

0806875 [2009] RRTA 56 (14 January 2009)

DECISION RECORD

RRT CASE NUMBER: 0806875

DIAC REFERENCE(S): CLF2007/165225, CLF2007/38670,
CLF2008/24049

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: David Dobell

DATE: 14 January 2009

PLACE OF DECISION: Sydney

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

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 (the Department) 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. 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.
3. The applicant sought review of the delegate's decision

RELEVANT LAW

4. Under s.65(1) of the Act, 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.
5. 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).
6. 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'

7. 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.
8. 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.

9. 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.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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

17. The Tribunal has before it the applicant's Departmental protection visa application file and the Tribunal review application 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.
18. The applicant lodged a largely uncompleted protection visa application and further details were later provided by the representative. From these, he is a male national of the PRC, born in Fujian Province. He gives his religion as Christian. The applicant's parents and a sibling remain in China. The applicant originally gives the one residential address. However, later he states that before departing China he was staying at church members' houses because it was not safe for him to stay at his house. He went to school in Fujian Province. A note on the protection visa application details states that the applicant's departure was delayed, and the airline put him up in a hotel. He states that two friends of his parents were supposed to help him, but did not. He was afraid that the police might arrest him during this time.
19. The applicant's refugee claims follows in a summary form:
- The applicant was born into a Christian family. His parents and his younger sibling are devoted Christians
 - The applicant's father is a pastor. He preached during the day, and sometimes brought church friends home to worship. The applicant's father was always preaching, leaving home early and coming back late at night
 - In the early 2000s, the family church grew in size, and 'a big family church was organised'. The applicant was young at the time, and does not know details. The larger attendance came to the adverse attention of local government agencies
 - A couple of years after the church had grown in size local authorities warned the applicant's parents not to hold organise underground church activities. This did not dissuade his parents from practising
 - While the applicant was studying at high school, the applicant's family and other church members were worshipping at the family church. PSB officers raided the meeting. They punched the applicant's father, hit him with batons and dragged him out. The applicant and his sibling watched this from under a table. They saw PSB officers taking their parents and other church members to a police car, and then to a police station
 - The applicant and his sibling had difficult lives from this time. An uncle helped them out. The authorities sentenced the applicant's parents to a lengthy term in prison. They tortured the applicant's father, leading (among other things) to a minor amputation and internal injuries. He continues to suffer from other injuries.

- The applicant suffered discrimination at school. His parents were unable to have him transferred to other schools. The applicant felt stressed
 - On one occasion, two PSB officers came to the school. They abused the applicant, alerting him that they knew he would follow his parents' path. They said – in a vague, yet intimidating way – that they would charge the applicant. After they left, the applicant's school principal brought to him a Dismissal Notice
 - The applicant's parents then decided that the applicant should leave China as they were worried about his future
 - The applicant states that he saw no point living elsewhere in China. The local authorities would force his parents to reveal his whereabouts. Authorities in any other place would check his background, as would neighbours, schools, etc. He risked being returned to Fujian where he would be brainwashed. He would also be in constant fear and worry, and be unable to visit family and friends. The applicant states that he left China because he had to, for his safety
 - From the time the PSB approached him to his departure from China, the applicant states that he lived with friends and church members. It was not safe at home, as the local authorities regarded it as a 'focus point'
 - The applicant states that his parents organised his passport and temporary visa through a migration agent. He is unaware of how they did this
 - The applicant states that he had little money and little English on his arrival here and his parents gave him contact details for a person in Australia. He stayed with this person for a short period, until he found alternative accommodation
 - The applicant states that, if he returned to China, the authorities would track down his parents' identity, and guess that he had been deported. This would lead them to conclude that he had applied for a protection visa, and persecute him accordingly. He fears being forced to go to brainwashing, detention, or long-term monitoring and similar harassment
20. The Tribunal has found it extremely difficult to work out the chronology of events in Australia in this matter. The applicant arrived in Australia on a visa which was cancelled 5 months after his arrival (before its expiry) due to a breach. It does not appear that the applicant sought a review of that decision at that time.
 21. There was an interview with the Department and he was granted a bridging visa
 22. The applicant then applied for a protection visa. A decision was made by the Department and the applicant applied to the Tribunal for review.
 23. However, it was subsequently decided that the cancellation of the applicant's temporary visa was not lawful. The applicant applied for permission to work. The applicant's temporary visa appears to have come back into effect, but he is then granted a bridging visa. His application for permission to work was refused
 24. The Tribunal understands from Department records that the applicant has been notified of a possible breach of his temporary visa and that a non-compliance notice was sent to him

25. The Department file, CLF2007/165225, contains information concerning his application for a bridging visa and medical examinations. It includes notes from an interview. It records the following (at folio 39): ‘Is there any reason why you cannot return to your home country?’ The application stated that he had suffered an injury.
26. The applicant appeared very depressed and upset as he could not get hold of his family back in China and he believed they may have been executed. He was very worried because he could not contact his family and fears they have been taken away by the PRC security forces.
27. At an interview with a Department delegate, the applicant gave the following relevant information:
- He has practised Christianity since he was a child
 - His father is a priest who was involved in a Chinese underground church
 - In the mid 2000’s his parents were in prison for religious reasons for many months
 - From this time, his parents worked as farmers. The applicant was not aware of whether they had any other work
 - After that 2 police officers came to the applicant’s school accusing him of being a member of the underground church, like his father. The principal of the school was nervous about these approaches, and expelled the applicant from the school
 - In order to avoid further problems with the authorities, the applicant stayed at home and visited other people’s places from this time. After being expelled from school, he went to a private school
 - The applicant did not know much about his Chinese passport and his Australian visa. He provided photographs and obtained documents, and perhaps signed some forms
 - The applicant last spoke to his parents some months ago. He believes the telephone line has been cut off, and he is concerned about their welfare
 - At first the applicant did not participate in any religious activities in Australia. He did not know much about Australia, and did not know where to find a church.
 - As for why he did not seek protection in Australia earlier, the applicant said that he had come here on a temporary visa and he wanted to abide by the conditions of that visa
 - The applicant disagreed with DFAT reports suggesting that he was not at risk of persecution for reason of his having applied for a protection visa
 - The applicant, responding to country information that he would have had difficulties obtaining a passport and leaving China had the authorities regarded him as a dissident, said that, as a minor, he would not have been arrested
28. In relation to information on the applicant’s temporary visa file, the delegate put to the applicant the following information:
- He was living with his parents prior to leaving China.
 - The applicant’s mother had worked in a factory for several years, and had provided documents showing her income from that period. This suggested that she had not been detained as claimed. The applicant replied that he knew nothing about these documents.

- His father had raised a loan of a large sum of money to finance the applicant's time in Australia. The delegate asked how this was possible if his parents' sole source of income had been farming, the applicant said that he did not know. .]

29. The Tribunal received submissions from the applicant's representative containing the following information and comments:

- Country information from the UK Home Office 'Country of Origin Information Report: China' (6 March 2007), US State Department Country Reports on Human Rights Practices: China (2005), Human Rights Watch (various reports) and other sources is attached. The excerpts cover China's human rights record, the treatment of religious minorities (particularly Christians), entry/exit procedures and the treatment of returnees.
- The representative contends the following:
 - In this particular case, the applicant was an ordinary church member (not a high profile member), he had never been convicted of any offences or subject to any pending charges, and his age would not suggest that he is a person 'harmful to state security' These factors may explain his ability to leave China on a passport in his own name.
 - The applicant's ability to obtain a passport and depart China is just one factor to consider in assessing a person's refugee claims. A person's ability to depart a country is not conclusive of whether they face persecution if they return there.
 - The applicant has no knowledge of his temporary visa application, as his parents arranged the passport and visa. The applicant states that the information concerning his parents' occupation is wrong He suggests that the agent might have provided false information because it is not safe to give real information about him and his parents.
 - The applicant claims that he has been unable to contact his parents, and is worried about their safety. He claims to have sought assistance from the Australian Red Cross, but to have then withdrawn the request because of these concerns.

30. A submission was received from the representative. It refers to country information indicating that ordinary members of unregistered churches in China may be subject to persecution. It addresses a number of concerns arising from the delegate's decision as follows:

- The Tribunal should have regard to the applicant's age at the time and particular circumstances in assessing his failure to seek protection in Australia earlier.
- It contends that his ability to leave China on a passport in his own name is inconclusive evidence as to whether he faces a real chance of persecution, particularly given his profile and age, and his claim that his parents paid an agent to organise the passport.
- The applicant claims to not know about his temporary visa application, but surmises that some of the information and documentation may have been incorrect, as it may have been unsafe to disclose real information.
- The applicant states that he is worried about his parents, and has asked the Red Cross in Australia to seek the assistance of the organisation in Geneva in finding their location

31. The applicant attended a Tribunal hearing. The hearing was conducted with the assistance of an interpreter in the applicant's dialect (Chinese), at the applicant's request. The applicant's representative attended the hearing. The following is a summary of evidence given by the applicant at the hearing:

The applicant flagged that he may request the interpreter to speak in Mandarin from time to time, to clarify some points. The Tribunal noted the interpreter's ability to also speak Mandarin, and recommended to the applicant that he use whichever language he was best able to present his claims in. It queried, however, why he felt uncertain in Fuqing, the dialect of his home area. The applicant replied that he had been outside China for some time, and may have forgotten his dialect. The Tribunal observed that his uncertainty was surprising, as the absence had not been so long.

Before the start of the hearing, the applicant said that he felt unwell as he had not had an opportunity to eat before the hearing. The Tribunal postponed the hearing briefly. The applicant confirmed, at the start, that he felt fine. The Tribunal found much of the applicant's evidence to be vague or discursive, whereas he spoke fluently and with confidence when recounting his claims of past harm.

The applicant said that he feared persecution from the local PSB, because he and his family members are underground Christians. He said that he came to Australia to flee persecution, and for no other reason. He feared that the police and PSB would arrest and detain him if he returned to China, brainwashing and mistreating him.

The applicant said that he came from a village which is part of a City. He lived there up to his departure from China. His grandmother, parents and sibling lived there until recently. The applicant then said that he had moved to a friend's house several months before leaving China. He did not know the telephone number, street address or any other details of this friend.

The Tribunal asked the applicant about his parents and family. The applicant stressed throughout the hearing that he was very worried about his parents. He had been unable to reach them for many months. The Tribunal asked what efforts the applicant had made to contact them, for instance through friends and relatives. The applicant replied that he had been unable to make contact with any relatives, friends or churchgoers, for a 'long time'. The applicant said that he believed this was linked with the Department's rejection of his protection visa application, as the PRC authorities may have learned about it. (The hearing addressed this issue in more detail later.)

The applicant said that his father had been head of the church, a priest. As for whether he had any other paid work, the applicant said that he had been too young to know. The Tribunal expressed its disbelief at this claim, as the applicant must surely have had some idea of his father's work. The applicant responded that his father may have been in business before, he was not sure. The applicant said that he also did not know much about his mother's work, except that she had worked as a farmer after his parents' release from their detention. The applicant generally evaded questions on these issues, saying that he had forgotten about them and that he was preoccupied with his parents' current welfare.

The applicant said that his parents owned their own home. They had a small plot of land, too. After their release from detention, they took over this abandoned piece of land and farmed it.

The applicant said that the house church took place in his family's home. In the early 2000's there were 4 or 5 members. Later, it grew to several dozen. Parishioners sat next to each other or under a table. After the numbers grew, the police came to know of it, and issued warnings. The applicant described – in a fluent and seemingly rehearsed manner – one occasion when

the police came to the family home. The police assaulted his father with a baton. The applicant and his sister avoided harm by hiding under a table. The police dragged his father away, into a police vehicle. They held him for many months, charging him with illegal church activities. After a few weeks, he was released on bail, to obtain medical treatment. The police had abused him to the point where he required a minor amputation. After the treatment, he returned to prison where he and the applicant's mother served their prison sentence. From this time, the applicant and his sibling stayed with a relative, occasionally moving back into the family home. His parents and all the family moved back there after their release.

The Tribunal asked the applicant about his parents' activities after their release, and how they had managed to afford his travel to Australia for study if they had been detained for such a long time and then had to rely on farm income. The applicant said that he did not know. His parents simply told him to leave China. They did not tell him about the temporary visa until one week before he left China. The Tribunal explained that it found it difficult to believe that he did not at least ask about this, particularly given the applicant's claim about their meagre circumstances. The applicant said that he had only recently found out that they had used a migration agent.

The Tribunal noted the applicant's results from School – certificates had been provided to accompany his temporary visa application. These indicated among other things that he had done well academically. The applicant agreed that he had done quite well. The Tribunal noted that this cast doubt on whether he had faced discrimination and disruption. The applicant suggested that the migration agent may have arranged for the certificates to be produced, implying that they may have been fabricated.

Christian practice in China

The Tribunal asked the applicant about his Christian practice in China, noting his claim to have grown up in a household whose head was a pastor and which hosted church meetings. The applicant said that he was a member of an underground Christian church. He explained that it was Christian, rather than Catholic. The applicant stressed on various occasions that he had been young at the time, and that in his final year in China, he had lived away from home, returning there only on Sunday afternoons.

Responding to further questions, the applicant said that his father held church services at home on Sundays and one other day each week. At first there were few people there, perhaps 4 or 5. Later some 20-30 parishioners attended. The services began by singing songs of praise. His father would then give a sermon. He would tell them about things happening around them as Christians, and also why Jesus died on the cross for them. The applicant said that the house had a red cross on the wall, and there were religious books. His father would place the Bible on the table before the service.

The Tribunal asked the applicant if he could recall any prayer or hymn in his local dialect of Fuqing. The applicant said that members of his church usually used Mandarin in prayers; it was maybe easier to express themselves in this way. He could not recall any prayer. However, he said that he liked a verse from the Bible, John 3:16, and he recited this in Chinese: 'For God so loved the world, that he gave his only begotten son, that whosoever believeth in him shall not perish, but have everlasting life.'

As for whether he recalled any religious songs, the applicant said that he had difficulty reading Chinese characters. The applicant was in any case a poor singer. His father had wanted to teach him to sing, but had been too busy. The Tribunal expressed doubts about these explanations. The applicant said that his father said that singing was not so important, and allowed the applicant to participate by just clapping hands.

The applicant presented a baptism certificate dated the day before the hearing. He said that he was unsure if he had been baptised in China, explaining in response to the Tribunal's question that he had forgotten many things.

The Tribunal asked the applicant if he had seen his father performing any ceremonies, or if he was aware of any sacraments. The applicant said that he sometimes performed baptisms at Easter, or twice a year. He could not remember any other ceremonies, and did not appear familiar with the notion of sacraments. He said that parishioners would talk about Jesus' sacrifice during Easter celebrations. As for whether his father had performed marriages, funerals or any other functions, the applicant said that the underground church in China only held services and baptisms, and did not perform other functions. He did recall, however, a ceremony in which his father had expelled Satan from newcomers to the church, while they held a Bible and a cross in their hands.

The Tribunal alerted the applicant to its concern that his familiarity with Christianity and his account of what he witnessed growing up in a Christian household appeared inconsistent with his claimed experiences and commitment. The applicant agreed that he did not understand much about the Bible, as his father had not told him much. His father had wanted him to study hard and had plans for his future. The applicant added, however, that had it not been for his religious practice and the consequent problems with the police (and his expulsion from school), he would have been able to remain in China safely.

The Tribunal, after advising the applicant of its concerns, invited him to draw to its attention any other aspects of his practice or knowledge in China that would support his claims. He said that his family had to hold church meetings with the door shut. Responding to the Tribunal's question as to why this was unusual, given that they worshipped at home, the applicant said that he had not asked his father about this, but he had seen that in other places worshippers did not have to close their doors. He implied that his house church was subject to risks that others were perhaps not.

The Tribunal observed that the applicant had repeatedly mentioned that he forgot his past experiences, which may lead it to doubt that he was a Christian in China at all. Furthermore, his level of knowledge and involvement was so low that it was hard to imagine why the local authorities would consider him to be a person who could take over from his father. The applicant replied that he had had a kind of disease that caused forgetfulness. He described breathing difficulties and temperatures, and said that it also prevented him from being able to recite texts, even at school. His memory had improved over time. The applicant did not know the proper name of the disease. The applicant restated his claim that the authorities had targeted him because of their concern that he would take over from his father.

The Tribunal asked about the reasons for the applicant's trip to Australia. The applicant said that his parents wanted him to flee future persecution. As for why his father had not fled, since he was a person at more immediate risk, the applicant said that the migration agent had been unable to obtain a passport for him. His father therefore concluded that it would be best to at least save the applicant's life. The family's plan had been for his sibling to migrate a year later. The applicant again stressed that he had now lost contact with all his family members.

Responding to the Tribunal's questions, the applicant said that on arrival in Australia, someone collected him from the airport – a young person whom he did not know – and helped him find rental accommodation. The applicant said that he has no relatives or family friends in Australia. He later made friends and met a girlfriend who is no longer with him.

The applicant said that he did not make contact with any Christians, because he did not know how to find a church. He said that some female students had Bibles, and they had allowed him

to read their Bible. They agreed to take him to church, but that never eventuated. The Tribunal asked the applicant why, if he fled China because of his inability to practice Christianity there, he did not make more efforts to practice freely in Australia. Responding to further questions, the applicant said that he had never told his girlfriend about his religion. He said that he was worried about her being implicated because of his protection visa application, but later clarified this to mean that he did not want her telling the police in China and causing problems for his family. The Tribunal expressed grave disquiet about the applicant's lack of contact with Christians, particularly given his claim about the long-term commitment to the faith and his social contacts in Australia. The applicant explained that he did not know his way around, he just socialised with friends.

The Tribunal observed that the applicant, in an interview, told Department staff that he could not return to China because he had suffered an injury. He did not mention anything about fearing persecution. The applicant said that it was true that he wanted to continue to stay in Australia. He did not refer to persecution because, at that time, he feared that Immigration or other Australian officials might tell the PRC authorities about his complaints, that they would in turn tell local officials, and that the police would come looking for his parents and harm them. Furthermore, he might be deported. Responding to the Tribunal's surprise, as to why he thought of Australia as unsafe, the applicant said that he was not well-informed at that stage.

The Tribunal alerted the applicant to its particular concern that there was minimal evidence that he had shown any interest in Christianity, in China or Australia, until he lodged his protection visa application. The applicant replied that he had told an Immigration official about his fears, describing that person's appearance, but was vague as to when this occurred.

The applicant also said that he had met with a pastor prior to the lodgement of his protection visa application. The applicant had gone to some church services, but did not persist because he had no English. However, he watched a video on Christianity.

The applicant said that, if he returned to China and were able to relocate his parents, he would work with them and spread the Gospel. The Tribunal observed that he had not done this before; he had simply attended his father's house church. The applicant replied that he had been studying the Bible in Australia. The Tribunal alerted the applicant to the operation of s.91R(3) of the Act, which required it to disregard certain conduct in Australia.

The Tribunal asked the applicant about his claim to also fear persecution as a result of his having sought refugee protection in Australia. He replied that he feared arrest and further problems, in the event that someone reported on him. The Tribunal reassured the applicant that the Australian authorities would not tell the PRC authorities about his refugee claims. It referred to country information indicating that failed asylum seekers returning to China did not experience persecution, although the PRC authorities might interview and investigate persons who had a profile as a political activist or similar. (The Tribunal drew on country information in the delegate's decision. It set out the relevant information in its s.424A letter, and provided references.) It noted that the applicant had been able to obtain a passport in his own name, and use it to depart China. Furthermore, his activities in China (if the Tribunal were to accept them) had been low-key. This suggested that there was no real chance that the authorities would target him for any reason at all. The applicant, in response, said that he had been afraid during his period of transit, en route to Australia, that the police might arrest him. The Tribunal explained that, even if the applicant had been apprehensive, the evidence suggested that the police were not in fact looking for him and that they had no adverse interest in him at all. The applicant responded that they

may have asked his parents why he was studying in Australia. The applicant did not know if his parents had said anything to the authorities.

At the conclusion of the hearing, the representative made a number of observations and comments, which may be summarised as follows:

- She advised that the applicant had sought the assistance of the Red Cross in Sydney to locate his parents. The matter has been referred to the Red Cross overseas. The applicant is also concerned that the police will come to know about this enquiry, and harm his parents.
- She urged the Tribunal to take into account the applicant's age, his lack of English and the psychological effect that his experiences in China may have had on him, even in Australia. He might continue to behave as if he were subject to persecution, even if that were not true, and his worry about his and his family's welfare might also cause him to be exceedingly cautious.
- She said that the applicant's knowledge of his family's church and its practices should be understood against the background of the church's small size, the lack of any known affiliation with other churches and the overall environment. Furthermore, the applicant had spent only limited time in the church, given his return to his village only on Sunday afternoons during his last year in China.
- She said that the applicant's knowledge of and involvement in the family church was not the issue, but rather whether the PSB and police would expect him to take over his father's activities in the future (regardless of how correct that expectation was).
- She stressed the applicant's claim to not know about the documents provided for his temporary visa application. His parents did not disclose to him what had been presented, but he thought that there may be some false documents. Country information indicated that such documents were widely available in China. The applicant could not, of course, have applied for protection while still in China. The Tribunal questioned the logic of this argument. According to the applicant, he had not even been aware of the availability of protection in Australia.
- She invited the Tribunal to reflect on the context in which the Department had asked the applicant about the reasons that he was unable to return to China. She underscored the applicant's advice that he had been scared of Australian officials possibly informing the PRC authorities at that time. She reiterated the applicant's advice that he told Immigration officials that he was Christian. The Tribunal, in reply, stated that it had found no evidence of him advising Australian officials of his religion. The applicant should provide such evidence if he was aware of it.
- The representative stressed that the applicant's lack of contact with Christian churches in Australia was due to his fear of the consequences.
- The Tribunal undertook to reflect on all these points. It alerted the applicant to the difficulties with his claim to be Christian at all. It would reflect on these factors – whether they adequately explained the applicant's circumstances, and whether they displaced the Tribunal's concerns about his refugee claims.

32. The Tribunal advised that, in the circumstances of this case, it considered it fair and reasonable to put to the applicant particulars of adverse information in writing, so that the applicant could reflect on the information and discuss any responses or comments

with his representative. The applicant and his representative agreed that this was appropriate. The Tribunal wrote to the applicant, pursuant to s.424A of the Act, inviting his comment or responses in writing on potentially adverse information. A copy of the letter is on the relevant Tribunal file, and states in summary as follows:

The applicant's experiences in China

- The Tribunal observed that the applicant's claim in his protection visa application to have grown up in a Christian family appeared to be at odds with his level of knowledge and his recollections from such a past.
- The Tribunal also noted that the documents provided for the applicant's temporary visa application – concerning his academic results in China, his residency in his home town, and his father's ability to raise a large loan – all cast doubt on his claims that he and his family suffered discrimination, that his parents were detained, and that he had to move to a different house for his safety.
- The applicant's use of a passport in his own name to leave China also suggested that the PRC authorities did not view him adversely.

The applicant's experiences in Australia

- The Tribunal noted that it had found no reference to the applicant having mentioned Christianity or any fear of persecution prior to his protection visa application, and then only in the context of his protection visa application.
- The Tribunal attached a copy of the interview notes when the applicant identified as the reason that he could not return to China his concern at having failed to attend his studies.
- The Tribunal alerted the applicant that this information could lead it to infer that the applicant was not in fact a Christian.

The applicant's protection visa application

- The Tribunal alerted the applicant that his age and his education suggested that it was reasonable to expect him to recall with confidence aspects of his childhood, such as his parents' work. It also suggested that, had he wished to seek contact with Christians in Australia, he could have taken some steps or (if, as claimed at the hearing) he was afraid, he could also have initiated enquiries as to how he could make contact with Christians safely.
- The Tribunal summarised country information indicating that the PRC may interview and keep under surveillance failed asylum seekers, but might be expected to take harsher action only against high profile activists or persons who were members of a targeted group. It reassured the applicant that the fact of his protection visa application would not be disclosed to the PRC authorities. It noted that, if it were to find that he did not have an adverse profile (as a known or suspected underground Christian), it would likely also find that any fears he had arising from his having sought refugee protection were unfounded.

The Tribunal added that, if it were to find that the applicant is not a genuine Christian, it may conclude that he is not a credible witness, and it may dismiss some or all of his refugee claims (including his claim to have lost contact with his relatives). It may also conclude that his recent contact with Christians was aimed at

bolstering his refugee claims, and that the Tribunal must therefore disregard such conduct (s.91R(3) of the Act).

33. The Tribunal received a reply from the representative. In it, the representative made submissions under the following headings: *Christian teaching and practices, Passport and departure from China, [type] visa application, Protection visa application and Contact with Christians in Australia.*
34. The applicant then appeared before the Tribunal to give further evidence and present further arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Fuqing (Chinese) and English languages. The applicant was represented in relation to the review by the same registered migration agent who attended the first hearing.
35. The Tribunal noted that at the previous hearing, the applicant had said that he sometimes needs to speak in Mandarin rather than Fuqing. The Tribunal noted that the interpreter at the hearing today was also a qualified Mandarin interpreter.
36. The Tribunal noted however, that this hearing should be seen as a continuation of the previous hearing, inasmuch as it would not be asking him again many of the questions asked at the first hearing and it would be considering all the evidence he gave at the first Tribunal hearing and after.
37. The Tribunal said that it would be asking him some more questions and in particular, it would be asking him whether there have been any relevant changes or developments in his claims since the last hearing. The Tribunal also stated that it was also giving him an opportunity to tell it any things that are important to his case. .
38. The Tribunal asked for an overview of the applicant's fear of harm and asked what would happen to him if he should return to China. The applicant told the Tribunal that he was afraid that he would be arrested by the Chinese government and brainwashed. As to why, he said his father was a priest who was arrested by the government. He said that the Chinese authorities expect family members to follow in the same path and expect that he will become a preacher and member of a cult as well. As to what he meant by a 'cult', he said that is where people get together and the Government thinks they are betraying them.
39. As to whether the Chinese authorities are looking for him now, the applicant said that he believed they were. He said that a relative died and that there was a phone call from a court of law. He said his relatives asked where he was. The Tribunal said it did not understand what he was saying and asked him to clarify what he was saying. He said that a few months ago, there was a telephone call and that his relatives contacted him on the Internet and asked for his telephone number. He said he gave them his phone number. He said there was a phone call to his relatives and they were looking for him. They said they wanted to talk to him and his relatives told the caller he was in Australia. He said they wanted to arrest him because of what had happened before and because they knew he had applied for refugee status here in Australia.
40. The Tribunal said that it still had difficulties understanding fully what had occurred. He said that his uncle had called him, because someone had been ringing asking for the

applicant and he was very scared. He said that his phone number was not given to anyone from the Chinese government.

41. The Tribunal asked whether it was possible that the phone calls were in relation to the death of his relative. He confirmed that his relative had died. He said the police were looking for him. The Tribunal asked how he knew that the police were looking for him. He said his uncle had told him.
42. The applicant then said that his uncle had only told him that his relative had died when he rang. He said his uncle also said the police were looking for him. The Tribunal asked again whether it was possible that they are looking for him in relation to the death of his relative. He again said it was because he made an application for refugee status here.
43. The Tribunal asked its question again and the applicant said 'no, it was not possible'. The Tribunal asked why it was not possible that they were looking for family members related to his relative who had died, if his parents were not locatable. He said his parents were not at home and the caller thought he was still in China. He said that his uncle told him that they often make phone calls looking for him. The Tribunal asked whether he was referring to the police calling. He said it was people from the court who were ringing.
44. The Tribunal said that at this stage, it was asking for an overview of his fears of harm and noted that he was also claiming harm because he had applied for a protection visa here. The Tribunal asked whether there were any other reasons why he feared persecution. The applicant listed a few types of harm he might suffer. The Tribunal explained again it was asking whether there were any other *reasons* he feared harm. He said 'no'.
45. The Tribunal then asked the applicant about things that had happened to him since the last Tribunal. After some thought, he said his brain was not good and his memory was bad and he could not remember. The Tribunal asked the applicant what month it was now. He answered correctly.
46. The Tribunal asked the applicant where he was now living. He provided his current address.
47. The Tribunal asked the applicant whether he had been working or studying. He said he was studying but his fees had run out and he had no more money to study. He said he asked the help from the Department but this was not given. He said he also wanted to work but he was not given a visa to work.
48. The Tribunal attempted to ascertain when the visa applicant ceased study. He said it was about one month before the fees expired. The Tribunal asked why he did not attend study until the end and he said he did not have any money for train tickets.
49. The Tribunal asked the applicant whether it was true he had applied for another type of visa recently. He looked quizzical in response to this question. The Tribunal asked whether he had lodged another temporary visa application in the last month. He did not answer this but said that the Department told him that they would return his temporary visa to him.

50. The Tribunal asked the applicant how he could afford to pay rent. He said that his flatmate is renting, not him, and that he does not pay him any money. As to how he manages to eat, he said that a loaf of bread lasts a few days.
51. The Tribunal put to the applicant that it could not understand how he could keep studying if he did not have any money for future fees. He said that he has no money but the Department said he would get his temporary visa back.
52. The Tribunal asked the applicant whether he has since heard from his parents. He said 'no', he had only received information from his uncle. He confirmed that his uncle lived in the same village. He said he did not know the whereabouts of his parents.
53. The Tribunal referred to the telephone conversation with his uncle and asked whether they talked about his parents' whereabouts. He said that his uncle did not know where they were. He said he asked his uncle again, and asked what happened to them, but he didn't say.
54. The Tribunal asked the applicant exactly what he said to his uncle. He said he asked uncle, where are my parents, please tell me what happened to my family. He said his uncle replied that he did not know where they were. He repeated that his uncle told him that his relative had passed away and asked why his father did not come to show his respects. The Tribunal asked whether his uncle was upset. He said he was. The Tribunal asked whether his uncle was angry. By way of answer, the applicant said that his uncle asked what he thought of his father not responding and that his father did not respect his relative and that his father had no great feelings of piety and that he should not learn from his father.
55. The Tribunal asked whether the applicant still has the Red Cross looking for his parents. He said they were. The Tribunal noted there was an issue about him earlier withdrawing his request. He confirmed they were still looking for his parents. He said he wants them to look but he does not want them to leak information to the Chinese government about him.
56. The Tribunal asked the applicant when was the last time he spoke to his parents. He could not remember. He said there was no answer to his calls. He made two calls. As to whether he called to a land line or mobile, he said he called to both. After that he did not know where they were. The Tribunal asked him what he thought happened to them. He said that maybe they had been arrested, or maybe they were in hiding. He said that if they were arrested they would be beaten.
57. The applicant confirmed to the Tribunal that he did not know whether his parents had been arrested or whether they were in hiding. The Tribunal noted that his uncle's reaction of being upset and angry seemed an inappropriate response if his brother was possibly in jail somewhere. The Tribunal said that his uncle's reaction was more consistent with someone he knew to be in hiding. The applicant said that he didn't know. He then said that if they were in hiding, he would feel better.
58. The Tribunal asked whether his uncle had been to the family home. He said they did not talk about that. He then said that the door of the house would have been locked and no one could have entered. The Tribunal asked whether his uncle had a key. He said that his uncle does not live in the same house so did not need a key. The Tribunal

asked whether his father and his uncle were close. He said they were brothers. The Tribunal noted this and the applicant said that they were financially separate and they received no support from him. The applicant confirmed that this was not the uncle he had lived with when his parents were in jail; that was another uncle. The Tribunal asked whether he had heard from the other uncle. He said that uncle went to live in another Province and he did not have his number.

59. The Tribunal then asked the applicant whether he had attended church in recent months. He said 'yes' and that he attended church near where he lives. He says he does not know the address as he goes with his flatmate. He said it is a Chinese speaking church and operates on Saturdays and Sundays and that he normally attends on Sundays. He said he would go on at 10 or 11am on Sundays. He provided the name of the pastor. The Tribunal asked whether the Pastor would know him. He said he did not communicate with the Pastor. He then referred to sermons and said that there are a few Pastors, many Pastors. He said that his friend took him to church the first time and he did not ask for the telephone number of the Pastor. As to whether he attends church every Sunday, he said there would have been a few times when he did not go. As to whether he attended church last Sunday, he said he attended on Saturday. He said he went alone. He also said that for a while he went to church with some friends
60. The Tribunal then gave the applicant a warning under s.91R(3) that if he had engaged in Christianity here for the purpose of improving his chances of being found a refugee, the Tribunal would have to disregard this conduct. He said, emotionally, that is impossible and that if he did that, he would rather be sent home and die in China, as long as his parents were safe.
61. The Tribunal asked the applicant about his health since the last hearing. He said that he has a health problem. He said he is not seeing any doctors as he has no money. He said he also has a bad memory and is forgetful. The Tribunal asked whether this was a medical problem as such. He said he doesn't know; that he is dizzy sometimes and has headaches. He said that he had been sick as a child and often had high fevers. The Tribunal asked him whether he had memory problems and forgetfulness before he left China. At first he said he didn't know and then said that his memory in China was not that good and that sometimes it didn't take him long to forget things.
62. The Tribunal noted that from the Department file, the applicant had previously attempted to harm himself. He looked at the Tribunal in a puzzled fashion and said he could not remember that.
63. The applicant appeared confused and then said that he was worried about his family members all the time and had then asked the Red Cross to start looking for them.
64. The Tribunal asked the applicant about the church in Australia where he was baptised. It asked whether he had had any recent contact with the minister or the church. He said he does not know where the church is and cannot remember where the Pastor is.
65. As to whether there was anything else he wished to tell the Tribunal, the applicant said that last time the Tribunal did not let him tell everything he wanted to tell.
66. The Tribunal then asked whether there had been any developments or further incidents in China in respect of his claims. He said 'no'. The Tribunal noted that there had been

the phone call from the uncle. He then mentioned the call from his uncle to tell him about his grandmother's death. The Tribunal asked him whether there had been any more developments and he said 'no'.

67. The Tribunal commented that he had limited knowledge of Christianity and did not have the depth of knowledge one might expect from someone who had long-term exposure to Christianity. The applicant said that his father was a priest and that he was a Christian who followed his father. He said he went to school to study and did not have much chance to study the Bible.
68. As to his limited knowledge, the applicant said that he didn't have a deep understanding of Christianity but was able to do basic things. He confirmed that he was brought up as a Christian. He said that when he was a child, his father told him stories of religion and not to be too worried and to concentrate on his study.
69. The Tribunal noted that he did not know any songs or prayers as one might expect from someone who had attended church in his home all his life. He said that if his parents had not been sent to jail and persecuted, it would not be necessary for him to have been sent to Australia. He said he was young when he was sent and was not independent. He asked whether the Tribunal member would send his son overseas at that age to study. The Tribunal responded by saying that it was not uncommon for Chinese families to send their children overseas to Australia to study.
70. The Tribunal then commented that the applicant appeared to be hesitant and limited in expressing his knowledge of Christianity. The Tribunal specifically referred to his baptism where he stated that he was not sure whether he had been baptised. The applicant said that he did not know whether he was baptised. He said he was not sure. He said that he had a bad memory, so how could he remember? He then said he was afraid of cold water or ice and this would give him a fever. He then referred to some children being baptised when they were a few months old and asked how he could know if he was baptised at that age. The Tribunal said that baptism is an important part of Christianity and it would have expected his parents to have told him that he was baptised if indeed he had been. The applicant said that he was too young to understand and didn't know whether he had been baptised and even if he was told, he wouldn't have understood.
71. The Tribunal then referred to the applicant's failure to establish contact with other Christians and Christian churches in Australia when he first arrived. He said that he had no relations here and no other people he could turn to and he did not know how to travel and who was his guardian. The Tribunal said that he appeared capable of asking people for information. He said that how could he as he did not speak English, and then said that even those people who spoke Chinese would not answer him. He referred to an instance where he asked a person who spoke Chinese for information and they denied that they could speak Chinese. He said he was disappointed with 'the crowd'. He said people say that Australia has human rights and freedom but he felt that people here are cold; even the Chinese. The Tribunal said that he could have asked someone where a church was. He said he was disappointed when he was denied information.
72. The Tribunal then referred to the lack of documentary evidence until his protection visa application of him claiming to be a Christian. The applicant referred to a visit by a

pastor. As he did not speak Chinese, the Pastor said he would get a Chinese Pastor to come and visit him. He said this Pastor told him that life has its 'ups and downs' As to the name of the Pastor, he said he couldn't remember. The Tribunal asked him whether he told the Pastor that he was a Christian. He said this Pastor had written a support letter for him.

73. At this point, the representative said that she had received two letters from the applicant just before the hearing which were in support of his claims. She said she delayed giving these to the Tribunal as she wished to clarify certain information in them but was happy to give them to the Tribunal. These letters were from the Pastor and also from another Christian organisation.
74. The Tribunal noted that the letter from the Pastor said that the applicant was not a Christian before he met him but had now accepted the Gospel. He said that the Chinese police would say he is a Christian anyway because of his father's beliefs in God.
75. The Tribunal then asked the applicant whether he was a Christian and believed in God when he came to Australia. He said he was. He then referred to the PSB finding him and being 'used' by his friend here and that he had to escape persecution by the Chinese government.
76. The Tribunal asked the question again as this response was disjointed. He said that if he was not a Christian, he would not swear to tell the truth and would not be able to go to God when he died. The Tribunal said that it was trying to ascertain whether or not he was a Christian when the Pastor visited him. He said the Pastor came to visit him and that he did not tell him he was a Christian in China. He said that in the beginning he went to read a book and the Pastor called in to see him. The Tribunal asked the question again and he said that he did not tell him, and then said at least 'not in the beginning'. He confirmed that he eventually told the Pastor that he was a Christian in China.
77. The Tribunal then referred to the Department's interview with the applicant, and noted that he did not mention he was a Christian at that time. The applicant disputed this. He said he was asked whether he was religious and he said he was a Christian, but the person interviewing him said he was not a Christian and did not write down that he was a Christian. The Tribunal asked him how he could remember this if his memory is so bad. He said that it is clear to him because he had been asked this question many times in interviews.
78. The Tribunal then referred to the evidence concerning the applicant's original visa and noted that there were various inconsistencies between the oral evidence of the applicant and the documentary evidence contained in the visa application file. The applicant asked for an example of this. The Tribunal gave the applicant a letter in Chinese from a school, on letterhead, and a translation, which indicated that he attended school in a particular year, whereas he has already said he had to leave his school the previous year. He said he paid money to the school but didn't go.
79. This did not make initial sense to the Tribunal. The applicant confirmed that he did attend the school on the letterhead. He said he did after he transferred from the public school. The Tribunal noted this accorded with his earlier evidence that he then attended a private school. The Tribunal asked him how long he attended that school. He said it

was not for long. He said he felt alienated at school and the students were looking at him in a strange way. He said that after a few months he didn't go. The Tribunal asked what was the cause of this treatment. He said it was because his father had been in jail. The applicant confirmed this treatment was part of the religious persecution.

80. The Tribunal then referred to his delay in lodging his protection visa application indicated that he had no fear at that time of persecution, nor any future fear of persecution. The applicant asked what would be the purpose for him leaving China otherwise. He said he could have had a good future if he could have continued studying. The applicant then said that he did not know when he got here that he could apply for protection. He said he had no money for a migration agent and did not know how to do it himself.
81. The Tribunal then referred to the applicant's ability to get a Chinese passport and its doubt that he was perceived as a religious threat or a religious dissident. He said that his father got his passport through an agent, and also the visa to Australia. As to whether he filled out any forms himself for a passport, he said 'no', and that he did not know about this and that his father had told him all about it.
82. The Tribunal then referred to the applicant's claim that he was at risk of serious harm because of his asylum application here and noted that there was no evidence that the Chinese authorities knew that he had made such an application. He said that his uncle told him that people from the court had made a call looking for him and that his uncle did not want his family implicated in this. The Tribunal suggested that he was making a deduction from this information that the Chinese authorities were looking for him because he had made a protection visa application. He asked how come the court people were looking for him? He said he put it all together and the arrest of his father and that he had lodged a protection visa application had placed him in trouble.
83. The Tribunal then referred to him not having the attributes of someone who would be at risk because of making an asylum application. He said that when he was a student, the PSB came to school and said that he would follow his father's path. He said he was removed from school. He confirmed to the Tribunal that this was the only incident that occurred to him in China.
84. The Tribunal then referred to the earlier Tribunal's finding that independent country information indicated that, even if it was known that he had made an asylum application, and was taken in for routine questioning, he would not be subject to any ongoing risk and that such questioning of him did not amount to serious harm. He said that he will be arrested because of what his father did. He said they sang hymns and many people were together.
85. As to whether there is anything else he wished to tell the Tribunal, the applicant said 'please consider his application'.
86. The Tribunal then asked the representative whether she wished to follow up any further evidence with the applicant. She said 'no', but that she did have a few comments to make and that she would be making some comments in writing as well.
87. As to the issue of the applicant's credibility, the representative said that it should be understood that he has difficulty understanding, and this was indicated in his inability

to understand issues relating to his temporary visa and the protection visa. She said he was unable to convey clearly things to the Tribunal and it was clear that he did not understand what was happening. She said he is not able to clearly state his case and even contradicts himself at times. She said that this could indicate he is untruthful, but it could also indicate that he lacks the ability to fully explain himself and to be understood. She suggested that the benefit of the doubt should be given to the applicant and that he has gone through some bad experiences and suffered persecution. She said he was most upset about not knowing what has happened to his family. She indicated there may also be some psychological issues here.

88. The representative said that it was conceivable that the applicant might have only known about protection visas well after he arrived in Australia. She said that, given his youth and inexperience, he might not have known about protection visas earlier.
89. As to the applicant's interest to the authorities, the representative said that he was removed from school and that being a member of the family unit can be enough to lead to persecution in China. She reminded the Tribunal that his church was illegal and unauthorised and that there was considerable country information about persecution on this basis. She said that it would be imputed to him that he had the motives and beliefs of his father.
90. As to whether the applicant is at risk of questioning on his return to China, the representative referred to the independent country information and said that there was limited information as to this and that there had been some difficulties and that the Department was investigating this at present. She said that if he was returned to China, no mechanism would be able to him which provides independent or effective assistance if he was persecuted.
91. The representative said that, even if he returned to China and did not come to the attention of the Chinese authorities, the applicant would not be able to practise his religious beliefs as he did before, suggesting he would have to modify his behaviour. She also said that it cannot be ignored that, in Australia, the applicant has freedom to practise his religion as he wishes and that if he returned he will not be in a place where there is religious freedom. She asked the Tribunal to consider this.
92. The representative's final two points were to clarify that the applicant's study fees were prepaid for one year and this was how he was able to re-attend his studies and that he has not had any access to medical treatment because he has not had visa working rights.
93. The Tribunal noted that, according to the Department movement records, he was on a bridging visa which had expired. The representative said she had no information on his current visa status and it was noted that there was nothing in the applicant's Chinese passport as to his visa status. The representative said she would follow this up.
94. The Tribunal indicated to the representative that it would be writing to her, inviting the applicant to provide any other information he wishes to provide. It noted that he may be obtaining more information from the Pastor and from another Christian organisation and that the representative had indicated that she wanted to make a further submission in writing.

95. The letter from the Pastor states that the applicant became a Christian. He stated that he visited the applicant due to his language difficulty to understand Christian gospel in English. He visited over a period of several months. The applicant became a Christian during this period of time.

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96. The letter from another Christian group states as follows:

I write in strong support of [applicant][details deleted in accordance with s431 as it may identify the applicant]. Just recently I witnessed [applicant] being baptised. Growing up in a Christian family, [the applicant] was baptised when he was a baby. However he wanted to do it again, this time as an adult, to demonstrate his own conscious choice to follow Jesus. This was a very important occasion, as it was this choice that led him to leave his family and friends in China, to come to Australia to seek protection.

China still does not allow its citizens to practice religious freedom. Its state run churches, are churches' in name only and bears no resemblance to real Christianity. Therefore there are many 'underground' churches existing throughout China. Unfortunately many of those involved are targeted and 'punished' if their involvement is discovered. At a time when other young men of his age are just embarking on adult life and enjoying family and friends, [the applicant] has come to Australia seeking protection, and an opportunity to practise his Christian faith without the fear of oppression and persecution.

Minister, I ask you to please consider [the applicant]'s case with compassion. As a bright young man he has much to give to the Australian community. Thank you for your kind attention.

97. After the hearing the Tribunal wrote to the applicant, care of his representative, inviting him to provide any additional information in support of his application. A submission was received by fax. The representative's submission addressed certain matters under the following headings:

- IMPORTANT ISSUES THAT NEED TO BE CONSIDERED WHEN EXAMINING THE APPLICANT'S CLAIMS.
- APPLICANT'S FAMILIARITY WITH CHRISTIAN TEACHING AND PRACTICES.
- INFORMATION RELATED TO THE APPLICANT'S ABILITY TO EXIT CHINA USING A PASSPORT IN HIS OWN NAME
- EXIT/ENTRY PROCEDURES
- TREATMENT OF RETURNEES
- INFORMATION RELATED TO THE APPLICANT'S [TEMPORARY] VISA APPLICATION.
- INFORMATION RELATED TO THE APPLICANT'S DELAY IN APPLYING FOR A PROTECTION VISA
- INFORMATION RELATED TO THE APPLICANT CONTACT WITH CHRISTIANS IN AUSTRALIA
- ABILITY/WILLINGNESS OF AUTHORITIES IN CHINA TO ASSIST/PROVIDE EFFECTIVE PROTECTION

- RELOCATION
- CONCLUSION

INDEPENDENT COUNTRY INFORMATION

98. The Tribunal notes that the latest US Department of State International Religious Freedom Report 2008 talks about the persecution of some unregistered house churches and their family members:

Prominent house church leaders and their family members continued to serve time in prison.

... On July 27, 2007, Beijing house church activist Hua Huiqi was released from prison. Hua had been detained on "suspicion of interfering with public duties" and was formally arrested by Beijing PSB's Chaoyang Branch on February 8, 2007. In April 2007 the Beijing Intermediate People's Court rejected the appeal of Hua's 76-year-old mother, Shuang Shuying, who was sentenced to 2 years in jail for destruction of public and private property. Hua alleged that government authorities imprisoned Shuang in an attempt to pressure him into providing information to the Government about individuals who visited him.

From: <http://www.state.gov/g/drl/rls/irf/2008/108404.htm>. Accessed 13 January 2009

99. The Tribunal also refers to the report titled *China: Treatment of children of members of underground Christian churches; whether children of members of underground Christian churches are subject to sanctions, including reduced access to education and to health care*, published by the Immigration and Refugee Board of Canada and dated 26 June 2008, which states:

According to the United States (US) Department of State's International Religious Freedom Report 2007, in certain areas of China, local authorities have placed pressure on members of unregistered, unofficial churches [also known as "underground" churches (Reuters 4 Dec 2007; BBC 23 Sept. 2007) or "house" churches (CAA 19 May 2008)] to join registered churches or face certain consequences, including having their children's access to schooling restricted (US 14 Sept. 2007).

In 2 June 2008 correspondence, a representative of China Aid Association (CAA), a US-based, non-profit organization that investigates and advocates for religious freedom in China (CAA n.d.), indicated that "while there are no specific laws or regulations concerning the cessation of rights for children of house church Christians, there have been several instances of persecution amongst children of house church pastors and Christians" (ibid. 2 June 2008a). In separate correspondence on the same date, another representative of CAA said that the organization had received reports indicating that "children of the underground church were discriminated [against], even expelled from schooling" (ibid. 2 June 2008b).

Press releases on the CAA website report that Chinese authorities have arrested children following raids on Sunday schools or bible studies at unregistered churches (CAA 4 Apr. 2008; ibid. 19 May 2008; The New York Times 18 Aug. 2006; AFP 4 Aug. 2006). On 30 March 2008, four children were reportedly arrested with several underground church leaders following a Sunday school service in Qu County, Sichuan Province (CAA 4 Apr. 2008). The children were apparently released after

interrogation (ibid.). One month earlier, the authorities reportedly arrested eleven minors and two adults at a house church bible study in Huocheng County, Xinjiang Province (ibid. 28 Feb. 2008; ibid. 19 May 2008). Information on when the children were released could not be found among the sources consulted by the Research Directorate.

Cited in two other news sources, the CAA reported that in August 2006, 90 children and 40 adults were arrested in Tongwei Village in Anhui Province after their Sunday school was raided (The New York Times 18 Aug. 2006; AFP 4 Aug. 2006). The children and most of the adults were reportedly released once the authorities had registered their personal information (ibid.).

On 1 May 2007, Mission Network News (MNN), a Christian news service "dedicated to keeping Christians informed on evangelical mission activity around the world" (MNN n.d.), reported that the authorities had arrested two children of underground Christians following a raid on a religious gathering that was attended by their parents (ibid. 1 May 2007). Further details on this case, including when or whether the children were released, could not be found among the sources consulted by the Research Directorate.

In January 2008, local authorities reportedly evicted several children and their caretakers from a Christian orphanage in Hubei province as part of a "crackdown on Christian activities" (BosNewsLife 13 Jan. 2008). The authorities also reportedly "threatened" landlords to prevent the orphanage from obtaining another rental space (ibid.).

Information on whether access to health care is restricted for children of house church Christians could not be found among the sources consulted by the Research Directorate.

...

From: Immigration and Refugee Board of Canada, China: Treatment of children of members of underground Christian churches; whether children of members of underground Christian churches are subject to sanctions, including reduced access to education and to health care, 26 June 2008. CHN102868.E. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/48d22380c.html> Accessed 14 January 2009

FINDINGS AND REASONS

100. The Tribunal is satisfied from the applicant's Chinese passport that he is a national of the People's Republic of China. Accordingly, his claims to refugee status will be assessed against China as his country of nationality. There is no evidence before the Tribunal to suggest that he has rights to enter or reside in any other country.
101. Based on the applicant's protection visa application, he claims to reside in a town in Fujian Province, China. The applicant claims that he is the son of a leader of an underground Christian church there. He claims his parents were arrested several years ago and were imprisoned for a lengthy period. He claimed that he was forced to leave his public school because of the intervention of the PSB and that he then had to attend a private school, where he was further persecuted. He claims that, as the son of a leader of an underground church, the authorities will expect him to 'follow in his father's footsteps' in regards the church and this will lead to him being persecuted should he

return to China. He also believes the fact that he lodged a protection visa application will get back to the Chinese authorities and he will be persecuted because of this.

102. When determining whether a particular applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the claims he or she has made. This may involve an assessment of the credibility of the applicant. When assessing credibility, the Tribunal should recognise the difficulties often faced by asylum seekers in providing supporting evidence and should give the benefit of the doubt to an applicant who is generally credible but unable to substantiate all of his or her claims.
103. The Tribunal is not required, however, to accept uncritically each and every assertion made by an applicant. Further, the Tribunal need not have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out.
104. In assessing the applicant's credibility, the Tribunal would say that it thought that the applicant was suffering some form of undiagnosed mental health problem as a result of his experiences in China and perhaps Australia. This was also suggested by the representative. The Tribunal is mindful of the effects that long-term persecution of this nature can have on an individual. It can make a person extremely wary and suspicious and possibly even paranoid. A person may start to believe that every bad thing they can think of will happen to them. They will think the worst in any situation. This may be in some ways a normal reaction to an abnormal situation. The Tribunal considered that some form of mental health problem may have affected the applicant's thinking and memory of recent times and made him extremely cautious and fearful of doing anything in Australia for fear of it getting back to Chinese authorities. The Tribunal took this into account in assessing the applicant's evidence.
105. The Tribunal considered that the applicant was generally credible in his claims. While there were a number of aspects of the applicant's evidence which did concern the Tribunal, on considering the evidence overall, and noting the consistency in the applicant's claims from his protection visa application to the hearing, it believed that the applicant was telling the Tribunal the truth.
106. The Tribunal notes that when interviewed by the Department there was no record of the applicant's claims of persecution for his Christianity as a reason why he could not return home. The Tribunal can accept that the applicant was not well-informed at that stage and was likely to have been mentally traumatised and accepts his evidence that he did not refer to persecution because, at that time, he feared that Immigration or other Australian officials might tell the PRC authorities about his complaints, that they would in turn tell local officials, and that the police would come looking for his parents and harm them.
107. In regards this interview, the Tribunal cannot find with any confidence in favour of the applicant's claims that he did actually advise that his religion was 'Christian' at that time and that this was not noted. Even if he did advise of this, it does not mean that he advised he was being persecuted for his Christianity.
108. The Tribunal therefore accepts that the applicant is the son of an unregistered house church leader. However, it does not consider that he himself was a particularly strong Christian while in China. The applicant did not demonstrate in his oral evidence to be

either a strong Christian or a leader of his church while in China. It would appear that he has learned most of what he knows about Christianity by merely growing up in a strong Christian leader's household and being present at home when church services were being conducted there. The Tribunal considers that he had not made any serious commitment to Christianity while in China and it would appear that this was alright with his father, as it would seem that all he wanted at that point was for the applicant to study and do well at school.

109. The Tribunal is of the view that the applicant's mental state, combined with its finding above, may satisfactorily explain the applicant's limited knowledge regarding Christianity and Christian practice in China. In particular, the Tribunal refers to his inability to recall prayers or songs from his house church, and why the applicant's description of what he observed and participated in as a Christian in China to be hesitant and limited, as demonstrated in his evidence at the first hearing. Furthermore, if the applicant had spent only limited time with his parents, and hence his father's church, during his last year or so prior to leaving China, this may also explain his poor recall in these areas.
110. The Tribunal has examined closely the applicant's actions in Australia and believes they support a finding that he is being truthful in his claims overall.
111. The Tribunal does not consider that the applicant's actions here are consistent with someone who has contrived a plan to seek refugee status in Australia; rather they are of someone who is fearful and confused and somewhat desperate, financially and emotionally.
112. The Tribunal first considered the fact that the applicant did not lodge his protection visa application until several months after his arrival here. What is interesting is that he did not lodge a protection visa immediately on coming to the attention of the authorities. While the dates are not certain, it would seem that nearly four months had passed until he finally lodged a protection visa application.
113. While such a delay in the applicant lodging his protection visa application could be seen as adverse to his claims of fear of harm, or even to his credibility, the Tribunal is of the view that it is also consistent with someone who is confused and who does not know of their rights to seek protection in Australia, which one would expect from someone who had not contrived their presence in Australia.
114. The circumstances surrounding the applicant coming to the attention of the authorities – being the cancellation of his temporary visa – is, in the Tribunal's view, illustrative of his confusion and desperation at that time and the lack of contrivance in his claims. The applicant could easily have sought a review of the cancellation of his temporary visa and might have remained on a bridging visa.
115. The Tribunal also accepts that the applicant has been genuinely trying to find his parents while in Australia, and is most concerned about their welfare, within the context of his concerns that the Chinese authorities might discover about his enquiries.
116. The Tribunal refers to the Department file notes concerning the applicant's inability to contact his parents and that he harmed himself because of this. The Tribunal raised this with him at the first hearing and rather than seeking to overplay this event to support

possible contrived claims, the applicant looked at the Tribunal quizzically and said he did not remember doing such a thing. In the Tribunal's view, this supports the Tribunal's finding that he is telling the truth about his claims.

117. The Tribunal also considered the applicant's claims as to practising his Christianity here in Australia. The Tribunal can accept that he was isolated at first and inhibited but notes that he has described some contact with Christianity and Christians
118. The Tribunal found there was no evidence of his embracing Christianity until he lodged his protection visa application and notes that he was baptised the day before his last hearing. The Tribunal alerted the applicant to its particular concern that there was minimal evidence that he had shown any interest in Christianity, in China or Australia, until he lodged his protection visa application. He said he had gone to some church services, but did not persist because he had no English and that he watched a video on Christianity
119. Notably, at the second Tribunal hearing, the applicant provided documentary evidence from the minister of an Australian Chinese Christian Church. This evidence goes to support the applicant's claims in this regard, and as to his truthfulness generally.
120. The minister's evidence is also that the applicant accepted the gospel and became a Christian during this time. On first appearance, this would go against the applicant's earlier claims. However, accepting that the applicant was not a committed Christian at that stage, it then makes sense that, in a time of desperation, he might accept the gospel and become a committed Christian. This is what happens with many 'born-again' Christians.
121. The applicant's embrace of Christianity and his subsequent baptism can be seen in this light, rather than in the light of someone who appears to have embraced Christianity to improve their chances of being found to be a refugee.
122. [Information deleted in accordance with s431].
123. The Tribunal would also like to refer to the applicant's evidence at hearing of a conversation with his uncle a few months before, about his relative's death and the courts and police looking for him. It was difficult to get a clear picture of what had happened from the applicant. The applicant's evidence on the role of the police was not clear. The Tribunal suggested that, given his parents could not be found, the courts were looking for him in regards his relative's death, rather than anything to do with religious persecution. The applicant said this was not the case. However, the Tribunal cannot be sure of this, given its view that he is suffering from some kind of mental health problem which may lead him to read the worst into any event. However, the Tribunal accepts that the applicant did speak to his uncle and that he told the applicant that his parents whereabouts are unknown.
124. As to the significance of the information on the Department's temporary visa file, and how this contradicts the evidence of the applicant now, the Tribunal accepts that the applicant knew little about how his parents obtained this visa and what documents were used. Hence, the Tribunal does not believe that these documents can be used to discredit the applicant's claims of persecution now.

125. Accordingly, the Tribunal accepts the applicant's claims that:

- His parents are devoted Christians and that his father is a Pastor who ran an underground house church from their home
- The local authorities wanted the applicant's parents to cease holding underground church activities, but they did not cease
- While he was still at high school, his parents and other church members were arrested by the authorities His father was assaulted in the process. This was witnessed by the applicant and his sibling
- His parents spent many months in prison and his father was tortured
- He suffered discrimination at school because of his parent's arrest and detention. He lived with an uncle for this time
- Later he was visited by the PSB at school. They threatened him and said they knew he would follow in his father's path in the church. The principal then gave the applicant a Dismissal Notice from school
- From the time the PSB approached him, the applicant did not live at home but with friends and other church members. He would only come to his family home on Sunday afternoons to visit
- He was then sent to a private school but also felt discriminated against there also and subsequently left
- He was able to get a Chinese passport and Australian visa through the help of his parents and others. He was not aware of how his parents had done this, or what they had stated in order to get the visa.
- He did not lodge a protection visa application initially because he was not aware of his rights
- In Australia, he attended Bible study, was baptised and became a committed Christian
- He was in contact with his parents until early 2008. The applicant attempted self-harm because he could not locate his parents. He has been unable to locate them since and has used the services of the Red Cross in order to do this. The applicant considers they may be in jail or in hiding.
- He has spoken to his uncle a few months ago, who advised of the death of a relative, and who also advised that he does not know the applicant's parents whereabouts.
- He has attended a Chinese-speaking church regularly for several months.
- If he returned to China, and was able to locate his parents, the applicant would work with them to spread the Gospel

126. Given that the Tribunal has accepted the applicant's claims are generally truthful, it must now determine whether the applicant's claims of his facing serious harm are well-founded. The Tribunal accepts that he has an extreme fear of harm but it must determine whether factually or objectively, there is a sound basis for this fear. That is, the Tribunal must determine that the harm the applicant fears is not remote, or far-fetched, or insubstantial, or mere speculation, such as to amount to a 'real chance' of him suffering serious harm should he return to China
127. In regards to how likely the chance of persecution must be, the Tribunal notes the words of McHugh in *Chan v MIEA (1989) 169 CLR 37*:
- [A] fear may be well-founded for the purpose of the Convention and Protocol even though persecution is unlikely to occur. ... an applicant for refugee status may have a well-founded fear of persecution even though there is only a 10 per cent chance that he will be ... persecuted. Obviously, a far-fetched possibility of persecution must be excluded.
128. The Tribunal refers to the independent country information available in regards whether family members of church leaders in unregistered churches in China may face persecution merely by being family members. The Tribunal notes that the latest US Department of State International Religious Freedom Report 2008 talks about the persecution of some unregistered house churches and their family members and that the Immigration Review Board of Canada has specifically addressed this issue, noting that child family members may be persecuted by way of arrest and interrogation and may face restricted access to education in the way that the applicant has
129. The Tribunal considers that family members like the applicant are at risk of persecution merely because of their family association to known church figures, regardless of whether they are also involved in the religious activities. While the Tribunal considers that the applicant views the risk of persecution if he was returned to China as extreme, the Tribunal does not believe that, objectively, the risk is as high as he states. The Tribunal considers that his view of the risk is founded on his not knowing what has happened to his parents and sibling and may possibly be influenced by his current mental state. Nevertheless, the Tribunal accepts from the independent country information that the chance of the applicant suffering persecution for this reason alone is not far-fetched or remote and that it is real possibility. Further, the Tribunal accepts that the risk facing the applicant may now be higher, given that he is now a committed Christian, who would on relocating his parents, join them in spreading the Gospel.
130. The Tribunal finds that the applicant, as a committed Christian and the son of a known leader of an unregistered house church who has been previously imprisoned, has a real chance of suffering serious harm by coming to the attention of authorities on return to China. This could result in serious harm, such as official interrogation, which has been known to result in torture and physical harm, or administrative or extra-judicial detention which can be undertaken without regard to lawful safeguards. This would be serious harm for the purposes of s.91R(1)(b).
131. As to whether such harm would fall within Convention grounds, the Tribunal finds that the applicant's claims falls within the terms of Article 1A(2) in two ways. The applicant may suffer harm, either for being a Christian, or it being imputed that he is a potential leader of a Christian leader movement. He may also belong to a particular social group in China, being family members of unregistered house church leaders. The harm can,

then, be said to essentially and significantly arise by reason of a characteristic contemplated by the Convention: s.91R(1)(a).

132. Further, in the Tribunal's view, the real risk of serious harm extends to the entire country of China, because the Chinese Government has highly centralised elements and the security authorities have a national structure, although with considerable local autonomy. The applicant would be readily identifiable by authorities on return and in the Tribunal's view would probably be of interest to authorities, no matter where in the country he attempted to reside. The persecution would involve systematic and discriminatory conduct for the purposes of the Act: s.91R(1)(c).
133. There is no material which indicates that the applicant has any right of residence in any third country, being only a citizen of China and currently physically in Australia. He is also outside his country of nationality. It is the view of the Tribunal that the applicant has a well-founded fear of being persecuted for a Convention reason and is a person owed protection obligations by Australia.

CONCLUSIONS

134. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

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

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

Sealing Officer's I.D. prrt44