

071739399 [2007] RRTA 300 (29 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071739399

DIAC REFERENCE(S): CLF2007/83116

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Jane Marquard

DATE DECISION SIGNED: 29 November 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of China, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees convention.

The applicant applied to the Tribunal for review of the delegate's decision.

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

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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

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

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

enough that the government has failed or is unable to protect the applicant from persecution.

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

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

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

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

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

CLAIMS AND EVIDENCE

The documentary evidence in this matter is contained in the Department and Tribunal files.

Protection visa application

According to the protection visa application the applicant is a woman from Shandong Province, China.

She left China and arrived in Australia on another visa. She has a Chinese passport issued a number of years ago. She travelled to Country X on a tour the year before she arrived in Australia.

She had 14 years of education. She worked in an office in various places from the late 1980s. From the early 2000s she was unemployed.

The applicant has a son who is in China.

A statement accompanying the protection visa application stated the following (in summary):

- The applicant joined Falun Gong, because, in the beginning, she heard from a friend that by practising Falun Gong, one could have disease cured and disaster eliminated. She remained in poor health after giving birth. She began to practise Falun Gong and her health improved after three months.
- Her “mentality” became calmer. Previously she lost her temper easily when she saw the inequality in society and the unfairness in organisation or unfair treatment. She also had grudges at the practices of “going through the back door”, seeking relationships and the darkness in which the leaders only attached importance to one’s social background instead of one’s own ability. She changed her attitude and became sober minded.
- The reason she changed herself step by step is that Master Li Hongzhi put forward the principles of “truthfulness, benevolence and compassion”. She said a large number of fine people were practising Falun Gong including many members of the Communist Party, government functionaries and high-ranking intellectuals. “They had received the education from the Communist Party for many years, but they were addicted to the practice of Falun Gong. It was a Buddhist doctrine that was able to cultivate ideology of the people and raise them to a higher plane. It was the only Buddhist doctrine that filled the gap in life and a satisfactory explanation of the universe.”
- She said she joined Falun Gong in the late 1990s with the sponsorship of her friend Person A and Person B.
- She said the persecution occurred when she was expelled from work during the nation-wide campaign of crackdown which commenced on 20 July 1999. She was forced to make a self-criticism at the general meeting among the employees for the practice of Falun Gong when she was employed. She was made to read the guarantee at the meeting that she would no longer be involved with any Falun Gong organisation. She was disciplined with a demerit and all her treatment was cancelled.
- She was made to do the hardest and most difficult work. She had to report to leadership what she was thinking every day and received surveillance from the leaders and colleagues.
- In the end she was detained for seven days and fined by the local Public Security Bureau for her involvement with Falun Gong. She was expelled from work.
- In the meantime her husband was implicated and criticised and warned several times from his work unit. He was also expelled from work because she practised Falun Gong. Her husband had grudges against her for implicating him and his love for her was disappearing. He proposed divorce. The applicant and her son moved in with her parents.
- Other organisations did not dare employ her because the government would not allow Falun Gong members to be employed.

- She took advantage of high-level corruption in the government organisations of the CPC and bribed officials for a passport. Her application commenced in a specific year and was granted the following year. There were strict vetting procedures in her city. The broker said it was a difficult job and asked her to hide, lie low and wait for opportunities.
- She waited a number of years and paid a huge amount of money to ask an agent to “package her”. The agent organised a trip to Country X with the aim of “activating the passport, avoiding the [city] which was the place of my residence and depart from and return to [city] so that I would have a sound record of visiting [Country X] and would make it easier for the foreign diplomatic missions in China to believe me.” She said the broker worked for another 6 months and she was granted a visa on a specific date.
- She said the Chinese government knew she had fled and she would be subject to severe punishment if she returned. Normally she would serve a prison term and lose the right to work. She said she could not get employment because she had been punished for being a member of Falun Gong. She said she would not be able to survive and support her son. She said she had to rely on her parents who were advanced in age and no man would dare marry a Falun Gong practitioner. She said that she would live without dignity and the future would be extremely dark, if she returned to a “blind alley”. She said she is still young and does not want to suffer to death.
- She said since she had been in Australia she had been participating in practice activities organised by Person C. She has also attended demonstrations in support of the withdrawal from the Communist Party of China.

Hearing

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

The applicant confirmed that she was born in Shandong province, China. She confirmed that she was married and divorced, although she had been separated from her husband for a few years before the divorce.

She confirmed that her son lives in China, along with her parents. She also has one older sister and one younger brother in China. Her son boards at school and lives on weekends with her parents.

The applicant said that she has no relatives living in Australia.

She said that she had 14 years of education.

After she finished university she worked at an office. In the mid 1990s she moved to another workplace. At the latter workplace there were four or five employees.

She stopped working when she was dismissed following the crackdown on Falun Gong practitioners in July 1998. She said that after she was dismissed she did not get a job until two years later.

She then found a job at another workplace. She worked there until the following year.

The applicant was asked when and how she first became a Falun Gong practitioner. The applicant said that in the early 1990s her health was poor after she gave birth. Her friends, Person A and Person B, introduced her to Falun Gong saying that it was good for her.

She was asked what her friends told her about Falun Gong. She said that at that time she was overweight and had medical problems. She said that she could not turn in bed because of a particular problem. Her friends said that she should have “a look” at Falun Gong. They bought her the book “Zhuan Falun” and she read it. In the beginning she used Falun Gong for health and did not know how good it was.

The applicant said that her formal involvement began when she “joined” Falun Gong. The Tribunal asked her what she meant by “joined” and she said she started practising in a particular year. However she began to read the book Zhuan Falun, earlier.

She said that during that year she did weekly exercises and distributed leaflets and was involved in outdoor activities. She said Falun Gong practitioners practised in a friend’s home in a residential complex. Before Falun Gong was restricted they practised at the friend’s home in the evenings. They practised at least once a week. They practised at home as they had children.

The applicant said that her family did not practise and nor did her husband. He opposed it, laughing at the exercises as a means of fixing illness. Then he saw her health improving and said that as long as she did not ignore the child or the house chores, she could practice.

The applicant said that she was distributing pamphlets about how to learn about Falun Gong, how it was good for health, and how to create a perfect world. However after the ban on Falun Gong they could not distribute the pamphlets so they had to secretly distribute pamphlets, including pamphlets about the persecution.

The applicant told the Tribunal that she first heard about a government crackdown on Falun Gong from her teacher who knew something was going on. This was early July 1998 but the official crackdown was on the 20th of July. She heard from her teacher that the government was cracking down. Then workplaces issued notices telling employees not to practice Falun Gong. Also there were newspaper reports about the crackdown. She heard that the government strictly banned Falun Gong. She said she was confused as to why the government did this as the practice was about truthfulness and beauty. She said that the Falun Gong practitioners thought the situation would all settle down. They did not realise the crackdown would be so harsh. They thought that there were many university graduates, intellectuals and even party members who were participating in Falun Gong at the time, so they could not understand why the government would want to crack down on Falun Gong. They did not understand it so they thought maybe it was because there were too many practitioners so the government thought they had some power.

The Tribunal asked her when she first had difficulties with the Chinese authorities because she was a Falun Gong practitioner. She said that the management of the

workplace spoke to her and said that the government had made it clear that Falun Gong was banned so she was not to do things that impacted on the company. The applicant said she had continued to practice after the crackdown took place – secretly at home and at her friend's home. The manager then became aware of this and dismissed her.

She said that at the time she was not scared as she thought she would get another job and as it was, she needed a more regular job.

However, until the end of the following year when she applied for a particular workplace, she could not find a job. She said that it was very difficult to find a job.

She then began working. There were a large number of employees at the company and she was employed in a particular position.

The applicant said that the company knew that she had had involvement with Falun Gong when they employed her, because the relevant bureau had made a public announcement about it. She was asked why they would employ her if they knew she was a Falun Gong practitioner. She said that she told them that she had stopped practising, as she would not dare to say she was still practising. Also, she said this was a newly established company and they needed people with experience.

The applicant said that while she was working at the company, a junior staff member watched her, found out she was still practising Falun Gong, and told the management. She said that the junior staff member may have heard her talking to other practitioners on the telephone or seen that she had brochures. After this she was forced to make a self-criticism in the workplace. At the self-criticism the manager asked her to read a self-criticism and write an undertaking that she would not practise again.

The Tribunal asked her if it was not very dangerous to carry materials such as brochures at work. She said at the time it did not occur to her that she was being watched.

The applicant said that at this time she was still practising at her friends' house. They practised on particular nights with only a few people, 3 to 5. At their sessions they did reading, study and discussion, and the set of exercises.

The Tribunal asked her what the other repercussions were at work. She said that at that time she had had a medium level managerial salary and her salary was reduced by more than half.

She said that after this, the practitioners moved secretly from home to home.

On a specific date there was a large scale activity at night that had been organised by her friends. A neighbour saw them there and the police arrived and detained them.

The applicant was asked to describe what happened when she was detained. She said that they were doing exercises when 6 or 7 police arrived. The police did not ask any questions, just handcuffed them and took them away. They were taken to the local police station. They were questioned and not allowed to sleep. They were not allowed

to contact their families and their bags were taken away. The police said many insulting things to the practitioners, and did a lot of insulting things.

At this point in the hearing, the applicant was very distressed. The Tribunal asked her if she could say what insulting things were done to her. The applicant said that the practitioners were questioned individually and the interrogators were all men. She said that the police made some sexual moves towards her. They hit her breast with an electric tool. Some police just took the chance to “touch her everywhere”.

She said the police asked her how long she had been practising for, and whether she was still practising. The applicant did not dare to say anything. She said the police hit her and laughed at her. They touched her body here and there and asked her where Falun Gong had “unblocked” her.

She was asked how long she was in detention. She said she and all her friends were detained for a number of days. During that time they were sometimes questioned and sometimes left alone, and sometimes they had no food. The police then notified the families and asked them to bring in a specific amount of money each. The police also notified their workplaces.

Her husband paid the money and she was released.

She was dismissed from work after her detention.

The Tribunal asked what happened to her husband. She said that her husband warned her to stop practising after this and they fought all the time. He was also dismissed at the end of the year because of her practice, although it was called “redundancy”.

She said that after the detention, she was too afraid to practise with others, but she did practise at home. She said that she was still monitored by the neighbourhood committee.

The Tribunal asked her if she was not afraid that she would be locked up again if she continued to practice. She said she was rebellious and thought that she had done nothing wrong, so she continued to practice at home with all the curtains closed.

She said she did not have a job and had to support herself through her husband but gradually he stopped coming home, and then her parents gave her money.

She was asked whether she tried to get other work. She said she could not find a job because everyone knew she had been in detention.

She never thought she was doing anything against the government.

The applicant said that at the end of a specific year she and her husband separated. She said that he became addicted to alcohol. Then she and her son moved to her parents' house. She said that once her husband hit her and her child, saying that she had brought bad consequences to the family, and because of her his career had gone.

The applicant said that her parents were angry and annoyed about her practice of Falun Gong but they took pity on her and their grandson as they had no home.

She was asked if she was afraid for her son if she got locked up again. She said she felt embarrassed towards him, because she was arrested, as she had never done bad things or violated the law.

She was asked if she had any further difficulties with the authorities after she was detained. She said she did not dare have any problems with the authorities after that. However some ladies told her mother that they had been told by authorities that if anyone saw her practising Falun Gong they should report her to the authorities.

She said that from then on, until she came to Australia, she only practised Falun Gong if her parents did not see her. She said that she was concerned that she was a reason for her father's high blood pressure.

She was asked when she decided she wanted to leave China. She replied that since she left detention, she was thinking about leaving the country. She said that many practitioners were going to other Western countries. She chose Australia because an agent said she should choose one place. This agent told her to wait for a while.

The Tribunal asked if she was not afraid to talk to practitioners after she had been in detention. She said she still kept in touch. They did not meet publicly.

She was asked how she was able to get a passport. She said she made an application in one year and it was issued in the following year. A relative worked for the PSB so she asked him for help.

She was asked how, if she had been arrested, was under surveillance, was fined and dismissed from work, she could obtain a passport legally. She said she does not know what this relative did, but he obtained a police clearance certificate for her. She said that a manager from her work organised a dismissal letter, as he was a nice person and she had done outstanding work while in employment there.

The Tribunal asked her if it was not risky for the relative to obtain police clearance for her. She said she gave him presents. She said that in China it is easy to get a passport.

She was asked if it was very expensive obtaining a passport and she said it was not.

The Tribunal referred to independent country information before it (US Department of State Reports 2004) which was to the effect that some Falun Gong members had reportedly had difficulty obtaining passports during the year she was issued with one. She said she applied in the previous year and she lived in a different district from the area where she applied.

She was asked how she went about getting a business visa. She said that the broker was going to obtain a Country Y visa and said she should go to Country X first to get a good record of leaving China and then returning to China. The same agency arranged her visa to Australia.

She was asked what reason she gave for coming to Australia on a particular visa. She said she did not know.

She was asked if she was aware of the information given by the broker when applying for her visa. She said she was not.

She was asked whether she travelled to Australia with anyone else. She said she came with three others but she did not know them.

She was asked whether she had ever worked in a specific occupation. She said that the agent asked her to use the title “[occupation]”. She was asked why in her application for the visa to come to Australia her occupation was given as a particular occupation. She said that the agent told her to say she was this particular occupation.

She was asked if she had worked at specific companies as stated in her visa application. She said that she had not. She was asked if it was incorrect that she had worked at this company for a specific period as stated in the application. She said it was not correct.

The Tribunal asked her whether she had any difficulty getting through customs. She said she did not. She was asked why she did not ask Country X for protection. She said she had to stay with her tour group when she was there.

She was asked where she stayed when she came to Australia. She said that at first she stayed with a friend and then she got her own place.

She was asked who helped her with her protection visa application. She asked a translator to help her. She prepared her own application with his help.

The Tribunal asked her when she first started practising Falun Gong after she arrived in Australia. She said that in a specific month she made enquiries and found out that there was a site in a particular location and she has been practising there since. In the beginning she went on particular days as she lived a long way away. Usually she goes there on a particular morning. Now she lives even further away so she goes when the weather is fine.

She practises every morning and night at home and sometimes with the group.

She is working a lot so the exercises make her stronger and happier. She does the exercises for herself and this keeps her in good health and makes her young. She won't give up Falun Gong as she has too much experience.

Sometimes she goes to study sessions if she has someone to accompany her. Person C runs the sessions. At these sessions they study books and issues relating to the Australian situation.

She said she had attended protests and demonstrations. She handed up to the Tribunal a timetable of various demonstrations she had attended. These included a particular demonstration.

She handed up to the Tribunal a number of photographs of the applicant and other people at various protests in Australia against the Chinese Communist Party.

She also provided statements from four practitioners, stating that she was a Falun Gong practitioner. One of these practitioners stated that he participated in the study sessions with the applicant and had participated in protest activities with her. Another practitioner said that he studies with her on a particular day.

The Tribunal asked the applicant if she would practise Falun Gong if she returned to China. She said she does not dare to go back because she knows she would continue to practise. She said if the Tribunal looked at the photograph she submitted with her application and her image now, the difference in the photographs is evident, as she can practice freely and is happier and has colour on her face.

The Tribunal asked her what she feared if she returned. She said that all the neighbours and residential committee know that she has gone. She said they said she had been recorded on the internet participating in demonstrations here so is afraid she will be arrested again.

She was asked what she felt the most important principles of Falun Gong are. (At the heart of the practice are the supreme principles of the universe: Truthfulness, Benevolence, and Forbearance. www.falunau.org) She said it was truthfulness, kindness and forbearance. She said that Falun Gong asked her to be truthful and tolerant. She was tolerant in China but here she can practise freely and do the things she wants to do. She said like Buddhism, Falun Gong asks people to be kind, truthful, and peaceful and get on with each other. She said that if everybody followed Falun Gong there would be no conflict in the world, so why do the Communist Party ban it? She thinks it is wrong to ban Falun Gong. She said that the Communist Party talks about a harmonious society but harmony is a principle of Falun Gong. She said she worked for the Communist Party so why can't individuals have their own beliefs. She said that Falun Gong never did anything detrimental against the Communist Party. She said that now she lives in Australia, she can participate freely in activities such as the activities on particular dates. It is her freedom and right to participate in activities and not be afraid of anyone. She said here people can practice any belief.

She was asked if she knew what cultivation meant in relation to Falun Gong. (We call it a cultivation practice: "cultivation" refers to the improvement of one's heart and mind through the study of universal principles based on Truthfulness, Benevolence, and Forbearance; "practice" means doing exercises and meditation to energise the body. www.falunau.org) She said that cultivation means the internal cultivation mainly, not just the five exercises to strengthen the body. She said the main element of Falun Gong is internal cultivation. She referred to internal cultivation of xinxing. She said when you cultivate xinxing you have more "de", white substance and your "gong" will improve quickly. *Chapter 111 – Zhuan Falun – “all cultivators of Falun Gong must make cultivation of xinxing their top priority and regard xinxing as the key to developing gong. Xinxing encompasses many facets including virtue. It encompasses how to deal with gain and loss. One should let go of attachments and take lightly all matters of personal gain and reputation. Sincerity is a prerequisite.*

The Tribunal asked the applicant if the exercises were performed sitting or standing. (First four standing, fifth sitting www.falundafa.org). She said that the first four were performed standing and the last sitting.

The Tribunal asked if there were any special words that had to be said before or during the performance of the exercises. (*three are verses for each exercise, recited once right before each exercise. Each exercise has its own specific verse – www.falundafa.org*). She said there is no need to say anything.

She was asked which her favourite exercise is. She said she likes them all. The Tribunal asked her to perform exercise four. She did so accurately.

The Tribunal asked the applicant if she could tell the Tribunal about the Falun Gong concepts of karma or de. (*Zhuan Falun – there exists a transformation between the white substance and the black substance. After a conflict takes place between one another, there occurs this process of transformation. When one does a good deed, one acquires the white substance, de. When one does a bad deed, one obtains the black substance, karma. There is also an inheriting process.*)

She said that both in Buddhism and Falun Gong you need to improve. If you are looked at from another world by a celestial eye, if you are white substance you are pure and white. If you are almost white then you can do cultivation and walk out of this world. If someone has more white substance then they have more de or virtue and it is quicker to cultivate dong. It is not a matter of longer or shorter practice, it is about moving to higher levels through getting more de. She said that the Master says it is a matter of cultivating xinxing. So de dictates the amount of white substance. There is a saying in Chinese of accumulating virtue, so it is a matter of accumulating de.

The Tribunal asked the applicant if she knows what “falun” means. (The *Falun* emblem is the official symbol of Falun Dafa. *Falun* translates literally to “law wheel.” www.falundafa.org)

It asked her where “falun” is located. (*A Falun is installed in the lower abdomen of every Falun Dafa practitioner. Falun rotates nonstop, automatically assisting practitioners to increase their cultivation energy. Unlike other practices, Falun Dafa allows practitioners to develop cultivation energy regardless of whether they are meditating or not. Falun continues to rotate twenty-four hours a day, constantly developing cultivation energy, even while practitioners are at work, at play and asleep.* www.falundafa.org).

(Falun Gong cultivators can not only quickly develop their gong strength and supernatural abilities, but also acquire an incomparably powerful Law Wheel in a very short period of time. Once formed, the Law Wheel perpetually rotates automatically in a practitioner’s lower abdomen. It continuously collects energy from the universe and transforms it into gong in the cultivator’s innate body. The goal called “the Law refines the practitioner” is thus achieved. www.falundafa.org)

She said that falun is a miniature of the universe, with all the characteristics of the universe. Just like the earth or moon which rotates, it rotates according to a pattern. She said that all practitioners have falun in the abdomen which rotates anti-clockwise and releases energy, and clockwise absorbs energy. She said that even when you rest

it rotates by itself and gets energy from the universe. She said that it combines the energy from the energy of the universe. She said that when going clockwise it can release bad elements. She said that also it represents the level of one's practice – if you have more gong you can have more falun.

The Tribunal asked if there was anything further she wanted to tell the Tribunal. She said that she was upset earlier in the hearing, as she was thinking about all the wrongs she suffered over the years. She said that in Australia she can practice her religion freely. Since coming here she understands more about Falun Gong, more than she could see in China. She said she has heard more about Tiananmen. She said that what she saw in China is different to what she sees here. She said that the Communist Party covered up lots of things but here the media reports the truth. She said that in Australia, human rights are respected.

Independent country information

Information about Falun Gong generally

Information about the practice and philosophy of Falun Gong, its exercises, Zhuan Falun and its teachings, including the concepts of karma, de, gain and loss, and xinxing, may be found at <http://www.falundafa.org> or the Australian site, <http://www.falunau.org>.

The practice/philosophy/religion that is known as Falun Gong was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese cultivation system known as qigong, but it is novel in its blending of qigong with elements of Buddhist and Taoist philosophy. Despite its own protestations to the contrary, it also has a well-organised and technologically sophisticated following and has deliberately chosen a policy of confrontation with authorities.^[1]

Falun Gong first came to the attention of PRC authorities after demonstrations by Falun Gong adherents in April 1999 in Tianjin, and later that month outside the Zhongnanhai in Beijing. The initial government crackdown against Falun Gong began in late July 1999, when a number of government departments implemented restrictive measures against the movement, banning Falun Gong and issuing an arrest order for Li Hongzhi. The movement was declared an “evil cult” and outlawed in October 1999.^[2] From July 1999 Falun Gong protests were countered by police roundups in which thousands of practitioners were detained in police lockups and makeshift facilities for short-term “re-education”. The crackdown was accompanied by a coordinated media campaign by China’s public institutions, highlighting the alleged dangers of Falun Gong and attempting to justify the crackdown. According to the Department of Foreign Affairs and Trade (DFAT):

Chinese Authorities ... are more concerned by the ability of Falungong members to organise themselves and to propagate Falungong beliefs. Laws banning Falungong are aimed at preventing the formation and public assembly of groups and the use of public means (books, videos, leaflets, mass media etc.) to promote Falungong.^[3]

A 2005 DFAT report confirms that this advice is still valid.^[4] On 1 March 2005, new religious affairs regulations came into effect which bring regulatory practices within a legal framework and into compliance with China's Administrative Licensing Law. The new regulations protect the rights of registered religious groups, but critics say they give the authorities broad discretion to define which religious activities are permissible. Only groups which meet government requirements can be registered, and the government tends to perceive unregulated religious groups as a potential challenge to its authority. The Falun Gong and other groups labelled as "cults" remain banned, and Premier Wen Jiabao's 2004 Government Work Report emphasised that the Government would "expand and deepen its battle against cults", including Falun Gong.^[5]

Information about treatment of Falun Gong practitioners since 1999

From July 1999 on, Falun Gong protests were countered by police roundups in which thousands of practitioners were detained in police lockups and makeshift facilities for short-term "reeducation". The crackdown was accompanied by a coordinated media campaign by China's public institutions, highlighting the alleged dangers of Falun Gong and attempting to justify the crackdown. From July 1999 until the end of 1999, a "legal infrastructure" to counter Falun Gong was erected: the banning of CCP members, civil servants and members of the military taking part in Falun Gong activities; the introduction of restrictions on legal officers representing Falun Gong practitioners and a circular calling for confiscation and destruction of all publications related to Falun Gong. Falun Gong internet sites also came under attack.

Measures used against the Falun Gong have included severe sentences, allegedly incorporating the use of psychiatric institutions to detain and "re-educate" Falun Gong practitioners; an increase in systematic and state sanctioned violence against practitioners; an escalated propaganda campaign against Falun Gong, repeatedly reinforcing the government's message that the group was an "evil cult" which posed a threat to Chinese society; and the utilisation of state institutions such as the police and universities to combat Falun Gong. Reports suggest that PRC authorities also attempted to restrict the movement of suspected practitioners within China; to prevent the international press from covering the activities of the Falun Gong movement, and launching an offensive against the internet structure underpinning the effectiveness of the Falun Gong organisation in China. In recent years there has been a dramatic abatement in the visibility of Falun Gong activities within China, with many practitioners performing the exercises at home instead of in public. But there have been regular public demonstrations, and the arrest, detention, and imprisonment of Falun Gong practitioners has continued. There have been credible recent reports of deaths due to torture and abuse. Practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, labour camps, and extra-judicial "legal education" centres. Falun Gong cases are reportedly handled outside normal legal procedures by a special Ministry of Justice office, known as the 610 office.

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Treatment of returnee asylum-seekers

Country sources indicate that it is not possible to comment definitively on the treatment of failed asylum seekers returning to China. It would depend on the circumstances of the individual case. Generally, the possible treatment of a returnee would vary according to the person’s profile.

DFAT advices on various situations are outlined below.

In March 2007 DFAT responded to questions concerning possible treatment by the Chinese authorities of failed Chinese asylum seekers who were named in the media and who might be imputed to be a Falun Gong practitioner, underground Christian or political dissident in the following terms:

R.1. Advice provided in our reftel (CX161676) [see below] would remain applicable in these circumstances.

R.2. In terms of the possible treatment the person might receive on return to China, it is not particularly important how the person comes to the attention of Chinese authorities. As advised in reftel, it is not possible to comment definitively on how Chinese authorities would treat returnees to China who were failed asylum seekers. If Chinese authorities believed them to be a member of one of these groups (Falun Gong, underground church, political dissidents), it would be likely that authorities would interview them and might keep them under surveillance or detain them for a short period. Authorities may record the failed asylum attempt in the person’s dossier (“dang an”), which could impede the person’s attempts to obtain employment (particularly government employment) or engage in further education. If the person was a high-profile activist in Australia (for example a prominent Falun Gong leader, or someone known for publicly criticising the Chinese leadership) it is likely that the authorities would treat them more severely (longer-term surveillance, administrative detention) than if the person was a low-profile member of one of these groups.

R.3. Media publicity of the mere fact that the person had applied (sic) for asylum would not necessarily lead to harsher treatment (sic) for the person on return. Our impression is that these days Chinese authorities view seeking to remain in Australia through a protection application as more commonplace behaviour rather than a sign of political disloyalty. Authorities could, however, treat the person more severely if he or she was quoted publicly as criticising China’s regime or senior leadership in the media. If, for example, the person had been an active, outspoken member of one of

these groups and had publicly called for the end of Communist Party rule in China, he or she would be more likely to be put under surveillance and possibly detained on return to China. At the extreme, the person could be criminally prosecuted, for example under Article 105 of China's Criminal Law, which prohibits "incit[ing] others by spreading rumours or slander or any other means to subvert State power or overthrow the socialist system."^[6]

The document CX161676, referred to above, is a September 2006 DFAT advice which responded to the question on "what treatment the PRC delegation interviewees might expect" as follows:

It is not possible to comment definitively on how Chinese authorities would treat returnees to China who were failed asylum seekers. It would be very likely that Chinese authorities would interview them and might keep them under surveillance and detain them for a short period. Any further action would depend on the circumstances of the individual cases. Authorities maintain a dossier on every PRC citizen and we would expect authorities would record the person's failed asylum attempt in this file. This conceivably (sic) could impede the person's attempts to obtain employment (particularly government employment) or engage in further education.^[7]

Passports and bribes

Some Falun Gong practitioners could have difficulties obtaining passports in 2002/3 if they had been in detention, however it would have been possible to obtain false passport through the payments of bribes.

Sources indicate that there is a widespread trade in forged documents and genuine documents obtained from corrupt officials, including passports and travel documents.

In 2003 the US State Department reported that:

The Government permitted legal emigration and foreign travel for most citizens. Passports were increasingly easy to obtain in most places, **although those whom the Government deemed to be threats, including religious leaders**, political dissidents, and some ethnic minority members **continued to have difficulty obtaining passports...**

... **Some Falun Gong members** also reportedly had difficulty in obtaining passports during the year...(US Department of State 2004, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2003 – China*, 25 February)
According to an August 2005 DFAT advice on passports for Falun Gong practitioners:

A.1. China's Entry and Exit Law states that the following groups of people shall not be given approval to leave China: (1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court; (2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; (3) convicted persons serving their sentences;

(4) persons undergoing rehabilitation through labour; and (5) persons whose exit from the country will, in the opinion of the competent department of the State Council, be harmful to state security or cause a major loss to national interests. The Ministry of Public Security (MPS), which administers the law, has advised that these five groups of people are not allowed to obtain passports.

The MPS has wide powers to interpret who may be denied a passport. Local public security organs could conceivably deny a known Falun Gong practitioner a passport.

A.2. If a person was detained and tortured by the Chinese authorities for practising Falun Gong it is conceivable that the local public security authorities would deny him or her a passport should the person apply (DIMIA Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August).

In January 2003, in relation to the questions “Would a person who had come to the adverse attention of the PRC government experience difficulty in obtaining a legal passport? If so, how easy would it be to obtain from illegal means (ie payment of bribes) and have one issued in their own name?”, DFAT answered:

Yes. Checks with the Public Security Bureau in the applicant’s place of registered residence would reveal any adverse records held by Public Security organs on the applicant. An applicant “whose exit, in the judgement of the relevant department of the State Council, would be harmful to state security or cause a major loss to national interests” would likely be denied a passport. **Illegally obtaining a passport in the applicant’s own name through bribery would be possible, but highly risky and expensive. It would be easier to obtain a passport using someone else’s identity** (DIMIA Country Information Service 2003, *Country Information Report No. 12/03 – Passport and exit procedures*, (sourced from DFAT advice of 15 January 2003), 24 January).

In September 2005 the Canadian Immigration and Refugee examined the issue of forged, fraudulent and illegally obtained documents in China and included the following on passports and travel documentation:

A professor of criminal justice at Rutgers University, who has written on Chinese human smuggling, told the Research Directorate that, in his opinion, “it is pretty easy to obtain all kinds of fake documents in China,” including identity documents, birth certificates, university diplomas and hospital documents (Professor 25 Aug. 2005). One organization in Shanghai advertised its services on paper cards that were distributed on the streets and that listed the various types of documents available for purchase (Shanghai Star 29 Aug. 2003). **Procurement of fraudulent documents is also facilitated by corruption among local officials (Schloenhardt 2002, 48; Comtex 18 June 2004). The involvement of government officials in procuring fraudulent travel documents is reportedly common but seldom discussed in the Chinese media (ibid.).** A 2002 report published by the Australian Institute of Criminology on organized crime and migrant smuggling in Australia and the Asia-Pacific region notes that “[t]he increasing decentralisation of China’s

administration makes it easy for migrant smugglers to obtain passports and travel documents by corrupting local government employees” (Schloenhardt 2002, 48). According to the report, **corrupt officials provide “both genuine and fraudulent documents in exchange for money, or...for the migrant smuggler’s promise to smuggle a member of the corrupt official’s family abroad”** (ibid.) (Immigration and Refugee Board of Canada 2005, *CHN100510.E – China: The manufacture, procurement, distribution and use of fraudulent documents, including passports, hukou, resident identity cards and summonses; the situation in Guangdong and Fujian particularly (2001-2005)*, 8 September).

Earlier, in 1998, DFAT addressed the question of whether a dissident wanted by the Chinese authorities could leave the country using a Chinese passport issued by the Public Security Bureau (PSB) in his/her own name. DFAT advised that:

...given the prevalence of corruption in China, to which the authorities readily admit, we consider it plausible that individuals could leave China on passports they have obtained through corrupt officials although, given the usual stringency of border checking in China, it is improbable dissidents on wanted lists would be able to exit on passports issued in their own names...

...We would assess as possible, the use of PSB passports to smuggle Chinese nationals out of China, including under their own names...We do not have precise figures, but would estimate that the number of ordinary passports issued annually in China is now in the millions. The chance of improper issue and use would, therefore, be correspondingly high (DIMA Country Information Service 1998, *Country Information Report No.64/98 – China: Passport and Exit Permit Issuing Procedures: CIS Request CHN-AA858*, (sourced from DFAT advice 12 February 1998), 17 February).

Falun Gong practitioners leaving through customs

Definitive information was not found in the sources consulted on the ability of a Falun Gong practitioner to leave China without being stopped by customs. Some practitioners have reportedly been able to leave the country. The *Administrative Law on the Border Exit and Entry of Citizens of the People’s Republic of China* sets out the circumstances which a citizen will not be allowed to exit China. The circumstances include when a person is a defendant in a criminal case, suspected of a crime by the security authorities, involved in a civil case which has not been completed, currently serving a criminal sentence, is undergoing re-education through labour or the authorities believe a person may cause danger to national security after departing. DFAT has noted that these rules could be interpreted to include Falun Gong practitioners. There is also an “alert” list to check out-going passengers.

On the ability of practitioners to leave China in respect of the treatment of practitioners following detention, the Canadian Immigration and Refugee Board of Canada has reported:

Both Gail Rachlin [spokesperson for the New York-based group of Falun Gong practitioners known as the Falun Dafa Information Center] and Stacy Mosher [the communications director at Human Rights in China (HRIC)] stated that their respective organizations were aware of some former Falun Gong detainees who have

been able to leave the country (Mosher 30 Mar. 2005; Rachlin 23 June 2005). In particular, it is possible for those with family members overseas to leave China on family reunification grounds (Mosher 30 Mar. 2005), or else through connections or “contacts with officials who are sympathetic” (Rachlin 23 June 2005). In contrast, the former detainee from Guangzhou profiled in *The Age* claimed to have been told by police that she would be unable to obtain a passport to leave China (16 Oct. 2004). According to *Country Reports 2002*, some Falun Gong practitioners allegedly had difficulty obtaining passports that year (31 Mar. 2003, Sec. 2). Grace Wollensak [a representative of the Falun Dafa Association of Canada (FDAC)] stated that there was a high likelihood that practitioners who had undergone re-education would face difficulties in obtaining passports, as well as securing state housing or pensions (4 Apr. 2003) (Immigration and Refugee Board of Canada 2005, ‘Treatment of Practitioners Following Detention’ in *CHN100726.EX – China: Situation of Falun Gong practitioners and treatment by state authorities (2001 – 2005)*, 31 October).

On exit procedures which could be interpreted to include Falun Gong practitioners, DFAT has advised:

3. The Ministry of Public Security said that border exit procedures were carried out according to Chinese law. Chapter II, Article 8 of the *Administrative Law on the Border Exit and Entry of Citizens of the People’s Republic of China* states that Chinese citizens will not be allowed to exit the PRC border under the following circumstances:

i) If the person is a defendant in a criminal case or suspected of a crime by the security organs, the People’s Procuratorate or the People’s Court;

ii) If the People’s Court notifies that the person is involved in a civil case that has not been completed and they cannot leave the country;

iii) If the person is currently serving a criminal sentence;

iv) If the person is undergoing re-education through labour;

v) If the relevant organs of the State Council believe that, after departing the country, that person might cause danger to national security or cause extreme harm to national interests.

4. We note the broad wording of the last point could be interpreted to include Falun Gong practitioners, given the Chinese Government’s extreme sensitivity to vocal campaigning by Falun Gong practitioners (sic) abroad.

5. As a general point, we remind you that **implementation of rules in China can be incomplete, or over-zealous** (Department of Foreign Affairs and Trade 2006, *DFAT Report No. 540 – RRT Information Request: CHN30682*, 28 September –).

DFAT has also advised that there is an “alert” list for all outgoing passengers. It has stated that:

Post can confirm that Chinese authorities check all outgoing passengers against an “alert” list. We do not know how comprehensive this list is (DIMIA Country Information Service 2006, *Country Information Report No.06/42 – China: Failed asylum seeker return decision*, (sourced from DFAT advice of 7 August 2006), 25 August.).

And earlier:

A.2. We have so far been unable to obtain comprehensive information on alert lists from China’s Ministry of Public Security. We can confirm that Chinese citizens subject to arrest warrants would be on the alert lists. It is likely that people under investigation but for whom a formal arrest warrant is yet to be issued would also be on these alert lists. The alert lists are connected to Chinese identity cards as well as passports. The alert lists operate at railway stations as well as airports and border crossings. We will continue to seek information on this issue (DIMIA Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November).

It is of some interest, however, that in respect of Hong Kong it was reported that four Taiwanese Falun Gong practitioners were on an Immigration Department “watch list” and denied entry into Hong Kong in 2003 (‘Falun Gong watch list disclosure ordered Immigration Department to consult lawyers after being told to reveal details’ 2006, *South China Morning Post*, 9 May; Wong, Albert 2005, ‘Government ordered to produce watchlist data’, *The Standard*, 5 November).

Information about Falun Gong practice in Australia

[Country information and sources deleted in accordance with s431 of the Migration Act].

FINDINGS AND REASONS

The Tribunal accepts the difficulties of proof faced by applicants for refugee status. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* [1992] FCA 470; (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* [1984] FCA 57; (1984) 1 FCR 354 at 357; [1984] FCA 57; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees’ *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraph 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the

situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* [1994] FCA unrep6786; (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547. If the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* [1999] FCA 719; (1999) 93 FCR 220).

Having sighted the applicant's passport at the hearing, the Tribunal accepts that she is a national of China and is outside her country of nationality.

There is no evidence before the Tribunal that the applicant has the right to enter and reside in any other country. Accordingly section 36(3) does not apply. The Tribunal accepts, on the basis of independent country information, that the persecution of Falun Gong practitioners in China occurs principally because the government is concerned about the threat to its authority. For this reason, the applicant's claims are based on the Convention ground of political opinion imputed to her. Such persecution falls within the scope of the Refugees Convention.

The applicant claims that she first learnt about Falun Gong in the mid 1990s but she started practicing seriously in the late 1990s. She claims that after the government crackdown on Falun Gong in 1998 she was forced to make a self-criticism at work and later dismissed. She claimed that it took her two years to find another job. She claimed that even though she practiced Falun Gong secretly after that, she was discovered and detained for a number of days. During detention she was assaulted physically and sexually, and mocked. Upon her release she claims that she was dismissed from work and her husband was also given a "redundancy" because of her. She claimed that since she has been in Australia she has continued to practice Falun Gong and has participated in many protests and demonstrations which have come to the attention of the Chinese government. She claims that she will be arrested if she returns to China as she would continue to practice Falun Gong and the Chinese government would be aware of her activities in Australia.

The Tribunal found the applicant to be a credible and truthful witness. Her recollection of events in China included details which persuaded the Tribunal that she was telling the truth about these events. She also had a sound knowledge of Falun Gong principles and exercises. On the basis of the totality of the applicant's oral evidence before the Tribunal, the statements of practitioners and independent country information, the Tribunal accepts that the applicant is a genuine Falun Gong practitioner. The Tribunal also accepts that she was a serious Falun Gong practitioner in China and that because of this, she was forced to make a self-criticism, had repercussions in the workplace including dismissal, and that she was detained and assaulted by the Chinese authorities.

The Tribunal accepts that the applicant organized a passport to come to Australia notwithstanding the fact that she had been detained for practicing Falun Gong. The independent country information set out above makes it clear that some but not all Falun Gong practitioners have difficulty leaving the country.

The Tribunal has considered the evidence about the applicant's involvement in Falun Gong activities in Australia, including the photographs and statements from practitioners. The Tribunal has also considered independent information before the Tribunal that a study group and practice group in Australia do exist as described by the applicant. The Tribunal accepts that the applicant engaged in these activities because of the depth and seriousness of her beliefs and not for the purpose of strengthening her claims to be a refugee.

The Tribunal finds that there is a real chance that the applicant will attract the adverse attention of the Chinese authorities if she returns to China, because of her Falun Gong activities in the past, and because of her active participation in Falun Gong activities in Australia. The Tribunal finds that the applicant will not forsake her dedication to and practice of Falun Gong if she returns to China. The Tribunal finds that there is a real chance that she will be detained or assaulted if she returns to China.

The Tribunal finds that the persecution which the applicant fears clearly involves serious harm as required by subsection 91R(1)(b) of the Migration Act, in that it involves a threat to her life and liberty. The Tribunal finds, on the basis of the applicant's evidence and the independent country information, that the applicant's imputed political opinion is the essential and significant reason for the persecution which the applicant fears, as required by subsection 91R(1)(a). The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct as required by paragraph 91R(1)(c) in that it is deliberate and intentional and involves selective harassment for a Convention reason.

In these circumstances, the Tribunal is satisfied that there is a real chance that the applicant will suffer serious harm amounting to persecution for reason of political opinion imputed to her.

The Tribunal has considered whether it would be reasonable for the applicant to relocate within China. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of "practicable", to expect him or her to seek refuge in another part of the same country. What is "reasonable" in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing. Independent country information is clear that the persecution of Falun Gong practitioners occurs across all regions of China. In these circumstances the Tribunal finds that it would not be reasonable for the applicant to relocate to another part of China.

CONCLUSIONS

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

DECISION

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

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*. PRRRNM

^[1] Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, pp.14-24, pp.91-95.

^[2] Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.8-10

^[3] DFAT, 2002, Country Information Report No 136/02, Falun Gong Practitioners, 20 June – CISNET China CX64757

^[4] DFAT 2005, *Country Information Report No. 05/34: China: Update on Falun Gong*, 30 June – CISNET China CX125116. See also Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Penny, Dr Benjamin 2003, *Falun Gong: What was it? and what is it now? A talk for the Refugee Review Tribunal National Members' Conference*, 29 August; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press; DFAT, 2002, *Country Information Report No 136/02, Falun Gong Practitioners*, 20 June – CISNET China CX64757; DFAT 2005, *Country Information Report No. 05/34: China: Update on Falun Gong*, 30 June.

^[5] US Department of State 2005, *International Religious Freedom Report 2005: China (includes Tibet, Hong Kong, and Macau)*, 8 November; UK Home Office, 2002, *Revolution of the Wheel – the Falun Gong in China and in Exile*, April; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.24-31.

^[6] DIAC Country Information Service 2007, *Country Information Report No. CHN8990 – CIS Request CHN8980: China: Publication of client details*, (sourced from DFAT advice of 20 March 2007), 22 March

^[7] DIAC Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September