

0902446 [2009] RRTA 626 (7 July 2009)

DECISION RECORD

RRT CASE NUMBER: 0902446

DIAC REFERENCE(S): CLF2009/436

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Catherine Carney

DATE: 7 July 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of China (PRC), arrived in Australia [in] November 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2008. The delegate decided to refuse to grant the visa [in] March 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. 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.
4. The applicant applied to the Tribunal [in] April 2009 for review of the delegate's decision.
5. 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

6. 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.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. 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.

Application for Protection Visa

The following information is contained in the Applicant's Application for Protection Visa. The applicant arrived in Australia [in] November 2007. The applicant entered Australia on a Student Guardian visa. He left China legally and had no trouble obtaining travel documents. He states he was born [in] 1967 in Fuqing City China. He speaks Chinese and English. He has had ten years education. He states his occupation is Farmer and Church Assistant.

A summary of the Statement attached to his application is as follows:

The applicant came to Australia to care for his daughter. He picked up his luggage to return to China when he learned from his parents on the telephone that his wife had been arrested and detained at Fuqin detention centre. The applicant was informed by his parents that his wife had attempted to reveal the corruption prevalent within the Fuqin religious authority. Due to this, she has been detained and the corruption allegation has been swept aside. In China, the applicant was an assistant in [Location A] church, which his family has attended for over ten years. His parents and wife are devoted Christians. In April 2008, church members agreed to renovate the derelict cathedral building. The applicant's wife attempted to ascertain the donations credited to the church on a number of occasions, without success. She tried to appeal to higher authorities in order to obtain the requested data, but was warned by the Fuqin religious authority not to do so, otherwise she would be punished. When the deputy premiere of China visited Fuqin on 21 November 2008, she tried to give him a petition that was issued by her church, but was unsuccessful. She was taken away by security guards and police, along with other protesters.

[In] November 2008 after the deputy premier left Fuqin, the applicant's wife was taken away by the Fuqin Public Security Bureau and was charged with illegally congregating and disturbing public order and was subsequently detained. The applicant has contacted the media to help high light his wife's case.

The applicant provided the following documents:-

- A photocopy of a document entitled "Fujian Province Fuqing Public Security Bureau Detention";
- Information from Wikipedia on Vice Premier of the People's Republic of China Li Keqiang;

- Print out from website called www.ntdtv.com;
- Photographs of a group of people including the applicant under a sign indicating [church name deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant] and further photographs of applicant in what appears to be church hall;
- Various general Pamphlets from [church name deleted: s.431(2)] these pamphlets give date and times of services and general information;
- A letter from [name deleted: s431(2)] stating that the applicant has been meeting at the Church;
- A Statement signed by several people stating that the applicant attended our church every Sunday:

20. [In] March 2009 the applicant was interviewed by the Department.
21. The Tribunal [in] April 2009 wrote to the applicant acknowledging his application and inviting the applicant to send further information.
22. [In] April 2009 the Tribunal sent an Invitation to Appear before the Tribunal to give evidence. The Tribunal also asked the applicant to send any further information he wanted the Tribunal to consider.
23. No further information was provided by the applicant.
24. The applicant appeared before the Tribunal [in] May 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

A summary of the oral evidence is as follows:

25. The Tribunal went through the introductions and explained the process to the applicant. The applicant stated his name and date of birth for the record. The applicant indicated he had no witnesses. The applicant indicated he had no problems understanding the interpreter and no objection to using this particular interpreter. The Tribunal asked the applicant if he recognised his application for protection and the information provided in it. The applicant examined the document in the Department file and indicated that it was his signature and his document. The applicant stated that a friend of his at the church had assisted him to fill out the application. The Tribunal asked if the applicant had English skills. The applicant stated he did not. The Tribunal then showed the applicant his application where he had indicated he had some English skills. The applicant stated that he only had a little knowledge.
26. The Tribunal asked the applicant if he was satisfied that the Application contained his Claims for Protection. The applicant replied that they are still his claims. The Tribunal asked if there was anything left out or any other claims the applicant would like to put to the Tribunal. The applicant replied that there were no other claims.

27. The Tribunal asked the applicant to go through why he cannot return to China. The applicant stated that he cannot return to China as his wife is still in a Detention Centre. He stated that he dared not return until the issue is sorted out.
28. The Tribunal asked how long his wife had been in Detention. The applicant replied she had been there ever since [date deleted: s431(2)] November 2008. The Tribunal asked if the applicant had any contact with his wife. The applicant replied that he did not. The Tribunal asked the applicant to explain why his wife was in detention. The applicant stated that it was related to corruption, he stated the Chinese police arrested her. He stated they accused her of an illegal gathering. The Tribunal asked the applicant to explain the illegal gathering. The applicant stated that before his wife was arrested Chinese Communist party officials came to their region. The applicant stated that those people who had grievances and complaints want to have their grievances heard by the officials, so his wife and other church goers went to complain. He states that his wife was arrested [in] November 2008 and the real reason is because it is a corruption case. The applicant stated that they just used the name of causing trouble and causing social unrest and illegal gathering to arrest his wife.
29. The applicant states that he cannot contact his wife and all his information is from his parents. He states that all the details of his church had been sent in. He stated that all this information was saved in the records of the Chinese Democracy Party.
30. The Tribunal then went through the documents with the applicant. The Tribunal indicated it was concerned about the legitimacy of the Detention document. The Tribunal asked the applicant how the print out about the Vice Premier of China related to the applicant. The applicant replied that it was all genuine. The Tribunal then re-phrased the question and asked why the print out of general information about the Vice Premier was important to the applicant's claims.
31. The applicant replied that it was very important. The Tribunal asked the applicant to explain how it was important. The applicant replied that he was also a Christian petitioner and was arrested under the name of illegal gathering.
32. The Tribunal then showed the applicant the document he had supplied to the Department which was a print out from the internet. The applicant spent some time inspecting and reading the documents. The applicant then replied that they were from the internet. The Tribunal asked the applicant to explain how they related to his claims. The applicant did not give a coherent response. The Tribunal then rephrased the question and asked the applicant to explain to the Tribunal how these documents were important to his claim. The applicant replied that he did not know if they were important or not.
33. The applicant then stated that he thought because he participated in a Christian Church and he was a member of a Christian Church he was at risk. He stated that because previously people were arrested under the name of an illegal gathering. The Tribunal asked how this related to the applicant. The applicant replied that he would suffer the same fate as he also was a Christian petitioner.
34. The Tribunal asked when the applicant was a Christian petitioner. The applicant stated that he became a Christian petitioner in 1997. The Tribunal asked the applicant what he was petitioning about. The applicant stated that he did not have a big role in the Christian Church he just helped out in small issues. The applicant stated that he helped out for example at

Sunday gatherings. He stated that when the priest from other areas would come he would make some arrangements.

35. The Tribunal asked what sort of arrangements. The applicant replied he did not arrange the priest to come to the area that was done by another member of the Church.
36. The Tribunal asked where were the gatherings held. The applicant replied in the Chinese Christian Church. The Tribunal asked if the Church was open to everyone. The applicant replied yes. The Tribunal asked if it was an underground Church. The applicant replied he was not sure if it was underground or not. The applicant stated that he did not know if the underground Church was busted by the government or our Church, however he stated that this time his wife was arrested because she complained about corruption and it is related to a corruption case.
37. The Tribunal asked what, is the corruption case. The applicant replied; why, do you want to ask, corruption is corruption. The Tribunal asked the applicant to explain the corruption case as it was trying to assess the applicant's claims.
38. The applicant stated that previously he did not know but they needed to do up the church so they needed money from the religious bureau. He stated he did not go back in the end of 2008. He stated that because of his passport he intended to go back at the end of December 2008 however he had a conversation with his parents and they told him his wife was in detention.
39. The Tribunal asked if the applicant had booked his return tickets. The applicant said that, he had not done that as it was 20 days between his wife's issues and when he wanted to return and he did not want to book so early.
40. The Tribunal asked when it was decided that they needed money to do up the Church. The applicant stated that it was not his decision. He stated, he heard the church was prepared to do up the Church in August and he was told by his wife and other church goers that they went to the religious bureau to ask for money.
41. The Tribunal asked the applicant what denomination he belonged to. The applicant replied that he was a Christian who was baptised. The Tribunal re-phrased the question and asked what branch of Christianity he belonged to. The Tribunal pointed out that earlier he had said he was not sure if he was underground or not and in his statement which he supplied with his Application for Protection he referred to Christians and Roman Catholics needing protection. The applicant indicated he was not sure.
42. The Tribunal asked the applicant to describe how gatherings were conducted. The applicant replied that in China they were conducted on Thursday night and Sunday morning. The applicant referred to prayers and singing. The applicant then stated that his wife put in a petition and he was in danger.
43. The Tribunal asked the applicant why he thought he was in danger. The applicant stated that when he planned to return his parents asked him not to go back. The applicant referred to other people being arrested. The Tribunal asked why they were arrested. The applicant stated because they want to petition the authorities. The applicant indicated that they were high profile people. The Tribunal asked if the applicant was high profile.

44. The applicant replied that he was not high profile; he stated he was not famous however they had his record. The Tribunal asked the applicant to explain how his petitioning since 1997 put him in danger. He stated that because his church was a big one, those who participate have a record. The applicant stated that his wife was arrested because she was in their records and several people arrested were also in their records. The applicant stated that he was on their records and he has been since 1997.
45. The Tribunal asked the applicant when he was baptised. The applicant stated that he was baptised in 1997. The applicant stated that he was born into a Christian family that his parents and grandparents were Christian. The Tribunal asked why the applicant was not baptised until 1997. The applicant replied because before that he had not reached a level where he could be baptised. The Tribunal stated that generally in Christian families babies are baptised. The applicant replied that this is not the case in China.
46. The Tribunal asked the applicant if he participated in religious ceremonies prior to 1997. The applicant replied that he did participate on Thursday and Sundays. The Tribunal asked how he participated. The applicant replied that they would pray and sing and sometimes the priest would preach. The Tribunal asked how his participation was different prior to 1997. The applicant stated that prior to 1997 he did not do anything for the Church and after that he just did small deeds.
47. The Tribunal asked what small deeds. The applicant replied that when the priest came from other areas he would put the chairs out.
48. The Tribunal then asked the applicant to describe any rituals in the church. The applicant replied we would have Christmas and Chinese New Year celebrations and during that time we had special events.
49. The Tribunal asked what the special events were. The applicant replied that they had a drama play and people would sing. The Tribunal asked what the play was about. The applicant replied it was Bible stories. The Tribunal asked what Bible story. The applicant stated that the story changed and he does not know where to start. The Tribunal asked the applicant to start at any story he wanted.
50. The applicant stated that one story was about a rich man and a lost son. The Tribunal asked the applicant to go on. The applicant stated that the rich man was to believe in God, he stated that one day he begged the rich man for food. The rich man asked why he was happy and he replied because he believed in God. The poor man had God in his heart and talked about God. The Tribunal stated that the story as told by the applicant did not appear to be a Bible story; usually there is a clear story and a moral to a Bible story.
51. The Tribunal asked the applicant who was the prophet who told the Bible stories. The applicant replied he was not sure as he thinks the story may have been made up and created in his Church.
52. The Tribunal then asked the applicant about his attendance at Church in Australia. The applicant stated that he attended at [Suburb A] Church. The Tribunal stated that pursuant to s.91(R)(3) if the Tribunal formed the view that the applicant had only attended Church in Australia to strengthen his refugee claim then the Tribunal would have to disregard that conduct.

53. The applicant replied that it was impossible that he would participate for any other purpose than that he is a Christian. The applicant stated that the ceremonies start at 9.30am however there is usually no one there and then they start at 10am. He stated that the priest would preach. The applicant then handed further pamphlets to the Tribunal. The Tribunal stated to the applicant that these pamphlets were of a general nature that anyone could get from a Church foyer. The applicant agreed that they were of a general nature. The Tribunal asked the applicant what days he attended Church. The applicant replied just Sunday morning. The applicant then stated that sometimes if there are special events he will participate. The Tribunal asked what those special events were. The applicant stated that previously a person came from America to preach here. The Tribunal asked where those special events were held. The applicant replied that all events were held in [Suburb A] Church.
54. The applicant stated that they were held on Sundays. The Tribunal asked if he had attended at any other places. The applicant replied that he had attended at somewhere closer to his home; he stated that he went to another Church but he does not remember the address. He stated that he did not know the address but he listened to someone preaching.
55. The Tribunal then asked the applicant to expand his claim that he contacted some media. The applicant replied that he did not speak to the media and he did not know why the Tribunal was saying this. The Tribunal explained that it was not the Tribunal who is saying it but he had stated in his statement which was part of the Application for a Protection Visa that he contacted the media. The applicant stated that he did not contact the media they found him. The applicant then stated that he did not know why or how a journalist got his phone number but a journalist called him two or three times and he did not agree to speak to the media however on the fourth call he agreed to the interview. He stated he did not know who they were or what organisation they were from. The applicant states that this journalist then asked him to turn on his computer for an interview and he thought this might be a person who could help him, however this person was not able to help his wife.
56. The applicant stated that he was not sure if this person was from the Broadcasting Co and he was not sure how they got his number and when he asked they stated that as long as it is news they can get his number. The applicant stated that he did not ask him or her name or where they were from. He states he just wanted to help his wife through a broadcast. The Tribunal asked if the interview was broadcast. The applicant replied it was broadcast on the China Democracy website. He stated he is not familiar with the site. The Tribunal stated that it was having trouble understanding how he could give an interview on his wife's problems to someone he says he does not know, does not know their name or where they are from.
57. The applicant replied that was why he refused for two or three times but only agreed when he thought they might help his wife. He states that the information may be on the Chinese Democracy website but he is not sure. The Tribunal pointed out that in his application he said he contacted the Media. The applicant replied that he never said so, the media contacted him.
58. The Tribunal then discussed independent country information with the applicant. The Tribunal stated that earlier in the hearing the applicant had stated that from 1997 he was a Christian petitioner and that his name was on the Chinese records. The Tribunal stated that he exited China legally and this would indicate that he was not of interest to the authorities. The applicant stated that he did not understand. The applicant stated that when he left there were no issues with his wife. The Tribunal stated that it was concerned that he had said he did not know if he was with an underground Church and in his application for protection he

had referred to Christians and Roman Catholics but did not know what denomination he belonged to or whether he was underground or not. The applicant replied that in China they did not define the Church and it was those who believe in God and if you define you may be defined as a shouter. The applicant stated he did not know what Christianity was called and some called it shouters.

59. The Tribunal discussed the Independent Country information on corruption including the information in the Department's decision. The applicant agreed that Chinese authorities are doing something about corruption and have plans in place however the problem is so big they can only look at high profile cases.
60. The Tribunal asked the applicant if he had anything further to add. The applicant stated that he would like to provide some further documents. The Tribunal stated that the applicant lodged his application in December 2008 and he has had ample time to provide further documents. The Tribunal stated that it would consider any further documents the applicant provides up until the time it has made its decision.

Evidence from other sources

Corruption in the PRC

61. Transparency International 2005, Global corruption Report 2006 – China reports on the following steps taken in China with respect to corruption
62. On 19 September 2004, the Fourth Plenary Session of the 16th Central Committee of the Communist Party of China (CPC) adopted a resolution on governance capacity building that called for more accountability of members through broader citizen participation, greater separation of government from the management of businesses and the creation of more democratic evaluation systems. The resolution included a call for whistleblowers' protection, a right officially enshrined in an ordinance that came into effect on 24 October. In January 2005, the CPC Central Committee released guidelines for a national system of corruption prevention that entails a three-pronged approach of ethics education, institutional accountability and civil monitoring. The system is due to be in place by 2010. This is the first time Chinese leaders have laid out a comprehensive blueprint for a national anti-corruption campaign
63. Country of Origin Information Service, UK Home Office 2006, 'Country of Origin Information Report: China, UK Home Office website, April
64. According to the NGO Transparency International (TI) and their Corruption Perception Index 2005, China was placed 78 out of 158 when it comes to its own citizens' perceptions of the level of corruption – it scored 3.2 out of ten (ten being zero perception of corruption). According to TI a score of less than three out of ten indicates "rampant corruption." On 28 October 2005, the official People's Daily newspaper reported that the Standing Committee of the NPC (Parliament) had voted to ratify the UN Convention against corruption. The convention was due to go into effect on 14 December 2005.
65. The official China Daily newspaper reported on 19 December 2005 that overall the number of corruption cases is on the decline but more high ranking officials are being rooted out. "In the past two years, China prosecuted and punished nearly 50,000 corrupt officials at various levels in the nationwide anti-corruption drive, according to the latest government figures."

66. On 9 March 2005 the People's Daily also reported, "Chinese procuratorates at various levels investigated 43,757 government officials for job-related crimes last year, said Jia Chunwang, procurator-general of China's Supreme People's Procuratorate, Wednesday. Among the investigated government employees, 35,031 involved in crimes concerning corruption, bribe-taking and embezzlement of public funds, and 8,726 probed for dereliction of duties and abuse of power."
67. In a statement made in the Hong Kong-based International Anti-Corruption Newsletter, Wang Jianming, Deputy Director-General of the Anti-Corruption Bureau of China's Supreme People's Procuratorate stated that [a]nti-corruption units are now established at all 4 levels of procuratorates throughout the country. For the Supreme People's Procuratorate, an anti-corruption general office is established. And anti-corruption offices are set up under the provincial people's procuratorates, municipal people's procuratorates and county people's procuratorates. At present, there are about 40,000 cadres and procurators from various procuratorates throughout the country taking part in the fight against corruption (2003).

Departure from China

68. With respect to exit procedures operating in China, the UK Home Office's 2005 China Country Report provides the following montage of information from various sources:
69. As noted by [USSD Report 2005], "Members of underground churches, Falun Gong members and other politically sensitive individuals sometimes were refused passports and other necessary travel documents... As reported by the Canadian IRB on 25 October 2005, "The Frontier Defence Inspection Bureau (FDIB) is in charge of the inspection barriers, and FDIB officers examine the passports and immigration departure cards of Chinese travellers. The officers also verify the identity of the person through a 'computerised record system.' Chinese travellers do not need to present their resident identity card during the inspection." (Based on information supplied by a representative of the Canadian Embassy in Beijing)

Documents Fraud

Advice from the Department of Foreign Affairs and Trade 5 June 2000 is;

70. " any official document can be either bought or forged in China. Irregular or improper issue of documentation is widespread. Thus, we would suggest that little evidentiary weight can be placed on any official Chinese document."

Advice from UK Home Office, Border and Immigration Agency, Country of Origin Information Report, China June 2008 reports:

71. that it is very easy to obtain all kinds of fake documents in China and that corrupt officials provide both genuine and fraudulent documents in exchange for money

FINDINGS AND REASONS

72. The applicant travelled to Australia on a valid Chinese passport and claims to be a national of the People's Republic of China The Tribunal accepts that the applicant is a national of China and has assessed his claims against China as his country of nationality.

73. The Tribunal found the applicant to be a witness who lacked credibility. The Tribunal found the applicant to be inconsistent, confused and non-responsive in the way direct questions were answered. The Tribunal has the following concerns about the applicant's evidence which cause the Tribunal to question its veracity:-
74. At the beginning of the hearing the applicant confirmed his statement included with his Application for Protection Visa as being correct. The applicant stated he could not understand English however when it was pointed out that on his Application for Protection Visa he had written English down in response to question 11 he stated that he could understand a little. The applicant stated he had no concerns with the interpreting however he could not answer simple requests by the Tribunal to expand on his circumstances. He stated that he could not return to China as his wife was arrested because of corruption. When the Tribunal asked how this related to him he stated that he too was a Christian petitioner and had been one since 1997. He stated that his name was on the records. The Tribunal then pointed out that he had exited China legally and on a passport in his own name and if the Chinese authorities were interested in him he would not have been able to do so. He did not properly respond and just stated that his wife had the issues.
75. When the Tribunal asked the applicant to explain the significance of some of the documents he had provided to the Tribunal he could not give an adequate response. The Tribunal then showed him the documents he had provided. He inspected the print out of two websites he had provided. One was general information about the Vice Premier. When asked to explain to the Tribunal how this information related to his claim he stated that it was very important as he was a Christian petitioner and was arrested under the name of an illegal gathering. When the Tribunal asked the applicant to comment on the document from www.ntdtv.com website he stated that he did not know if the document was important or not.
76. At interview with the Department the applicant was asked about the print out from the ntdtv website. He stated that his daughter found the website on the internet and told him her mum had a problem in China and had been arrested. The applicant stated at interview that it was printed out directly from the internet. However he could not explain why the type was different from the top and bottom and had the appearance of someone typing in information. He could also not explain why the dates on the document were inconsistent. At interview the delegate had stated he could not access the article on the website. At the interview the applicant could give no explanation for the discrepancies. In response to an s.424A letter he gave further inconsistent evidence that he printed out the article in May 2009. Further with his response to the s.424A letter the applicant provided a document which he stated was a link to the article and a translation of the webpage. Due to the above and the applicant's inadequate oral responses to the Tribunal's concerns, including the oral response that he did not know if the document was important or not the Tribunal places no weight on the documents provided.
77. The applicant provided a copy of the document he stated was a copy of his wife's detention document. He could give no further details about that document except to say it was sent by friends in China. The Tribunal accepts independent country information that fraudulent documents are easily obtained in China and places no weight on that document.
78. In his statement attached to the Application for Protection he stated that he had been told about his wife's detention by his parents when he rang after collecting his luggage to return to China. At the hearing he stated that he had no ticket booked at that time and he was told about his wife's detention 20 days before he was to leave. At the interview he stated he was

told about his wife's arrest by his daughter who found out her mother had been arrested in China from the website.

79. In the applicant's Claim for Protection Visa the applicant provided documents which stated that he contacted the media in Australia. At the interview with the Department he stated that one day he had a call from a TV network in Australia. He stated that one of the television reporters came to ask about his wife in China, so he related to them about his incident and his wife's arbitrary detention in China because of religion. The applicant when asked could not say what TV station contacted him. He could not identify the television reporter. He stated that he did not know how they found his number in Australia.
80. At the hearing he at first stated that he did not contact the media and knew nothing of this. When it was pointed out that he had earlier said he contacted the media he then stated that he gave an interview after being contacted four times. He stated that he did not know who he spoke to; he did not know their name or what Broadcaster they were from. He stated they asked him to turn on his computer for an interview. When the Tribunal asked him if it had been broadcast he stated it was on the Chinese Democracy website. The applicant indicated he spoke to the journalist and it was broadcast on a Chinese site. It appeared from the applicant's oral evidence that he was speaking to a Chinese journalist. Earlier he had stated he was speaking to an Australian journalist from an Australian network. He did not indicate he was using an interpreter. In response to an s.424A letter he stated that he presumed the journalist obtained his phone number in China and he stated that he cannot remember the reporters names as he was under pressure. The Tribunal acknowledges that at times applicant's can be nervous however the applicant's information was completely inconsistent and the inconsistencies go to more than him not remembering the journalist's name. As outlined above on different occasions he stated he contacted media, then they contacted him, he stated they were Chinese media and then Australia. The Tribunal does not accept the applicant's response as adequate.
81. In his application he referred to Christians and Roman Catholics being persecuted. At the interview with the Department he stated he was Baptist. In the hearing he gave oral evidence that he was not sure if he belonged to an underground church or not. In his response to the s.424A letter he stated that in China Christian and Catholic are different. At the hearing his oral evidence was that he did not know what denomination he belonged to or whether he was underground or not. The applicant at the hearing gave oral evidence that in China they did not define the Church and it was those who believe in God and if you define you may be defined as a shouter. The applicant stated he did not know what Christianity was called and some called it shouters. The Tribunal does not accept that his response overcomes the Tribunal's concerns about his lack of knowledge of the church he belongs to.
82. At the hearing the applicant gave oral evidence that the congregation made a decision to renovate the Church in August 2008. In his written statement he stated that the congregation made a decision to renovate the Church in April 2008.
83. In the applicant's written statement and oral evidence he stated that others were arrested with his wife after her protests. In the article submitted by the applicant it indicates that his wife was the only person arrested. There is no suggestion of a large scale protest and the article suggests the church was looking at becoming self-administrating not as the applicant stated accusing religious authorities of keeping donations and corruption

84. At the hearing the applicant gave oral evidence that he was a Christian petitioner since 1997 and was on records and at risk of arrest. He stated he was not sure if he was in an underground Church. At interview he stated that he and his family had openly attended Church from 1997 and the authorities did not mind and there were no problems. He stated that they did not interfere with Church activities and it was an open Church. In his written statement he said that he had attended Church in [Location A] for more than a decade and there was only trouble after his wife wanted to check the church's donation account in April 2008.
85. At the hearing he gave oral evidence that he only ever attended Church on Sundays at [Suburb A] When pressed by the Tribunal for any other places he may have attended he cited special events again at [Suburb A] and that he may have previously attended some other Church but he cannot remember. At the interview he stated that he attended family gatherings in Merrylands. When asked to provide the address he gave his home address. The applicant then stated that he was assigned to lead a family group and they attended at his house every week. In response to a s.424A letter the applicant stated that he went to Church at [Suburb A], he had attended at [Suburb B] and held family congregations every Monday at his home. He did not explain why he did not provide this information in oral evidence at the hearing. The Tribunal would expect that someone would recall having church meetings in their home every Monday. The applicant provided photographs which showed him sitting in what appeared to be a Church Hall surrounded by empty chairs. The applicant provided further photographs of him with a group of people under a sign indicating a Church. The applicant provided a statement which had a list of signatures and a statement from a person identified as a Chairman stating that he attended Church and general pamphlets. The above documents gave no detailed information and are of a general nature. When the Tribunal put its concerns to the applicant he stated that it was impossible that he would participate for any other purpose than that he is Christian.
86. The Tribunal has formed the view that the applicant attended church in Australia simply in order to strengthen his claim for refugee status. The Tribunal is not satisfied that he has a real commitment to Christianity. As the Tribunal is not satisfied that the applicant's conduct was otherwise than for the purpose of strengthening his claim to be a refugee under the Refugees Convention it must disregard his conduct in Australia as required by section 91R(3) of the Act .
87. At interview the applicant stated that his favourite Bible story was Solomon and the farmers however he could give no further detail about the story and when asked gave general information about the glory of God. At the hearing the applicant was again not able to give details about a Bible story that he had elected to tell. The Tribunal did not ask him to tell a particular story but asked him to explain any story he chose. The Tribunal does not expect an applicant to have precise knowledge of the Bible however it would expect someone who claims to have been born into a Christian family and regularly attended Church and Bible studies would be able to explain a Bible story of his choosing. In response to the s.424A letter the applicant provided a copy of gospel stories to the Tribunal. The information is of a general nature. The Tribunal does not think that the provision of written accounts from the gospel overcomes the applicant's inability at hearing to give a lucid account of his favourite Bible story.
88. The Tribunal several times put to the applicant that it was concerned with his evidence as it was inconsistent and there were issues the Tribunal found difficult to understand such as why he could not remember who he spoke to from the media, what Christian denomination he

belonged to and other consistencies. The applicant could not adequately explain any of the inconsistencies. The Tribunal does not accept due to the above inconsistencies and improbable evidence that the applicant is, ever has been or will in the future be targeted by authorities because of his Christian petitioning, his wife's petitioning about the corruption in the religious authorities or his religion.

89. The Tribunal asked the applicant to comment on his claim that he spoke to the media. The applicant's evidence was confused, he stated that he contacted the media, later he denied this and stated the media found him. He stated he did not know how they found him; he claimed he did not know where they came from however at first he stated they were from an Australian network and then later they were from a Chinese Broadcaster. He was confused over his claims of his contact with the media. The evidence was improbable and the Tribunal does not accept that he had any contact with the media accordingly there is no conduct to disregard for the purposes of s.91R(3).
90. The applicant's evidence is that his wife went with her complaints to higher authorities. The applicant could not explain to the Tribunal why the authorities could or would not protect her from the corruption he claimed she was complaining about, given the extensive level of anti-corruption activity in China, suggested by the country information. The applicant's evidence is that his wife approached the vice premier and was escorted away and detained. The Tribunal does not accept that the applicant's wife was detained for approaching the vice premier. Given the finding made by the Tribunal on the applicant's credibility the Tribunal does not accept that the applicant's wife was detained or is still in detention for reporting corruption. At the hearing the applicant agreed with the Independent Country information and stated that the only explanation for why his wife would not be protected was because they (authorities) were too busy
91. At the hearing the applicant provided to the Tribunal his passport, which indicates that it was issued in the applicant's own name. The applicant was able to depart the country holding a passport in his own name. The applicant stated in oral evidence at the hearing that he was able to depart as the issue in relation to his wife had not started. The Tribunal does not accept the applicant's claims concerning his wife's alleged activities. At the hearing he had earlier given oral evidence that he was on the records and was a petitioner since 1997. The Tribunal considers the applicant's ability to depart the country on his own passport to be inconsistent with the applicant's claim of being at risk due to his being a Christian petitioner since 1997.
92. For these reasons, and the Tribunal's finding about the applicant's general lack of credibility apparent from the applicant's evasiveness, lack of detail, inconsistency and ineffective response to the Tribunal's questions, the Tribunal finds that the applicant has been untruthful in his claims to the Tribunal. The Tribunal rejects the applicant's claims. The Tribunal rejects that the applicant had been involved in being a Christian petitioner since 1997, that he contacted or was contacted by the media to publicise his wife's detention and that she campaigned against the corruption of the religious authorities and he is therefore at risk. The Tribunal rejects the claim that the applicant and the applicant's wife referred the matter to the local authorities. The Tribunal rejects the applicant's claim that his wife spoke to people about her complaints, the corruption and that she arranged a petition and drafted formal complaints. The Tribunal rejects the applicant's claim that he or his wife are at risk from the authorities.
93. After considering the applicant's claims individually and on a cumulative basis, the Tribunal finds that if the applicant returns to China now or in the reasonably foreseeable future, there

is no real chance that he will be persecuted for the reason of his political opinion, membership of a particular social group or for any other Convention reason.

CONCLUSIONS

94. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

95. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officer's I.D. RCHADW</p>
--