he received a phone call from his family member F1, and another one from the second in charge of the Company. His family member F1 informed him that the door of his new apartment had been sealed with police marking tapes, and that the neighbours told her that the police had searched his apartment and found a lot of stuff. He had stored in the new apartment a large number of "*Nine Commentaries on the Communist Party*" and thousands of copies of other materials about Falun Dafa.

- His family member F1 also told him that another family member F2 who is living elsewhere in China had also been questioned by her local police. The police said to his family member F2 that if he hands himself over to police after his return to China, they would not pursue him any further. The most penalty that he was likely to get would be a fine.
- The second in charge of the company told him that police had again attended his place of work looking for the applicant. They asked a lot of questions about his travel and holiday, and inspected his work studio. The second in charge asked the applicant whether something new had happened and the applicant said no and requested an extension of his leave period. That night, the applicant discussed the situation with his fellow practitioners. They urged him to think things over and they believed that he should not run the risk of going back to China. They told him that they would help him if he wished to seek protection from the Australia government.
- Over the past few days he has participated in a series of demonstration and other activities that aimed to clarify the truth about Falun Dafa. He has joined group meditation on a week day

The applicant provided to the Department the following:

1. A photograph relating a gathering in Australia at a stated time.
2. Publication and translation from [Internet site IS1] referring to a large number of arrests of practitioners, including the applicant on a given date.
3. Publication and translation from [Internet site IS1] referring to the Chinese authorities' harassment of the applicant's family in China.
4. Four photographs relating to a Falun Gong parade in Australia and a rally in Australia
5. Publication and translation from [Publication X] referring to the applicant's detention in mid Year 3 and threats to his family
6. News' translations relating to the applicant from [Internet site IS2] published [in year 3].

The applicant was interviewed by the Department and the Tribunal has considered his responses. The Tribunal has not, in any way, relied on this material in an adverse manner to the applicant.

Material provided to the Tribunal

In a statement to the Tribunal and essentially in response to the delegate's decision, the applicant claimed that:

- He has been looking for evidence regarding the illegal detention and penalty imposed on him by the Communist Party of China (CPC) through the CPC police regarding his involvement in the Falun gong organisation. However, *"I can not guarantee that I will surely find it. Instead, I have got evidence issued by the*

Falungong organisation. So far as I know, the Buddhist Association does not issue relevant certificates as required for the application as a refugee status”

- Regarding the report on the internet on Internet Site IS2, he told the immigration officer and he has no other comments to make.
- In relation to the leave the company granted to him, as it took a very long time to apply for a visa, it was not possible to predict what kind of work would await him during this period of time. As such, the time for application from [date] to [date] was just the time frame which he could expect. The holidays allowed by the company were from [date] to [date]. They were organised and decided in light of the work requirement. It was because by the end of this period, his company would undertake a new project elsewhere in China. The company leaders asked him to return to work in the company no later than on a given date. About this issue, the immigration officer did not raise any question or doubt him at interview
- The Company with which he was employed prior to Year 2 was a state-owned company under an Office of the State Council. Consequently, he was fired as soon as the company got the news in Year 2 that he was involved in Falun Gong. Soon after in the same year, his immediate boss by the time was still working for that same Company and he employed the applicant in the company which he established. But he reduced his wages and cautioned him that he should not do anything in the company in relation to Falun Gong. The applicant accepted his warning. He has no other statement to explain why the CPC authorities did not deprive his right to residence or work.
- His new residential home in City A which was searched in Year 3 was purchased with up front payment. A deposit was paid the previous year and full amount of the purchase money was paid off on [date] before the key was delivered. The interior decoration was completed soon after, but he did not move in immediately after that because of smell following the construction work. With the exception of his family members and a co-practitioner, no one knew that he had bought the new property. Hence he kept the Dafa documents there, which he had meant to distribute during a stated date. It was partly owing to this factor that he refrained from moving into the new property.
- In his initial application for a visa, he did not use the new address because he did not have the new property, or use the address of the property which he rented from Person P because that property was under surveillance by the CPC police. In his later application, he put down the actual address of the new property on the form.
- The Immigration Officer had doubts about his illegal detention by the CPC authorities on a stated date in mid Year 3. The applicant was not aware of whether the police searched his residential home or not. He has stated in his application for refugee status that just before that date, he was working overtime with the second in charge and he did not go home till just after that date. During that time, he was dispatched by the company to another city for technical business negotiations and stayed there until just before he went back home. It was precisely due to these facts that the second in charge brought him back to the company some days earlier. When they were working overtime, he did not return to the residential address. He

did not find anything unusual when he returned home, or hear anything like the home search. Hence he said he was not aware of whether the authorities had searched his home.

- During his stay in Australia, his co-practitioners advised him to stay but he declined their offer. He has a fairly good office job in China and there were no work pressures on him. He had a good income and owned a sizeable asset. However, if he were to stay in Australia, he can not live like many other Chinese residents but will have to do physical and heavy labour due to his poor English skills. In recent times, he has been able to work and survive on a set wage
- Before the CPC police searched his new home in City A in Year 3, the CPC authorities did not find any evidence except the Dafa documents which they had discovered in his residence in Year 2. Apart from the slight panic that he suffered for being followed, there were no conditions or extreme fear for which he had to flee China. His family members and other loved ones were residing in the mainland.
- He does not have much to add in response to the allegation about his *“prior tendency of applying for refugee status, which the immigration officer raised in the letter. If I had had such a prior tendency, I would have sought all means to depart the Chinese mainland as soon as I was issued the passport and would also have brought with me all the necessary evidence”*
- He made up his mind to apply for protection as he was told that the CPC authorities searched his new residence in Year 3 and that the CPC authorities *“overthrew all my previous statements which I have made prior to this event”* In light of the practice that the CPC authorities had habitually performed towards dissidents and the masses of people who are religious believers, the CPC authorities would not let him go easily. Although he is not an influential or important figure, he is an ordinary member of the hundreds of thousands of Falun Dafa practitioners. Being an independent living person, he is requesting an equal opportunity.

The applicant provided translated statements from witnesses referring to the applicant’s Falun Gong activities in both China and Australia

HEARING

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

The Tribunal showed the applicant the statement he had provided in support of the application for a protection visa. The applicant stated that the document had been translated by a NAATI 3 interpreter. He confirmed that he had nothing to change to the statement. The Tribunal asked the applicant about the completion of the application for a protection visa. The applicant said a fellow practitioner had assisted him in the completion of the application. He confirmed that he had nothing to change to the application.

The applicant gave evidence of the date that he came to Australia on a temporary Visa valid for a set period. The Tribunal asked the applicant where he had lived in China over the last few years. The applicant stated where he had lived and on what dates.

The applicant gave evidence of when he started to practise Falun Gong. He said he had a landlord who had introduced him to Falun Gong. He said she was a good lady. He said that in Year 1 he was employed in a particular job. The Tribunal asked him why he commenced to practise Falun Gong. He said that he started to practise Falun Gong as he was under pressure from his work. He said he had heard that Falun Gong was good. He said in Year 1, he was a certain age. The Tribunal indicated to the applicant that it was unusual for a person at his age to start practising Falun Gong. The applicant stated that he had grown up in a single-parent home and that he did not find it easy to communicate with others. He said he knows a lot of young people who practise Falun Gong.

The Tribunal asked the applicant about the Falun Gong activities in which he was involved in Year 1. The applicant stated he learnt theories and practised the exercises. He said he was involved in “*issue*”. The Tribunal asked the applicant what he meant by “*issue*” The applicant said it refers to certain activities that any practitioner should be involved in; practitioners should be spreading some information about Falun Gong. The Tribunal indicated that his explanation does not appear to explain what he means by “*issue*” The applicant stated the main activity is to rescue people and regulate oneself and others. The Tribunal indicated to the applicant that his responses are vague and that the Tribunal does not have a clear idea about what he means by “*regulate*” or “*issue*”. The applicant stated that all practitioners in Falun Gong in the world will at certain time, think of some information and idea in their mind. He said it means they will send information to the universe. The Tribunal indicated that it would further consider his explanations.

The Tribunal noted that his responses have been vague and general which could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment on or respond. The applicant stated in Falun Dafa one regulates oneself and others. He said this means that they want to get rid of all evil things. It means they want to create truthfulness, tolerance and kindness in the universe. The Tribunal indicated that it would further consider his comments, responses and explanations. The applicant stated that in China a practitioner issues information. The Tribunal indicated that it would further consider his explanations.

The Tribunal asked the applicant to outline the exact Falun Gong activities in which he was involved in China. The applicant stated where he was spreading information about the Nine Commentaries and information about Falun Gong. The Tribunal asked him when he had spread that information at that location. He said he had done so on the weekends and during evenings. He said he did not do so regularly, because of the government’s control. The Tribunal asked the applicant if he could explain more when he had spread the information at Location L. He said he had done so when there was a big celebration such as public holidays, every year from Year 1 until Year 3. The Tribunal asked him if he had spread information at Location L only on those occasions over those years. He said he had but he had also spread information at Location L if the situation in China was not strict. The applicant stated that when the government was very strict he did not spread information. The Tribunal asked him where he had spread that information He said he had done so and where he had done it. The Tribunal asked him how he had spread that information. He said he gave pedestrians and others the information. He said he stood close to a building complex. The Tribunal asked him whether there was security in that area and the applicant stated there would have been security.

The Tribunal noted that in the application for a protection visa the applicant does not say he had spread information on the stated dates or how many times a year over those years, which might raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment on or respond to that information. The applicant referred to his statement, where he said he had mentioned that on one occasion he was at Location L. The Tribunal indicated to the applicant that the statement is long, comprehensive, detailed and contains irrelevant information, but it does not include specific information about when he had spread information at that location, which the Tribunal considered to be significant details. The Tribunal indicated to the applicant that the fact that he did not include those details in the application for a protection visa, could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment or respond. The applicant stated that in the statement, he had talked about the persecution by the Chinese government. The applicant stated that he did not take the statement to contain all information about what had happened to him in China. He said he did not think that he had to put all activities in which he was involved in China, but rather it was about how he was detained. The Tribunal reiterated that his statement appears to be comprehensive containing details about many aspects as well as irrelevant information. The Tribunal indicated that it would further consider his explanations.

The Tribunal indicated to the applicant that it was of the view that it was implausible that the applicant and others would spread information in a public and presumably a high security location, such as Location L and/or its surroundings. The Tribunal invited the applicant to comment on, or respond to that information. The applicant stated that he and others had lived close to that location. He said most of the other practitioners had their families in the area and they were familiar with the area. He said Location L is not like a similar one in Australia. He said the building complex is far away from Location L's security. He said they had chosen a place where it was not easy to find by the police; it was a place from where it was easy to run. He said there were people there who had spread information unrelated to Falun Gong. The Tribunal indicated that it would further consider his explanations.

The Tribunal asked the applicant to explain other activities in which he was involved in China. He said he had spread information and learned theories and he practised. The Tribunal asked him where he had practised Falun Gong. He said he had practised Falun Gong at the place where he lived. He said he had always practised alone. The Tribunal asked him if he had met other practitioners. He said he did meet them but he did not practise with anyone else as the practice is banned in China.

The Tribunal asked the applicant when he and others spread information about Falun Gong in China. He said they had joined together to study the theory. He said when the situation was not so bad they joined to discuss and spread information. The Tribunal indicated to the applicant that it was odd that he would meet with other practitioners and discuss the spread information and yet he did not practise with them. The applicant stated that in order to practise one needs a big place and a long time. He said for that group of practitioners, they would have been easily discovered. He said to discuss the spreading of information, one needed fewer people. The Tribunal indicated it would further consider his explanations.

The Tribunal asked him to explain how often he had met with other practitioners, he said how often they met twice a month normally at the beginning and the middle of every month from Year 1 to Year 3. He said he however did not attend those meetings on every occasion. The Tribunal indicated to the applicant that his responses appear to be vague, general and lacking in details which could raise doubts about the veracity of his claims and credibility generally. The

Tribunal invited the applicant to comment on or respond to that information. The applicant stated he did not know how to explain.

The Tribunal asked the applicant about the first time when he came to the attention to the Chinese authorities. He said the date that it occurred. He said the police had been searching the neighbour's home. He said they found a book in his bedroom and he was detained and forced to tell them. He said he was asked if he was a practitioner of Falun Gong. The Tribunal asked him if he had been charged with any offence. He said he was not charged. He said although he was taken away and detained where he remained for many days. He said when he was released. The Tribunal asked the applicant why a person who allegedly had been detained for that number of days and ill-treated, would have continued to spread information about Falun Gong. The applicant stated that a Falun Gong practitioner should tell the truth and rescue people.

The Tribunal reiterated that it was difficult to accept that a person who had allegedly been detained and ill-treated by the authorities would still engage in what are arguably public activities, such as spreading information at Location L. The Tribunal indicated that this could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment on or respond. The applicant stated that he should explain to the Tribunal further about Location L and the area. He said they practised in the Location L area, which meant the District D area. He said the Location L area includes District D village, the staff dormitory, the living area and the commercial areas. He said they were spreading information in those areas. The Tribunal indicated to the applicant that he had given evidence earlier that he stood near a building complex and that it appears that he was changing his evidence when further clarifications were being sought from him. The applicant stated he had not earlier given the names of all those places. The Tribunal indicated to the applicant that the change in his evidence could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment on or respond. He said he was not clear about when he could say his whole words and there were times when he did not finish his sentences. The Tribunal invited him to finish. He said that he has explained but he was not sure if the Tribunal had understood. He said he had nothing else to say.

The applicant gave evidence about the date that he was arrested in Year 3 and that he was arrested because the police had watched surveillance videos of a section close to Location L. The Tribunal asked him what street that section was and he said what road that it was. He said he was asked to admit if he was spreading information about Falun Gong and if there was anybody else with him. He said they told him they saw him wondering and watching. The Tribunal asked him if that road is where he normally stood. He said not every time. He said on that occasion he was. The Tribunal asked him how many occasions he stood at that road. He said only once as far as he could remember. The Tribunal asked him if the police had shown him the video and he said they did. He said he was just standing there. The Tribunal indicated that in his statement, he has claimed that he was seen loitering the area. Upon further clarification from the interpreter, it was discovered that the word used in Chinese could mean loitering, standing or wondering. As such the Tribunal indicated to the applicant that it would not use this matter in an adverse manner to the applicant.

The applicant gave evidence that on the second occasion, he was kept for some days and he was subjected to Method M. He described how that was experienced.

The applicant gave evidence that he was arrested another time in Year 3. He said someone had reported that he was spreading Falun Gong, but he was not. He said he was kept at District D and he was released as his work leader had proved that the applicant was working at the time. The

Tribunal indicated to the applicant that he has not provided any letters or witnesses from the Falun Gong association in Australia. The applicant referred to the witness statements he had provided to the Tribunal. The Tribunal noted those statements and indicated to the applicant that those documents are not from the Falun Gong association in Australia. He said he had asked for assistance from the Falun Gong association but he was told the association no longer supports refugee applicants. The Tribunal indicated that the Tribunal would further consider his explanations.

The Tribunal discussed with the applicant the two photographs he provided to the Department. The Tribunal indicated to the applicant that the photographs show that he was standing there and that this does not mean that he was actively involved in those activities. The Tribunal indicated to the applicant that the Tribunal would further consider the weight that it would place on those photographs as evidence of him being a genuine Falun Gong practitioner. The Tribunal invited the applicant to comment and or respond. He said he had participated in those activities. The Tribunal indicated to the applicant that if the Tribunal were to form the view that he was engaged in those activities otherwise than for the purpose of strengthening his application for a protection visa, the Tribunal must disregard those activities. The Tribunal invited the applicant to comment on or respond. He said he had no comments to make.

The Tribunal discussed with the applicant the publication and the translation from [Internet Site IS1] referring to arrests of practitioners including the applicant in Year 4. The Tribunal asked the applicant where he got that material. He said from the Internet. He said he searched his name and this is what he had found. The Tribunal noted that the documents refer to the applicant as having lived in Province P but his evidence was that he had lived in City A. The applicant said he had been living in City A but his house registration was in Province P, the province where he was born. He said that when he went to City A he did not change his registration and he could not. He said he was only working in City A and he did not have his original housing registration in City A. The applicant showed the Tribunal identification referring to his residential address in Province P. He said he also had temporary registration in City A. The Tribunal indicated that it would consider the matter further.

The Tribunal indicated to the applicant that the Tribunal needed to further consider the authoritativeness and or reliability of those publications. The Tribunal indicated that the Tribunal would need to further consider whether those publications contained correct and or truthful information.

The Tribunal indicated to the applicant that the document entitled "*The Illegal Detention of [Province P] Dafa practitioner [name]*" indicates that "*All Dafa followers will need to send forth the righteous thoughts in a combined effort to rescue [name]*" The Tribunal indicated that it would not make sense that they would need to rescue him given his claim that he was released on the same day. The applicant stated "*I really don't know this...*" He said when he was arrested by the police somebody may have witnessed it but maybe when he was released, nobody saw it. The Tribunal indicated that it would further consider his explanations. The Tribunal indicated to the applicant that the inconsistency could raise doubts about the reliability of those documents and the truthfulness/correctness of the information contained therein. The Tribunal indicated that it is plausible that the applicant had something to do with the publication of the documents. The Tribunal invited the applicant's comments and or responses. The applicant stated he believed that some people must be trusted. The applicant stated that the Falun Dafa site would have deleted the information if not genuine. The Tribunal indicated that it would further consider the matter. The Tribunal indicated to the applicant that the publications would be further considered in terms of reliability and truthfulness of information contained therein.

The Tribunal indicated to the applicant that there are many internet sites, such as Wikipedia, that can easily be edited, raising doubts about their reliability.

The Tribunal discussed with the applicant the publication and translation from [Internet Site IS1] referring to the Chinese authorities' harassment of the applicant's family in China. The Tribunal indicated that the Tribunal would further consider the reliability of this information and the truthfulness of the information contained therein. The Tribunal noted however that the document contained very personal information about the applicant such as his "[name] mobile phone account" and the company run by his family member F2, [name of company] which could suggest that this information was provided by the applicant personally as it is private and personal information. The Tribunal questioned how the authors of the publication would have known such personal details. The applicant stated that after he came to Australia he talked to other practitioners about family threats and his history. He said it is possible that those practitioners had disclosed those matters. The Tribunal indicated that it would consider further his comments and the reliability and the truthfulness of the information contained in those publications.

The Tribunal discussed with the applicant the four photographs that he provided to the Department showing him being involved in a parade and a rally in locations in Australia. The Tribunal indicated to the applicant that the Tribunal needed to further consider whether he had engaged in those activities otherwise than for the purposes of strengthening his application for a protection visa. The Tribunal indicated that if the Tribunal were to reach that conclusion, it must disregard those activities. The Tribunal invited him to comment on or respond. The applicant said he had no comments to make.

The Tribunal discussed with the applicant the publication and translation from [Publication X] referring to the applicant's detention in mid Year 3 and threats to his family and the News' translations relating to the applicant from Internet site IS2. The Tribunal referred to the personal information about the applicant referred to in those publications and asked him how they would know about his activities. The applicant stated that the articles had been taken from Internet site IS1. The Tribunal indicated that it would further consider his explanations and the reliability and the truthfulness of the information contained in those publications. The Tribunal invited him to comment and or respond. The applicant stated that he had no further comments to make.

The Tribunal referred to the translated statements provided to the Tribunal from the applicant from fellow practitioners referring to the applicant's Falun Gong activities in both China and Australia. The Tribunal indicated that it would further consider the weight to be placed on that material and that it is not difficult to get people to write such statements. The Tribunal invited him to comment and or respond. He said that Falun Gong practitioners must tell the truth and they would not write such statements for anybody. The Tribunal indicated that it would further consider the explanations, comments or responses. The Tribunal indicated to the applicant that the Tribunal would further consider whether he has engaged in Falun Gong activities in Australia for the purpose otherwise than for the purpose of strengthening his application for a protection visa. The Tribunal invited the applicant to comment or respond. The applicant said that he has told other practitioners about private matters. He said if he had anything to do with the articles he would not have included information about members of his family. The Tribunal indicated that it would further consider the matter.

The Tribunal indicated to the applicant that the material in support that he has provided is not from official sources and that he has not provided any official documents in support of his claims. He said he had them at home but as he did not intend to apply for a refugee status when

he came to Australia, he did not bring them with him. The Tribunal indicated to the applicant that the fact that he has not provided any official documents might raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited his comments and or responses. The applicant stated that he understood what the Tribunal was telling him.

The Tribunal indicated to the applicant that the Tribunal needed to further consider whether he had anything to do with the publication of those articles for the purposes of strengthening his application for a protection visa. The Tribunal indicated to the applicant that if the Tribunal were to form the view that he had engaged in those activities otherwise than for the purpose of strengthening his application for a protection visa, the Tribunal must disregard those activities.

The Tribunal asked the applicant if he knew when the Chinese authorities had issued an order against Mr Hongzhi. The applicant stated that it happened in 1999 but he does not recall the date. The Tribunal indicated that country information dictates that it occurred on 29 July 1999. The Tribunal asked the applicant if he knew when Mr Hongzhi had applied for asylum in the U.S. The applicant stated that he did not know those details. He said he only knew that Mr Hongzhi had lived in America. The Tribunal indicated that Mr Hongzhi had applied for asylum in America in February 1997. The Tribunal asked the applicant if he knew Mr Hongzhi's date of birth according to Falun Gong. The applicant stated he did not know. The Tribunal put to the applicant that it is 13 May 1951. The Tribunal asked him if he knew Mr Hongzhi's date of birth according to Chinese authorities, and the applicant stated he did not know the exact date. The Tribunal indicated to him that it is 7 July 1952. The Tribunal asked the applicant if he knew when Mr Hongzhi founded Falun Gong. He said it was in 1990 but he did not recall when. The Tribunal indicated that country information indicates that it is 2 May 1992.

The Tribunal asked the applicant if he knew when Mr Hongzhi had stopped teaching Falun Gong. The applicant stated that he did not know. The Tribunal put to him it was in 1995. The Tribunal asked the applicant if he knew when *Zhuan Falun* and other Falun Gong publications had been banned by Chinese authorities. He said from the 20 July 1999 everything was banned. The Tribunal put to him that country information suggests that *Zhuan Falun* and other publications had been banned on 24 July 1996. The Tribunal asked the applicant if he knew the significance of 25 April 2000. He said it was the Falun Gong protest anniversary. The Tribunal accepted his response as being correct. The Tribunal asked him if he knew when the Beijing protests took place. He said on 25 April 1999. The Tribunal indicated that it was on the 22 April 1999. The Tribunal asked him if he knew when the Tianjian protests took place. He said he did not know. The Tribunal put to him that it was on 18 April 1999. The Tribunal asked him if he knew when Falun Dafa day is and he said it was on the 16 December in the world. The Tribunal indicated that it was not correct and that it was on the 13 May.

The Tribunal indicated to the applicant that he appears not to know basic and important details about the development of Falun Gong, which could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited the applicant to comment or respond. The applicant stated that he had nothing to say.

At the end of the hearing, the Tribunal indicated to the applicant that he was entitled to seek additional time to comment on or respond to the information that the Tribunal had given him in the course of the hearing, that the Tribunal considered would be a reason for affirming the decision to refuse him a visa. The Tribunal asked the applicant if he needed more time to comment on or respond to that information. The applicant stated that he did not need any more time to comment and or respond.

In closing the applicant stated that he would like the Tribunal to consider the fact that in China Falun Gong websites are banned, and as such it is difficult to get information about Falun Gong. The Tribunal indicated to the applicant that the Tribunal would take this into account in reaching its conclusions.

INDEPENDENT COUNTRY INFORMATION

Background to Falun Gong

The practice / philosophy that is loosely known as Falun Gong was founded in 1992 in China by Li Hongzhi as a development from the ancient Chinese self-realisation and development regime known as QiGong . While the practice of QiGong is a tradition within China, Falun Gong is novel in its blending of QiGong with elements of Buddhist and Taoist philosophy. Many terms such as Falun Dafa and Falun Gong are used in relation to the movement. The term Falun Dafa is preferred by practitioners themselves to refer to the overarching philosophy and practice. (UK Home Office 2002, *Revolution of the Wheel – the Falun Gong in China and in Exile*, April) There is no question that Falun Gong promotes salvationist and apocalyptic teachings in addition to its QiGong elements. Despite its own protestations to the contrary, it also has a well-organized and technologically sophisticated following and has deliberately chosen a policy of confrontation with authorities. (Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against FalunGong* , February)

Falun Gong first came to the attention of PRC authorities after demonstrations by Falun Gong adherents in April 1999 in Tianjin and later that month outside the Zhongnanhai in Beijing The initial government crackdown against Falun Gong began in late July 1999, when a number of government departments implemented restrictive against the movement, banning Falun Gong and issuing an arrest order for Li Hongzhi. The movement was declared an “evil cult” and outlawed in October 1999. (\\Ntssyd\Refer\Research\Internet\Ukhome\Uk-Home2002apr\Chn-2002-Revolution Of The Wheel.Doc RRT Library – Call no. Human Rights Watch)

When and why Falun Gong started to attract government attention

Founded in 1992, Falun Gong first came to prominence in April 1999 after several thousand Falun Gong adherents staged a sit-in in Tianjin, outside the publishers of the Tianjin University journal that had published an article criticizing the movement. Official attention was heightened when more than 10 000 adherents of Falun Gong coordinated a peaceful demonstration outside Beijing’s leadership compound, the Zhongnanhai, on 25 April 1999. The demonstration was the first major public manifestation of Falun Gong’s popularity in China, and is reported to have caught the PRC authorities unawares. The incident is widely considered to have been the trigger for the initial crackdown against Falun Gong commencing in July 1999. The authorities are reported to have been mainly concerned by the capacity of the group to mobilize large numbers of followers, unnoticed, for a public demonstration. Subsequently, after some conflicting signals, they branded the Falun Gong a “threat to social and political stability”. The government banned Falun Gong on 22 July 1999 and launched a massive propaganda campaign to denounce its practice and the motivation of its leaders, in particular Li Hongzhi. Since then, the government's accusations against the group have been repeatedly publicized by the state media and government officials. (Amnesty International 2000, *People's Republic of China: the Crackdown on Falun Gong and Other So-Called “Heretical Organizations”* , ASA 17/11/00, 23 March, Section 2.1 <http://www.amnesty.org/ailib/aipub/2000/ASA/31701100.htm> - Accessed 25 February 2002; Penny, Benjamin, 2001, *The Past, Present and Future of Falun Gong (paper presented to a*

seminar at the Refugee Review Tribunal in Sydney Australia), 4 May; ter Haar, Barend J., 2001 (updated 2002), *Falun Gong: Evaluation and Further References*, on his website at Leiden University (Holland): <http://www.let.leidenuniv.nl/bth/> - Accessed 14 November 2002; Human Rights Watch 2002, *Dangerous Meditation: China's Campaign Against FalunGong*, January (released 7 Feb 2002), 'Section I – Summary and Recommendations'.

Summary of basic dates

The UK Home Office, *China Country Assessment*, October 2002 (Report produced by Country Information and Policy Unit), noted that:

Key Events in the history of the Falun Gong movement

6.A.85. *Up to December 1999 is based on A Chronological List of Events for the Falun Gong Movement produced on 5 December 1999 by the United States Immigration and Naturalization Service. [3h] This is corroborated with the chronology of a commentator, Danny Schlecter, and Schlecter's chronology is used for December 1999 to June 2000 [5q] Other dates and events have been added up to February 2002.*

6.A.86. *Basic dates are as follows:-*

13 May 1951 - Date of birth of Li Hongzhi (Falun Gong)

7 July 1952 - Date of birth of Li Hongzhi (PRC authorities)

22 May 1992 - Li Hongzhi founds Falun Gong

August 1993 - Falun Gong accepted as an associated sub-group into the China Qigong Science Research Association

1995 - Li Hongzhi stops teaching Falun Gong, authorities in Hangzhou take action to stop the spread of Falun Gong .

24 July 1996 - Chinese government bans Zhuan Falun and other publications.

February 1997 - Li Hongzhi formally expelled from the China Qigong Science Research Association.

February 1997 - Li Hongzhi and family apply for asylum in New York, leaving at apparent urging of the authorities.

18 April 1999 - Tianjin protests.

22 April 1999 - Beijing protests

25 April 1999 - Zhongnanhai protest.

22 July 1999 - Falun Gong banned.

29 July 1999 - Arrest order for Li Hongzhi issued.

30 October 1999 - Law outlawing cults passed.

February 2000 - Zhong Gong declared a cult and banned.

25 April 2000 - First anniversary of the Zhongnanhai protests; 100 protesters arrested in Beijing

26 June 2000 - period of increased protest by Falun Gong; 1,200 practitioners arrested in 1 week.

23 January 2001 - The Beijing immolations and subsequent crackdown

25 April 2001 - Second anniversary of the Zhongnanhai protests; some public protest in Beijing; mainly protests outside PRC.

21 September 2001 - first reports of actions taken against "terrorists" in China, in the wake of 11 September.

1 October 2001 - National Day: no reported protests.

5 March 2002 - Falun Gong interrupt cable signal in ChangChun, broadcast pro- Falun Gong programmes for an hour.

13 March 2002 - Police orders allegedly escalated to shoot Falun Gong protesters on sight.

The UK Home Office 2007, 'Country of Origin Information Report: China', UK Home Office website, 30 April <http://www.homeoffice.gov.uk/rds/pdfs07/china-100507.doc> - Accessed November 2007 notes as follows:

Important dates for foreign-based practitioners

25 April

"This is the anniversary of the protest by 10,000 practitioners outside Zhongnanhai, the communist regime headquarters in Beijing, China...The commemoration activities typically consist of protest rallies and/or parades usually in front of the Chinese embassies/consulates or other public open spaces. Public open air exhibitions about the persecution, including torture and organ harvesting, could also form a part of the events. Practitioners may also give out flyers about the atrocities and collect signatures for petitions." [81b]

13 May (Falun Dafa Day)

"This is the day when Falun Gong was publicly introduced in China in 1992, and also the birthday of the founder of Falun Gong [Li Hongzhi]. The [sic] is an anniversary event typically for celebrations featuring performance of the Falun Gong exercises in public open spaces together with performances of Chinese dances, songs, calligraphy, and other art forms of the traditional Chinese culture of which qigong including Falun Gong is a part. Depending on the place and the year concerned, some efforts made [sic] also be made to raise awareness of the persecution." [81b]

20 July

"Anniversary of the start of the persecution of Falun Gong by the communist regime in China (see also the item for 25 April) This is commemorated with the aim of raising awareness of the persecution and the form of commemoration is usually the same as that for 25 April." [81b]

FINDINGS AND REASONS

On the basis of available information the Tribunal is satisfied that the applicant is a citizen of China and that he is outside that country.

In consideration of the evidence as a whole and for reasons outlined below, the Tribunal finds the applicant does not have a well-founded fear of persecution.

In the course of the hearing the applicant's responses were vague, lacked in details and were internally inconsistent and inconsistent with his written claims. His knowledge of the development of Falun Gong in the Tribunal's opinion is not commensurate with his claims that he has been a practitioner since Year 1 and that he had been involved in the claimed activities, or that had learned theories about Falun Gong

Evidentiary concerns

As discussed in the course of the hearing, the Tribunal has concerns about the following:

- In relation to his Falun Gong activities in Year 1, the applicant gave evidence that he learnt theories and practised the exercises. He said he was involved in “*issue*”. When asked to explain what he meant by “*issue*” The applicant said it refers to certain activities that any practitioner should be involved in; practitioners should be spreading some information about Falun Gong. Asked again, the applicant stated the main activity is to rescue people and regulate oneself and others. The applicant stated that all practitioners in Falun Gong in the world will at certain time, think of some information and idea in their mind. He said they will send information to the universe. The applicant stated in Falun Dafa one regulates oneself and others. He said this means that they want to get rid of all evil things. It means they want to create truthfulness, tolerance and kindness in the universe. The applicant stated that in China a practitioner issues information. The Tribunal is of the view that despite repeated questions, his responses were vague and did not provide a clear idea about what he meant by terms that he had used such “*regulate*” or “*issue*”, raising doubts about the veracity of his claims and his credibility generally.
- The applicant gave evidence that he was spreading information at Location L about the Nine Commentaries and information about Falun Gong. He said he had done so on the weekends and during evenings, but he did not do so regularly because of the government’s control. He said he had done so when there was a big public celebration such as [stated dates], every year from Year 1 to Year 3. He said he had also spread information at Location L if the situation in China was not strict. He said he had spread that information in Location L. He said he gave pedestrians and others the information. He said he stood close to a building complex The Tribunal asked him whether there was security in that area and the applicant stated there would have been security.

In the application for a protection visa, the applicant does not specifically say he had spread information during big public celebrations such as [stated dates] over those years. When it was suggested to him that the fact that he did not include those details might raise doubts about the veracity of his claims and his credibility generally, the applicant referred to his statement, where he said he had mentioned that on one occasion he was at Location L. It is correct that there is mention of a Location L incident in the statement but there is no mention that he had spread information on the stated dates throughout the year over those years. The Tribunal notes that the statement is long, comprehensive, detailed and contains irrelevant information, but it does not include specific information about when he had spread information at Location L, which the Tribunal considers to be significant details, raising doubts about the veracity of his claims and his credibility generally. The Tribunal has considered his comments about the statement, that he had talked about the persecution by the Chinese government and that he did not take the statement to contain all information about what had happened to him in China. He said he did not think that he had to put all activities in which he was involved in China, but rather it was about how he was detained. The Tribunal is not persuaded. The statement is comprehensive, containing details about many aspects as well as irrelevant information, but not those significant details.

- The Tribunal is of the view that it is implausible that the applicant and others would have spread information in a public and presumably a high security location, such as Location L and/or its surroundings. The applicant’s explanations that he and others had lived close

to Location L, that most of the other practitioners had their families in the area and they were familiar with the area, that Location L is not like a similar place in Australia, that the building complex is far away from Location L's security, that they had chosen a place where it was not easy to be found by the police, that it was a place from where it was easy to run, or that there were other people there who had spread information unrelated to Falun Gong, are neither convincing, nor persuasive. Given the potential serious consequences, the Tribunal is of the view that it is implausible that the applicant had engaged in those activities in an area where, on his evidence, there would have been security. In fact, in his statement, he claims that early in Year 3, the police took him and showed him the surveillance video footage of him near Location L. It is difficult to reconcile his contention that they chose an area where they could not be found, but at the same time, to claim that he was shown footage of the area where he allegedly was. Furthermore, his contention is incongruent with his evidence that he stood close to the building complex where he agreed there would have been security.

- Furthermore, it is difficult to accept that a person who had allegedly been detained and ill-treated by the authorities would still engage in what are arguably public activities, such as spreading information at Location L, raising doubts about the veracity of his claims and his credibility generally. The applicant's explanations that they were spreading information in the Location L area which includes District D village, the staff dormitory, the living area and the commercial areas, are unconvincing.
- In the course of the hearing, the applicant was changing his evidence. He had given evidence that he stood near a building complex. As concerns were being put to him and as noted above, his evidence changed raising doubts about the veracity of his claims and his credibility generally. When he was invited to comment or respond, he said he was not clear about when he could say his whole words and there were times when he did not finish his sentences. The Tribunal invited him to finish. He said that he has explained but he was not sure if the Tribunal had understood. He said he had nothing else to say. The Tribunal is satisfied that the applicant had ample opportunity to elaborate and clarify his evidence. It was a task to get the applicant to provide coherent and clear responses about his claims. His response that he had nothing else to say suggests that he indeed was given ample opportunity. The Tribunal is satisfied that the change in the applicant's evidence raises doubts about the veracity of his claims and his credibility generally. He gave an impression of being prepared to say whatever was convenient rather than provide truthful responses to basic questions about his claims.
- The applicant claimed that he had practised Falun Gong alone, but that he and others joined together to study the theory. He stated that in order to practise one needs a big place and a long time. He said for a group of practitioners, they would have been easily discovered. He said when the situation was not so bad they joined to discuss and spread information. He said to discuss the spreading of information, one needed fewer people. The Tribunal is not persuaded. The Tribunal is of the opinion that it is odd that he would meet with other practitioners and discuss the spread information, and yet he did not practise with them.
- The Tribunal asked the applicant to explain how often he had met with other practitioners, he said how often they met between Year 1 and Year 3. He said he however did not attend those meetings on every occasion. The Tribunal is of the opinion that his

responses were vague, general and lacking in details, raising doubts about the veracity of his claims and credibility generally.

- Whilst it is not the Tribunal's intention to conduct a 'test', given the applicant's claims, the Tribunal is of the view that it is legitimate to ask him questions about Falun Gong, especially given his claims that he had studied the theory and spread information. The Tribunal asked the applicant if he knew when the Chinese authorities had issued an order against Mr Hongzhi. The applicant stated that it happened in 1999 but he does not recall the date. Country information dictates that it occurred on 29 July 1999. The Tribunal asked the applicant if he knew when Mr Hongzhi had applied for asylum in the U.S. The applicant stated that he did not know those details. He said he only knew that Mr Hongzhi had lived in America Mr Hongzhi had applied for asylum in America in February 1997. The Tribunal asked the applicant if he knew Mr Hongzhi's date of birth according to Falun Gong. The applicant stated he did not know. The Tribunal put to the applicant that it is 13 May 1951. The Tribunal asked him if he knew Mr Hongzhi's date of birth according to the Chinese authorities, and the applicant stated he did not know the exact date. The Tribunal indicated to him that it is 7 July 1952 The Tribunal asked the applicant if he knew when Mr Hongzhi founded Falun Gong. He said it was in 1990 but he did not recall when. Country information indicates that it is 2 May 1992.

The Tribunal asked the applicant if he knew when Mr Hongzhi had stopped teaching Falun Gong. The applicant stated that he did not know. Country information indicates that it was in 1995. The Tribunal asked the applicant if he knew when *Zhuan Falun* and other Falun Gong publications had been banned by Chinese authorities. He said from the 20 July 1999 everything was banned. Country information suggests that *Zhuan Falun* and other publications had been banned on 24 July 1996. The Tribunal asked the applicant if he knew the significance of 25 April 2000. He said it was the Falun Gong protest anniversary, which was correct. The Tribunal asked him if he knew when the Beijing protests took place. He said on 25 April 1999. Country information indicates that it was on the 22 April 1999 The Tribunal asked him if he knew when the Tianjian protests took place. He said he did not know. Country information indicates that it was on 18 April 1999. The Tribunal asked him if he knew when Falun Dafa day is and he said it was on the 16 December in the world. The Tribunal indicated that it was not correct and that it was on the 13 May. This is not a minor detail but an important day for Falun Gong practitioners.

The Tribunal is of the view that the applicant did not to know basic and important details about the development of Falun Gong, raising serious doubts about the veracity of his claims and his credibility generally. The Tribunal has carefully considered his comments that in China Falun Gong websites are banned, and as such it is difficult to get information about Falun Gong, but finds them unconvincing when considered within the context of his claims, such as studying the theory and spreading information about Falun Gong.

Whilst the Tribunal appreciates that each of the above listed evidentiary problems may not be problematic for the applicant, however, when they are considered cumulatively, the Tribunal is satisfied that they impugn the applicant's credibility. In consideration of the evidence as a whole and given the above-noted concerns, the Tribunal is not satisfied that the applicant is a witness of truth.

Documents in support

The publication and the translation from the Internet Site IS1 referring to a number of arrests of practitioners including the applicant in mid Year 4.

The Tribunal notes that the documents refer to the applicant as having lived in Province P but his evidence was that he had lived in City A. The Tribunal accepts as plausible the applicant's explanations that he had been living in City A but his house registration was in Province P, the province where he was born, that when he went to City A he did not change his registration and he could not, that he was only working in City A and he did not have his original housing registration in City A. The applicant also showed the Tribunal identification referring to his residential address in Province P. He said he also had temporary registration in City A. The Tribunal has not used this issue in an adverse manner to the applicant.

The document entitled “*The Illegal Detention of [Province P] Dafa practitioner [name]*” indicates that “*All Dafa followers will need to send forth the righteous thoughts in a combined effort to rescue [name]*”.

As discussed with the applicant, the Tribunal is of the view that the reference that they would need to rescue him is inconsistent with his claim that he was released on the same day. When this was put to him, the applicant stated “*I really don't know this...*” He said when he was arrested by the police somebody may have witnessed it but maybe when he was released, nobody saw it. The Tribunal is not persuaded by his explanations. The Tribunal is of the view that the inconsistency raises doubts about the reliability of the documents and the truthfulness/correctness of the information contained therein. The Tribunal is of the view that it is plausible that the applicant had something to do with the publication of the documents. The applicant's comments and or responses that he believed that some people must be trusted, that the Falun Dafa site would have deleted the information if not genuine, is unconvincing

The applicant has not provided any evidence about how the site is maintained or secured. There are many internet sites, such as Wikaepedia, that can be easily edited, raising doubts about the reliability of the information contained therein.

The publication and translation from [Internet site IS1] referring to the Chinese authorities' harassment of the applicant's family in China

The Tribunal notes that the document contains very personal information about the applicant such as his “*[name of] mobile phone account*” and the company run by his family member F2, [name of company] which suggests that this information was provided by the applicant personally as it is private and personal information. The Tribunal questioned the applicant how the authors of the publication would have known such personal details. The applicant stated that after he came to Australia he talked to other practitioners about family threats and his history. He said it is possible that those practitioners had disclosed those matters. The Tribunal is not persuaded. The Tribunal is of the view that this raises doubts about the reliability of the documents and the truthfulness/correctness of the information contained therein.

The applicant has not provided any evidence about how the site is maintained or secured and as noted above, there are many internet sites, such as Wikaepedia, that can be easily edited, raising doubts about the reliability of the information contained therein.

The publication and translation from [Publication X] referring to the applicants detention in mid Year 3 and threats to his family and the News' translations relating to the applicant from Internet Site IS2 published in Year 3.

The Tribunal notes that the publications refer to personal information about the applicant. The applicant stated that the articles had been taken from Internet Site IS1, a site where reliability is at issue. The Tribunal is of the view that this raises doubts about the reliability of the documents and the truthfulness/correctness of the information contained therein.

The applicant has not provided any evidence about how the site is maintained or secured and as noted above, there are many internet sites, such as Wikaepedia, that can be easily edited, raising doubts about the reliability of the information contained therein.

Findings in relation to internet material

As noted above some of the documents contain personal information about the applicant which is likely to have come from the applicant personally rather than anyone whom he claimed to have told. The Tribunal has given regard to the applicant's comments that if he had anything to do with the articles he would not have included information about members of his family, but the Tribunal is not persuaded.

There is no evidence about the authoritativeness, reliability and accuracy of the information therein. It cannot be presumed that internet sites are secure or reliable. There are many sites, such as Wikaepedia, that can be easily edited.

In light of those comments, in consideration of the evidence as a whole and given the adverse credibility finding, the Tribunal is not satisfied that the information contained in those documents is reliable, correct or true. Consequently, the Tribunal does not to give them any weight.

The statements provided to the Tribunal from the applicant from fellow practitioners referring to the applicant's Falun Gong activities in both China and Australia.

The Tribunal is of the view that it is not difficult to get people to write such statements. The applicant's comments that Falun Gong practitioners must tell the truth and they would not write such statements for anybody, are unpersuasive. In consideration of the evidence as a whole and given the adverse credibility finding, the Tribunal has decided not to give them any weight.

Findings on the applicant's claims

In consideration of the evidence as a whole and given the adverse credibility finding, the Tribunal does not accept that the applicant is a genuine Falun Gong practitioner, or that he was ever involved in any actual or perceived Falun Gong activities, including but not limited to, spreading information in the Location L area, or that he was ever arrested or detained by the Chinese authorities, or ill-treated by the Chinese authorities, or that he was released on payment of a fine, or that he was ever followed or watched by the Chinese police or security, or that he was dismissed by his employer, or that he is of any adverse interest to the Chinese authorities. In essence and for the stated reasons, the Tribunal is not satisfied that the applicant has suffered any of the claimed harm.

The applicant's activities in Australia

The applicant has provided the Tribunal with photographs and other material relating to his Falun Gong activities in Australia. The applicant denied any suggestion that he has engaged in Falun Gong activities in Australia, otherwise than for the purpose of strengthening his application for a protection visa. In consideration of the evidence as a whole and given the Tribunal's lack of satisfaction that the applicant was a genuine Falun Gong practitioner in China, the Tribunal is not satisfied that he has engaged in Falun Gong activities in Australia, otherwise than for the purpose of strengthening his application for a protection visa, and pursuant to s.91R(3), the Tribunal disregards those activities and any consequences flowing from those activities such as publication of internet material. The Tribunal appreciates that s.91R(3) refers to an applicant's own conduct. In consideration of the evidence as a whole, given the adverse credibility finding and the Tribunal's comments about the internet material, the Tribunal is satisfied that the applicant himself had engaged in the publication of the material and any consequences flowing from those activities are disregarded pursuant to s.91R(3).

In essence and for the stated reasons, the Tribunal is not satisfied that the applicant has suffered any of the claimed harm, or that there is a real chance that he would suffer any Convention related harm in the reasonably foreseeable future.

The Tribunal is satisfied that if the applicant were to return to China he would not practise Falun Gong, not out of fear but out of lack of genuine interest in the practice.

In consideration of the evidence as a whole, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason.

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.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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