

071567425 [2007] RRTA 241 (15 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071567425

DIAC REFERENCE(S): CLF2007/79137

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Richard Derewlany

DATE DECISION SIGNED: 15 October 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

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

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

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

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

RELEVANT LAW

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

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

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

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

Definition of 'refugee'

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

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] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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

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

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

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

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

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

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

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

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

CLAIMS AND EVIDENCE

The 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.

Protection visa application

According to her protection visa application the applicant was born in China. She had undertaken studies at University. She stated that she left China to avoid persecution. She started practising Falun Gong in the late 90s and suffered because of this; she was under surveillance and did not have freedom. She also stated that she was taken to have a forced abortion when she was pregnant with another child. Her salaries and

annual bonuses were 'deducted as punishment' and her husband was demoted from a senior position. She also stated that she protested because her residence was about to be demolished and was taken to the PSB as a result. She stated that if she returned to China she would be detained for interrogation and her family members would be adversely implicated.

Review application

The applicant submitted to the Tribunal a number of photographs showing her involved in protest gatherings, distributing information about Falun Gong, and undertaking Falun Gong practice in various locations in Sydney. The Tribunal also received a statement from Mr X, who claimed to be a Falun Gong practitioner, confirming the applicant had attended Falun Gong practice in the Sydney suburb on a number of occasions, and had been involved in protests against the Chinese authorities' treatment of Falun Gong practitioners.

The applicant also submitted a statement in which she stated that she joined Falun Gong in the late 90s because she was unhappy with her employment, and the way the Communist Party operated in China. She stated that she was under surveillance because of this. She also stated that when she protested against the fact that her old home had to be demolished, she was detained and the authorities stated she was a Falun Gong practitioner and harmed her. She had to pay to be released. She did not feel it was safe to stay in China. She was seeking protection because there was no freedom for her in China.

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

The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.

The applicant stated that she started to practise Falun Gong in the late 90s, having been introduced to it by a friend. She had become very unhappy and depressed because of the corruption of the authorities. She had to have an abortion during her University studies. She was also working during this period and she was not given for a few months' wages or bonuses. She had other problems at her place of employment. She felt her general condition and health improved after starting to practise Falun Gong. She practised regularly; she undertook physical practice a few times per week for an hour each time, and also spent a couple of hours on study.

Being a Falun Gong practitioner involved practice and study, and helping to distribute information. It meant that she followed the principles of truth, compassion and tolerance, and she felt more relaxed and her health improved. The aim of practice was to elevate one's *xinxing*, to be sincere, kind and tolerant of others, and to tolerate hardship. She stated that her practice involved improving her general state, and aiming to reach a higher level of awareness, and to help others and do kind things. She stated that practitioners could achieve things that others could not. She stated that doing the qi gong exercises helped one to improve one's health, but Falun Gong

practice cultivated the mind as well as the body; it enabled one to ‘assimilate’ into the universe through cultivating *xinxing*.

The applicant explained that the falun was located in the lower abdomen and rotated constantly. It absorbed energy when rotating clockwise to help the individual, and it released energy when rotating anticlockwise to help others. It turned black energy into white, and white energy was good and positive. This helped one to become an increasingly better person. The applicant stated that she read the books Falun Dafa and Zhuan Falun by Li Hong Zhi, and she named 3 other texts by him. She stated that Zhuan Falun was the important work and that she kept studying it and had her own copy. She continued to attend study sessions, including those at a Sydney suburb that took place after physical practice.

The applicant explained further that *xinxing* was an important concept; it helped to keep away evil things and helped one to achieve good and positive things. One strove to increase *xinxing* through the practice of Falun Gong . She explained that Li Hong Zhi’s beliefs were that the moral code of zhen shan ren was like the universe in miniature. The Tribunal asked the applicant about her understanding of Li Hong Zhi’s views about the planet Earth in the universe. She stated that Earth rotated just as the falun did, and described the falun again. She explained her understanding of the third eye and stated that after practice of Falun Gong the third eye enabled one to see things that others could not. This was possible by those who achieved higher levels of ‘gong’. The Tribunal asked what people could see. She stated that Master Li knew all the time whether people were doing good things or bad.

The Tribunal asked the applicant what was her understanding about Master Li’s views on eating meat. She stated that after practising Falun Gong and attaining higher levels, people would naturally reach a state where they just avoided meat and rejected it.

The applicant stated that Falun Gong involved the practice of 5 exercises. She named the five exercises. She did not recite the verses before each exercise as she did the exercises to a tape and the verses were recited in the tape. The Tribunal asked the applicant to perform the 4th, 3rd and 5th exercises and she did so in full. The Tribunal asked the applicant to explain the purpose of the 5th exercise. She stated that it lifts *xinxing* and the body released ‘exhaust’ and absorbed fresh oxygen. She stated that the purpose of the 1st exercise was to achieve calm, and a focus on one’s self. The purpose of the 2nd exercise was to enter another level, to facilitate the flow of energy and to remove illness. The purpose of the 3rd exercise was to release ‘exhaust’ from the body and to penetrate extremes. The purpose of the 4th exercise was to pen the ‘meridian’ from both sides and to release exhaust from the body completely.

The applicant stated that she experienced problems with the authorities when she was detained with other practitioners. She was released after a few months for medical treatment, but was not charged further. The authorities injured her during her detention. She was also detained a few years later when she protested about decisions of the authorities regarding her housing. She was detained for a few days because she was regarded as a Falun Gong practitioner. She was also detained about three years later. She had travelled to Country A to provide information, and the PSB found out about her travel and detained her. She stated that she went to Country A to exchange information and to obtain the latest information about Falun Gong; it was difficult to

get the information in China. She did not think she was on a specific wanted list, and she left from Beijing rather than Dalian. The Tribunal raised its concern that if the applicant returned to China after her travel it may indicate that she did not have a well founded fear of persecution based on her activities and previous problems in China. She stated that she felt it was important to bring back information about Falun Gong to fellow practitioners.

The applicant stated that she practised Falun Gong regularly in Australia. She started at a Sydney suburb about a week after her arrival, and attends sessions there about 3 times per week. She practices in a park and also attends study sessions. She felt that if she returned she would be arrested again.

The Tribunal raised with the applicant its concerns about some of her evidence, including her travel outside China, and some of her knowledge about Falun Gong that appeared to be limited in the context of her claim that she had practised since the late 1990s; the Tribunal referred to her knowledge about the purpose of the exercises, and her knowledge of Li Hong Zhi's views about the planet Earth. The Tribunal explained that the information might lead the Tribunal to doubt that she had been a Falun Gong practitioner in China and had suffered harm as a result. The Tribunal asked the applicant whether she wished to comment or respond to the information. She stated that she had to undergo brainwashing or reeducation sessions during her first detention. She stated that she had told the Tribunal about her personal experiences and she had no confidence that she would have the freedom to continue her practice if she returned to China. She wanted to be able to help others.

The Tribunal asked the applicant whether she wished to seek additional time to comment or respond to the information, in accordance with s.424AA of the Act. She stated after some consideration that she did, and requested 1-2 months additional time. The Tribunal considered the request and stated that in the circumstances it did not consider that she reasonably needed additional time. The Tribunal asked whether the applicant had any further comment or response, and the applicant stated that she feared she would meet a bad end if she returned, that she was in a 'messy state', but had no further comments.

Independent evidence

The practice/philosophy/religion that is known as Falun Gong was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese cultivation system known as qigong, but it is novel in its blending of qigong with elements of Buddhist and Taoist philosophy. Other terms such as Falun Dafa and Falun Gong are used in relation to the movement. The term Falun Dafa is preferred by practitioners themselves to refer to the overarching philosophy and practice (UK Home Office 2002, *Revolution of the Wheel – the Falun Gong in China and in Exile*, April). There is no question that Falungong promotes salvationist and apocalyptic teachings in addition to its qigong elements. Despite its own protestations to the contrary, it also has a well-organised and technologically sophisticated following and has deliberately chosen a policy of confrontation with authorities (Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, pp.14-24, pp.91-95).

Falun Gong first came to the attention of PRC authorities after demonstrations by Falun Gong adherents in April 1999 in Tianjin, and later that month outside the Zhongnanhai in Beijing. The initial government crackdown against Falun Gong began in late July 1999, when a number of government departments implemented restrictive measures against the movement, banning Falun Gong and issuing an arrest order for Li Hongzhi. The movement was declared an “evil cult” and outlawed in October 1999 (Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.8-10).

According to the website falundafa.org, accessed on 19 September 2007, Falun Gong is described as:

“It is most accurately described as a “cultivation practice”. Practitioners cultivate their mind, body, and spirit by acting in accordance with the principles of: Truth, Compassion and Tolerance.

Practitioners also do five sets of gentle and easy to learn exercises. All practitioners feel peaceful, energized and refreshed after practising and almost every practitioner has reported improvements in both body and mind, as well as a deepened spiritual awareness.”

As reported by The Irish Times on 18 November 2004 and re-produced by the Falun Dafa Information Centre on their website:

“Falun Gong, or Wheel of Law, is a spiritual movement that draws on Buddhism and Taoism. Practitioners believe that illnesses are the result of bad karmas, and by becoming a practitioner, a falun (or wheel of chakra) is installed into his or her stomach which eventually eliminates all that is bad.”

The five Falun Gong exercises are named, pictured and explained in the Falun Dafa website at <http://www.falundafa.org/eng/exercises.htm#EX1>.

As noted by the leaflet supplied to the Home Office by the Falun Gong Association UK in May 2004, adherents undertake five exercises, four standing one sitting. Details are as follows:

Exercise 1 – Buddha showing a thousand hands

Exercise 2 – Falun standing stance

Exercise 3 – Penetrating the two cosmic extremes

Exercise 4 – Falun heavenly circulation

Exercise 5 – Strengthening divine powers

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

The Australian Falun Dafa Information Centre states the following:

practice of Falun Dafa is simple, yet profound and effective. It consists primarily of two components: self-improvement through studying Mr. Li's teachings, and performing Falun Dafa's five gentle exercises. The exercises, which include meditation, are easy to learn, enjoyable, and at the same time both relaxing and energising. Many students of Falun Dafa enjoy doing them together as a group outdoors. (<http://www.falunau.org/aboutdafa.htm> - Accessed 17 April 2007.)

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

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

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

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

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

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

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

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

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

The Falun Dafa website also contains information about the books *Zhuan Falun* and *Falun Gong*:

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

Key contents of *Zhuan Falun* include discussion of:

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

Referring to the book *Falun Gong*, the website states: ‘*Falun Gong* is an introductory book, systematically spelling out the practice of Falun Gong in plain, accessible language. It thus serves as an ideal entry point to beginning the practice’ (www.falundafa.org/eng/books.htm).

When and why Falun Gong started to attract government attention
Falun Gong first came to prominence in April 1999 after several thousand Falun Gong adherents staged a sit-in in Tianjin, outside the publishers of the Tianjin University journal that had published an article criticizing the movement. Official attention was heightened when more than 10,000 practitioners coordinated a peaceful demonstration

outside Beijing's leadership compound, the Zhongnanhai, on 25 April 1999. The demonstration was the first major public manifestation of Falun Gong's popularity in China, and is reported to have caught the PRC authorities unawares. The authorities seemed to be chiefly concerned about the capacity of the group to mobilise such large numbers of followers, and the incident is widely considered to have been the trigger for the initial crackdown against Falun Gong that commenced in July. The movement was branded a "threat to social and political stability" and was banned on 22 July 1999. The government launched a massive propaganda campaign to denounce its practice and the motivation of its leaders, in particular Li Hongzhi. Since then, the government's accusations have been repeatedly publicised by the state media and government officials (Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Penny, Dr Benjamin 2003, *Falun Gong: What was it? and what is it now? A talk for the Refugee Review Tribunal National Members' Conference*, 29 August; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.7-10).

Treatment of Falun Gong practitioners

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

On 1 March 2005, new religious affairs regulations came into effect which bring regulatory practices within a legal framework and into compliance with China's Administrative Licensing Law. The new regulations protect the rights of registered religious groups, but critics say they give the authorities broad discretion to define which religious activities are permissible. Only groups which meet government requirements can be registered, and the government tends to perceive unregulated religious groups as a potential challenge to its authority. The Falun Gong and other groups labelled as "cults" remain banned, and Premier Wen Jiabao's 2004 Government Work Report emphasised that the Government would "expand and deepen its battle against cults", including Falun Gong (US Department of State 2006, *International Religious Freedom Report 2006: China (includes Tibet, Hong Kong, and Macau)*, 15 September; UK Home Office, 2002, *Revolution of the Wheel – the*

Falun Gong in China and in Exile, April; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.24-31).

In its International Religious Freedom Report 2006 in relation to China the US State Department also stated that:

During the period covered by this report, government repression of the Falun Gong spiritual movement continued. Membership in the Falun Gong and other groups considered cults was illegal. Distributing Falun Gong literature or encouraging others to join the spiritual movement was punishable by criminal and administrative sanctions, including reeducation. As in past years, foreigners who distributed Falun Gong materials were expelled from the country, including an Australian expelled in October 2005 after attempting to distribute the book *Nine Commentaries on the Communist Party*. In January 2006 the Government released U.S. citizen Charles Lee after three years of imprisonment for Falun Gong-related activities. The authorities also continued to oppose other groups the Government considered "cults," such as the Xiang Gong, Guo Gong, and Zhong Gong qigong groups. (US State Department 2006, *International Religious Freedom Report 2006: China*, Section II. Status of Religious Freedom - Restrictions on Religious Freedom).

FINDINGS AND REASONS

The Tribunal finds on the basis of the applicant's passport which she provided to the Tribunal that the applicant is a citizen of China (PRC).

The Tribunal finds that the applicant gave detailed and generally consistent evidence to the Tribunal regarding her practice of Falun Gong. The Tribunal finds that the applicant demonstrated a good understanding of the moral code of *zhen shan ren* and was able to explain to the Tribunal the importance in Falun Gong of the combination of practice of physical exercises and spiritual development. The applicant was able to explain what Falun Gong meant for her personally in terms of following the moral code and developing a calmer and more positive self. The Tribunal finds that the applicant also demonstrated a reasonable understanding of other significant principles of Falun Gong, in particular the *falun* and *xinxing*. The applicant was able to explain the link between the moral code and *xinxing*, and the cultivation of a higher state of awareness. The applicant referred to the principal Falun Gong text *Zhuan Falun*. The Tribunal is satisfied she was able to explain how study of the book was important for her in her practice, though the Tribunal also finds that when it asked her to discuss some of the teachings she had learned from her study, the applicant appeared to return to a limited number of matters such as the moral code, and *xinxing*.

The Tribunal finds that the applicant knew the names of all 5 exercises. The Tribunal finds that the applicant was able to perform the 4th, 3rd and 5th exercises confidently when asked to by the Tribunal. The Tribunal is satisfied on this basis that the applicant knew how to perform the exercises.

The Tribunal finds that the applicant demonstrated a reasonable knowledge of other concepts in the practice of Falun Gong; for example, she explained how cultivation would lead to a natural rejection of meat, and she explained in simple terms the concept of the 3rd eye. The Tribunal finds that some of the applicant's knowledge of

concepts that she might have been expected to come across in her practice and studies appeared to be limited. For example, the Tribunal finds that she had a limited awareness of Li Hong Zhi's views about the state of the planet Earth in the universe, and she demonstrated a limited knowledge of the purpose of the 5 exercises. The Tribunal has some concerns about the applicant's limited level of knowledge of these matters, and her limited reference to concepts of Falun Gong that she learned from her study of *Zhuan Falun*. The Tribunal finds, however, that its concerns are generally overcome by the other positive evidence of her practice.

The Tribunal accepts that the applicant's evidence about Falun Gong is generally consistent with the independent evidence before the Tribunal. The applicant's evidence in relation to the benefits she believes she gains from Falun Gong is also consistent and typical of accounts given by genuine practitioners. The Tribunal finds that the applicant was a practitioner of Falun Gong in China since the late 1990s.

The Tribunal accepts that the applicant had contact with other practitioners in China, and was involved in the promotion of Falun Gong and the distribution of information about Falun Gong. The Tribunal finds that the applicant practiced Falun Gong publicly in China until it was banned, but was afraid to do so after it was banned, though she continued to practise in private.

The Tribunal finds that the applicant has referred to some incidents in China relating to her employment, a forced abortion, and to having to vacate her housing because it was identified for demolition. The Tribunal does not accept that the problems the applicant claims to have experienced in these areas occurred because of her practice of Falun Gong.

The Tribunal has concerns that aspects of the applicant's evidence of problems that she experienced from the authorities because of her practice of Falun Gong have been embellished. The Tribunal accepts that the applicant was detained for some period and had to participate in reeducation. The Tribunal is not satisfied that the applicant was detained again after a few years as a result of her Falun Gong practice. Though it is difficult to establish the circumstances of the problems that the applicant experienced before leaving China, the Tribunal accepts that some event occurred at the time that led the applicant to fear she would be targetted by the authorities in the future because of her Falun Gong practice, even though she had not been targetted for some time .

The Tribunal has some concerns that the applicant's travel to Country A and Country B before arriving to Australia may not be consistent with a person who has a well founded fear of being persecuted. The Tribunal finds that aspects of the applicant's evidence regarding the reasons she returned to China, that she needed to bring back information about Falun Gong, to be implausible. The Tribunal accepts, however, that at the time of her travel the applicant had not experienced problems with the authorities for a number of years, and thus may have reasonably felt that it was safe for her to return. The Tribunal has accepted above that events occurred that caused the applicant to fear that the authorities would continue to target her in the future, and accepts that this led her to take steps to leave China. The Tribunal finds that its concerns about the applicant's travel outside China, and aspects of her evidence of problems she experienced with the authorities, are overcome by the other positive evidence of her practice of Falun Gong. The Tribunal accepts that the applicant's

evidence regarding her fear is consistent with independent evidence which indicates that following the banning of Falun Gong, Falun Gong practitioners were subject to arrest, detention and torture.

The Tribunal accepts that the applicant has practised Falun Gong since her arrival in Australia, and that she took steps to practise and contact other Falun Gong practitioners shortly after arriving in Australia. The Tribunal accepts the evidence indicating that the applicant has practised regularly at a Sydney suburb, and accepts that the applicant has been involved in distributing information about Falun Gong and in attending protest gatherings in Australia. The Tribunal is satisfied for the purposes of s.91R(3) of the Act that the applicant's conduct in practising Falun Gong in Australia has been otherwise than for the purpose of strengthening her claims to be a refugee.

The Tribunal accepts that the authorities have detained the applicant in China because of her Falun Gong activities. The Tribunal accepts that if the applicant returns to China now or in the reasonably foreseeable future, she will continue practising Falun Gong as she has done since the late 1990s in China and Australia. The independent evidence confirms that the Chinese government's repression of Falun Gong activists continues unabated and it extends to followers of Falun Gong who are not prepared to renounce their beliefs. The Tribunal finds that if she were to return to China now or in the reasonably foreseeable future there is a real chance that the Chinese authorities would detect her continued practice of Falun Gong and she would be detained and harmed for reason of her beliefs. The Tribunal accepts that the persecution which the applicant fears involves 'serious harm' as required by s.91R(1)(b) of the Migration Act in that it involves a threat to her life or liberty or significant physical harassment or ill-treatment. The Tribunal is of the view that the applicant's religion or political opinion, that is her belief in Falun Gong, is the essential and significant reason for the persecution which she fears, as required by s.91R(1)(a). The Tribunal is also of the view that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c). As the Chinese Government is responsible for the persecution which the applicant fears, the Tribunal also considers that there is no part of China to which the applicant could reasonably be expected to relocate.

For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of her religion or political opinion as a Falun Gong practitioner, if she returns to China now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the Government of the People's Republic of China. There is no material which indicates the applicant has a legally enforceable right to enter and reside in any country other than her country of nationality, the People's Republic of China. The applicant is also outside her country of nationality.

The Tribunal is therefore 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.

CONCLUSIONS

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

DECISION

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