

**1210725 [2013] RRTA 142 (11 February 2013)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1210725
<b>DIAC REFERENCE(S):</b>	CLF2012/23511
<b>COUNTRY OF REFERENCE:</b>	China (PRC)
<b>TRIBUNAL MEMBER:</b>	Suhad Kamand
<b>DATE:</b>	11 February 2013
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

## 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 to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of China (PRC), applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] February 2012.
3. The delegate refused to grant the visas [in] June 2012 and the applicants applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
8. 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.

9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. Whether an applicant is a person in respect of 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.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Member of the same family unit**

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include a spouse and dependent child.

### **CLAIMS AND EVIDENCE**

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

### **Department files**

21. The Protection visa application forms appear to have been completed with the assistance of Registered Migration Agent [name and agency deleted: s.431(2)]. They identify three visa applicants, with express claims for Australia's protection being made only by the first named applicant (first applicant). The second named applicant (second applicant) is identified as the husband of the first named applicant. The third named applicant (third applicant) is identified as the son of the first and second named applicants.

22. In respect of the first applicant, the information provided indicates that she: was born in [year deleted: s.431(2)] in Shandong, China, where she is a Citizen; speaks, reads and writes in the Chinese language; is of Han ethnicity and of Christian (“Local Church”) religion; married in [1995]; holds a Chinese passport issued in [2010]; has lived at only one address in China between February 2002 and January 2012 (folio 51); was self-employed in China; departed China legally “with helps of my friends”; has [family] residing in China.
23. In respect of the second applicant, the information provided indicates that he: was born in [year deleted: s.431(2)] in [Fujian], China, where he is a citizen; holds a Chinese passport issued in [2009]; was self-employed in China; is of Han ethnicity and Christian (“Local Church”) religion.
24. In respect of the third applicant, the information provided indicates that he: was born in [date deleted: s.431(2)] in Shandong, China, where he is a citizen; is the son of the first and second applicant; is of Han ethnicity and Christian (Local Church) religion; holds a Chinese passport issued in [2010]; was attending [school] in Shandong between September 2009 and January 2012.
25. In support of the applications the applicants provided copies and certified copies of documents including marked pages of their passports.
26. Only the first applicant has made express claims to fear harm in China, detailing those claims at folios 45-48 of the Tribunal file, as well as in a typed statement in alternating English and Chinese paragraphs at folios 60-65.
27. In summary, her claims at folios 45-48 are that:
  - a. she fears harm by the Chinese authorities as an active Christian who developed secret gatherings of the Local Church (which she also refers to as the “Shouters”) in [City 1], Shandong, and departed China with her husband and son to escape persecution; and
  - b. she fears being arrested and imprisoned by the Chinese authorities and being unable to practice her religion and that her husband and son will also be implicated. Her activities in connection with the Local Church are already known to the Chinese authorities who consider the Local Church to be an evil cult.
28. Her statutory declaration, sworn in March 2012, at folios 60 to 65, adds that:
  - a. the applicants arrived in Australia [in] January 2012 as part of a tour group. [Details of siblings deleted: s.431(2)], leaving her as the only child of her parents.
  - b. since leaving school in [year deleted: s.431(2)] she worked in a [shop] run by [Ms A];
  - c. she met the second applicant in 1994. They married [in] 1995 and their son was born on [date deleted: s.431(2)];
  - d. [Ms A] transferred the [shop] to the first and second applicants in January 2003. They changed the name to “[name]” and expanded it into a trading company. Wanting her to enjoy a happy home life her husband established the company “[name]” in August 2006. The first applicant remained home as a housewife after this;

- e. in early 2010 her husband began gambling and in June 2010 had to return to [Fujian] to “dodge” creditors. This left the first applicant with pressure from creditors. She began thinking of leaving China and obtained passports for herself and son in [2010];
- f. in August 2010 [Ms A], who had already become a Christian in the Local Church, approached her and gave her “strong support” in: running the company; helping her repay the debts; encouraging her creditors to allow repayment by instalment. She also evangelised to the first applicant and arranged for her to attend the Local Church. The first applicant was baptised in the home of [Ms A] [in] October 2010 and has been “a genuine and devout Christian of the Local Church” since;
- g. from January 2011 [Ms A] and the first applicant employed Local Church members at the company. They also set up a “new meeting group of the Local Church based on these members who had worked with us”, these meetings taking place every Tuesday, Thursday and Sunday. Their meeting places varied, and they had up to 27 attendees;
- h. [in] November 2011 the PSB raided their “Lord’s Day” meeting at [Ms A]’s home. All attendees were taken to the [City 1] PSB. Based on the evidence of other attendees the first applicant and [Ms A] were identified as the leaders of the group. The first applicant and [Ms A] were then transferred to [City 1] Detention Centre. The first applicant was “interrogated, mistreated and tortured by police” and forced to do hard manual jobs while in detention. This made her seriously ill;
- i. at the time of her arrest her husband was in [Fujian] and had heard that she had repaid his debts and kept the company running. Even though she had earlier tried to persuade him to return to Shandong, he refused, saying he would only return if he had enough money. However, he returned as soon as he heard of her arrest and spent a lot of money on contacts in the PSB. He paid a PSB officer RMB50,000 for her release. She was released on bail, temporarily, for medical treatment [in] December 2011. She was required, during this time, to report to the local police station every Monday;
- j. her husband then began, after her release, to plan their escape from China. He had a friend working at a hotel in [City 1] who had many contacts. It was this friend who arranged for the applicants to join a tour and depart China [in] January 2012, far from Shandong Province;
- k. [in] January 2012 the police went to her home in [City 1] as she had failed to report to the police on time. Her parents were taken to the PSB and questioned for a whole night. On learning that she had left China the authorities “sealed my husband’s company and froze all of our properties. The police warned my parents that all of our properties would be confiscated by the authorities if we failed to return to China within one month. Right now, our properties have already confiscated by the PRC authorities”; and
- l. in Australia she has “been continuously attending the Local Church” which is considered an evil cult in China. She is a “major activist of the Local Church, actively establishing and developing secret gathering group of the Local Church”, and is already known to the authorities. She fears being imprisoned by the PRC authorities, that she will not be able to practice her religion and that her husband and son will be implicated and persecuted by the PRC authorities if they return to China.

## Department interview – [in] March 2012

29. The applicants were interviewed by the department in respect of their claims, with the assistance of a Mandarin/ English interpreter. A summary of the oral evidence given during that interview, as recorded in the audio recording at folio 68, follows.
30. The first applicant decided to come to Australia in July 2010 when her husband was in debt. She thought about it again in July 2011. They used money from their business to come to Australia. Their travel was arranged by [name deleted: s.431(2)], the manager of a motel, who organised their travel within twenty days.
31. The applicants left the tour group immediately on arrival to Australia. They did this after passing customs.
32. Regarding their circumstances in China, her husband returned to Fujian from Shandong in 2010 because he lost RMB160,000 in gambling and owed RMB500,000. He didn't want to face her or their son. She didn't return with him because the money was borrowed from his friends and they had a business to run, however she maintained phone contact with him. She was going to repay the debt slowly.
33. When asked why she considered leaving China at the time she applied for her passport ([2010]) she responded that her husband had many debts and the debtors were coming to her. It was difficult. She had gone to Fujian but he didn't want to see her as he couldn't face her. They reconciled and started being together again after she was arrested and jailed.
34. She was introduced to the Local Church through [Ms A] who she worked for after school. They maintained contact and the applicants later took over her shop. [Ms A] introduced her to the Local Church in around August 2010, by evangelising and asking her to pray to Lord Jesus. What appealed to the first applicant was that the people in the Local Church have good hearts and are very willing to help others. The first applicant started to believe in Jesus by being with Local Church people who made her feel happy.
35. [Ms A] also helped the first applicant with her business because she sympathised with the first applicant and used her money to help the business's cash flow. It took around three quarters of a year to repay the debts. [Ms A] lent her the money as she is a dedicated Christian and is happy to help others. They also had a close connection as the first applicant had worked with her a long time. [Ms A] had been a member of the Local church around seven years.
36. The first applicant practiced Christianity in China by believing in the Trinity and that every word in the bible is imbued with the Holy Spirit. The gatherings involved four steps: hymn singing, reading the bible, sharing, and praying. She attended gatherings once a week, but sometimes on Saturday also. The gatherings lasted around two hours. In these gatherings they would pray approximately three to five minutes in the last prayer session. Most of the time at the gatherings would be taken up singing and bible reading. Then they would share their testimony about God. They can call on the Lord Jesus' name at any time.
37. The gatherings in China were held at a residential complex, the address of which she provided. The place belonged to [Ms A]. The gatherings were held at the same time each week, on Sundays between 6:30 and 8:30.

38. When asked what the difference is between the church she attended and normal unregistered house churches she responded that they believe in the Trinity and every word in the bible is from the Spirit and they call on God's name in a loud voice. The baptism is different, involving full submersion, and they use the Recovery version of the Bible. There are no leaders in the Local Church. The Recovery Version of the Bible is distinct because it has the original text and notes. The notes are by Li Changshou.
39. She started organising gatherings in around July 2011. These were held at her home sometimes. Her role was to organise people to come, read the bible and give more testimonies than others. Normally around 12 or 13 people would attend. Later there were about 27 attendees as she invited some classmates and friends of friends. She took the risk of holding gatherings at her home because they believe in Jesus and that the Lord is Almighty and everyone should believe. Without belief we are like empty shells. When asked why she decided to hold gatherings at her home given that they were already being held at [Ms A]'s home, she responded that, initially the gatherings were held on Sunday. Later there were more gatherings on Saturday and they had to move location due to concerns of detection. The gatherings were held at her home around once a week. On Sunday they were at [Ms A]'s home.
40. She first came to the adverse interest of the authorities [in] November 2011 when plain clothed police entered [Ms A]'s home and took them away. Around thirteen or fourteen attendees were taken away. Six police officers came into her home. Everyone at the gathering was taken to the police station. It took five to eight minutes to get there by police car. At the police station they were interrogated separately and accused of spreading anti-revolutionary speech. She thinks they knew she was from the Local Church. They said the Local Church is anti-revolutionary and a cult. She was kept at the police station one day. On the second day she was transferred to [a] Detention Centre which was around an hour by car from the police station, [location details deleted: s.431(2)]. Only [Ms A] and the first applicant were transferred there. The other attendees paid a fine and got out a few days later. They weren't sent to the detention centre because the gatherings were held at the homes of [Ms A] and the first applicant, and they were the organisers. The police knew she held gatherings at her home as the brothers and sisters had confessed this.
41. She was detained until [a date in] December 2011 and got out for medical reasons. She had stomach and intestinal problems. While she was detained her son was looked after by her father.
42. On the day of her release she was taken to the [Hospital] as she was beaten on her head and leg. She first got sick [in] December. She had digestive problems, couldn't eat and lost weight. She was hospitalised for six or seven days. Her husband found a contact within the police. He paid him RMB50,000 to arrange medical bail. They found the money quickly, despite their gambling debts, as [Ms A] helped their business to operate well and profitably. The Lord Jesus protected her.
43. When asked why her husband didn't return to Shandong when the debts were repaid she responded that he didn't have the face to see friends and relatives.
44. After being released from hospital she had to report every Monday morning and couldn't travel. When she reported she had to sign against her name on a calendar and identify what she had done in the week. This would normally take around thirty minutes.



45. She was able to depart China by asking a hotel manager to use connections. The delegate noted that Chinese airports have watch lists of people of adverse interest and that passports of such people are often confiscated by the Chinese authorities. She responded that her contact had engaged people at Customs to arrange her trip and the gate to pass through. Her contact did not accompany them to the airport. When asked how her contact had these connections she responded that he has run his hotel for many years and has many social connections. They lent the contact capital to start his motel in the past, without charging him interest.
46. The Local Church has been considered an illegal and evil cult by the Chinese government since 1995. The government doesn't like any people gathering. She has been baptised. She described her baptism at [Ms A]'s home [in] October 2011. Her whole body was submerged in water. [Ms A] and [name deleted: s.431(2)] baptised her. The whole body is submerged so their sins can be washed away and she can start her new life.
47. She attends church in Australia at a [location] at [address not audible]. She began attending around 20 days after arriving in Australia. She heard about it from [Ms B], from Sichuan Province, who enquired from her colleagues. The applicant's lives at this lady's home. The second applicant does not attend the church as he works in construction in Canberra. Her son does attend. They attend on Sunday night and sometimes on Saturday night also. Less people attend on Saturday night. Last weekend she attended and they discussed Jerusalem. The mountain is where God is and is the highest point of Jerusalem. The person who runs the gatherings in [Suburb 2] is [name deleted: s.431(2)]. There is an [older person] also. There are around 50 for 60 attendees on a Sunday night, and on Saturday there are around 20.
48. The Local Church was started in China by Ni Tousheng in around 1920. Witness Lee is Li Changshou. His role was big. He did the Recovery version of the Bible and the Living Stream Ministry. When asked about the second coming of Christ she hesitated before offering that they are God's children and are to worship God. They are like Jesus' body and the cup containing the body, soul and spirit. When Jesus revisits his disciples will be able to enjoy eternal blessing in His new kingdom. When God returns he will build his eternal kingdom.
49. In China, she has never been to a registered church and the Local Church's in China do not register or work with the government. There is not much freedom in the government churches. She knows this, despite not attending one, as she has a friend and neighbour who attended said participants are not allowed to speak. The government may also give you money to just sit there.
50. The duty of every Local Church member is to evangelise and believe in every word of the Bible. When asked what the Local Church view of Christian clergy such as priests and bishops is she responded that they are just like us, children of God. However, there are no formal roles in the Local Church, no priests, and everyone is equal and referred to as brother and sister.
51. If she returns to China she thinks she will be arrested and detained. She will lose her ability to attend her church. She would be arrested straight away as she left [in] January and was meant to report [in] January. [In] January they went to her home and questioned her parents for a day. They confiscated her property and told her parents that if she does not return within a month she will be considered to have absconded. Since [a date in] January her parents were taken again for questioning one week later and again asked when she will be returning. Now she dares not contact them. Her son was a top student in China. If she had other options she wouldn't have risked her son's future. He didn't want to come here and was popular.

## **Delegate's decision – [in] June 2012**

52. The delegate was not satisfied that the applicants are persons in respect of whom Australia has protection obligations. The decision record notes the following: concerns the first applicant's account of the frequency and nature of Local Church gatherings did not appear consistent with her written claims (folio 73); she did not identify the two formal positions in the Local Church (elder and deacon); did not identify the belief in multiple baptisms and did not distinguish the Local Church from government registered churches by reference to the Local Church principles that the church is not a human institution or the registered church's "curbed view on the 'second coming'" The delegate was not satisfied that she was detained, noting independent information that cult leaders may be sentenced to seven years in prison as opposed to the one month she claims to have been detained. The delegate also considered it doubtful that the first applicant could retain her passport and depart China if she was of adverse interest as claimed. Being unsatisfied that the first applicant was a member of the Local Church in China, the delegate considered her attendance at the Local Church in [Suburb 2] to be conduct engaged in solely for the purpose of strengthening her refugee claims. Based on the above findings of fact the delegate was also not satisfied that there are substantial grounds for believing that there is real risk that the applicant will suffer significant harm in China.

## **Tribunal review**

53. The applicants sought this Tribunal's review and continued to be represented by the same migration agent. They appeared before the Tribunal [in] January 2013 to give evidence and present arguments, in the company of their agent. The hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
54. At the commencement of the hearing each applicant produced their original Chinese passport and photos depicting the first applicant's participation in Local Church activities in Australia. They also produced letters from the [Local Church] stating that the first and third applicant have each been regular attendees since February 2012.
55. In response to questions put to them the applicants indicated that they are each nationals of China and of no other country, and they have no right to enter or reside elsewhere. Their passports contain their correct identification details, were issued by the Chinese authorities and contain only official, unaltered stamps and markings.
56. The Tribunal noted that the Local Church letters (Tribunal folios 38-39) appear to be generic letters. The representative explained that this is just how they are issued by the Local Church in Australia. Regarding the photos copied at Tribunal folios 40-41, they are of a Local Church conference between [a date in] December 2012 and [a date in] January 2013. The first and third applicant attended.
57. The Tribunal asked the second applicant if he has any religion. He responded that he has believed in Jesus since coming to Australia and he did not have this belief in China. The first and second applicant waited outside the hearing room while the first applicant gave evidence to the following effect.

## ***First applicant's oral evidence***

58. The first applicant's remaining family in China comprises only her parents only who live in Shandong, around a 15 minute walk from the applicants' home. The address given at

department folio 51 is her *hukou* and has been since her son was born in [year deleted: s.431(2)]. Before that her *hukou* was in Shandong District. She has always lived in Shandong. The second applicant shares the first applicant's current *hukou*, which is urban.

59. The second applicant's family in China comprises his [family composition deleted: s.431(2)]. They all live in [Fujian].
60. Regarding the current status of their business in Shandong, it has been confiscated. When asked what that means and how the confiscation occurred she referred to being a leader of the Local Church and being arrested. When asked what she means by her business being confiscated she responded that it is hard to explain, but the business has gone and the things in the shop don't belong to her anymore. When she left China in January 2012 the business was ongoing and there were five paid employees. She heard that the business was confiscated around four or five days after arriving in Australia. Her father phoned and told her that, because she didn't report to police [in] January, they went to her home. When asked how her father knew that if they didn't live at the same address, she responded that the police asked her neighbour for her parents' number. When asked what her father told her of the confiscation of her business, she responded that he said: the police went to her home and arrested her father and asked where she is; her father said he doesn't know and the police said if she is not back in a month the business will be confiscated. However, at that time they had already frozen her properties. They did this [in] January 2012 when they took her father away and said it was because she didn't report. She understands that: her assets were frozen [in] January 2012 and confiscated one month later; the goods in the business are still there but the premises is sealed. When asked how many properties she had in China at the time of her departure she responded that she had around RMB100,000 in [goods] at the property and RMB40,000 in savings. The home she lived in was owned by her and has now been sold at auction by the Chinese government. Her father said that this happened around the end of March 2012. She has one more property but at that time it wasn't built. She bought the property two years prior, paying RMB830,000 in full two years ago. She borrowed half from [a] Bank and paid half up-front. It is part of [a multi] story building, with a view. It was still being constructed but may have been finished by now, as it was almost complete when she was there. She does not know if this was confiscated. That property is also in [City 1], Shandong Province, and is registered in her name only.
61. The business the applicants had in Shandong, which has been confiscated, was registered only in the second applicant's name. When asked why the police would confiscate his business and not her RMB830,000 property because of her failure to report she responded that this is common in China.
62. Regarding the claims set out in the Protection visa application form and written information provided in support, including her statement, she is certain the contents are true and correct. She has read her statement. She expressed her story orally and her agent wrote it. She wrote the Chinese version. All the information she gave at her department interview is also true and correct. However, she was nervous and had low blood pressure, so she misstated some dates. Since being released from prison has suffered dizziness. When asked if she has seen a doctor about this she responded that she did in China but not in Australia as the symptoms are not severe when she isn't nervous. She added that sometimes she can't open her eyes fully. When asked what dates she thinks she misstated in her department interview she responded that the Local Church meetings at home were always held on Tuesday, Thursday and Sunday, but at [Suburb 2] they are on Saturday and Sunday. She told the department that the gatherings were on Saturday and Sunday as she thought she was being asked about the [Suburb 2] meetings.

She added that, in relation to arranging for brothers and sisters of the church to work in her business, this was in January 2011, but in her department interview she said it was June 2011. The Tribunal put to her that it seems her recollections are very strong if she remembers such detail. She responded that she makes mistakes when she is nervous.

63. In relation to the claimed transfer of the shop from [Ms A] to the applicants in 2003, she explained that the applicant's paid [Ms A] RMB250,000 for the business. [Ms A] did not retain any business interest in the shop. After this [Ms A] was not [physically well]. [Ms A] just attended the Local Church and became a devoted attendee. She supported herself financially from the RMB 250,000 she sold the business for and from savings. [Ms A] was not married. She owned the home in which she lived and as far as the first applicant knows, had no other investments.
64. In relation to how she first discovered her husband's gambling debts, she responded that creditors came to their house to ask for money. Her husband had already gone to Fujian at that time. When asked why she originally thought he had returned to Fujian if she discovered his gambling later, she responded that he told her that he wanted to visit his parents and brother-in-law who was unwell. He left Shandong in early June 2010. The creditors approached her around six days later. Then she phoned her husband and asked when he borrowed so much money. He was silent. He told her he doesn't have the face to stay in Shandong. He had borrowed money from three people named [names deleted: s.431A(2)], to a total sum of RMB 500,000. The creditors told her he borrowed the money to gamble. She and her husband spoke only a few times when he was in [Fujian]. She repaid the debt in less than a year and told him immediately.
65. At this point the Tribunal invited the second applicant into the hearing room. He gave evidence that: his wife didn't initially know about his gambling and found out after he returned to [Fujian] that he had lost money and borrowed money from friends; he had borrowed money from [names deleted: s.431(2)] and owed them around RMB500,000; he is not sure how long it took to repay this as his wife repaid it and told him so in around 2011. The first conversation he had with wife regarding his gambling took place by phone. He had a lot of work in [Fujian] at that time and when she called him he was sometimes busy. He was working in a [company] named [name deleted: s.431(2)] in [Fujian]. He was not sending his wife money as he was doing business and thought he would invest it in other things to have face to return to Shandong. He later said that he would occasionally send his wife money. He started working at the [name deleted: s.431(2)] after graduating High School and then stopped when he owned his own business. He re-commenced working there after he lost money gambling, in around July 2010.
66. As to why he got his passport in [2009] he explained that: he was doing business and his first passport was going to expire; his friends were talking about travelling to Singapore and other places, however he never actually travelled outside China. After giving the above evidence the second applicant again left the hearing room while the first applicant continued to give evidence.
67. The first applicant indicated that she applied for her own and her son's passport in around [2010] because there were many creditors asking for money. She felt angry that her husband lied and many people knew. She felt she had lost face and wanted to leave China. She didn't though, as in August 2010, [Ms A] came to visit and said she would help financially and told her to get over the difficulty. The Tribunal asked why she needed [Ms A]'s help if her husband was working and investing in [Fujian] and she could afford to invest in an

RMB830,000 property around that time. She responded that her husband had already lost the money and they had already bought the property. She was very angry and messy in her mind and wanted to go away.

68. The Tribunal put to her that its question is about why she would need financial assistance from [Ms A], an elderly lady with health difficulties and a limited amount of money to live off from the sale of her business in 2003, while the applicants seemed well off at the time. She responded that they had a mortgage from the bank and their property had not been paid off yet. The bank wouldn't allow them to sell the property. The Tribunal noted her earlier evidence that she paid around RMB415,000 in cash for the property and was also paying to develop it. She responded that she only bought one unit in the 18 story development.
69. She continued that [Ms A] helped her with the with cash flow of the business by giving the applicants RMB300,000. She had this money in savings as she had done business for over twenty years and has a lot of money. She gave it to the applicants as they were very close. The applicants have since paid [Ms A] back as well as the creditors, in the order of RMB800,000. They managed to do this because their business was good, having a daily turnover in the order of RMB10,000. It was a [business].
70. In relation to the Australian Protection visa, she first heard about it in Australia, from a person named [Ms B], whose home the applicants lived in in Australia. That lady helped her find a migration agent.
71. Regarding her involvement with the Local Church in China, the Tribunal asked when she first realized that the church [Ms A] was encouraging her to participate in was considered an illegal and evil cult in China. She responded that [Ms A] didn't tell her it is illegal. She preached the Gospel and told her to pray to God. When asked what that meant to her at the time, as her evidence does not reveal any prior contact with Christianity, she repeated that [Ms A] just told her to pray to God to save her husband and once she believes, she will be saved. The first applicant didn't ask [Ms A] what church she attends and [Ms A] just made arrangements for the applicant to go to a home to attend a gathering. When asked when she first realized [Ms A] was part of a church considered an illegal cult in China, she responded that she was already a believer when she learnt this and did not know that the gatherings were unregistered or illegal when she first started attending. She didn't ask. She didn't think in that direction. The Tribunal put to her that this seems surprising. She responded that she didn't think in that way as she had many problems at the time.
72. The Tribunal asked if she is saying she did not turn her mind to the safety implications for her business, family and son of attending secret religious gatherings, and when she did start thinking about such things. She responded that she didn't think that way until later, when [Ms A] would tell them to keep their voices down in case they get reported. When the Tribunal noted the centrality of singing and praying aloud in the Local Church, and asked whether she is saying that these things did not occur when she first started attending gatherings, she responded that they happened early on, and [Ms A] told them to sing low so others wouldn't hear. When asked whether she ever wondered why [Ms A] would say this she responded that she didn't think about what that meant and thought that [Ms A] didn't want to disturb the neighbours if they were resting. The Tribunal put to her that it finds this explanation unconvincing. She started attending the gatherings on a weekly basis, on Sundays, in August 2010. The gatherings kept changing location. When asked if she wondered why that was she responded that she wasn't sure and would just follow. Later, [Ms A] told her it was to avoid detection. [Ms A] told her this after she was baptised. The Tribunal put to her that it finds it

very difficult to accept that a successful business woman who was worried about saving face, was already embarrassed by her husband's conduct and who had a [son] to worry about, would not make more enquiries regarding what gatherings she was getting involved in. She responded that she didn't think much at the time as she was furious about her husband's conduct and felt happy at the gatherings. When asked about how long [Ms A] had been a member of the Local Church she responded that she learnt, prior to her baptism, that [Ms A] had been a member of the Local Church for 7 years.

73. She gave evidence that, when she was phoning her husband in [Fujian] she told him about the gatherings she was attending. He told her to not attend and warned her that she should know what she is doing and where she is going. He told her this after her baptism but she isn't sure. She probably told him of her attendance once before her baptism. No family attended her baptism. She continued to participate in the Local Church after learning that it could cause problems for herself and her son in China as she believed in the Lord by then. Her son was living with her when she first started attending the Local Church in China, but he was spending a lot of time at [school] in Shandong. Her son and husband did not attend any church gatherings in China. They first started attending in Australia.
74. When the first applicant found out the Local Church is considered illegal in China she was not communicating much with her husband. He came to know much later that she was baptized. They were still in China when he found out. When he found out he told her to check if the church is legal or safe. The Tribunal put to her that it seems she would have already known this by the need to change locations. She responded "yes" but she can't recall when she told him about her baptism. When she did she was only considering getting her husband back so her son could have a complete family and she and was relying on God for that. When asked again if she recalls whether she knew it was illegal at the time she responded that she can't recall. The Tribunal put to her that it seems, from what she has said of her husband's response, that acting within the law was an important matter for him, and that she herself was mindful of the welfare of her son, wanting her family to be united for her son's sake, and in such context it is wondering what made her participate in a religion which could result in harm to her family. She responded that the law considers it illegal but she finds it reasonable. She didn't take her husband's words seriously and was only thinking on relying on the Lord.
75. When asked about whether she explored the legal options to practice Christianity in China, she responded that [Ms A] preached to her so she was attracted to [Ms A]'s church, which was the Local Church. In particular she was attracted by the many brothers and sisters in the gathering who, even though they didn't know her husband, prayed for him. It was mainly the kindness of those people which influenced her. She has heard that the gatherings she used to attend in China don't happen anymore, that the former attendees have not seen [Ms A] and she has not been sentenced yet.
76. When asked about what [Ms A] said in terms of evangelizing which made her want to attend the gatherings, she responded that she asked her to pray to Lord Jesus. She said that human power is limited and God controls everything. When asked if she said anything further she responded that she said nothing else. She explained that her parents had no religion and she was not brought up in any particular religion. The only other Christian she knew, before [Ms A], was an accountant at her company who also preached the gospel to her but she wasn't in a good state at that time and didn't accept it. That was before her husband started gambling.
77. In explaining when she first experienced adverse attention in connection with her religion in China, she stated that it was [in] November 2011. They were singing at a gathering at the

time. Around thirteen or fourteen attendees were taken by the police. There were around six police officers. They were held for one night at the police station before she and [Ms A] were taken to a detention center. She has not heard from [Ms A] since then.

78. When asked how she and her family spent Christmas 2012 she indicated that she cannot recall, but they were probably at a gathering. Normally they don't celebrate Christmas as it is considered a "God of the Sun" festival and has nothing to do with the Bible.
79. In relation to whether there is any difference between reading the bible aloud and reading in silence, she offered that reading aloud allows spirit to be open. In explaining what is calling the Lord's name about she responded that, like when children call the names of their parents, this makes their parents happy. Similarly, when we call the Lords name, as our father in heaven, this makes Him happy. When asked about the significance of consuming bread and wine she responded that bread is the body of Christ. It is the bread of life. Wine is the blood of Jesus.
80. The Tribunal put to the first applicant that, independent sources indicate that elders of the Local Church are appointed based on their spiritual maturity<sup>1</sup> and asked how she was determined to have the spiritual maturity to be a leader or organiser of the Local Church in China. She responded that [Ms A] appointed her but she is not sure when. It was maybe two or three months after her baptism. When asked what made [Ms A] think the first applicant had spiritual maturity by then, she responded that [Ms A] thought she had accepted God very fast. The Tribunal noted that there were presumably attendees who had been attending the gatherings much longer than her and asked why they were not considered to have the spiritual maturity to be leaders. She responded it isn't based on length of time and [Ms A] thought that she was an appropriate leader. Maybe it is because she made great progress, but she is not sure.
81. Regarding her time in Australia, the Tribunal asked about her movements [on her arrival] to Australia. She responded that she is not sure where they went from [the] Airport, but they arrived at around 8 or 9pm. They followed others to the exit. They saw a Chinese looking man near the taxi rank and asked him if he knew of any Chinese suburbs and asked her to specify one. She didn't know, so the driver took them to a Chinese supermarket where they bought biscuits. When asked if she, her son and husband, after a long haul flight, went, with their luggage, directly from the airport to a Chinese shop to buy biscuits, she responded that they did not have much luggage. They had some Australian currency. After they bought the biscuits they ate them near the supermarket and, by chance, started speaking to a woman named [Ms B]. They told her what happened in China and that they had fled. [Ms B] was very kind and let them stay in her home. When asked if she is saying that [Ms B] was a complete stranger they bumped into while eating biscuits outside a Chinese supermarket, on the night of their [arrival] and before they had arranged a place to sleep that night, and that on meeting her she told her that she had suffered persecution in China, she responded that she had no choice. The Tribunal asked why she didn't simply ask for [Ms B]'s assistance in locating a hotel to sleep in. She responded that they knew no-one in Australia and their English language skills were poor. The Tribunal noted her evidence of having received assistance in leaving China and that it is difficult to understand why they did not at least organize a place to sleep on the night of their [arrival]. She responded that they didn't have time. The Tribunal noted that it seems her arrangements in arrival in Australia may have been pre-arranged.

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<sup>1</sup> 'II. In the Local Church' (undated), Witness Lee and the Offices in the Church website <http://www.local-church-offices.org/local-church-elders/index.html> – Accessed 28 September 2009

82. When asked why she thinks the Chinese authorities didn't confiscate her passport if she was of ongoing adverse interest and required to report on a weekly basis, she responded that she doesn't know. The Tribunal noted that all the passports provided appear to have been issued in each applicant's name. When asked if they had to show their passports as they were departing the airport in China she responded that they followed arrangement made by their contact. When asked again if they actually showed their passports when passing through the airport in China she responded that they went through gate 2 and channel 4. When asked again she said they were not required to present their passports. The Tribunal put to her that normally international travelers are required to show their passports at several points of departure at the airport. She responded that she recalls that they went through straight away.
83. Regarding her church attendance in Australia, she began attending in February 2012. Her son began attending at the same time and her husband has only attended three times as he works far away. The Tribunal put to her that it must assess whether she has participated in Local Church activities in Australia, including learning about Local Church beliefs and practices in Australia, just to strengthen her refugee claims, and whether or not she is a genuine believer in the Local Church. She responded that she needs the Lord more than she needs a Protection visa and this is not the reason for her participation in the Local Church.
84. The Tribunal asked the second applicant to re-enter the hearing room. In response to the Tribunal's questions he gave evidence that: he did not attend any Christian gatherings in China as he was not interested in the religion; his wife would sometimes phone him when he was in [Fujian] and tell him about believing in God and would give him blessings regarding his mistakes; in China he was brainwashed by Mao's ideology so he didn't take this seriously and told her not to say such things and to not participate in an evil cult; his wife didn't say anything about knowing it is considered a cult and only told him she believes in God; she told him of her baptism when he was still in [Fujian].
85. Since coming to Australia he has participated in Christian gatherings only three times. When asked why, he responded that he believes now, a little bit. When asked what he believes he responded that believing in the Lord Jesus brings benefits, for example, in Australia his son can go to school and things have become smoother. Before, in [his employment], he couldn't work as his hands shook. After praying to God his heart becomes calmer and more energetic. He first attended a gathering in Australia around twenty days after his arrival. He accompanied his wife. When asked why he chose to attend a Christian gathering for the first time in Australia, given the availability of registered and legal Christian gatherings in China, he responded that in the past he had no interest. The Tribunal noted that it has to assess whether he started attending gatherings in Australia just to support his refugee application, and whether he is a genuine believer in the Local Church as claimed. He responded that his reason for attending is because he got interested and believed that the Lord Jesus can bring blessings.
86. When asked what it would mean to him if he could not attend Local Church gatherings he responded that, at the moment he can't attend, so he gets up every day, prays every day for forgiveness and when he [returns] he will attend gatherings every week. He has looked into Local Church gatherings near his work but he has no car and the gatherings are usually far away.
87. The third applicant was asked to enter the hearing room at this point. The Tribunal explained to him that it must assess whether he is genuine in his claimed belief in the Local Church and whether he has participated in Local Church activities in Australia for the sole purpose of



strengthening his claims to be a refugee. His evidence was that he: did not attend Local Church gatherings in China; he has been attending in Australia since he arrived. When asked why he started attending in Australia he responded that he believes it does no wrong and seems good to him. When the Tribunal noted it has concerns about the genuineness of his mother's claimed faith and asked if he would attend if his mother didn't, he responded that he would, as he thinks it is good. When asked what he means by that, he responded that it is in his heart and he can't explain it. When asked if he has been to any other Christian gatherings in Australia he responded that he hasn't. The Tribunal asked if his sole purpose in participating in Local Church gatherings in Australia is to strengthen his refugee claims. He responded that he couldn't attend in China and if the situation was the same in China as it is here, his mother would have taken him.

88. When asked if they have anything further they wish to bring to the Tribunal's attention, their representative indicated that: the conference the first and third applicant attended in Australia was an annual conference of the Local Church; he does not think that people in China would necessarily turn their minds to whether the gatherings are legal. The Tribunal noted that the first applicant's evidence suggests that her husband did turn his mind to this matter and mentioned this to her.

## **FINDINGS AND REASONS**

89. The mere fact that a person claims fear of persecution or significant harm for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEO* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).

### **Nationality**

90. On the basis of the passports sighted by the Tribunal, and the oral and written evidence provided, the Tribunal is satisfied that each applicant is a national of China and of no other country, and that none of the applicants have a right to enter or reside in any country other than China.

### **Refugee claims**

91. The claims made and arising on the evidence in respect of the first applicant are that she faces serious or significant harm in China because: of her past and intended future participation in the Local Church; she will be unable to practice her chosen religion in China; she is known by the Chinese authorities to have been an active member of the Local Church who "developed" secret gatherings, and has previously been arrested, detained and required to report on that basis; she failed to comply with the conditions of her bail, in particular her obligation to report to the local police every Monday.
92. The claims made and arising on the evidence in respect of the second applicant are that he faces serious or significant harm in China because: of the first applicant's adverse profile (in

particular he has had his business confiscated); he is also a Local Church believer and he will not be able to practice his faith in China.

93. The claims made and arising on the evidence in respect of the third applicant are that he faces serious or significant harm in China because: of his mother's adverse profile; he is a Local Church believer and he will not be able to practice his faith in China.
94. Having had the opportunity to: review the written information submitted in support of the application; listen to the audio recording of the first applicant's department interview; consult independent information; discuss the applicants' claims and evidence face-to-face with them when they appeared before the Tribunal to give evidence and provide arguments; the Tribunal considers some aspects of the applicants' evidence regarding their circumstances to be true, but considers other significant aspects of the claims and evidence to be unconvincing and lacking in credibility. Considering all the claims and evidence before it, including cumulatively, for the reasons set out below the Tribunal is not satisfied that the applicants are persons in respect of whom Australia has protection obligations.
95. In assessing the claims and evidence overall, on the basis of the overall consistency of the evidence provided over time in respect of the following matters, and the consistency of the oral evidence given to the Tribunal by the first and second applicant on those matters, the Tribunal accepts that: the first and second applicant are spouses and the third applicant is their son; the first and second applicant owned and ran a [business] in Shandong which was registered only in the second applicant's name; the second applicant's family originates from [Fujian] and his parents and siblings continue to live there; the second applicant incurred some gambling debts causing him and the first applicant to feel ashamed and feel that they had "lost face" amongst their community in Shandong, that their high regard for how they are viewed by that community caused the first applicant to feel so ashamed that she wanted to leave China, and the second applicant to leave Shandong for [Fujian] where he continued to work and invest in an effort to rebuild and repair his reputation and restore his "face" in Shandong.

#### ***Assessment of first applicant's claims***

96. In assessing the first applicant's claims and evidence the Tribunal has the following cumulative and significant concerns.
97. Firstly, in respect of the first applicant's claimed attendance at Local Church gatherings in China, she volunteered to the Tribunal, unprompted, that during her department interview she erroneously stated that the gatherings in China took place on Saturday and Sunday, rather than Tuesday, Thursday and Sunday. She explained that: she thought she was being asked about the [Suburb 2] gatherings, not the gatherings in China; she gets nervous, has low blood pressure and has experienced dizziness since being released from prison in China. While claiming to have obtained medical attention regarding this in China, she did not produce any such medical documentation and gave no indication, in the extensive statement and detailed oral evidence she gave to the Tribunal, of experiencing any difficulty recalling detailed information of claimed past events. The Tribunal is unconvinced that the first applicant thought she was being asked by the department about her Local Church attendance in [Suburb 2] when she stated that she attended gatherings on Saturdays and Sundays, and considers that if she did in fact attend Local Church gatherings on Tuesdays, Thursdays and Sundays on a weekly basis in China, as claimed in her written statement and her oral evidence to the Tribunal, she would have mentioned this to the department. Her oral evidence

to the Tribunal indicates that she did not, which casts doubt on the truth of her claims to have attended the Local Church at all while in China.

98. A further significant concern for the Tribunal, as put to the first applicant, is that she has given evidence to the effect that: she was the last remaining child of her parents; was the mother of a child whose welfare she considered a priority; was, with her husband, the owner and operator of a successful business and owner of several properties, and appeared to be doing very well financially in China; cared about how she was perceived within her community in Shandong to such an extent that the loss of face she felt at the public awareness of her husband's gambling in 2010 caused her to want to leave China in around July 2010 and caused her husband to leave Shandong for [Fujian] for a time. The Tribunal accepts that the applicants cared deeply, in China, about how they were viewed amongst their community. In such a context, as put to the first applicant, the Tribunal considers the following matters to be significant: the timing of the first applicant's awareness that the religion she claims to have begun participating in in mid-2010 was considered an illegal cult in China; and why she would participate in such gatherings given the social stigma and adverse repercussions it could have on her family and business. In response to these concerns and related issues, the first applicant's evidence impressed the Tribunal as confused, evasive and unconvincing. For instance, she indicated that [Ms A], a long term and dedicated friend, wanted to help her deal with her husband's gambling debts and encouraged her to attend Local Church gatherings, but did not warn her that these gatherings are considered illegal in China or that her participation in such gatherings, if detected, could compromise the welfare of her business, herself, her family and other attendees. The Tribunal does not consider it credible that a kind lady and long term friend wanting to help the first applicant would not warn her at the outset that the gatherings she is being introduced to are considered illegal, and her claim that she did not know until after she became a believer some months later casts doubt on the truth of her claim to have participated in the Local Church at all in China.
99. This concern is compounded by the following contradictions. The first applicant informed the Tribunal that she did not realise the Local Church gatherings she was attending were illegal or unregistered and that she didn't think to ask [Ms A] about this as "she didn't think in that direction". However, she also gave evidence that: [Ms A] instructed attendees to keep their voices down so others would not hear them singing and praying aloud; the location of the gatherings frequently changed. Yet she also claims that these factors did not prompt her to suspect that the gatherings were not registered and not lawful, nor to ask her good friend, [Ms A], if this was the case. The Tribunal does not consider this to be credible in the context of the first applicant's demonstrated interest and concern for how she is viewed in her community.
100. While claiming on the one hand that she did not become aware that the gatherings she was attending were illegal, nor turn her mind to that possibility, until after she became a believer, she contradicted this by also stating that, when she told her husband about attending these gatherings he told her to check if they are legal or not. Her written statement also makes clear reference to her attendance at "secret meetings", casting further doubt on her claims to have not known that that the gatherings she claims to have attended in China were illegal, until after she became a believer. The Tribunal considers the "secret" nature of the meetings would have alerted the first applicant to their unregistered nature if she did in fact attend such gatherings, and does not accept that, if she was attending Local Church gatherings, she would not have known from the outset that they were considered illegal in China and that they must be kept discrete to protect all attendees, including the first applicant, from detection and harm. That the first applicant claims to have been oblivious to this at the outset casts

significant doubt on the truth of her claim to have ever attended or otherwise participated in the Local Church in China.

101. Casting further doubt on the first applicant's claimed belief and participation in the Local Church in China is her evidence regarding how she came to believe in the faith of the Local Church. Her claim is that, when she was upset about her husband's gambling, [Ms A] helped her financially and evangelized to her. However, when asked to elaborate on what [Ms A] said to her when evangelizing which made her want to attend gatherings, she responded only that she told her to pray to Lord Jesus, that human power is limited and God controls everything. She stated that [Ms A] said nothing more than that. The Tribunal considers, however, that such "evangelizing" and notions of God and the Lord Jesus would have little if any meaning for or persuasive impact on a person such as the first applicant, who, on her own evidence, was not from a religious family, was not brought up in any religious tradition, and had not demonstrated prior involvement with Christianity but for hearing a former colleague speak about the gospel at a time when the first applicant claims she had no interest in the gospel. The Tribunal is not persuaded on the evidence before it that such simplistic "evangelizing" would persuade the first applicant to risk her business interests, marriage, safety and that of her family to attend unregistered gatherings of a religion considered an illegal cult in China.
102. Further, while claiming that she was, by the time of her arrest [in] November 2011, a leader of the Local Church in China, when the Tribunal put to her its understanding that elders of the Local Church are appointed based on their spiritual maturity and asked how she was determined to have the spiritual maturity to be a leader or organiser of the Local Church in China, she offered only that [Ms A] considered her ready one or two months after her baptism (83) but she is not sure why. The Tribunal considers this simplistic account of how and why she became a Local Church leader in China to be unconvincing.
103. Casting doubt on the overall reliability and truthfulness of the first applicant's claims and evidence, is her oral account to the Tribunal of how the applicants came to meet a lady in Australia named [Ms B], who is identified as the applicants' landlord and the person who referred them to their migration agent. The first applicant described this meeting as being a pure chance encounter with [Ms B] on the night of their arrival in [Australia]. According to the first applicant, they bumped into [Ms B] by chance outside a Chinese grocery store where they had stopped to buy and eat biscuits after disembarking their flight at [the] airport at around 8 or 9pm. On meeting [Ms B], at around 11pm on the night of their arrival, with their luggage and with no idea as to where they would sleep that night and with no prior knowledge of [Ms B], they told her of their persecution in China. When asked why they would tell a random stranger about their persecution in China rather than simply asking where they could find a hotel to sleep at that late hour, the first applicant offered variously that "she had no choice" and her English language skills are not strong. However this does not explain why the first applicant opted to tell a complete stranger, on first meeting her, about her persecution in China rather than simply asking about where she and her family could find a hotel to sleep. The Tribunal also considers it far-fetched that, having claimed to have received assistance departing from China, the applicants would not have pre-arranged a place to sleep, at least on the first night of their arrival in Australia. The Tribunal considers the above account to be highly lacking in credibility, and to cast significant doubt on the first applicant's reliability and credibility as a witness. The Tribunal considers her account to be evasive, far-fetched, and does not accept it as true. The Tribunal considers that account to compound the Tribunal's concerns about the truth of significant aspects of the applicants'

claimed circumstances in China, including their reasons and method of departure from Australia, and the truth of their claimed reasons for seeking Australia's protection.

104. Regarding the first applicant's claims to be of adverse interest to the Chinese authorities now and at the time of her departure from China, the Tribunal has the following additional concerns. She claims to be of such adverse interest that, on learning that she had left China the authorities took her parents to the PSB, questioned them the whole night, sealed her company, "froze all our properties" and that "right now, our properties have already confiscated by the PRC authorities" She informed the Tribunal also that her home was auctioned by the authorities in March 2012. However, she also informed the Tribunal that she and her husband and son were able to depart China on their own passports, in their own names, and her passport was not seized at any point after her claimed release from detention, despite her remaining of adverse interest to the authorities. Her evidence regarding how this occurred impressed the Tribunal as highly evasive and unconvincing, with the Tribunal asking her three times whether she, her husband or son had to show their passports when exiting China's airport, with her responding variously about the "arrangements" her contact made, without providing any detail as to what those arrangements were, and by reference to a range of gate numbers. She stated that the business which was confiscated was registered only in her husband's name but could not explain why the authorities would confiscate her husband's business for her claimed failure to report to the authorities, but had not confiscated a further property she bought for RMB830,000 which was registered in Shandong and only in her name. The Tribunal considers her response that this is common in China, to be unconvincing in the context of the balance of its concerns, and considers this evidence cumulatively to cast significant doubt on the claim that any of the applicants are or have at any time been of adverse interest to the Chinese authorities.
105. Based on all the evidence before it, including cumulatively, and taking into consideration the significant and extensive concerns identified above, the Tribunal is not satisfied that the first applicant was, in China, a participant or leader of the Local Church, nor that she was perceived to be. The Tribunal does not report that she was ever arrested or detained in China in connection with the Local Church, nor that she was otherwise harmed in connection with the Local Church in China. The Tribunal does not accept that she was required to report to the local authorities in connection with the Local Church in China, nor does any other reason arise on the evidence. The Tribunal does not accept, on the evidence before it, that the first applicant was of any adverse interest to the Chinese authorities in China for any reason, before her departure from China, nor that any of her own or her husband's properties or assets have been confiscated, sold or adversely impacted by the Chinese authorities for the reasons claimed.
106. Notwithstanding the above, the Tribunal accepts that the first applicant has, since her around February 2012, participated in Local Church gatherings and activities in Australia. The Tribunal accepts that this has been evidenced by letters provided by elders of the Local Church in Australia. The Tribunal also accepts that the first applicant has, in her evidence to the department and Tribunal, demonstrated an understanding of aspects of the Local Church practice and beliefs. Because the Tribunal does not accept that the first applicant had any participation or involvement in the Local Church in China, the Tribunal finds that the applicant's contact with the Local Church, her participation in the Local Church and her learning of Local Church practices and beliefs, is entirely conduct engaged in by her in Australia. Given that the Tribunal does not accept that the first applicant had any involvement in the Local Church while in China, and its extensive and cumulative credibility concerns above, while mindful of the first applicant's claimed genuine faith in the Local Church, the

Tribunal does not accept that evidence as convincing or true, and is not satisfied that the first applicant engaged in conduct linked to the Local Church in China otherwise than for the sole purpose of strengthening her claims to be a refugee. The Tribunal is not satisfied on the evidence before it that she is a genuine believer of the Local Church, nor that she is perceived by the Chinese authorities to have any connection to the Local church which would give rise to a real chance of persecution. The Tribunal is not satisfied that the first applicant has any genuine desire to practice the Local Church faith in the future.

107. On the basis of all the evidence before it, including cumulatively, and on the basis of the cumulative reasoning and findings of fact detailed above, the Tribunal is not satisfied that the first or second applicant face a real chance of serious harm in China for reason of their religion or any other Convention reason in the reasonably foreseeable future. It follows that the Tribunal is not satisfied, on the evidence before it, that the applicants have a well-founded fear of persecution in China within the meaning of the Convention.
108. Further, the Tribunal is not satisfied, on the basis of all the evidence before it, and on the basis of the cumulative reasoning and findings of fact detailed above, the Tribunal is not satisfied that the first applicant faces real chance of persecution in China in the reasonably foreseeable future in connection with the Local Church or for any Convention reason. It follows that the Tribunal is not satisfied that the first applicant has a well-founded fear of persecution in China for a Convention reason:s.36(2)(a).
109. The Tribunal has also considered whether the first applicant is a person in respect of whom Australia has protection obligations under Complementary Protection. However, based on the cumulative concerns and findings of fact above, the Tribunal is not satisfied, on the evidence before it, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the first applicant being removed from Australia to a receiving country, there is a real risk that she will suffer significant harm: s.36(2)(aa).
110. In relation to the second applicant, the Tribunal accepts his oral evidence to the Tribunal to the effect that: as at the time of his Tribunal hearing [in] January 2013, he has attended Local Church gatherings on three occasions since arriving in Australia in around January 2012; he had not attended any Local Church gatherings in China or any other Christian gatherings in China, even registered ones, as he was influenced by the atheistic ethos of Mao Zedong and was not interested in Christianity. The Tribunal has not been provided with any evidence of the second applicant's baptism and is satisfied that he has not been baptised in the Christian faith or the Local Church. While the Tribunal accepts that, since coming to Australia the second applicant has come to identify "benefits" of attending the Local Church, his evidence regarding the nature of these benefits impressed the Tribunal as being practical (ie, his son can attend school in Australia) rather than spiritual, and extremely simplistic. Given the second applicant's expressed absence of any interest in Christianity while in China, his infrequent attendance at the Local Church or any other Christian gatherings in Australia, and the absence of any demonstrated substantive belief in the Local Church, the Tribunal is not satisfied, on the evidence provided, that the second applicant is a genuine believer in Christianity generally, or the Local Church, or that he has any desire to practice the Local Church or Christian faith in the future. The Tribunal accepts that he has participated in Local Church gatherings in Australia, but is not satisfied that this was conduct engaged in otherwise than for the sole purpose of strengthening his refugee claims. The Tribunal is not satisfied that he would, nor that he would be perceived by the Chinese authorities, in the reasonably foreseeable future, to be a participant of the Local Church. For the above reasons cumulatively, the Tribunal is not satisfied that the second applicant faces a real chance of

persecution in China in the reasonably foreseeable future for reason of any actual or perceived connection to the Local Church, nor for any Convention reason. It follows that the Tribunal is not satisfied that the second applicant has a well-founded fear of persecution in China for a Convention reason in China, in the reasonably foreseeable future: s.36(2)(a).

111. The Tribunal has also considered whether the second applicant is a person in respect of whom Australia has protection obligations under Complementary Protection. However, based on the cumulative concerns and findings of fact above, the Tribunal is not satisfied, on the evidence before it, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the second applicant being removed from Australia to a receiving country, there is a real risk that she will suffer significant harm: s.36(2)(aa).
112. In relation to the third applicant, the Tribunal also accepts his oral evidence to the Tribunal that he has, since coming to Australia, participated in Local Church gatherings and events (such as an annual conference) and that he did not participate in any Local Church activities while in China. From the evidence presented, the Tribunal accepts that the third applicant has participated in Local Church activities in Australia with the first applicant. While the third applicant claims that he would participate in the Local Church even if his mother did not, as he “thinks it is good”, when asked, he was unable to elaborate on what that means, other than to state that it is in his heart. However, the evidence presented reveals him to be only [age deleted: s.431(2)], and to have commenced attending the Local Church with his mother, and does not reveal him to have had any independent interest or involvement in any Christian religion, or the Local Church before coming to Australia. In that context and on the evidence before it, the Tribunal is not satisfied that the third applicant’s participation in Local Church activities in Australia is conduct engaged in otherwise than to strengthen his refugee claims. The Tribunal does not accept that he is a genuine believer in the Local Church faith or that he has any genuine desire to express that faith in the reasonably foreseeable future. The Tribunal is also not satisfied that he is perceived to have any connection to the Local Church or that he faces a real chance of persecution in China in the reasonably foreseeable future in connection with the Local Church or for any other Convention reason. It follows that the Tribunal is not satisfied that the third applicant has a well-founded fear of persecution in China for a Convention reason in China, in the reasonably foreseeable future: s.36(2)(a).
113. The Tribunal has also considered whether the third applicant is a person in respect of whom Australia has protection obligations under Complementary Protection. However, based on the cumulative concerns and findings of fact above, the Tribunal is not satisfied, on the evidence before it, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the third applicant being removed from Australia to a receiving country, there is a real risk that she will suffer significant harm: s.36(2)(aa).

## **CONCLUSIONS**

114. The Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a).
115. Having concluded that the applicants do not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under s.36(2)(aa).

116. There is no suggestion that any of the applicants satisfy s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a Protection visa. Accordingly, the applicants do not satisfy the criterion in s.36(2) for a Protection visa.

**DECISION**

117. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.