

**071576767 [2007] RRTA 223 (25 September 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071576767

**DIAC REFERENCE(S):** CLF2007/49583

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

**TRIBUNAL MEMBER:** Jane Marquard

**DATE DECISION SIGNED:** 25 September 2007

**PLACE OF DECISION:** Sydney

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 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 letter.

The delegate refused the visa application as 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  
CLAIMS AND EVIDENCE**

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

## Protection visa application

According to his application, the applicant is a Chinese man from Guangdong. He was educated and completing his schooling. He is married with children. He was a farmer up until the early 2000's. After this he worked he worked as a tradesman in Guangdong County. The applicant claimed that:

- He was born in County A, Guangdong Province;
- His parents were farmers;
- He has siblings;
- He is married with children;
- After he graduated he worked on his family's farm;
- The farmland belonged to the government but has been controlled by local corrupt officials; who sold the farms to some private businesses to gain profit. During recent years, more and more farmers lost their farmland and their main income source;
- His relative knew that a serious threat to his farmland was coming. So he warned farmers in his home village to take care of their farmland and suggested farmers unite to form a strong power to strive for human rights. However the farmers were not unified, "just like being described in a Chinese idiom – a sheet of loose sand." Few of them gave responses to his relatives suggestion;
- All the farmland in their village was sold to a private businessman, in the early 2000's. The applicant's family lost their farmland permanently. Not long after, his relative passed away because he was "terribly indignant";
- They did not receive any compensation from the government or the businessman. They were told the farmland belonged to the government and the government was entitled to do what it wanted to do;
- The only benefit for the applicant was that each family could select one person to work at the business which was established by the businessman in Town B. The applicant was selected to work at the business. His job was a tradesman and it was very hard. However he did his best to keep the job to maintain basic living for his whole family;
- The business rarely paid monthly salaries on time. They often paid once in two or three months. This made them face many difficulties and they really needed the money to maintain daily living. The applicant found it difficult to change jobs as he was a farmer without particular skills;
- In mid 2000's for a period of several months the business only paid their employees once. After that they received nothing. Many months later they asked many times for their salary. This made employees very angry;
- A month later the applicant's good friend Mr C, a professional at the business suggested to the applicant that they unite to strive for basic human rights, reminding him of his relative's experience and learn a lesson from it. Mr C persuaded the applicant and he enlisted employees from his village. The applicant reminded the villagers of what his relative had said and why he died. He obtained great support;
- Soon after Mr C and the applicant organised lots of employees to protest in front of the business, asking the business to make full payment immediately. The production of the business was stopped. Unexpectedly many Public Security Bureau police arrived, denounced the protest as an anti-

government strike and ordered them to stop. Mr C and the applicant tried to explain to the police the purpose of the strike but they were not given a chance. They were both handcuffed and thrown into a police car. Other protestors tried to save them and were driven away with police sticks. Eventually the protest was suppressed and many protestors were seriously wounded;

- The applicant and Mr C were detained for a period at the detention centre. The police tried to force them to confess their anti-government movement which was firmly refused by the applicant and Mr C at the beginning. As a result both were subject to “miserable persecution not only by the police but also by those criminals in the detention centre”;

- The police used various methods to mistreat and torture them. Finally the applicant and Mr C gave up and signed a confession prepared by the police. Both were required to pay RMB an amount of money. “But we really did not have such big money, and we had to work as [tradesmen] at a [workplace], where the PSB was [carrying out work] without any payment”;

- For several months, the applicant and Mr C worked ten hours a day under surveillance. They had no freedom except moving between home and the workplace;

- It was an “open secret” that the businessman had bribed the PSB. The businessman warned other potential protesters;

- The applicant now has a bad record because he had to confess. He claims that what the PSB has done is illegal because there is no evidence of them being anti-government;

- The applicant and Mr C were dismissed by the business after their arrest. They are still owed money for 8 months work;

- The applicant and Mr C could not give up their struggle and for a period of several months they sent many petitions to various government agencies, local and central. They never received any help. The PSB gave them a lot of trouble and required them to report at least once a month. They were frequently warned or threatened or questioned by police at home or in the station or in the street. The applicant’s family members tried to stop him protesting;

- From late 2006 the applicant and Mr C organised some reliable friends to distribute propaganda materials to protest directly against the government, condemning the authorities for trampling down basic human rights of ordinary people and for corruption. They called for ordinary people to unite for basic human rights. They did not put their names on the propaganda, for their own safety;

- His family was scared about his activities and begged him to give up his activities for the sake of his family. Finally he left China in early 2007;

- After he left many police went to his home in China and searched his house. A family member was taken to the station and interrogated. In the following days other family members were also interrogated by police. The police told his family that he had been found to be one of the two main organisers of distribution of anti-government propaganda materials, along with Mr C. Mr C has been arrested and has confessed; and

- The applicant seeks protection in Australia as he believes he would be persecuted on his return to China.

## Passport

The applicant's passport was issued in Guangdong. He travelled to Australia on a valid visa.

## Independent Country Information

### Land appropriation, protests and government response

The US Department of State Country Report on Human Rights Practices 2006 reported the following on freedom of assembly:

### Freedom of Peaceful Assembly and Association

The law provides for freedom of peaceful assembly; however, the government severely restricted this right in practice. The law stipulates that such activities may not challenge "party leadership" or infringe upon the "interests of the state." Protests against the political system or national leaders were prohibited. Authorities denied permits and quickly suppressed demonstrations involving expression of dissenting political views.

### Freedom of Assembly

At times police used excessive force against demonstrators. Demonstrations with political or social themes were often broken up quickly and violently. Widespread market reforms and rapid growth have resulted in increased social unrest, with large-scale public disturbances on the rise for more than a decade. As in past years, the vast majority of demonstrations during the year concerned land disputes, housing issues, industrial, environmental, and labor matters, government corruption, taxation, and other economic and social concerns. During the first half of the year, public security authorities reported 39,000 "public order disturbances," a 2.5 percent decrease from the same period in 2005, although these statistics were widely viewed as unreliable. While the scale of disturbances and incidents varied, some included thousands of participants. In April, for example, up to 3,000 riot police used tear gas and water cannons to disperse 4,000 villagers gathered to protest destruction of an unauthorized, farmer-initiated irrigation project in Bomei Village, Guangdong Province. Land protests involving hundreds or thousands of protesters also continued (see section 1.a.). In January one villager died and as many as 100 were injured when police disrupted 3,000 residents at a sit-in convened over a land dispute in Zhongshan City, Guangdong Province. In April more than 50 villagers were injured when 1,000 riot police confronted 2,000 villagers peacefully protesting a land dispute near Guangdong Province's Foshan City.

Authorities detained potential protesters before the June 4 anniversary of the Tiananmen massacre, the first anniversary of Zhao Ziyang's death in January, and the March plenary sessions of the NPC and CPPCC. Dissidents were detained around the time of other sensitive events to head off public demonstrations (see section 1.d.). Labor protests over restructuring of state-owned enterprises and resulting unemployment continued, as did protests over environmental degradation and major infrastructure projects, such as dams. All concerts, sports events, exercise classes, or

other meetings of more than 200 persons required approval from public security authorities. In practice much smaller gatherings also ran the risk of being disrupted by authorities. Unlike previous years, there were no sizable incidents of anti-Japanese protests.

The government continued to wage a severe campaign against the Falun Gong movement. Falun Gong practitioners were subject to close scrutiny by local security personnel, and their personal mobility was tightly restricted, particularly at times when the government believed public protests were likely.

Persons petitioning the government continued to face restrictions on their rights to assemble and raise grievances. Official news media reported that citizens presented 12.7 million petitions to "letters and visits" offices in 2005, but only 0.2 percent of petitions filed received a response. Most petitions mentioned grievances about land, housing, entitlements, the environment, or corruption. Petitioners largely sought to present their complaints at national and provincial "letters and visits" offices but also targeted foreign embassies and media to bring attention to their complaints. In Guangdong there have been many protests over compensation for land acquisition:

For more than two decades it has set the pace for China's economic development. It used its closeness to Hong Kong and the commercial instincts of its people to become the richest province in the country, and the workshop of the world. But a series of protests, disputes and scandals have turned this glittering jewel in the reformists' crown into something closer to a blot on the political landscape - the grim embodiment of all that is going wrong with China's unique blend of capitalism and communism. In the latest incident, last weekend, many casualties were reported when police broke up a rural protest over compensation for land acquired for a new road in Sanjiao township (Luard, T. 'Conflicts mar Guangdong dream' 2006, BBC News, 17 January. <http://news.bbc.co.uk/2/hi/asia-pacific/4620450.stm> - Accessed 3 October 2006).

The BBC in January 2006 reports that mass protests and protests by farmers appears to be fairly common, and increasing in frequency:

Chinese Premier Wen Jiabao has said that land seizures by local authorities are a key threat to rural stability. He said land grabs and a lack of proper compensation for those affected was sparking "mass incidents". His comments were published a day after the government said public disturbances in 2005 had risen more than 6% on 2004. The latest mass protest took place in the southern city of Shenzhen on Thursday, after police shut down night spots as part of an anti-vice campaign

...

"Some places are unlawfully occupying farmers' land and not offering reasonable economic compensation and arrangements for livelihoods, and this is sparking mass incidents in the countryside," he said. He said farmers were paying the price for China's rapid urbanisation.

Correspondents say the comments show how worried Beijing is becoming about instability in the countryside, where the majority of China's population still lives, while corrupt local authorities often ignore orders from the central government.

In one recent incident, villagers in southern China's Guangdong province said a teenage girl was killed last week when police broke up a protest over land taken over for development, a charge the local authorities denied ('Chinese PM warns on rural unrest' 2006 BBC News, 20 January <http://news.bbc.co.uk/2/hi/asia-pacific/4630820.stm> - Accessed 3 October 2006 ). In the incident in Sanjiao village (mentioned above), the BBC reports that:

A number of villagers in southern China have been injured after police used batons to break up a protest over a land dispute, according to reports. Protesters had blocked a highway in Sanjiao village, Guangdong province, to complain they were not paid enough for land bought to build a road. "Many people were injured," a man told the Associated Press news agency - but a government official has denied this

...

With recent figures showing there were 74,000 protests in 2004, China's leaders are very worried about rising social unrest, says our correspondent. At least three people were killed after police opened fire on protesters in the Guangdong village of Dongzhou in December, drawing criticism from Chinese intellectuals.

...

The Sanjiao protests were fuelled by anger that villagers had not received enough compensation for land taken to build a road leading to a highway. A man quoted by AFP news agency reportedly said villagers were also angry over the sale of local land to a Hong Kong-based developer. A local government official told the BBC the police was sent on Saturday to quell a four-day-old protest. He denied anyone had been injured.

According to a man interviewed by AFP news agency, the villagers started Saturday's protest in the evening in order to avoid being filmed by police cameras, which had recorded their attempts to stage demonstrations earlier in the week.

Hospitals reported receiving injured protesters on Saturday, the agency reports.

"Between 30 to 50 people were injured as police were attacking anyone they saw," a man who gave his name as Tan told the AFP agency ('Villagers clash with China police' 2006, BBC News, 15 January, <http://news.bbc.co.uk/2/hi/asia-pacific/4614124.stm> - Accessed 3 October 2006).

The most serious incident identified was in December 2005, when 3 protesters were killed:

Paramilitary police last week opened fire on villagers protesting over the seizure of land for a power plant in Dongzhou, Guangdong province. The government has said three people were killed while villagers say that up to 20 were shot dead (Lim, K. 'China scholars condemn shootings' 2005, BBC News, 13 December. <http://news.bbc.co.uk/2/hi/asia-pacific/4523504.stm> - Accessed 3 October 2006).

Academic Thomas Lunn in a recent paper for the US Congressional Research Service presents a summary of the government's position on land appropriation and social unrest in the countryside:

The PRC government's efforts to address social unrest have been hampered by tensions between the central and local governments, institutional weaknesses, inconsistent policies, and the inability or unwillingness to undertake fundamental political reforms. The central government has acknowledged that the grievances of many citizens have been legitimate, and occasionally has corrected local policies that have violated the law or punished local officials for employing excessively violent tactics against protesters. However, the state has reserved the authority to arbitrarily determine which protest activities are acceptable. It has not developed adequate institutions that protect human rights, cede political power to social groups, ensure judicial independence, and resolve social conflict. Many small demonstrations have been tolerated, but marching, organizing, and talking to reporters have brought harassment and repression by government authorities. At the end of 2005, the central government pledged a number of additional reforms aimed at rural unrest, including better management of land use, strengthening the legal system, protecting farmers' land, raising rural incomes, increasing social spending on health care and education, and abolishing the national tax on farmers. However, these policies will likely be resisted by local officials whose power remains unchecked and who are desperate to attract investment and prone to corruption.

(Lum, Thomas 2006, Social Unrest in China, US Congressional Research Service, 8 May, p.8 <http://www.fas.org/sgp/crs/row/RL33416.pdf> – Accessed 12 December 2006 pp.5-6).

Expropriation of farmland by local, provincial or national governments is covered by the Land Administration Law, which permits the state to expropriate land in the public interest in return for compensation (for more on the process, see Asian Development Bank 2006, Reforming the Legal and Policy Framework for Land Acquisition to Manage Impoverishment Risks, Capacity Building For Resettlement Risk Management Series, People's Republic Of China PRC Thematic Report No. 4, March <http://www.adb.org/Resettlement/activities/TA6091REG/PRC-Thematic-Report-4.pdf> – Accessed 14 December 2006). As many such expropriations are carried out by corrupt local officials with inadequate compensation, economically disadvantaged peasants have engaged in mass protests, some of them violent.

As noted by Lum above, the government has acted against corrupt officials in some land disputes. The Economist noted that in one case, after one protest received media publicity, officials and businessmen were arrested:

Tens of thousands of disputes arise in China every year over the appropriation of farmland, many of them violent. Yet a fracas on June 11th in the village of Shengyou in Hebei Province, about 200km (125 miles) south of Beijing, has aroused unusual attention in the official media. A video smuggled out by one of the villagers shows his fellow residents being beaten with staves and shovels by a mob of 300 or so helmeted young men. Shotguns fired by some of the thugs can be heard above yells and screams. Six villagers were killed, and around 50 admitted to hospital.

With copies of the video circulating widely on the internet, the authorities responded quickly. The mayor and Communist Party chief of Dingzhou municipality, to which the village belongs, were sacked. The official media reported that 22 people had been arrested, including the bosses of a firm contracted by a local state-owned power plant to build a waste-processing plant on Shengyou's fields.

('China's land disputes: Turning ploughshares into staves' 2005, Economist, 23 June [http://economist.com/world/asia/displayStory.cfm?story\\_id=4109014](http://economist.com/world/asia/displayStory.cfm?story_id=4109014) Accessed 14 December 2006)

While the government action in this case appears to be an exception, the national government has condemned corruption in land deals and illegal land seizures and called on local officials to obey the law. The BBC recently reported:

Chinese Premier Wen Jiabao has said that land seizures by local authorities are a key threat to rural stability. He said land grabs and a lack of proper compensation for those affected was sparking "mass incidents". His comments were published a day after the government said public disturbances in 2005 had risen more than 6% on 2004.

...

"Some places are unlawfully occupying farmers' land and not offering reasonable economic compensation and arrangements for livelihoods, and this is sparking mass incidents in the countryside," he said. He said farmers were paying the price for China's rapid urbanisation.

Correspondents say the comments show how worried Beijing is becoming about instability in the countryside, where the majority of China's population still lives, while corrupt local authorities often ignore orders from the central government. ('Chinese PM warns on rural unrest' 2006, BBC News, 20 January <http://news.bbc.co.uk/2/hi/asia-pacific/4630820.stm> – Accessed 3 October 2006). A number of reports note that, while there are legal measures which farmers can take against the expropriation of land with inadequate compensation, these measures are weak and rarely successful. Human Rights Watch discusses the situation for the related issue of forced evictions:

China's weak judicial system also frequently fails its citizens in this matter. Evicted residents have tried to seek redress in the local courts, but many find that courts refuse to hear the cases because of pressure on judges and lawyers by local Communist Party officials. In the rare instances when a court finds in favor of residents, their homes are likely to have already been demolished. ... Given the lack of routes for legal redress, it is unsurprising that many angry residents have taken to the streets to protest. (p.3)

In many cases, tenants are given little or no notice of their evictions, are mired in arbitrations procedures handled by government officials with an interest in their eviction, never receive their promised compensation, and are denied justice in local courts. (p.8)

All these problems lead many who have sought and failed to find redress in the arbitration system to take their cases to court. However, those who do so, and who are



able to find and afford a qualified lawyer to represent them, are likely to encounter familiar conflicts of interest in the court system. Chinese legal experts say that many courts refuse to hear cases brought by evicted urban residents. One resident told Human Rights Watch that even when the municipal department has clearly not followed procedures spelled out in the regulations, such as obtaining a relocation agreement signed by developer and resident, the court may still find against the resident. Political interests may intercede: China's judicial structure permits local Communist Party committees to decide which cases are and are not heard by courts. In some demolition and eviction cases where there are strong official interests, Party committees may instruct judges to refuse to hear the cases. In others, courts simply tell plaintiffs that demolition and eviction cases are "outside of their area of responsibility."

In the wake of the jailing and conviction of Shanghai lawyer and tenants' rights advocate Zheng Enchong, some residents and lawyers told Human Rights Watch that lawyers are afraid to take forced eviction cases. (pp.16-17)

(Human Rights Watch 2004, Demolished: Forced evictions and the tenants' rights movement in China, March, Vol.16, No.4(C))

A US Congressional-Executive Commission on China report notes that:

The inability of government institutions and legal mechanisms to address corruption and social conflicts magnifies public anger. Official statistics indicate that the number of citizen petitions to government offices is growing rapidly, but according to Chinese scholars, government agencies address only about 0.2 percent of them. Chinese citizens may sue government officials under the Administrative Litigation Law, but they face a number of obstacles in successfully bringing such claims. These obstacles include a lack of legal representation, weak judicial capacity, Party and government interference in the courts, judicial corruption, and the prospect of official resistance or even retribution. In some cases, authorities specifically instruct courts not to accept too many administrative claims. Chinese law prohibits citizens from forming independent civil society organizations to support citizen complaints, and the Party limits political participation to channels that it designates, monitors, and controls. Without effective administrative, legal, and political channels through which to redress their grievances, citizens often have little choice but to protest. (p.11)

....

China's 1989 Administrative Litigation Law (ALL) and 1994 State Compensation Law (SCL) provide citizens with limited checks on arbitrary government action, but growth in the number of cases brought under the two laws appears to be leveling off. (p.85)

....

The limited scope of the ALL and SCL and official resistance to both laws have limited their practical utility. The ALL only applies to "concrete" administrative decisions, not government-issued directives or rules, while compensation standards under the SCL remain rigid and the amounts awarded are small. Chinese sources also

cite complicated procedures, legal loopholes that facilitate official resistance to claims, the failure of administrative defendants to attend trials, administrative interference with the courts, and citizen fears of official retribution as problems that undermine the effectiveness of both laws. In a November 2004 article, China Youth Online noted that citizen plaintiffs won about 21 percent of the administrative cases filed in the first nine months of 2004, but suggested that success rates should be higher because most citizens are cautious about suing officials. In the case of the SCL, plaintiffs have reportedly won compensation in about one-third of the state compensation cases that people's courts have adjudicated since 1995. Several Chinese reports demonstrate that government departments often refuse to honor compensation awards, however, with one commentator concluding that the SCL "sounds good but is of no use." The Chinese government is considering amendments to both laws that may address some of these concerns. (p.86)

(US Congressional-Executive Commission on China 2005, Annual Report 2005, CECC website, 11 October, p.11, 85-6 <http://www.cecc.gov> – Accessed 13 October 2005).

## Passports

The Passport Law of the People's Republic of China, which came into effect on 1 January 2007, set out the circumstances in which a passport will not be issued:

- (1) He does not have the nationality of the People's Republic of China;
- (2) He is unable to prove his identity;
- (3) He cheats during the process of application;
- (4) He has been sentenced to any criminal punishment and is serving the sentence at present;
- (5) The people's courts notice that he is not permitted to leave China because he is involved in pending civil case;
- (6) He is a defendant or criminal suspect of a criminal case; or
- (7) The competent organs of the State Council believe that his leaving China will do harm to the state security or result in serious losses to the benefits of the state.

**Article 14** In case an applicant is under any of the following circumstances, the passport issuance departments shall not issue to him any passport within six months to three years as of the day when he completes the criminal punishment or is repatriated to China:

- (1) He is sentenced to any criminal punishment due to his hindering the administration of national border (frontier); or
- (2) He is repatriated to China due to his illegal exiting China, illegal dwelling or illegal employment overseas

(The Passport Law of the People's Republic of China, Promulgated by the 21st Session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on 29 April 2006 and effective as of 1 January 2007, Beijing Review website [http://www.bjreview.com.cn/document/txt/2006-12/14/content\\_50706.htm](http://www.bjreview.com.cn/document/txt/2006-12/14/content_50706.htm) – Accessed 16 February 2007).

The US Department of State made the following assessment in March 2007:

Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports...There were reports that some academics faced travel restrictions around the year's sensitive anniversaries, particularly the June 4 anniversary of the Tiananmen Square massacre. There were instances in which the authorities refused to issue passports or visas on apparent political grounds. Members of underground churches, Falun Gong members, and other politically sensitive individuals sometimes were refused passports and other necessary travel documents. In March an individual in Guangxi Province was reportedly barred from traveling outside the country because he authored Internet articles critical of the CCP. In August ICPC member Wu Wei was reportedly stopped at the Hong Kong border while on his way to attend the ICPC's annual meeting. In September passport control authorities without warning confiscated the passport of a prominent labor rights lawyer as he was boarding a train to Hong Kong (US Department of State 2007, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in Country Reports on Human Rights Practices for 2006 – China, 6 March, Sect. 2.d). DFAT advised in November 2006:

A.3. We are aware of several instances where Chinese authorities have denied citizens passports to prevent them from leaving the country. These have included dissidents and human rights activists and their relatives. In the cases which we are aware of, the refusal to issue the passport came after the dissident or activist had served a period of imprisonment (but this is not necessarily an essential factor in denying a passport to this group of people). We are also aware of several cases where Tibetans have been refused passports. In these cases, the Tibetans had not previously been imprisoned or otherwise convicted of any illegal activity. There would very likely be other groups of people to whom China might refuse to issue passports but it is not possible to obtain information from the Chinese authorities on this practice (DIAC Country Information Service 2006, Country Information Report No. 06/65 – China: Passport and exit arrangements China: Passport and exit arrangements, (sourced from DFAT advice of 8 November 2006), 10 November).

In 2005, DFAT advised:

A.1. China's Entry and Exit Law states that the following groups of people shall not be given approval to leave China: (1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court; (2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; (3) convicted persons serving their sentences; (4) persons undergoing rehabilitation through labour; and (5) persons whose exit from the country will, in the opinion of the competent department of the State Council, be

harmful to state security or cause a major loss to national interests. The Ministry of Public Security (MPS), which administers the law, has advised that these five groups of people are not allowed to obtain passports.

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

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

Hearing before the Tribunal

The applicant appeared before the Tribunal to give evidence and present arguments. An interpreter assisted the Tribunal. The applicant confirmed that he could understand the interpreter clearly.

The applicant was represented in relation to the review by his registered migration agent. The agent was not present at the hearing.

The applicant said that he recalled making the statement accompanying his protection visa application. He said he wrote it in his own language and had it translated. He said everything in it was true and accurate.

The applicant confirmed that he was born in County A, Guangdong, where he lived there until he came to Australia.

His family members live in China. The applicant confirmed the details of his education and that he then started working on his family's farm in the early 2000's.

The applicant said that they worked a piece of land. They grew a couple of crops. He said that other family members also farmed there. He was asked if it was subsistence farming or whether they sold the produce in the markets. He said that they grew for the markets.

He was asked when his family first became aware that there may be a threat to the farmlands. He said that this was roughly in the early 2000's. Before their land was sold, they knew that their land may be sold because neighbouring farmlands were sold and many farmers were suffering because they were deprived of their farmlands.

He was asked to tell the Tribunal about the actions his relative took to pre-empt the takeover of the land. He said that his relative reminded the farmers that they had to be united to stop the takeover of the land. They were all in one village and would gather together and discuss the problem.

He was asked when and how they first heard that their farmland was sold. He said that a member of the village committee told them at a meeting some time in the early

2000's that the land had been sold. He said that all the farming land in the village was appropriated. As far as they knew there would be no compensation. The official said that the land belonged to the government so they could do what they liked with it. The official said that each family could select one person to work in the business.

The applicant said that straight away a businessman started to build the business and it was a while before it was running but the applicant could not remember exactly how long. The applicant and other workers were told to do odd jobs while they were waiting.

He was asked how his relative died. He said that his relative died because his land was taken away, and his relative was aggrieved and died. The applicant was asked if his relative was sick and he said he was not, but he vomited blood once or twice then died. The applicant said his relative was upset. The applicant did not know the reason he was vomiting blood. The Tribunal asked whether he knew the reason for his relative's death and he said he did not. However, the applicant said that his relative complained a lot after his land was taken and that could have made him sick.

The applicant was asked whether the villagers asked the village committee or the company for compensation. The applicant said that his relative tried to get the villagers to ask for compensation but the villagers were afraid to approach the committee.

He was asked whether the employees had to sign a contract before they began to work at the business. The applicant said that they did sign a contract. He said that this contract did not cover how much they were to be paid and the working hours. He was just asked to sign a document and then it was taken away. He did not know how much he was to be paid. He was asked to work eight to ten hours a day. The employers did not say when they would be paid.

The applicant said that they were paid bi-monthly and sometimes once in three months.

Other family members did not work in the business because only one family member could work there.

His entire family had to survive on his income and other family members did some other work to supplement the income.

He was asked how he knew how to be a tradesman and he said that it was just watching the other workers and sometimes the managers gave him some instructions.

The Tribunal asked the applicant if he was paid every two or three months right from when he started working there and he said that was true. He was paid at the end of every two or three months.

Between when he commenced work at the business and early 2005 he was asked if he was paid every two or three months. He said that sometimes it was once a month but usually every two or three months. The applicant shared this money with his family.

He was asked what happened in early 2005. He said this was a very difficult time as he was only paid once. He was asked if he asked his employers for his wages. He said they requested many times to have their wages paid. However none of the employees received wages for a period of 8 months. When the employees asked for their wages, the employers said that because of finance problems there was no money available. Usually the wages were paid to a certain section of the business and they were then transferred to them, but this did not happen. He was asked whether any of the employees approached the village committee or any other government officials about the problem. He said they did not because they did not know what to do.

He was asked what happened in early 2006. He said that his good friend, Mr C, who was an employee – a professional at the company -came to see him. Mr C reminded him of his human rights. Mr C said that the employees had to be united together. He reminded the applicant of his relative's experiences. Mr C reminded him that they had to be united together not to be like "loose sand" in the Chinese idiom. So the applicant was persuaded by Mr C to take part in his activities. The applicant liaised with other workers in his village. Mr C and the applicant organised for many workers to protest. During working hours, they talked between themselves and organised the protest.

The applicant said that the protest took place on a particular date. The workers went to the front of the office building of the business, during working hours, and protested. They demanded that all their wages in arrears be paid. The production of the business ceased. The manager did not come out. They had no placards and were not calling out. They were demanding payment so they could survive. The applicant said that Mr C and the applicant were in front. All of a sudden many Public Security Officers arrived. The PSB officers accused them of having an anti-government strike. The officers demanded that they stop. Mr C and the applicant tried to move up to explain to the police but the public security officers did not give them any chance to explain. Many officers detained Mr C and the applicant. The applicant was pushed into a police vehicle. There was chaos because of the unfair treatment of the applicant and Mr C. The protestors wanted to move close to Mr C and the applicant while they were being detained. The applicant said that on the other hand the police had batons and were chasing the protestors. He said that the protest failed. He said that many protestors were hit and injured by police.

The applicant said that he and Mr C were kept in the detention centre. At first the police wanted them to sign a confession that they had launched anti-government activities. The applicant said that they were treated badly as they did not make any admissions. He said that the police thought of various ways to torture them and abuse them. The Tribunal asked what these methods were. The applicant said that sometimes the applicant and Mr C were subjected to punishment. The applicant said he had superficial injuries.

He was asked whether they were questioned. He said they were questioned and were told that if they did not confess they would not be released. The applicant was asked what the police questioned him about and he said he could not remember as it was a long time ago. The Tribunal said as it was only a year ago could he remember what he was questioned about. The applicant said that the police asked him to admit to anti-government activities.

The applicant was asked if his family tried to get him released and he said they were not allowed to visit.

The applicant said that Mr C and himself then agreed to sign a confession that they had organised anti-government activities. They had no alternative because if they did not sign the confession, they would not be released. The applicant was then released after they had signed the confession and they also were required to pay an amount of money. The applicant could not pay so they were told to do work without wages for the Public Security Bureau. They worked for several months. They were able to go home in the evenings. His relatives were working and looking after his family. Mr C and the applicant had lost their jobs at the business. Still their outstanding wages were not paid.

He was asked what happened after they completed their time at the workplace. He said he did not work anywhere after that or try and find work, because Mr C and the applicant carried on trying to get the outstanding wages.

The Tribunal asked the applicant why they carried on trying to get the wages when they knew that on the previous occasion the business had used the police to come and lock them up. The applicant said that his family was worried and asked him to give up the protest. When asked why he did not give up the protest, he said that he did not give up the protest, because "I don't know how to say it". He said that he felt he was entitled to the money as he had worked. The Tribunal asked him whether he was worried about getting locked up again and he said he was and his family were too, and tried to persuade him to give up the protest. Family members raised funds for him to go overseas.

For several months he and Mr C wrote petition letters to various government departments, local, provincial and central. The Tribunal asked him why he wrote these petition letters if he was worried about getting locked up, and he said it was not an activity, it was reflection. He was asked what responses they received. He said there were no responses.

He said that he had to report once a month to the authorities but the authorities did not know that he was writing petition letters. He said that they did put their own names on these petitions which asked for their wages to be paid. He said that when he reported to the PSB, they had to go to the station and sign their name. He said that the PSB did not know about the activities they were involved in.

He was asked if he has any records of the petitions or information he distributed. He said that he does not.

He was asked about the distribution of materials from late 2006. He said Mr C and he, relying on close friends, distributed pamphlets. He was asked why he would get involved with the distribution of materials. He said that he got involved with this because Mr C asked him to do so. When asked what the content of the pamphlets was, he said they opposed central communist government directly because they deprived farmers of their basic human rights and they stated that the Chinese Communist Party was the most corrupt party in history. Mr C wrote the content of the pamphlets. When asked again why he would risk detention, he said that Mr C was a close friend and he

helped him. When asked by the Tribunal if he was not afraid of being locked up he said he was. He then said he could remember another sentence from the pamphlet, “[title of pamphlet].” He said they did not put their own names on the pamphlets.

He was asked who the reliable friends were who helped them. He said that they were people from the business.

He was asked what their objectives were in distributing this material. He said that the objective was to protect their basic human rights. The Tribunal asked him if they thought they could achieve something by distributing the material and he said he did not think about it as his best friend just dragged him along. He said none of his family was involved.

He was asked how the PSB did not know that they were sending petitions or distributing material. He said that he did not have his name on the pamphlets. The Tribunal asked if the police were not watching him closely and he said he did not know. The Tribunal said that if they had been watching him closely would they have known that he was distributing material and he said yes.

He was asked how he arranged for the issue of a passport. He said his family members organised it for him. Family members had a friend in the tourist authority.

He was asked how he would have been able to get a passport if he had been recently detained and the PSB were still requiring him to report to them. He said that family members obtained the passport for him.

He was asked if he was aware that under Chinese passport law a passport can be refused if it is believed that somebody will harm state security. He said he was not aware.

He was asked if the fact that he was issued with a passport meant that he was not of interest to the authorities. He said he has no idea as his passport was arranged by family members.

He was asked why he decided to come to Australia. He said he did not decide himself, but when he got involved with the distribution of pamphlets, his family told him not to be involved and he decided to listen to them.

He was asked why he or his family chose Australia. The applicant said that he had no choice.

He was asked how he organised a visa to come to Australia. He said that his family organised the visa for him. He knew what type of visa he had. He was asked how he went about applying for a protection visa, and he said a lot of Chinese people told him about it. He said that he did not know anyone in Australia but once he arrived he found Chinese people and talked to them. He bought a newspaper in Chinatown, read an advertisement and rented a place.

He was asked what he feared if he returned to China. He said that he feared that he would be caught if he returned because he telephoned home after he arrived in



Australia and was told that Mr C had been caught. His family told him that Mr C was asked to reveal things. He said that Mr C is in detention. The applicant said that after he left many police officers visited his home in China and searched his home. They took a family member to the public security office for questioning and then let them go. Another family member was also questioned. His family were told that Mr C had been arrested.

The applicant was asked why the police are still looking for him. He said that the police told his family that he was one of the organisers of the distribution of pamphlets.

He was asked if the family had tried to contact his family again recently. He said he seldom rings them and asks. He said he does not want them to know his whereabouts although his family does know where he is. He said he does not want the Chinese government to know where he is. He said he just seldom rings his family. When asked if he did not want to find out how his children are, he said he does but he does not want his family to know where he is in case the authorities approach his family and ask where he is.

He was asked if Mr C was still in detention and he said he did not know.

The applicant was asked if there was anything further he wished to say. He said that he was afraid to go to China for fear of being persecuted so he requests protection.

## **FINDINGS AND REASONS**

On the basis of the passport sighted at the hearing, the Tribunal accepts that the applicant is a national of China. There is no evidence before the Tribunal that he has rights to enter and reside in any other country. Accordingly, his claims to refugee status will be assessed against the PRC, as his country of residence.

The applicant claims to fear persecution in China for reasons of his involvement in protests against unpaid wages and the distribution of anti-government materials.

The independent information referred to above indicates, and the Tribunal is satisfied that, in certain circumstances, protestors against unpaid wages and anti-government protestors may be at risk of persecution. The US Department of State Country Reports on Human Rights Practices 2006 states that "the law provides for freedom of peaceful assembly; however, the government severely restricted this right in practice. The law stipulates that such activities may not challenge "party leadership" or infringe upon the "interests of the state." Protests against the political system or national leaders were prohibited. Authorities denied permits and quickly suppressed demonstrations involving expression of dissenting political views."

The independent information also confirms that protests of this type, relating to land acquisition and unpaid wages, are frequent in Guangdong, and are often suppressed by police and leaders arrested.

The Tribunal is satisfied that the persecution of these protestors occurs for reason of a political opinion imputed to them, which falls within the scope of the Refugees Convention.

In this case, the Tribunal found the applicant's evidence to be consistent and credible. The Tribunal accepts his account of the events in China in which his family's land was appropriated by a private business and no compensation given. The Tribunal accepts that he was selected to work for the private business. It also accepts that he and other employees were often paid wages late, culminating in a situation in which they were not paid at all. The Tribunal is satisfied that the applicant helped organize a protest, that the police attended the protest, arrested him and the other organizer, and detained them for a period. The Tribunal is satisfied that he was tortured in detention resulting in superficial injuries and that he was forced to sign a confession in order to secure his release. The Tribunal accepts that he was then required to work for no wages at work arranged by the PSB until his fine was paid. The Tribunal accepts that on his release he continued to petition for payment of wages and then became involved in the distribution of anti-government literature through the influence of his friend. The Tribunal accepts that the police searched his house after he had left the country and questioned family members.

The Tribunal accepts, on the basis of independent country information, that he was able to be issued a passport, notwithstanding his detention some months earlier. Recent country information indicates that most citizens of China can obtain passports although those whom the government deemed threats, including political dissidents continued to have difficulty obtaining passports (US Department of State Reports, March 2007). However the country information set out above, refers to "instances" where political dissidents have been refused passports, and does not state that all dissidents are refused passports. On the basis of this information, the Tribunal is satisfied that the applicant may have been able to obtain a passport legally notwithstanding the fact that he had been in detention.

In these circumstances, and based on all the evidence, the Tribunal is satisfied that there is a real chance that he might be subjected to serious harm, including possibly detention or torture, amounting to persecution, were he to return to China in the reasonably foreseeable future. The Tribunal is also satisfied that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c) of the Migration Act, in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his imputed political opinion. As the state authorities would be responsible for his persecution, and there is a real chance he would be persecuted on his return, relocation is not relevant in these circumstances.

The Tribunal is therefore satisfied that the applicant has a well-founded fear of persecution for a Convention reason of imputed political opinion.

## **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.