

071152034 [2007] RRTA 34 (7 March 2007)

DECISION RECORD

RRT CASE NUMBER: 071152034
DIAC REFERENCE(S): CLF2006/143649
COUNTRY OF REFERENCE: China (PRC)
TRIBUNAL MEMBER: Shahyar Roushan
DATE DECISION SIGNED: 7 March 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 his review rights by fax.

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.

The applicant is currently in Immigration Detention Centre.

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 (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 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, 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) 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 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 appeared before the Tribunal at a hearing to give evidence and present arguments.

The applicant was represented in relation to the review by his registered migration agent.

Application for a Protection Visa

According to his application for a protection visa, the applicant is a national of China. He has not specified his religion. He was a university student for a period of four years before he returned to his parental home and lived at the same address until his departure from China. He worked as an "insurance agent" before he came to Australia in order to study. He departed China legally. He is no longer in possession of his passport and claims to have lost it.

The applicant claims to have become a Falun Gong practitioner after arriving in Australia and fears persecution for that reason if he were to return to China.

In support of his application, the applicant provided a statement containing the following additional information.

He was born into an intellectual family. His parents had bad physiques and suffered from many diseases which did serious harm to their life and work. His mother was introduced to Falun Gong in 1997 and after 2 months she found an encouraging improvement to both her physical and mental health. Surprised by the noticeable improvements in his mother's condition, his father began to practice Falun Gong with her. During the period his parents practiced Falun Gong, the applicant was at university and could only get information about the changes by phone. At that time he thought that Falun Gong was a kind of Chinese Kung Fu so he didn't pay much attention to it.

Following the Chinese government's crackdown on Falun Gong practitioners in 1999, his parents were detained and subjected to bullying, humiliation, beatings and detention. Because of their brutal treatment his parents promised to stop practicing Falun Gong. This decision was against their will, but they had no choice. When he went home during holidays he saw sign of torture in his parents. His mother was in a bad mental state, speaking in a disorderly fashion, while his father usually said nothing all day long. Despite being set free, the police and official local residents committee continued to monitor his parents. They were frequently interrogated and asked if they practiced Falun Gong, their house was searched for Falun Gong related material and because of the continuous harassment they were unable to live or work as before.

After graduating from university he encountered problems while looking for a job because of his family's association with Falun Gong. As he was also perceived or suspected of being a member, a government road construction company withdrew an offer of employment extended to him earlier. Friends who worked at that company told him that this was for reasons related to Falun Gong. Eventually he found a job with an insurance company operating as a joint venture with an overseas insurance company. During the course of his employment at his company, the local police and residents committee kept harassing his company to find out what he was doing. They spoke to his boss on a number of occasions and asked about the applicant and whether he had any links with Falun Gong. This constant harassment caused him problems at work and after a year he was forced to resign.

Finding survival difficult in China, he obtained a student visa and came to Australia. In Australia whilst visiting the Chinese consulate he met some members of Falun Gong who were demonstrating outside. Remembering his parents, he talked to them and learned more about the movement from them. Not long after this communication with Falun Gong members, he began to practice Falun Gong. At first he just read brochures and began to do the exercises and in early 2004 he read Falun Gong related literature and started to practice irregularly with a group in a park. He felt the impact of the practice on his physical and mental health and felt that he could not give it up.

As a result of his commitment to Falun Gong he thought again about his parents and the many others in China who had suffered because of the Chinese government's repression of Falun Gong. As far as he is aware, his parents no longer practice Falun Gong, but are still harassed by the authorities. Eventually they could not tolerate this treatment any longer and they moved to his sister's house. They have been unable to obtain temporary residence permission to live with his sister so their situation there is not secure.

Whilst in Australia the applicant's student visa expired, but he remained in Australia out of fear. He did not have a good understanding of Australia's migration rules and feared that he would be deported back to China if he came forward and asked for help. Since being detained he has continued to practice Falun Gong. He is committed to practising if he returns to China as he believes that his health will suffer if he ceases to practise regularly. There are many informants in Australia and it is likely that his involvement with Falun Gong here is known to the Chinese authorities.

Application for Review

In support of his application for review, the applicant provided a detailed statement to the Tribunal providing more information about his claims. The applicant's representative also provided a submission containing her response to the delegate's concerns and additional country information regarding the situation of Falun Gong practitioners in China.

The Hearing

The applicant confirmed the accuracy of the information contained in his application for a protection visa and his accompanying statement. He also confirmed the accuracy of the information contained in the statement provided in support of his application for review.

The applicants' account of his addresses and work history in China was consistent with the account provided in his application for a protection visa. He stated that he had studied at university for four years. Upon graduation, he returned home and lived with his parents until

he came to Australia. Prior to travelling to Australia he worked at an insurance company, but was forced to resign because of police harassment and discrimination at work place. In relation to the latter, he explained that he was suspected of being a Falun Gong practitioner, even though he was not, and practitioners are regarded as being stupid or in similar terms. A few months after resigning, he came to Australia in pursuit of a better future. On one occasion he returned to China and stayed with his parents for one month. His parents have since moved and are being supported by his sister.

He began practising Falun Gong a couple of years ago when he encountered Falun Gong practitioners in front of the Chinese consulate where he had to obtain visa related documents. Asked why he would engage with Falun Gong practitioners in front of the consulate, he explained that on this occasion he was looking for a parking spot in front of the consulate when an old man pointed one out to him. After parking his car he approached the man to thank him and the man gave him Falun Gong brochures which he took home with him. Having read the brochures, he returned to the consulate a week later and this time he was given a copy of a book called Falun Dafa. It took him two to three months to read the book which contained instructions on how to do the five sets of exercises. He tried doing the exercises at home, but found them difficult. So he went to a park where he had seen Falun Gong practitioners practising. He frequented the park about three times a week on his way to the university and practised by following other practitioners. He was told that if he needed professional advice he should go to another location where a bigger group had started practising. However, he seldom went to this area. Instead, once or twice a month he went to a study meeting at a local library. He stated that for last couple of years he has been practising Falun Gong by carrying out the five set of exercises once a day and mainly in the privacy of his home.

The applicant found the practise of Falun Gong to have a calming effect on him. He was moved by the contents of Falun Dafa and considered Falun Gong to be a moral guide on how to be a better human being and how to treat others. He explained that if, for instance, a conflict was to arise between two individuals one must assess one's self first and examine his own shortcomings. Nothing is gained from conflict even if one was to win the conflict. Falun Gong teaches that human beings were once higher beings who have fallen below their station and they need to go back to their original state. He went on to accurately name the fourth and the fifth set of exercises, demonstrate the fourth set, explain the principle behind each exercise and recite the specific verses that practitioners must be mindful of when carrying out the exercises. He also provided a detailed and persuasive explanation of Falun Gong's attitude towards eating meat, seeking hospital treatment, jealousy, and spreading the practise of Falun Gong, as well as its philosophy regarding the concept of karma.

The Tribunal asked him about the extent of his communication with his parents regarding their situation while he was still in China. He said he knew that they had to report to the local police station regularly and that sometimes the police and members of the neighbourhood committee visited his parents at home. He knew that these visits were related his parents' association with Falun Gong, but he did not ask many questions as he did not want to cause them pain. When he did question his parents about their visits to the police station, he was told nothing had happened and that they had no choice but to attend these sessions.

The Tribunal put to him that his Falun Gong related activities in Australia could be construed as a deliberate attempt to find a way to remain in Australia permanently. He said when he started practising Falun Gong his student visa was still valid and if he wanted to use Falun Gong as a reason to stay in Australia, he would have become more active by attending

demonstrations in front of the consulate or taking photographs of himself as Falun Gong gatherings. He considers such behaviour almost blasphemous.

It was put to him that he was well aware of the consequences of practising Falun Gong in China and asked him why he had not applied for asylum earlier. He said because he believed that he could apply for permanent residency on other grounds. After his student visa expired, he did not know what to do or what his options were. He was asked why he did not seek advice from compatriots. He said he did not want to tell everyone and make the matter public.

He was asked why he returned to China previously. He said whilst he had been harassed before, he had never been detained in China. He also had to return because his mother was seriously ill. He was asked if anything happened to him on that occasion. He said he was summoned to the police station once and was asked a few questions about his parents, their activities and what could be done to stop them from perusing Falun Gong. The Tribunal asked him what would happen to him if he were to return to China. He said he is now devoted to Falun Gong and did not think that he would quit Falun Gong. He said according to Master Li, practitioners must protect themselves, but not hide their beliefs.

Evidence from other Sources

Background to Falun Gong

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 Falungong 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 Falun Gong 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 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. In late July 1999, 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 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).

According to the Department of Foreign Affairs and Trade (DFAT):

Chinese Authorities ... are more concerned by the ability of Falungong members to organise themselves and to propagate Falungong beliefs. Laws banning Falungong are aimed at preventing the formation and public assembly of groups and the use of public means (books, videos, leaflets, mass media etc.) to promote Falungong.” (DFAT, 2002, *Country Information Report No 136/02, Falun Gong Practitioners*, 20 June – CISNET China CX64757)

A 2005 DFAT report confirms that this advice is still valid (DFAT 2005, *Country Information Report No. 05/34: China: Update on Falun Gong*, 30 June – CISNET China CX125116).

Overview of types of treatment of Falun Gong practitioners since 1999

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

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

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

Treatment of family members of Falun Gong practitioners

The US Department of State's *Country Reports on Human Rights Practices – China (includes Tibet, Hong Kong, and Macau) – 2003* notes in respect of relatives of dissidents generally:

Authorities also harassed relatives of dissidents and monitored their activities. Security personnel kept close watch on relatives of prominent dissidents, particularly during sensitive periods. For example, security personnel followed the family members of political prisoners to meetings with Western reporters and diplomats. Dissidents and their family members routinely were warned not to speak with the foreign press. Police sometimes detained the relatives of dissidents

(US Department of State 2004, *Country Reports on Human Rights Practices – China (includes Tibet, Hong Kong, and Macau) – 2003*, February 25, Section 1f.).

Specifically in respect of Falun Gong members, the US State Department, in its 2001 *International Religious Freedom Report*, noted that the PRC had intensified its campaign to repress Falun Gong followers in early 2001, (as) the PRC authorities were frustrated by their lack of progress in eradicating the organisation and, particularly, in minimising its public manifestations such as public group exercises and highly visible demonstrations. ... The report stated in this respect that:

The tactic used most frequently by the Central Government against Falun Gong practitioners has been to make local officials, family members, and employers of known practitioners responsible for preventing Falun Gong activities by individuals

(US Department of State 2001, *International Religious Freedom Report 2001: China*, October, section II).

The Human Rights Watch report, *Dangerous Meditation: China's Campaign Against Falungong*, similarly details the progression of the PRC Government's campaign against the Falun Gong movement in late 2000 and during 2001:

The most significant changes came after a Central Work Conference (a meeting of high Party officials from all over China called by the Party Central

Committee) in mid-February 2001, when President Jiang told provincial and municipal Party officials to strengthen local control over Falungong practitioners. The plan called for the immediate formation of local “anti-cult task forces” and similar units in universities, state enterprises, and social organizations to augment the “610 office” (named for the date of its founding), which reportedly had been directing the crackdown since June 10, 1999, and the “propaganda work office, which was in charge of the media campaign.” It ordered local officials to detain active practitioners and to make certain that families and employers guaranteed the isolation of those unwilling to formally recant (Human Rights Watch, 2002, *Dangerous Meditation: China’s Campaign Against Falungong*, January (released 7 Feb 2002), ‘Section III – Defiance and Response’ – Human Rights Watch, 2002, *Dangerous Meditation: China’s Campaign Against Falungong*, January).

And continues:

[B]ehind the scenes, China’s leaders continued to enforce the “responsibility system,” whereby “all levels of government leaders, police, neighborhood cadres, work units and family members must receive punishment” if a practitioner reaches Beijing to protest. The tactic made it possible to keep Falungong from making international headlines and allowed local authorities to continue to persecute believers with little chance of eyewitness international coverage

(Human Rights Watch, 2002, *Dangerous Meditation: China’s Campaign Against Falungong*, January (released 7 Feb 2002), ‘Section III – Defiance and Response’ – Human Rights Watch, 2002, *Dangerous Meditation: China’s Campaign Against Falungong*, January).

A report on the Australian Falun Dafa Information Centre website states:

Over one hundred million Falun Gong practitioners and several hundred millions family members of practitioners have been living under pressure and fear for several years. Institutes at different levels in the Party and in the government, the army, schools at different levels, scientific research institutes, news media, business enterprises, public security offices, courts, the Procuratorate [a unique legal system in China dealing with government employees and Party members], prisons, detention centers, forced labor camps, and even prisoners or detainees in detention centers and forced labor camps, have all been forced to take part in the persecution and become accomplices either willingly or unwillingly, committing crimes of all different levels of depravity (‘The Complete Illegality of the Jiang Regime’s Persecution of Falun Gong’ 2002, The Australian Falun Dafa Information Centre web site, undated, p.1 – <http://www.falunau.org/illegalpersecution.htm> – Accessed 16 July 2004).

The report continues:

If a practitioner and his family members were killed because of his belief in Falun Gong, then their distant relatives may not even dare to take a look at their corpse or inquire about the cause of their deaths

(‘The Complete Illegality of the Jiang Regime’s Persecution of Falun Gong’ 2002, The Australian Falun Dafa Information Centre web site, undated, p8 – <http://www.falunau.org/illegalpersecution.htm> – Accessed 16 July 2004).

Falun Gong practitioners themselves have documented in a series of publications the different forms of mistreatment suffered by practitioners from the time of the first arrests in China in July 1999. These publications contain personal accounts provided by Falun Gong practitioners in China via phone calls, emails, faxes, etc. The publication claims:

some workplaces have warned people that they may be fired or their jobs may be changed if they are unable to prevent their family members from practicing Falun Gong

(Falun Gong, *A Report on Extensive and Severe Human Rights Violations in the Suppression of Falun Gong in the People’s Republic of China*, Compiled and Edited by Falun Gong Practitioners, March 2000, Book 1: The Report (from 1999 to March 2000), Part I: Summary from <http://hrreport.truewisdom.net>) p.12)

A 2003 paper by the Immigration and Refugee Board of Canada quotes a representative of the Falun Dafa Association of Canada (FDAC) who reported that she has “heard/read quite a number of stories [where] supporters, especially family members were persecuted due to their support to Falun Gong, or simply because they are family members” (28 Nov. 2003). According to the representative, these non-practitioners may be “interrogated, arrested, beaten, removed from their jobs, demoted, or refused bonuses” (FDAC 28 Nov. 2003). It is noted that she the examples she provides relate to people who have published information on the internet criticizing the Chinese authorities (Immigration and Refugee Board of Canada 2003, *CHN42185.E – China: Situation of people who do not practice Falun Gong, but who oppose the government’s policy of labelling the group a cult and who encourage others to learn about Falun Gong (2001-2003)*, 2 December).

According to Jennifer Zeng, a Falun Gong practitioner who was arrested, detained and tortured before fleeing to Australia,

My husband, who is not a Falun Gong practitioner, back in China he was actually arrested in 2002, and detained for one month, and treated and tortured very badly. And after he was released, they still, even today, he is still monitored by the security department. His friends spent a huge amount of money to try to bribe a police to get him out, and because he’s the only son of the family, his mother was so terrified that she passed away soon after he was released. And all my family back in China is now monitored. I also know very clearly that the police inside China know everything I’m doing here in Australia. I was actually warned not to use my land phone to talk to people inside China – the person who warned me said that he had very strong reason to believe that my telephone is monitored. Even my landline telephone is not safe (Transcript of RRT Members Seminar “Falun Gong: A Practitioner Perspective” held at Sydney RRT/MRT on 22 June 2006).

FINDINGS AND REASONS

The applicant’s claims are based on the Convention grounds of political opinion, religion and membership of a particular social group. He essentially claims that whilst he was not a Falun

Gong practitioner in China, as a consequence of his parents being practitioners, he was subjected to harassment by the authorities. He took up the practise of Falun Gong in Australia and claims to be committed to it. He fears harm if he were to return to China.

At the hearing before the Tribunal the applicant gave his evidence in a straightforward manner and his evidence was largely consistent with his written claims. Although the applicant's written submission to and oral evidence before the Tribunal contained more details compared to the contents of his written statement to the Department, the additional information did not contradict his earlier claims and the Tribunal did not form the view that he was embellishing his claims. Overall, the Tribunal found him to be a reliable witness and is not prepared to draw adverse credibility findings on the basis that he provided more information, some of which was new, to the Tribunal.

The Tribunal accepts that the applicant's parents were Falun Gong practitioners in China. The Tribunal accepts that they were subjected to mistreatment and continued harassment for that reason. The Tribunal accepts that whilst the applicant was not a Falun Gong practitioner, he was also subjected to some harassment for the reason of his parents' association with Falun Gong. This is consistent with the country information consulted by the Tribunal regarding the treatment of practitioners' family members by the authorities in China. The applicant, however, has repeatedly stated that he was not a Falun Gong practitioner in China, was never detained and was not mistreated. He came to Australia not because he was being harassed, but in order to find a brighter future. Indeed, he visited China without harbouring any Falun Gong related apprehension.

The applicant's fear of returning to China arises out of his decision to accept and practise Falun Gong in Australia. At the hearing, he provided a simple and plausible account of his encounter with a Falun Gong practitioner in front of the Chinese consulate and the subsequent evolution of his interest in and commitment to the practise of Falun Gong. He spoke convincingly about what Falun Gong means to him, why he has been inspired by its principles and how he has continued to practise Falun Gong in Australia. He displayed a sound knowledge of Falun Gong literature, including Master Li's views on eating meat, seeking hospital treatment, jealousy, the concept of karma and how to spread the practise of Falun Gong. The scope of the applicant's knowledge of Falun Gong as displayed at the hearing, as well as his ability to accurately demonstrate one set of exercises and articulate the principles behind this and other sets gave the impression that his understanding of Falun Gong is the product of continued interest and sustained commitment over a period of time. Having regard to the applicant's family background, his reasons for adopting the practise of Falun Gong in Australia, the level of knowledge he displayed at the hearing and his overall credibility, the Tribunal is satisfied that his conduct in Australia has been otherwise than for the purpose of strengthening his claim to be a refugee within the meaning of the Convention.

The independent evidence consulted by the Tribunal is to the effect that thousands of Falun Gong practitioners have been arrested, detained and imprisoned. Practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, labour camps, and extra-judicial "legal education" centres (see US State Department, *International Religious Freedom Reports: China (includes Hong Kong and Macau)*, 2005). The Falun Gong continues to be labelled as "cult" and remains. Premier Wen Jiabao's Government has emphasised that it would "expand and deepen its battle against cults", including Falun Gong (US Department of State 2005, *International Religious Freedom Report 2005: China (includes Tibet, Hong Kong, and Macau)*, 8 November; UK Home Office, 2002, *Revolution*

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

The Tribunal is of the view that the applicant is genuinely committed to Falun Gong and his activities in Australia are a genuine reflection of his beliefs. The Tribunal accepts that the applicant will continue to practice Falun Gong if he were to return to China. The Tribunal finds that the applicant's chance of facing arrest, imprisonment and torture for the reason of his political opinion, religion and membership of a particular social group, if he returned to China now or in the reasonably foreseeable future, is real. The Tribunal considers treatment to amount to "serious harm" as required by paragraph 91R(1)(b) of the Act. The Tribunal finds that the applicant's chance of facing adverse treatment is exacerbated because of his parents' association with Falun Gong in China which brought them to the attention of the authorities. As the applicant's fear of harm is from the authorities and there is no evidence before the Tribunal to suggest that he could avoid harm anywhere within China, the Tribunal is not satisfied that the applicant could avoid the persecution he fears by internally relocating. The Tribunal is satisfied that the applicant does not have a right to enter and reside in any other country besides China. The Tribunal therefore is satisfied that the applicant has a well-founded fear of persecution for a Convention reason.

CONCLUSIONS

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

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant.

Sealing Officer's I.D. PRECSA