

1002787 [2010] RRTA 503 (3 June 2010)

DECISION RECORD

RRT CASE NUMBER: 1002787

DIAC REFERENCE(S): CLF2010/4597

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Amanda MacDonald

DATE: 3 June 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), 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.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant and the Tribunal's case file. 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.

Protection visa application

20. In a statement submitted with his protection visa application, the applicant stated:

I, [name], was born in Gao City of Hebei Province on the [date]. My father was persecuted brutally by Chinese government twice because he persisted in practicing Falun Gong to keep healthy. For fear of being involved in my father's affair. I escaped to Australia with Visa 456 on [date]. As soon as I arrived in Australia, I found an immigration agency to help me apply for a protection visa.

I'm the youngest among the three children in my family. My birth caused my parents to be fined [amount] because they disobeyed the one-child policy. In order to pay the money back as early as possible, my father worked hard in the [occupation]. And when it's not the [occupation], he would do some labor work, such as [occupation] in [name] City. The heavy load of hard working damaged my dad's health badly. He suffered from severe pain on his low back. In [year] my father was diagnosed with [medical condition]. By that time, my father could hardly walk, not to mention doing some work to support the family and paying back the money we owed. Since we could not afford to pay for my father's medical bills, my father could only stay at home for recovery. Our life turned to be harder.

During the Chinese New Year in [year], my father's friend, [name] came to visit us and learned about my father's situation. He suggested my father to practice Falun Gong to release his pain. My father gave it a try and began to study Falun Gong books. Half a year passed, my father's health condition improved significantly. He barely felt the low back pain any more.

On 20 July 1999, Falun Gong was defined as anti-government heretical cult. Therefore all the Falun Gong study classes and other activities were prohibited. My father had to stop practising Falun Gong. Two months after that, he started to feel the pain again. So he turned to [name] to practice Falun Gong with him secretly. In the following years, my father had been practising Falun Gong at home cautiously and sometimes went to other practitioner's home to participate in Falun Gong's activities. With the recovery of his health, my father went back to work and all the debts were paid off eventually.

From [month, year], my father began to put some propaganda materials on Falun Gong into residential buildings' mailboxes and bicycles' baskets when he was working in the city. Before long, his behaviour was impeached. On [date], my father was arrested by the police nearby and put into jail on the charge of disturbing social orders. Some prison tyrants beat my father up, following the order of the police. My father's [medical condition] which has almost recovered recurred because of the

beating and became even worse. Thereafter he was tied up to bed all the time because of the illness and didn't recover much when I went abroad. The policemen also came and searched our home and took away all the books and propaganda materials about Falun Gong. My father was locked up in jail for [duration] and fined [amount]. He was also forced to sign a guarantee form, declaring his break up with Falun Gong organization. My father was released on [date].

In the past I didn't have time to study Falun Gong because of my heavy study. However, I became very curious about it after my father was beaten and arrested. I wondered how evil this "anti-government heretical cult" was. My mother took out a book "Zhuan Falun", which survived the search by the police. I found out what's written in the book was completely different from what I heard from the media. Master Li Hongzhi instructed us to be "truthful, kind and tolerate", to be kind to others and not to be involved in politics. Falun Gong was anything but what's called "anti-government heretical cult". Afterwards I began to practice the five sets of Falun Gong.

My classmates and teachers looked down upon me and isolated me after they knew that my father was arrested for being a Falun Gong practitioner as if I had done something evil myself. I used to be a good student. However, I could hardly concentrate on my study because of the isolation. And my study results at school declined rapidly. In addition, since we got no more income because my father fell ill again, my parents could no longer afford for my tuition. Therefore, after I graduated from [name] School in [name] town of Gao city. I had to leave school and go to work so to support the family.

I was extremely disappointed at the Chinese government. My family would not have owed debts for over ten years and my father would not have had the disease of [medical condition] but for the inhuman one-child policy. But for the persecution on Falun Gong believers, my father wouldn't have lost his ability to work and I would not have lost my opportunity to continue my study.

On [month, year], my father and [name] were arrested again because they participated in Falun Gong's secret study classes in town and they were released after [number] months. Thereafter, the police went to my home once a week to see whether he had participated in Falun Gong activities again and my father had to report where he had been during that week. All the members in my family felt greatly depressed. We were not prisoners. Why should we be treated in this way?

When my father was first caught, my mother told me that they were old enough and they had been through different kinds of hardship. So they were not afraid to be put into prison; My elder brothers and sisters had their families and their own lives. What they worried about was me. Therefore she entrusted someone to apply for a short-term business visa for me so that I can leave China to some place where I can be protected.

I arrived in Australia on [date]. When I called home on [date], my mother told me that the police were very angry after they found that I went abroad secretly and they smashed the furniture in my home. They also threatened that they would give me a big lesson when I went back. I was worried about the safety of my parents, however, considering that I would be persecuted after I came back to China which would not help my family at all and would make my parents worry for me, I found an agency to help me apply for a refugee protection visa.

I hope I can continue practicing Falun Gong to keep being healthy. I hope I can live in a place with freedom and democracy, where nobody would be persecuted on false charges. Therefore, I hope Australian government can protect me and allow me to keep on studying and living in here permanently.

Additional evidence

21. The applicant submitted 4 photos in support of his application: two are stated as showing the applicant at a Falun Dafa celebration activity at Location 1; one photo is detailed as showing the applicant distributing Falun Gong materials in Location 2; and the other photo shows the applicant holding a banner and is detailed as showing the applicant supporting Falun Gong in Location 2.

Interview

22. The Department interviewed the applicant with the assistance of an interpreter.
23. The applicant confirmed the details on his passport and his address in China and Australia. The Department noted that the applicant had listed a post office box address for his correspondence but the applicant confirmed he does not have a key to that post office box. The applicant confirmed he lived at an address in Village 1, in a Town in Gaocheng City until about two years ago and then he lived at Village 2, Location A City until about a year ago.
24. When asked about his religion and his religious beliefs, the applicant answered that he is a Falun Gong practitioner, and that he believes in truthfulness, compassion and forbearance. When asked to expand upon his beliefs, the applicant was initially hesitant in providing a response. He responded that he needs to speak true words, be a nice person, get along with others, do his best to help others, and speak out about injustice. When asked about his religious beliefs before he was a Falun Gong practitioner, the applicant said he believed in himself when he was young. When asked why he became a Falun Gong practitioner, the applicant said that when he was young his father practised Falun Gong at home and later he wanted to know more about it. He started learn about it and because of his father he was interested and kept learning about it.
25. When asked when he became a Falun Gong practitioner, the applicant said it was about two years ago. When asked why these months, the applicant said it was after he completed school when he had more time to study and know about what happened to his father. He moved to Location A City at that time. The applicant confirmed he was a Falun Gong practitioner in China and when asked in what way, the applicant said he mainly read the Falun Gong book and would ask his father if he did not understand something. He said he did not practise the exercises much in China. They did not have a DVD player, he could not contact other practitioners and so he would mainly study the book. When he did practise the exercises he would do them alone in his room and very occasionally in the dormitory at work. None of his friends knew he was a Falun Gong practitioner. He would read the book and hide it behind another cover. When he was free he liked to spend time with his father and would ask him questions. The delegate noted the applicant had declared he was self-employed in a trade. The applicant explained he had learnt his trade and then became self-employed and lived in a dormitory in Location A City. The applicant told the delegate that he would not have started practising Falun Gong without his father's influence, but after he started practising he did not see the evil side of it. He said that practising Falun Gong has become a habit. His father would be upset if he stopped practising Falun Gong. He said he would continue to practise it.

When asked about the name of the book he reads, the applicant said it is Zhuan Falun but he could not remember the name of chapter 2 he was reading the previous evening. When asked whether he would practise Falun Gong if he returned to China the applicant said that he would practise by himself in a private room so that no-one would know about it.

26. The applicant said he continues to practise Falun Gong and had read the book that morning. The applicant said he meditates and feels the energy in his body. The applicant was asked about his Falun Gong practise in Australia. He initially responded that he was not a member of any Falun Gong practise group in Australia, but later changed his mind and stated that he knows about the Falun Gong practise group in Location 3. He said he did not know about the association. He indicated that he watches the Falun Gong practitioners while standing at the side as an observer, and was too shy to speak with them. He does not know the leader of the Location 3 Falun Gong group, and has just met one of the practitioners. He just practises alongside them and he was afraid at the beginning. He said he regarded himself as one of them but is afraid. He said most of them have a busy schedule and he wants to talk to them longer but he does not know how to start a conversation with them. He does not know any of them very well. He last practised Falun Gong the previous day and had stayed at home that morning reading Zhuan Falun. He said that his father gave him his copy of Zhuan Falun in China.
27. When asked why he cannot return to China, the applicant said that as a Falun Gong practitioner he cannot practise in China. His school friends knew his father practised Falun Gong and made it difficult for him at school. The applicant said his father had been persecuted twice for practising Falun Gong. His father spent all they had to arrange for the applicant to come to Australia so he would not end up like him. When asked what he thought would happen to him if he returned to China, the applicant said he did not know. Perhaps he would end up the same as his father. The applicant confirmed he was saying that he might end up in prison like his father because he and his father will continue to practise Falun Gong. When asked why he thought he would be arrested and detained if he returned to China, the applicant said his father would not change his believe in Falun Gong and will continue to attend gatherings and other activities. The applicant said it was difficult to know what will happen to him on his return.
28. When asked whether he had done anything in Australia to express a political opinion, the applicant said he had supported the Falun Gong practitioners, disputing the theory that Falun Gong is evil and telling people about the persecution of Falun Gong in Australia. When asked whether he had attended any other Falun Gong activities in Australia, the applicant said that on dates specified he attended an activity. The person who gave him the book took him there and he told him that practitioners from other cities had also come to the square. He said they practised Falun Gong and distributed material about Falun Gong. The event went for the whole day. The applicant said the photos he submitted were of this activity. They all wore the same shirt and his friend took a camera so he would have a record of his attendance. The applicant said the photos were taken over several days. When asked why he was told what to wear the applicant said to show that he was one of them.
29. When asked whether his mother and siblings had suffered any problems since his arrival, the applicant said they had. When asked for detail, the applicant said his father had planned for a long time for him to escape from China and told him to leave when there were only a few days remaining on his visa. The applicant said he had contacted his family after he arrived but he got the feeling that something had happened but he did not know what had happened. He said his mother had cried but he was not able to nominate any particular problems that his

mother or older siblings had experienced since his arrival in Australia. He also confirmed he thinks his father was currently living at home.

30. When asked whether he knows the Falun Gong exercises, the applicant said he does and that there are five of them. He said he could demonstrate them if needed.
31. The delegate noted that the applicant had not provided any letters of support from Falun Gong organisations in Australia, or from individual Falun Gong practitioners. The applicant said that he did not know he needed to provide any supporting documentation. He said the people in the group do not know much about him.
32. The applicant confirmed he had no difficulty getting his passport or leaving China on that passport. The delegate noted that this indicated the applicant was not of interest to the authorities. The applicant said the police focused on his father. He was the youngest and not at home much. He started practising Falun Gong after he finished studying and only his father knows about it. The police would not pay much attention to him because he is the youngest son. His father will not deny his belief and he has protected him in the past but is unlikely to be able to do so in the future.

Hearing

33. 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.
34. The applicant was represented in relation to the review by his registered migration agent who did not attend the hearing.
35. The Tribunal went through the information as set out above.
36. The applicant provided his passport to the Tribunal. The applicant confirmed that his passport is in his own name.
37. When asked why he fears returning to China now, the applicant said he is doing Falun Gong which is not allowed and if he goes back he will be arrested. When asked what it means to do Falun Gong, he said he practises Falun Gong. When asked what that means, the applicant said it means he does Falun Gong practice. When asked how long he has practised Falun Gong, the applicant said it is for more than a year. When asked how he came to practise Falun Gong, the applicant said curiosity. When asked to explain what it means to practise Falun Gong, the applicant said it means improvement in physical health and increased mentality level. When asked what he actually does to practise Falun Gong, the applicant said it means he gives up all attachments inside and being focussed forget all attachments so he won't have any worries.
38. When asked about the history and philosophy of Falun Gong, the applicant said it was founded by Master Li Hongzhi in 1975 and its philosophy to do good things and to say the truth. When asked for details of practising Falun Gong, the applicant asked what the Tribunal meant. The Tribunal explained that where a person is claiming to have left their country fearing persecution because of a practise or a belief, it would expect the person to be able to give details about it. The applicant said he did not have anything to say.

39. When asked what he believes in, the applicant said he believes in truthfulness, compassion and forbearance. When asked what they mean, the applicant said truthfulness means to speak the truth, compassion means do good things and forbearance means to bear things others cannot bear.
40. When asked how he practises Falun Gong, the applicant said he normally forgets all his worries, abandons all attachments inside and does the exercises. When asked about the exercises, the applicant said one is called *Buddha Spreading a Thousand Hands*. When asked about others, the applicant said he has only practised this one. When asked why he has not practised the other exercises, the applicant said he has not mastered this exercise yet. When asked how many exercises there are, the applicant said there are five. When asked their names, the applicant said *Buddha spreading a thousand Hands, Falun standing stance, Causing between two poles and Enhancing supernatural power*. The Tribunal noted this is only four. The applicant then went over the names of the exercises but appeared to struggle to name all five.
41. When asked why he does not know the other four exercises, the applicant said he had practised them but he is not proficient in *Buddha spreading a thousand Hands* yet. The Tribunal noted that according to the Falun Dafa website the five exercises are easy to learn. The applicant agreed. When asked why he would not be practising the five exercises as a genuine Falun Gong practitioner, the applicant said he practises all five but he often forgets *Buddha spreading a thousand hands*. The applicant said he practises the exercises in the morning mostly everyday. When asked what other things he does to practise Falun Gong, the applicant said he follows truthfulness, compassion and forbearance, helping others and communicates with other practitioners.
42. When asked whether he practises publicly in Australia, the applicant said he has practised with other practitioners in a square in Location 3. When asked for details, the applicant said two or three days per week he goes to the site at Location 3. He has never met the leader. He has met other practitioners but has no evidence from them as to his practise. When asked why not, the applicant said every time he went to the site the people he knows were not there.
43. When asked whether he studies Falun Gong, the applicant said he does. When asked for details, the applicant said it means he should not join any other religion and believe in Falun Gong. He said it means he should attend any activities or teaching sessions. When asked whether he had been he has been to any teaching sessions, the applicant said he had. When asked for details, the applicant said he had been to quite a few but he had forgotten the details but a few days ago he attended a performance, which is associated with Falun Gong.
44. When asked about the main text for Falun Gong, the applicant said it is *Zhuan Falun*. When asked for details, this book is written by Master Li Hongzhi and explains Falun Gong. When asked how the book is divided, the applicant said it was divided into three parts. When asked whether it has an introduction and what it is called, the applicant said it does and it is called *Zhuan Falun*. When asked what it says, the applicant said it talks about the process of Falun Gong practice. When asked about the *Lunyu*, the applicant said he did not know about it. When asked whether he reads *Zhuan Falun*, the applicant said he does. When asked to talk about a part of the book, the applicant said he could talk about *the opening of the celestial eye*. When asked where it is in the book, the applicant said it is in the part of the *opening of the celestial eye*. The Tribunal noted that the applicant had said there are three parts and asked where this was located. The applicant said it is in the second part. The applicant said the book is not divided. The Tribunal noted that the available information indicates it is

divided. The applicant said it introduces things one after another and there are quite a few parts. When asked what Master Li Hongzhi says about the *Buddha Fa*, the applicant said his view is that it is part of Falun Gong. When asked for more detail, the applicant said there was nothing more.

45. When asked whether he would like to demonstrate one of the exercises, the applicant said he would. When asked which one, the applicant said he would think. The Tribunal noted that where a person had left China because of their practice of Falun Gong and who has been practising for the period claimed, would be able to demonstrate the exercises. The Tribunal noted it is difficult in the hearing situation and said that it was happy for the applicant to demonstrate an exercise of his choice. The applicant said he was very nervous.
46. When asked about the Falun, the applicant said it is a miniature of the universe. When asked what Master Li Hongzhi says about it in *Zhuan Falun*, the applicant stated he said it is a miniature of the universe and those who practise would have it in the lower abdomen and when you practise it will practise with you and it spins all the time. When asked what it looks like, the applicant said in the middle is the symbol of Buddhism and around it yin yang symbols. The Tribunal asked the applicant to draw it. He made two attempts but neither resembled the Falun emblem as shown on the Falun Dafa website, although they did contain some of the same symbols.
47. When asked when Falun Gong started, the applicant said at first it was in 1985 and then said 1978. The Tribunal noted that the applicant said it was 1975 previously. The applicant said he must have made an error. When asked whether the applicant knew when *Zhuan Falun*, was written, the applicant said it was 1986. The Tribunal noted it was commenced in 1992 and published in 1994. The applicant said he had remembered it wrongly.
48. When asked whether anything happened to him in China, the applicant said that nothing happened to him in China but things happened to his family which will endanger him. When asked for details, the applicant said his father is a Falun Gong student and he was arrested and they raided the family's home. He said his father is a Falun Gong practitioner and he handed out material and was arrested. When asked how his father became a Falun Gong practitioner, the applicant said that because his father owed money he worked hard to repay it and his health suffered. Through a friend he started practising in 1999 to improve his health. His father went to practise and went to activities and was detained for a month. He had to sign a document and was released after a month. He was beaten up badly before he was released. When asked when this was, the applicant said it was 19 something but he could not remember when. When asked whether it was 5 or 10 years, the applicant said it was between 5 and 10 years ago. His father was arrested twice; the second time was two years ago whilst handing out pamphlets. His father was detained for a few months. When asked whether anything happened, the applicant said that after he was released he was arrested again and beaten, but not formally, a third time in the last year. He confirmed his father was arrested a third time in the last year for a few days. His father left home and went into hiding after this third arrest. His father went to his relative's place. Only his mother is at home and the home was smashed on the day his father was arrested. The first two periods of detention occurred before he left and the third after he left for Australia. When asked when his father was detained last year, the applicant said the first period of detention happened 5 to 10 years ago, which he can't remember, the second period was two years ago and the third period was around the time he left for Australia.

49. When asked when he started practising Falun Gong, the applicant said it was two years ago and said he did so because he was curious. When asked when in that year, the applicant said it was one month or another. When asked how he commenced his practise, the applicant said he was curious and his father had been a practitioner and was arrested. He said he started because he was curious. The Tribunal noted that the applicant had said he could not remember his father's first arrest 5 to 10 years earlier. The applicant agreed.
50. When asked whether there was any further information the applicant could give the Tribunal about being a Falun Gong practitioner, the applicant said he had nothing more to say.
51. The Tribunal noted that it had some difficulties with the applicant's evidence. The Tribunal noted that the information the applicant had given the Tribunal about what happened to his family in China was different from the information he provided in his written statement. The Tribunal noted the applicant had told the Tribunal that he could not remember his father's first arrest because this occurred 5 to 10 years ago, whereas in the statement the applicant had said it was and that he started his practice following this detention because he was curious about the reasons for his father's arrest. The applicant had told the Tribunal that he could not remember his father's first arrest because it was 5 to 10 years ago and that he started to practise in about two year ago because he was curious. The Tribunal noted the applicant had said that he started practising the 5 Falun Gong exercises two years ago, whereas he had indicated he was really only proficient in one of these exercises. The Tribunal noted that the information the applicant had provided about Falun Gong was basic. The applicant had said he had read *Zhuan Falun* but he did not know it was divided into 9 lectures. The Tribunal noted that the applicant had said he had practised in Australia at Location 3 but he had not been able to get any documentation from other Falun Gong practitioners verifying his practise. However, the Tribunal noted that the applicant had submitted a couple of photos showing him at a practice site. The Tribunal said that all of the above may lead it to find the applicant is not a witness of truth, that is, it may not be able to believe the applicant's claims or that he is a genuine Falun Gong practitioner. The Tribunal noted that it may also lead the Tribunal to find that the practice and the protest activities the applicant had engaged in in Australia was for the purpose a strengthening his claim to be a refugee and, if so, it would disregard that conduct when determining whether the applicant had a well founded fear of being persercuted for a Convention reason. The Tribunal indicated it was happy for the applicant to provide any additional information or evidence in support of his claim.
52. The applicant said he did not have anything further to say. He said he is very confused. When asked whether he understood that the Tribunal was having difficulty accepting his claims, the applicant said he did but he had nothing further to say.
53. The Tribunal reiterated that it would expect a person who was claiming to have been a Falun Gong practitioner since two years ago would be able to give more information about Falun Gong, including about *Zhuan Falun*, when Falun Gong about be able to demonstrate the exercises, which according to the Falun Dafa website are simple and easy to learn.

Independent Evidence

54. The practice/philosophy/religion that is known as Falun Gong was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese cultivation system known as qigong, but it is novel in its blending of qigong with elements of Buddhist and Taoist philosophy. Other terms such as Falun Dafa and Falungong 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 Falungong promotes salvationist and apocalyptic teachings in addition to its qigong elements. Despite its own protestations to the contrary, it also has a well-organised 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; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, pp.14-24, pp.91-95).

55. 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 measures 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 (Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.8-10).

56. According to the website <http://www.falunau.org/aboutdafa.htm>, Falun Gong is described as:

Falun Dafa is a self-cultivation practice that has brought better health and inner peace to millions around the world. We call it a cultivation practice: "cultivation" refers to the improvement of one's heart and mind through the study of universal principles based on Truthfulness, Benevolence, and Forbearance; "practice" means doing exercises and meditation to energise the body.

Learning Falun Dafa is easy. The practice is simple, powerful, and absolutely free. The main principles of Falun Dafa are explained in their entirety in the book [Zhuan Falun](#), and in the beginner's text, [Falun Gong](#), both written by Falun Dafa's founder, Mr. Li Hongzhi. Also essential to the practice are the five gentle exercises, including a sitting meditation, which you can learn quickly and easily at any of the thousands of practice locations around the world.

57. The five Falun Gong exercises are named, pictured and explained in the Falun Dafa website at <http://www.falundafa.org/eng/exercises.htm#EX1>. Adherents undertake five exercises, four standing one sitting. Details are as follows:

- Exercise 1 – Buddha showing a thousand hands
- Exercise 2 – Falun standing stance
- Exercise 3 – Penetrating the two cosmic extremes
- Exercise 4 – Falun heavenly circulation
- Exercise 5 – Strengthening divine powers

58. The website shows each of the parts within the exercise and indicates that each of the exercises has a number of parts.

59. The Australian Falun Dafa Information centre states the following in relation to *Zhuan Falun*:

Zhuan Falun, the core text of Falun Dafa practice, is no ordinary book. Its contents and teachings have done nothing short of redefining qigong and cultivation practice.

Moreover, the book nurtured Falun Dafa from a practice done by 200 thousand people in China to one taken up by over 100 million around the world. It has transformed millions of lives, giving people back their superior health and allowing them to practise genuine cultivation according to higher principles.

The profundity of this book cannot be described in words – it is something one has to experience. Since its publication in 1995, *Zhuan Falun* has since been translated into more than twenty-five languages, with several other translations forthcoming.

Zhuan Falun is a comprehensive explanation of Falun Dafa that ranges across an enormous array of topics, shedding light where no other authors have. *Zhuan Falun* delivers the boundless inner meanings of Falun Dafa – it is the guide to Falun Dafa practice. Its language nevertheless remains highly accessible and unadorned, as the text is drawn from Mr. Li's public lectures in China from 1992-1994. From scholars and government officials to country farmers and the retired, people from all walks of life have been moved by *Zhuan Falun* to begin practising Falun Dafa. The book guides the practice of Falun Dafa for both new and veteran students alike. Only history will be able to fully reveal this book's importance.

60. *Zhuan Falun* includes an introduction or *Lunyu* and is divided into 9 lectures. Key contents includes a discussion of:

- The origins of qigong and the long-forgotten meaning of "cultivation"
- The roots of illness, and their fundamental removal
- Karma: its origin, effects, and transformation into virtue
- Falun Gong's relation to qigong, Buddhism, Taoism, and other cultivation methods
- The meaning and function of supernormal abilities
- The question of eating meat and the issue of attachments
- Genuine, integrated cultivation of mind and body
- What Enlightenment and Consummation are

61. In a presentation to the Refugee Review Tribunal National Members' Conference in August 2003, Dr Benjamin Penny of the Centre for Cross Cultural Research, Australian National University, and an authority on Falun Gong, discussed, among other things, the beliefs and practices of Falun Gong including the moral code, the *Falun* and *xinxing*, with reference to the writings of Li Hongzhi:

At the beginning of the first chapter of *Zhuan Falun* (as I mentioned, Falun gong's main text, first published in 1994), Li Hongzhi explains that Falun Gong differs from all other varieties of qigong that were concerned solely with healing and fitness. Li, on the other hand, claims that, "At present, I am the only person genuinely teaching qigong towards higher levels at home and abroad." What does this mean? Li answers, "Isn't this offering salvation to humankind?"

Given this high ambition – nothing less than offering salvation to humankind - Falun gong's five sets of physical exercises claim to be superior to those of all other cultivation systems.

However, one of the most distinctive claims about Falun gong as a cultivation system is that you can cultivate 24 hours a day, even though you are not doing them. According to the Falun gong texts, “the fa [or law] refines the practitioner.” The reason behind this is that in cultivation you will form a law wheel or falun in your lower abdomen. [This is where the name Falun gong comes from.]

If you were lucky enough to attend the initiatory lectures by Li Hongzhi himself, he would have installed one in your body while you were listening to his lectures. What does the Falun do?

...the Falun ceaselessly rotates itself after it is formed, it exists in the form of an intelligent being, regularly and continuously collecting energy at the lower abdomen area of the cultivator. Falun automatically absorbs energy from the universe via rotation.

This is claimed to be particularly convenient for busy people in the modern world who cannot always afford to set aside a certain amount of time each day for practice. When you have reached a high level of cultivation wonderful things happen to you. You acquire “supernormal capabilities” such as precognition, clairvoyance, the ability to transform one kind of object into another kind of object, remote sight, and so on.

...

Along with the exercises comes a moral code. The core of this moral code is the three words “ truthfulness – benevolence – forbearance” (zhen shan ren in Chinese). These three words form a kind of slogan for Falun gong appearing on posters, websites, t-shirts, banners and so on.

The three words sum up a moral attitude: one that is aimed at guarding what practitioners refer to as their xinxing, or “mind-nature.” The cultivation of xinxing is the “top priority” of the practitioner. Xinxing, says Li, is involved with gain and loss. “ ‘Gain’ is to gain conformity to the characteristic of the universe. The characteristic that makes up the universe is Zhen-Shan-Ren (*truthfulness-benevolence-forbearance*)... ‘Loss’ is to give up those ill thoughts and conducts of greed, personal gain, lust, desire, killing, battering, stealing, robbing, deceiving, jealousy, etc.” This kind of good behaviour is not, however, an end in itself. The cultivation of xinxing leads to the dissolution of karma which derives from bad behaviour and its transformation into virtue. Virtue, in turn, is transformed into cultivation energy - or gong. This is also what your law wheel will do: it collects energy from the universe and transforms it into cultivation energy. (Penny, Dr Benjamin: *Falun Gong: What was it? And what is it now?* – A talk for the Refugee Review Tribunal National Members’ Conference, 29 August 2003)

Information on Treatment of Falun Gong Practitioners in China

62. In a report released in February 2002 Human Rights Watch stated in relation to the persecution of Falun Gong practitioners in China that:

‘Chinese government persecution has not been limited to key organizers, big-time publishers, major distributors, or small-scale proselytizers. It has been directed against scores of low profile practitioners - rank and file followers - willing to publicly defend Falungong. Penalties for this latter group have typically been lighter, but its members have been subjected to grave mental and physical abuse including torture and mistreatment. At the start of the crackdown, most detained protesters were held for only a few days of “reeducation,” in part because the government appears to have misjudged the depth of commitment, in part because there were insufficient

permanent facilities for long-term incarceration of tens of thousands of practitioners. As it became evident that dismantling Falungong could not be accomplished quickly, and as demonstrations became daily occurrences, officials apparently grew impatient with briefly detained practitioners who, as soon as they were released, rejoined public protests in Tiananmen Square. In October 2000, China's policy changed. Instead of the Public Security Bureau rounding up protestors and escorting them home or detaining them for a few days or weeks, "relevant Beijing departments...decided to practice a 'close style management' on stubborn Falungong members." In the hope of facilitating the permanent "transformation" of identified "recidivists," such individuals were to be immediately sentenced administratively to reeducation through labor, in some cases for as long as three years.

According to some estimates, since the start of the crackdown as many as 10,000 followers may have been sentenced administratively to reeducation terms.' (Human Rights Watch, *Dangerous Meditation - China's Campaign Against Falungong*, February 2002, Chapter V, 'Falungong in Custody: Competing Accounts' 'Reeducation through Labor; Transformation Centers').

63. According to the United States Department of State 2008 *Country Report on Human Rights Practises* in China, published in March 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/index.htm>

Public Falun Gong activity in the country remained negligible, and practitioners based abroad reported that the government's crackdown against the group continued. In the past the mere belief in the discipline (even without any public practice of its tenets) sometimes was sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment. Falun Gong sources estimated that since 1999 at least 6,000 Falun Gong practitioners have been sentenced to prison, more than 100,000 practitioners have been sentenced to RTL, and almost 3,000 have died from torture while in custody. Some foreign observers estimated that Falun Gong adherents constituted at least half of the 250,000 officially recorded inmates in RTL camps, while Falun Gong sources overseas placed the number even higher.

Over the past several years, Falun Gong members identified by the government as "core leaders" were singled out for particularly harsh treatment. More than a dozen Falun Gong members were sentenced to prison for the crime of "endangering state security," but the great majority of Falun Gong members convicted by the courts since 1999 were sentenced to prison for "organizing or using a sect to undermine the implementation of the law," a less serious offense. Most practitioners, however, were punished administratively. Some practitioners were sentenced to RTL. Some Falun Gong members were sent to "legal education" centers specifically established to "rehabilitate" practitioners who refused to recant publicly their belief voluntarily after their release from RTL camps. Government officials denied the existence of such "legal education" centers. In addition hundreds of Falun Gong practitioners were confined to mental hospitals, according to overseas groups.

Police continued to detain current and former Falun Gong practitioners and used possession of Falun Gong material as a pretext for arresting political activists. The government continued its use of high-pressure tactics and mandatory anti-Falun Gong study sessions to force practitioners to renounce Falun Gong. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend anti-Falun Gong classes or were sent directly to RTL camps. These tactics reportedly resulted in large numbers of practitioners signing pledges to renounce the movement.

FINDINGS AND REASONS

64. The applicant travelled to Australia on a Chinese passport, and claims to be a national of China. The Tribunal accepts that the applicant is a Chinese national and has assessed his claims against China as his country of nationality.
65. In the statement attached to the protection visa application, the applicant claimed that he began practising Falun Gong two years ago when he became curious following the arrest of his father in the previous year for distributing propaganda material about Falun Gong. The applicant claimed that his classmates looked down on him and isolated him following his father's arrest for being a Falun Gong practitioner and this affected his study. He claimed his father was again arrested in the following year for participation in secret Falun Gong study classes and that the police visited their house once a week. He claimed his mother was concerned about him and arranged for him to leave China. The applicant claimed that just after he had left for Australia his mother told him the police were angry he had left China. They smashed the furniture and threatened they would give him a big lesson on his return.
66. At hearing the applicant claimed he began practising Falun Gong two years ago because he was curious. He claimed his father was a Falun Gong practitioner and had been arrested on three occasions. The applicant claimed he could not recall the first occasion, as it was 5 to 10 years ago. The applicant claimed that his father was arrested a second time within the last year and a third time just after the applicant left for Australia.
67. Although the applicant has claimed he began practising Falun Gong two years ago, the knowledge of Falun Gong he displayed at hearing with the Tribunal was limited and was not consistent with his claimed period of practice. When asked about practising Falun Gong, the applicant said it means improvement in physical health and increased mentality level. He said he practises Falun Gong by giving up and forgetting all attachments so he won't have any worries. When asked about his beliefs, the applicant was only able to state truthfulness, compassion and forbearance and when asked what they mean the applicant could only state that truthfulness means to speak the truth, compassion means do good things and forbearance means to bear things others cannot bear.
68. Whilst the applicant was aware that there are 5 Falun Gong exercises, he could only name four of them. He told the Tribunal that he had been concentrating on the first exercise but was not yet proficient. The applicant declined to demonstrate any of the exercises on the basis that he was nervous. Whilst the Tribunal accepts that it might be difficult in a hearing situation to demonstrate the exercises, the Tribunal would expect a genuine Falun Gong practitioner who claims to have been practising since 2008, who claims to practise publicly every week and who claims to practise most days would be proficient in all 5 Falun Gong exercises, particularly when the Falun Dafa website describes them as essential to the practice and that they are able to be learned quickly and easily. The Tribunal is of the view that the applicant's limited knowledge of the Falun Gong exercises indicates he is not a genuine Falun Gong practitioner.
69. The applicant was aware that Falun Gong was founded by Master Li but at first said it was in 1975 and then later said it was 1985 and changed it to 1978. The applicant said he had read *Zhuan Falun* but when asked for details and about its structure, he could only indicate that it explains Falun Gong and that it is divided into three parts. When asked whether the book has an introduction the applicant said it does and said it is called *Zhuan Falun* and not *Lunyu*. He said he could talk about the *opening of the celestial eye* which he said correctly is located in

part 2 or lecture 2 in the book. He then said the book is not divided, which according to the independent information it is divided into 9 lectures. The applicant demonstrated some understanding of the concept of the Falun and could describe the symbols used in depicting it but could not draw it.

70. In the Tribunal's opinion the applicant's overall knowledge of Falun Gong was limited for someone who claims to have practised for over two years. The Tribunal acknowledges that it may be difficult for applicants to articulate details about Falun Gong during a hearing situation. However, the Tribunal is of the view that the applicant's knowledge and understanding of Falun Gong is so limited for a person claiming to have commenced his practice two years ago that it cannot be explained by the difficulties of the hearing situation.
71. The Tribunal is satisfied that the applicant had considerable opportunity during the hearings to provide details of his knowledge and understanding of Falun Gong. The Tribunal does not accept that at hearing the applicant was able to demonstrate knowledge of Falun Gong in anything other than a limited manner. The Tribunal would expect a Falun Gong practitioner with the applicant's claimed period of practice to be able to tell the Tribunal about his beliefs and provide more and correct detail about the history, principles and meaning of Falun Gong, in particular knowing when it started, knowing the names of all 5 Falun Gong exercises, being able to practise them and to display a detailed understanding of the practice of Falun Gong. The Tribunal finds the applicant's limited knowledge and understanding of Falun Gong to be highly inconsistent with his claim that he commenced his practice two years ago and that he practises the Falun Gong regularly as he has claimed. The Tribunal is not satisfied that the applicant's evidence at the Tribunal hearing reflects any level of understanding of the spiritual aims set out in Master Li's teachings in *Zhuan Falun* or the other spiritual aspects of Falun Gong as referred to in the independent evidence set out above.
72. The Tribunal has had regard to the difficulties of expressing abstract concepts in relation to aspects of Falun Gong through an interpreter and is also conscious of the fact that different individuals have varying capacities to understand and express the theoretical basis of Falun Gong. However, the Tribunal expect in the applicant's circumstances that he would be able to explain more about the spiritual and theoretical basis of Falun Gong and considers that his ability to articulate the importance of Falun Gong to him and concepts relating to the purpose of Falun Gong to have been limited. Thus, whilst the applicant was able to provide some limited information about Falun Gong, the Tribunal considers that this was at a superficial level and could easily have been learned for the purpose of his application for protection in Australia. The Tribunal considers that the applicant was unable to explain important concepts in a meaningful way and is not satisfied that his evidence is indicative of a genuine and committed Falun Gong practitioner.
73. In addition, the Tribunal finds that the applicant is not a witness of truth and is of the view that he has not given a truthful account of his or his family's past experiences in China. There were significant inconsistencies in his evidence and he has either not explained these inconsistencies. The applicant has given inconsistent evidence about when his father was detained. The applicant did not claim in the statement attached to his protection visa application that his father was arrested a third time at the time the applicant had just left for Australia. In the statement attached to the protection visa application, the applicant claimed that he began practising Falun Gong two years ago when he became curious following the arrest of his father the previous year. He claimed his father was again arrested within the last year. At hearing the applicant claimed he began practising Falun Gong two years ago because he was curious. He claimed his father had been arrested on three occasions. The

applicant claimed he could not recall the first occasion, as it was 5 to 10 years ago. The applicant claimed that his father was arrested a second time within the last year and a third time just after the applicant had left for Australia. The Tribunal finds that these inconsistencies to be significant and the applicant has not provided an explanation for these inconsistencies. In the Tribunal's view, if the applicant's claims about his father being detained were true, his evidence about them would be broadly consistent, which it was not.

74. In light of the serious deficiencies in the applicant's evidence in relation to his knowledge of Falun Gong and the finding that he is not a witness of truth, the Tribunal does not accept that either the applicant or his father was a Falun Gong practitioner in China.
75. The Tribunal also does not accept that the applicant's father was arrested and detained in China for practising Falun Gong or for distributing propaganda material about Falun Gong or for secretly attending Falun Gong study classes. It follows that the Tribunal does not accept that the applicant's classmates looked down on him and isolated him following his father's arrest for being a Falun Gong practitioner and this affected his study. It also follows that the Tribunal does not accept that the police visited their house once a week or that they smashed furniture in the home and threatened they would give the applicant a big lesson on his return.
76. The Tribunal has also considered the applicant's evidence as to his practise of Falun Gong in Australia. Although the applicant claimed to have been practising Falun Gong two to three times a week at a Location 3 practice site, the evidence provided in support of his claimed practise of Falun Gong in Australia is limited to two photos of the applicant at a Falun Dafa celebration activity at Location 1 on a date earlier in 2010; one photo is detailed as showing the applicant distributing Falun Gong materials in Location 2 earlier in 2010; and another photo showing the applicant active supporting Falun gong in Location 2 on earlier in 2010. The Tribunal raised this as a concern at the Tribunal hearing and the applicant said that when he was at the Location 3 practice site the people he knows were not. He said he had not met the leader of the practice site. The Tribunal does not accept that the applicant's public practise in Australia is as extensive as claimed. In any event, as the Tribunal does not accept that the applicant is a genuine Falun Gong practitioner, the Tribunal does not accept that the applicant practised Falun Gong publicly or attended the activities depicted in the photos or the performance other than for the purposes of strengthening his claim to be a refugee.
77. Section 91R(3) provides that in determining whether a person has a well-founded fear of being persecuted for one or more of the Convention reasons, any conduct engaged in by the person in Australia must be disregarded unless the person satisfies the Minister that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee. For the above reasons, the Tribunal is not satisfied for the purposes of s.91R(3) of the Act that the applicant engaged in any Falun Gong practise or engaged in the activities depicted in the photos or engaged in attending a performance otherwise than for the purpose of strengthening his claims to be a refugee. Accordingly, the Tribunal disregards the applicant's conduct in Australia in assessing whether he has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol. Therefore, this conduct must be disregarded, pursuant to s.91(3) of the Act.
78. The Tribunal does not accept that the applicant, his father or his family has suffered serious harm in China as a result of being a Falun Gong practitioner or for any connection with Falun Gong. The Tribunal does not accept that the applicant would practice Falun Gong on return to China or be considered to have any connection with Falun Gong. Nor does the Tribunal

accept that if the applicant returns to China now or in the reasonably foreseeable future, that there is a real chance that he will be persecuted for reasons of his real or imputed religious beliefs, membership of any particular social group (such as 'Falun Gong practitioners') or imputed political opinion for the purposes of the Convention on the basis of his or his father's claimed involvement or connection with Falun Gong. The Tribunal also does not accept that the applicant would practise Falun Gong upon his return to China. Accordingly, as the applicant has not claimed any other reason for fearing to return to China except his and his father's practise of and connection with Falun Gong, the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason if he returns to China.

CONCLUSION

79. 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

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