

**060768904 [2006] RRTA 201 (4 December 2006)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060768904

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Kay Kirmos

**DATE DECISION SIGNED:** 4 December 2006

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant is 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 Multicultural Affairs (the delegate ) 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 (PRC), arrived in Australia early 2006 and applied to the Department of Immigration and Multicultural Affairs (the Department) for a Protection (Class XA) visa on mid-2006. The delegate decided to refuse to grant the visa on mid-2006 and notified the applicant of the decision and her review rights by letter dated late 2006.

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 Refugee Review Tribunal (the Tribunal) late 2006 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, in this case 17 May 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. 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 the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention relevantly defines a refugee as any person who:

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

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

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

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

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

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

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

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

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

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

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

## **CLAIMS AND EVIDENCE**

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

The applicant claims to be born in Fujian province in China. She was educated for several years. She entered Australia on a passport issued in Country A in different name and date of birth.

The applicant claims to be a Christian, who was born and raised in a Christian family. Her father is a devout Christian and an elder of the Local Church. Owing to her father's religious beliefs and practices, her father has been subjected to persecution for a long time, because the Shouters are classified as an anti-government Christian church by Chinese authorities. In mid-2000, her father was detained by police for about for several days on each occasion. In late 2002 her father was arrested by police and detained for a few months. Through out 2004 her father was forced to accept re-education through labour for many months. Her father has not given up his firm religious beliefs and spreads the Gospel to the family's relatives and friends. He encouraged the applicant to spread the gospel to her friends at school.

At the end 2005 the applicant was enrolled in the University. Her father assisted her in establishing a Bible study group on campus, organising Bible study and encouraged in students to join religious practices of the Local Church. A large numbers of students joined the group. She organised members of the group to distribute a large amount of religious propaganda materials to other students. Because of her family background, the applicant said she has been questioned by police many times since her childhood and personally witnessed the police coming to her home day and evening for the purposes of questioning her and her parents. She was there almost every time her father was taken away by police, and saw her father beaten and family property destroyed. His most recent arrest was due to a report through her Bible study group that her father spread illegal religious ideologies and propaganda to the students at the University. Her father is regarded as a "black hand" and she as his key assistant. Her father is still being detained by police and the police are looking for her with an arrest warrant. It is impossible for the Chinese government to protect her and she will be subjected to severe persecution by Chinese authorities on her return.

If she returns to China, she will be arrested by police immediately and sentenced to many years imprisonment. Her father is being detained by the police at the Detention Centre. She fears that if she returns to China shall be harmed or mistreated by the officials of the religious affairs office. She will be a target of Chinese authorities.

In the early 2006, the applicant participated in a Bible study group at the home of her friend and her mother rang and told her that police had broken into her house and arrested her father. Her mother also told her that lots of documents, including Bibles, religious propaganda materials and photographs had been confiscated by police. Some of her personal

documents, including the phone book, notebooks and photographs had been taken by police. Her mother told her to flee as soon as possible. (information about the applicant's history deleted in accordance with s.431 as it may identify the applicant).

The applicant appeared before the Tribunal in late 2006 to give evidence and present arguments, assisted by an interpreter. The applicant was not represented in relation to the review by her registered migration agent.

The applicant stated that she is from Fujian China. She arrived in Australia in early 2006 on a false passport. She stated that she did not know she would be coming to Australia, but a friend helped her. She left China because she had suffered persecution because of meetings she had attended. She stated that the passport she used to enter Australia was not hers, her friend helped her and introduced her to a person who helped people go overseas, and she was taken to this person. This person gave her the passport. She did not pay him anything, although her friend may have paid for it. (information about the applicant deleted in accordance with s.431 as it may identify the applicant.) She stated that she had never held a passport, and a photograph was taken of her in City A. She stated that she had never travelled outside of China.

She stated when she first arrived in Australia she did not know anyone. She was helped by a driver who took that to some accommodation, but that she had little money and tried to find work. She had never worked before, and was told she needed a permit before anyone would offer her work. She now has a casual job and resides in a suburb in cheaper accommodation.

She stated that she is of Chinese ethnicity and nationality. Her religion is Local Church. She lived in Fuqing from her birth until she left with her family. She has a father, mother, and siblings in China. The younger siblings were still studying when she left, but she did not know whether they were still at school. She stated her family is no longer a family, her father was placed in detention and she has lost contact with her mother and siblings, and does not know their whereabouts. She is unable to contact them. She found out by telephoning neighbours, that they had moved and changed telephone numbers, and was last able to contact them a few months ago. She has not had any contact with anyone in that time. She has no relatives in Australia and her parents had been farmers working the land.

Her father was responsible for the church activities as an elder of the church. She was unaware of any other members of her family having any problems with authorities, other than her father. She was told by her mother that her father had been arrested and detained and church photographs, documents, Bibles and other items confiscated, and her mother asked her to escape. Her mother and siblings had never had any problems with authorities because of their religion, probably because her siblings were very young. She stated that her father had been detained in throughout 2000, for several days on each occasion, as a result of a Bible meeting at a friend's place. He was charged with distributing illegal religious materials, and PSB members attempted to force a confession regarding his religious activities, but he refused to confess. He was released, as the PSB had insufficient evidence to prove the charges. She stated that she did not visit her father at the police station, although her mother did. She was very young at the time, and was unsure if her father had further problems.

In early 2000s, he was detained for a few months in a labour reform camp, and when they came to arrest him he tried to escape and jammed his fingers in the door. His fingers were later amputated. In 2004 he was involved in a village group meeting with many people, spreading the word of God and singing hymns, and someone informed on him as being anti-

government and involved in underground religious activities. He was taken to a labour reform camp for the full year.

The applicant stated her involvement in the church was taking friends to study the Bible and sing hymns. Her father printed parts of the Bible and gave them to her to distribute at school. She encouraged students to go to her dormitory and study the Bible and sing hymns. She looked after students at school and helped them. They would sing hymns, read Bibles and pray on a daily basis. She explained that she was from a religious family background in China, and since she was young her parents took her to the gathering, sometimes one-hour walk away from where she lived. In church, she felt happy and she sang hymns. Through her father's teaching she was touched and believed in God. She went with him to every church meeting, if she had time. On Friday nights there was the youth gathering and on Saturday and Sunday there was a gathering and prayer meeting.

She was asked about the church. She stated that she believed in the Holy Trinity, which was three-in-one, having the same status as God. She stated Jesus was born of Mary and was the son of God and died and was resurrected. She stated Jesus was at the same level as God and the Holy Spirit was part of the Holy Trinity. The services at church comprised of hymn singing and seeing to the needs of the parishioners. Her Brothers and Sisters in the church were with her and God was with her. There were Bible readings and prayers and, if one did not understand the Bible reading, the elders would explain them. The parishioners would connect and share, and communicate with God. The service takes one hour, sometimes more. She had been baptised in her early teens. She stated that she had heard her father talk of Watchman Nee and Witness Lee. She attends church every Sunday in an Australia city. She was asked why they were called Shouters, and she said that this was because they would shout in the name of God and Jesus, and praise his name.

She was of interest to the PSB because she organised a small Bible study group at school. She was informed for propagating illegal religious beliefs, so the government came to her school to stop and dismantle the group. She was told by her teacher to excuse herself from school, because what she was doing was interfering with others and causing the school problems. She stated that she could be suspended from school if she was absent for too many days or if she damaged the school's reputation. She stated that she never skipped classes so why should she be suspended? She only used her leisure time to talk with her friends about the Bible, never class time. The teacher insisted that she be suspended or there would be problems for the school.

She stated that she could not return to China. She stated that during her childhood, her family was often interrogated, when she was at home. She witnessed assaults against her father and family assets destroyed. Each time there would be lots of people from the PSB. One time in early 2000s, they were having dinner, and they wanted to take her father away and he refused. They wanted her father to confess to underground religious activities and anti-government activities and he refused. They assaulted him using furniture. When he tried to escape he crushed his fingers, and she feared that these things would recur. She believes the police are looking for her. Her mother told her that an arrest warrant had been taken out for both of them. She fears being arrested and detained if she returns to China and she will not be allowed to study. She would not be allowed to work, and her parents are not at home. She believes that she would not be safe anywhere in China.

She stated that she did not know the original passport holder. Her friend gave her the money to come to Australia. She stated that she is still young and she could have studied at home,

but now cannot because of the problems. She does not know anyone or anything in Australia. She does not speak English. She stated that she needed protection as a refugee, because she was sure she would be persecuted. She had no choice about leaving China and coming to Australia.

### **Evidence from other sources**

The U.S. Department of State's *International Religious Freedom Report* for 2004 summarises the current situation for Christians in China:

The Constitution provides for freedom of religious belief and the freedom not to believe; however, the Government seeks to restrict religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of activities of religious groups. The Government tries to control and regulate religious groups to prevent the rise of groups that could constitute sources of authority outside of the control of the Government and the Chinese Communist Party (CCP). Despite these efforts at government control, membership in many faiths is growing rapidly.

During the period covered by this report, the Government's respect for freedom of religion and freedom of conscience remained poor, especially for many unregistered religious groups and spiritual movements such as the Falun Gong. The extent of religious freedom varied widely within the country. Unregistered religious groups continued to experience varying degrees of official interference and harassment. Members of some unregistered religious groups, including Protestant and Catholic groups, were subjected to restrictions, including intimidation, harassment, and detention. In some localities, "underground" religious leaders reported ongoing pressure either to register with the State Administration for Religious Activities ... or its provincial and local offices, still known as Religious Affairs Bureaus (RAB). They also reported facing pressure to be affiliated with and supervised by official party organizations linked to the legally recognized churches. For example, some local officials in Henan Province often mistreated unregistered Protestants, and some local officials in Hebei Province tightly controlled Catholics loyal to the Vatican. In other localities, however, officials worked closely with registered and unregistered Buddhist, Muslim, Catholic, and Protestant groups to accomplish religious and social goals. During the period covered by this report, Government officials cautioned against "foreign infiltration under the guise of religion." The Government increased scrutiny of contacts between some citizens and foreigners involved in religion and detained some citizens for providing religious information to foreigners. Nonetheless, some local officials encouraged foreign religious groups to work in their communities to supply social services, provided that the groups did not proselytize openly. Many religious adherents reported that they were able to practice their faith in officially registered places of worship without interference from the authorities. Official sources, religious professionals, and persons who attend services at both officially sanctioned and underground places of worship all reported that the number of believers in the country continued to grow. (US Department of State 2005, *International Religious Freedom Report 2004 – China*, 18 December).

The above report repeated its customary inclusion of the Shouters as an illegal “cult” in China:

In 1995, the State Council and the CCP’s Central Committee issued a circular labeling a number of religious organizations “cults” and making them illegal. Among these were the “Shouters” ... In 1999, the Standing Committee of the National People’s Congress adopted a decision, under Article 300 of the Criminal Law, to ban all groups the Government determined to be cults .... The law, as applied following these actions, specifies prison terms of 3 to 7 years for “cult” members who “disrupt public order” or distribute publications. Under the law, cult leaders and recruiters may be sentenced to 7 years or more in prison (US Department of State 2005 , Section II).

Sources indicate that the Shouters consider themselves to be a Christian group. However, many commentators and more mainstream Christian groups consider the Shouters to be a cult of Christianity, or even heretical, since they have adopted some unorthodox beliefs and practices, and use a non-standard edition of the Bible. The group is illegal in China, and there have been reports of arrests of group members for over 20 years. A 1994 paper on the group by Human Rights Watch states:

The Shouters, who refer to themselves simply as Christians were an outgrowth of an indigenous Chinese religious sect, variously known as the “Local Church,” the “Assembly Church,” “Christian Assemblies” or the “Little Flock.” The original group, particularly strong in the provinces of Zhejiang, Henan, Fujian, and Guangdong, was founded in 1922 and is associated with the religious philosophy of Ni Tuosheng (1903-1972), better known as Watchman Nee. Imprisoned in 1952 during a government campaign aimed at the “bourgeois” private sector, Ni was accused of “having stolen a [huge amount] of national medicine, information, and property.” He was sentenced in 1956 to a fifteen-year term as head of a counterrevolutionary clique, and died shortly after his delayed release in 1972.

Ni’s disciple, Li Changshou, or Witness Li, who differed with Ni on tactics and doctrine, was primarily responsible for organizing the Shouter splinter movement. Its roots date back to the mid-1930s when “Local Church” congregants added external vocalizations, such as “Oh, Oh Lord” and “Amen,” to quiet prayer.

The Shouter creed is evangelical, mystical, subjective, intuitive, apocalyptic, and individual. According to Shouter literature, believers reject any human thought that goes beyond what the Bible says because they consider it the completed divine revelation. Thus, Bible reading is central to religious practice, and it is the duty of every Shouter to go out and preach the gospel to relatives, neighbors, friends, and colleagues. The Shouters then “nourish” the converted by visiting their homes regularly and leading them in Bible reading, singing, and prayer. Members meet in small groups with neither “appointed speakers or teachers.” Anyone moved to preach can, although it is usually the already recognized leaders, or elders, who do so. There is no professional ministry, and each local group is autonomous. Congregants meet clandestinely in each others’ homes; hence they are categorized with other Protestants who resist association with the official Chinese Christian Church, as “house church” members.



The Shouter creed has brought its members into open conflict with the Three-Self Patriotic Movement (TSPM), the official body responsible, under the Religious Affairs Bureau (RAB), for monitoring all Protestant affairs.' The intrusion of Party doctrine and politics into religion in the official churches violates the sect's principle that the church is not and should not be a human institution. The Shouters' interest lies strictly in Bible study; they eschew involvement with broad social, political or economic matters and resist participating in socialist campaigns. The evangelical nature of Shouter practices violates the Religious Affairs Bureau's three-fix policy. Shouters also resist government restrictions on what legitimately can be preached; in particular they resent government curbs on sermons dealing with the "second coming," a central tenet of Shouter faith. The Chinese government regards the belief in a "second coming" as inherently antithetical to development, in fact, to the very need for development (Human Rights Watch Asia, 1994, *China: Persecution of a Protestant Sect*, June, Vol.6 No.6).

The US Department of State *Country Report on Human Rights Practices in China for 2004* mentions that the authorities have continued a general crackdown on groups considered to be "cults." Premier Wen Jiabao, in his address to the NPC in March, stressed that government agencies should strengthen their anti-cult work. These "cults" included the Shouters. Authorities accused some in these groups of lacking proper theological training, preaching the imminent coming of the Apocalypse or holy war, or exploiting the re-emergence of religion for personal gain (US Department of State 2004, *Country Report on Human Rights Practices in China for 2003*, 25 February, section IIc 'Freedom of Religion'). Another report from a Christian website of April 2003 states:

News has come to us of the arrest of 120 house church Christians in Pingdingshan, Henan Province, last Friday April 4. This arrest is serious because many of those detained are leaders of the Local Church, one of the Chinese Church groups that comes from the root of Watchman Nee teaching. We have been told that the authorities have released about 20 of those arrested after determining they were not leaders, but approximately 100 are still in prison. The 20 released were finger-printed and fined.

The Local Church is considered an 'evil cult' by the Chinese government and also by the official Three-Self Church. Consequently, they are undoubtedly the one Christian group in China to have faced the most persecution over the years. Upon receiving the report of this arrest some Christian organizations around the world may echo the government's charge that the Local Church is a cult. The reason for this assertion is because of the false teachings of a man named Witness Li (Li Chanson). He fell into deep error in the 1970s and '80s and hundreds of thousands of Local Church believers in China and around the world followed his teachings ('China: 120 House Church Christians Arrested' 2003, Asia Harvest (Christian News service), 11 April posted on Voice of the Martyrs website <http://www.persecution.com.au/news/article.asp?artID={A778538A-9DC4-499F-8112-BF375741D6E6> – accessed 10 August 2004).

Another report of the group concerned the release, after almost three years in prison, of the last of three Shouters who were arrested in May 2001 for smuggling Shouter -annotated bibles into China (Wan, F. 2004, 'Freed Bible smuggler keeps his faith intact; A three-year

jail term has not weakened religious fervour of a Fujian Christian', *South China Morning Post*, 9 March).

Dr. Tony Lambert (Director of Research of the China Ministries Department of OMF International - a large mission agency - and publisher of several books on Chinese Christianity) has advised the RRT that

... In 'Secret Documents from China's security Sector' published 12 February 2002 by Shixiong Li and Xiqiu (Bob) Fu and distributed by Voice of the martyrs and Open Doors (both orgs. have Australian reps. I believe) there is an important document from the general Office of the Ministry of Public Security dated 10 May 2002 which lists 7 cults regarded by the government as illegal and liable to suppression. The first of these is The Shouters - probably listed first because it 'infiltrated' China in 1979 and by 1983 had 'deceived up to 200,000 believers' in 360 counties and cities in 20 provinces. This confirmed an earlier decision in 1995 when the General Office of the CCP central Committee issued a document identifying the Shouters as a cult.

All this is conclusive evidence that the Shouters are still proscribed as an illegal cult from the top levels of the Chinese government down to the local levels. It is still active in many areas. (Lambert, T. 2004, Email to RRT 'Information Request on Shouters in China', 1 August)

Whereas the suppression of the Falungong has attracted much media attention and the group itself has made a large volume of material available to the Western world through its internet sites, there has been much less attention given to the Shouters. The activities and plight of the Shouters have not been widely publicized outside the specialist human rights sources and a number of brief mentions of groups in China which follow the same teachings as the Shouters, but have different names including Local Church. The 2002 transcript of a radio programme by the Living Stream Ministry (Living Stream Ministry 2002, 'On Second Thought: Transcript from OST on October 13, 2002, KPLS, Orange, California, USA' Transcript of KPLS Radio Program, 13 October – <http://www.recoveryversion.org/kpls-transcript.html> – accessed 9 August 2004) shows that the speakers adopt a conciliatory line towards the Chinese authorities and do not condemn any arrests of Shouters or other Christians in China (pp. 1-2). One report about China mentions the three Shouters who were arrested for smuggling bibles in 2001 ('Letter from Living Stream Ministry' 2002, The Hearing of Faith, Living Stream Ministry Radio Newsletter, Number 47, March, p.1 <http://www.lsm.org/living-stream-ministry-radio/hearing-of-faith/pdf/2002/Mar02p1and3.pdf> – accessed 9 August 2004).

In March 2004 AsiaNews ("Christian bible "smuggler" released after 3 years in prison", <http://www.asianews.it/view.php?l=en&art=471>, accessed 8 October 2004) reported that a Protestant activist had been released after 3 years in prison on charges of secretly distributing copies of bibles in southeast China. He was freed near Fuqing in Fujian. He was a member of "an outlawed evangelical organization called the "Shouters", having been arrested in May 2001 along with two other members of the group, Lin Xifu and Hong Kong businessman Li Guangqiang, who were accused of smuggling 16,000 bibles from Shenzhen into Fuqing.

"On the surface I am now free, but it's not that simple. I will likely be followed and my phone may be tapped," said Yu Zhudi, who with the two others was convicted of "using a cult to undermine the enforcement of the law".

Yu said that during his prison term "the first three months were very terrifying." He and other prisoners made rattan baskets for 16 hours a day, but kept silent for fear of being punished. "My hands were cut, my whole body was exhausted and my head ached. There was no time to sleep," he said. His situation got worse when he was assigned to keep watch at night outside a prison cellblock. For lack of rest and bad food his health became seriously compromised. ...

Following his release Yu and his family have received several visits from Christian friends and relatives. "I hope the authorities will realize we are practicing religion legally. I hope they will let Christian groups like ours register as legal organizations. If my jail term can achieve this, it would be worthwhile."

The "Shouters" are one of the fastest growing religious organizations in the country. It is estimated that the organization now totals 500,000 members, who are urged to "shout" their devotion to Christianity. In 1995 the group was outlawed as an "deviant religious organization" or "evil cult".

Li Guangqiang and Lin Xifu were convicted to 2 and 3-year prison terms respectively. However they both were released in 2002 on medical parole, thanks to pressure put on by American groups. In addition to their prison sentences the three "Shouters" were fined 150,000 yuan (around 18,000 euro) each.

As to the procedure for persons arrested or taken into custody for religious offences, some people detained by the PSB were reportedly released after a short time, others being charged and sentenced to prison terms either through the court system or through the administrative process (administrative detention). Fines were also levied in some cases. The U.S.

Department of State states:

Many religious leaders and adherents have been detained, arrested, or sentenced to prison terms. Local authorities also use an administrative process to punish members of unregistered religious groups. Citizens may be sentenced by a non-judicial panel of police and local authorities to up to 3 years in reeducation-through-labor camps. Many religious detainees and prisoners were held in such facilities during the period covered by this report. ... (U.S. Department of State 2003, *International Religious Freedom Report for China – 2003*, Section II).

The 2005 report further notes:

Actions against such groups continued during the year. ... Police also continued their efforts to close down an underground evangelical group called the "Shouters," an offshoot of a pre-1949 indigenous Protestant group.

A news report outlines the possibilities for those arrested in China:

Most members of ... unauthorised religions are arrested and tried for "using an evil cult to sabotage implementation of the law" – a crime categorised as

disturbing the social order. Thousands have been imprisoned for such activities. ...

Dissidents picked up by the police but not formally arrested sometimes wind up in re-education camps or in psychiatric hospitals run by the Public Security Bureau. ... ('A grim reminder for the central government's opponents' 2003, *South China Morning Post*, 13 June).

The U.S. State Department (2005) says that during 2004 abuses in China included instances of extrajudicial killings, torture and mistreatment of prisoners leading to numerous deaths in custody, coerced confessions, arbitrary arrest and detention and incommunicado detention.

### **Exit from China**

All applications for passports are vetted by the Public Security Bureau, which involves an examination of the applicant's personal and political history and family background. This information is then handed on to the provincial bureau of the Ministry of State Security (DFAT "Passport and exit procedures", 15 January 2003, CX72393). In 2003 DFAT stated:

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 (DFAT "Passport and exit procedures", 15 January 2003, CX72393).

DFAT observed in 1998 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 (DFAT cable BJ5671, 12 February 1998, CX27863).

David Goodman (2005, 'Communism, Capitalism and Authoritarianism in China', Seminar by Professor David Goodman of the Institute for International Studies of the University of Technology, Sydney for Members of the Refugee Review Tribunal in Sydney on 23 February) has said that the ease with which one could buy false papers in China was "quite amazing" (p13).

### **FINDINGS AND REASONS**

In order to be a refugee under the Convention, it is necessary for the applicant to be outside his country of nationality and for him to hold a well-founded fear of persecution for reasons of at least one of the five grounds listed in that Convention. The applicant has claimed that she is in need of protection for reasons of her religious belief (being her adherence to the Local Church [Shouters]).

The applicant has claimed to be a national of China (PRC) and of no other country. She claimed to have travelled to Australia on a false Chinese (PRC) passport. It is noted that

Departmental information suggests that the passport holder has been in Country A since early 2006 and has not departed. The Tribunal notes that despite the fact that the delegate found that the applicant had used fraudulent documents to enter Australia, the delegate accepted that she is a citizen of China (PRC). The applicant submitted a copy of a PRC identity card which was consistent with her claimed identity and place of birth.

Her oral evidence also reflected familiarity with her claimed country of nationality. She has not made claims against any other country. The Tribunal is thereby satisfied that she is outside her country of nationality and that is China.

The Tribunal's task is to consider whether the applicant's claimed fear of persecution for reasons of her religious belief (being her adherence to the Local Church [Shouters]), is well-founded. To do this, the particular claims she has raised and the information she has advanced must be examined.

The applicant claims that she seeks protection because she is a Shouter, and she will be persecuted by the Chinese authorities if she returns to China.

The meaning of the expression "for reasons of ... membership of a particular social group" was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

The Tribunal considered whether the postulated social group is a particular social group for the purposes of the Convention.

The Tribunal considered whether being a member of the Local Church [Shouters] is a particular social group for the purposes of the Convention. The Tribunal finds that Shouters, of which the applicant claims to be a member, are united by their religious beliefs, which distinguishes the group from society at large. Therefore the Tribunal finds that members of the Local Church [Shouters] are a recognisable particular social group.

The Tribunal further finds that the Local Church is a religious belief.

The applicant's evidence at hearing was consistent with that on her protection application, and she appeared to be a credible witness. The applicant demonstrated knowledge of the practices and origins of the Local Church. The Tribunal accepts that the applicant is committed to her faith, and the applicant has continued to be involved in the Church in

Australia. On the basis of this evidence, the Tribunal finds that she is a member of the Local Church.

The applicant claimed that her father was detained on a number of occasions and that she was active in a leadership-type role within the Local Church, leading to the PSB issuing an arrest warrant.

The applicant's account of her father's problems with the PSB in the Fujian area in the early 2000s was consistent with the independent evidence about the treatment of members of underground "cults", and was also consistent with the general evidence that treatment of such groups varies across China. On the evidence overall, the Tribunal accepts that the applicant's father has been detained on few occasions and that, while the applicant has not previously been detained, the applicant has been persecuted in the past for reasons of her religion. The Tribunal accepts that the applicant was not permitted to continue with her education.

The applicant arrived in Australia using a passport, in another person's name, which the Tribunal accepts was fraudulent. The Tribunal considers reliable the evidence from DFAT that, while illegally obtaining a passport in one's own name through bribery is risky in China, it is easier to obtain a passport using someone else's identity (DFAT 2003, CX72393), and that it is very easy to obtain fraudulent documentation in China (Goodman 2004). It is consistent with the applicant's claims that she would have sought to leave China on a passport in another person's name. The Tribunal accepts the applicant's explanation as to how and why she obtained a false passport.

As to whether the applicant now has a well-founded fear of being persecuted because of her religious group, the Local Church, the Tribunal has had regard to the following: Firstly, despite the arrests and jailing of three Shouters in 2001, the Tribunal considers that the local PSB in Fujian was relatively tolerant of low key Shouter activities there until fairly recently. However, consistent with the evidence that in 2004 Premier Wen Jiabao stressed that government agencies should strengthen their anti-cult work (US Department of State 2004), it is likely that this has changed. The Tribunal accepts that in 2006, the applicant was informed against for organising Bible study groups and, in light of her background and the government crackdown on unlawful religious activities, it is likely that a warrant for the applicant's arrest would have been issued.

Further, as to the reasonably foreseeable future, the Tribunal accepts that the authorities have labelled the Shouters and Local Church "cults" and declared them illegal. The Tribunal also accepts that the law specifies prison terms of 3 to 7 years for "cult" members who "disrupt public order" or distribute publications, and that cult "leaders and recruiters" may be sentenced to 7 years or more in prison (U.S. State Department 2005). A lengthy period of imprisonment is persecutory, if for a Convention reason. In the present case it is not possible to know with certainty what information the authorities have about the applicant, but, given her father's position as elder and her evidence, it is likely that they would see her as a "leader" or "recruiter" in her church. The Tribunal accepts as reliable the information that, during 2004, abuses in China included instances of extrajudicial killings, torture and mistreatment of prisoners leading to numerous deaths in custody, coerced confessions, arbitrary arrest and detention and incommunicado detention (U.S. State Department 2005).

The Tribunal finds that there is a real chance that the applicant may face serious physical abuse and detention, or imprisonment accompanied by serious ill-treatment now and in the

reasonably foreseeable future, should she return to China, which the Tribunal considers sufficiently serious to amount to persecution.

The applicant would not be able to fully avoid persecution by relocating within China as the crackdown on “cults” is a national policy, even if it is implemented with local variations. There is no evidence that she has effective third country protection or that section 36(3) of the Act applies to her.

The Tribunal is therefore satisfied, and finds, that the applicant has a well-founded fear of being persecuted for the Convention reason of religion.

## **CONCLUSIONS**

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

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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

Sealing Officer's I.D. Inward