

1208940 [2012] RRTA 758 (6 September 2012)

DECISION RECORD

RRT CASE NUMBER: 1208940

DIAC REFERENCE(S): CLF2012/66072

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Adrian Ho

DATE: 6 September 2012

PLACE OF DECISION: Melbourne

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 (the delegate) 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), applied to the Department of Immigration and Citizenship (the Department) for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2012.
3. The delegate refused to grant the visa [in] May 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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:
 - a. 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.
7. 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, *Applicant S v MIMA* (2004)

217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of

that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

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.

The protection visa application

20. In her written application for a Protection (Class XA) visa to the Department, the applicant relevantly sets out the following information and/or claims:
 - a. Her family has been Christian for a few generations. The family attended the local home church which was held in the home or homes of church brothers and sisters. The government refuses to recognise home churches, which are frequently harassed by local government officials.

- b. She also attended the 'Youth Church' and distributed bible leaflets and sheets in school to spread the word about God. At the "end of 2007" "we" were arrested by police when we had meetings at the Youth Church. Those arrested were taken to [Town 1] Public Security Bureau. She was locked up there for 2 weeks.
 - c. She was assaulted by police when she refused to divulge information about the home church. The police attempted to force her to sign a document which committed her not to participate in home church activities again. She refused. She was released after her parents paid money to the police.
 - d. The police informed her school about the incident and she was publicly criticised by the principal and experienced social isolation within the school community.
 - e. She continued to work in the home church and the youth church.
 - f. She came to Australia as a student and fled the persecution in China. A friend took her to local church activities in Melbourne and she now enjoys freedom of religion.
 - g. She would continue to participate in home church activities if she returned to China and would never give up her belief in God;
 - h. She observes that home church "members and leaders are sometimes harassed by local government officials". This can involve a "prison sentence or, more commonly, reeducation through labour. Heavy fines also are not uncommon";
 - i. She observed that churches which do not register are considered illegal and liable for prosecution, fines and closure.
21. The delegate refused the protection visa application and the applicant applied to the Tribunal for review of that decision.

Tribunal hearing

22. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
23. The applicant confirmed that she completed forms 886B and 886C and did not wish to change or add any details.
24. She stated that she was unable to return to China and continue her religious activities. She said that on Sunday she attended a Christian protestant church. She did not ascribe to any particular type of Protestantism. She stated that her parents were Christian. Her earliest memory was attending church with her grandmother. She said her maternal grandmother would attend church on Saturday and Sunday evenings. She also related that Christians in the village would come by the family house for fellowship. She confirmed that her parents also attend church. Her paternal grandparents were also Christian, but attended church less frequently.
25. She was asked if she or her family experienced any problems practicing Christianity. She related that she was involved in an arrest by the police. She was

asked when that occurred. She relates that the event occurred when she was around [age deleted: s.431(2)] years old. She does not remember the date or the time of year of the event. She was living in [village deleted: s.431(2)] village with her parents at the time.

26. She was asked to relate more details of the arrest. She was at the home of a Christian 'brother'. There were 10-20 people at the house, reading the bible and a 'brother' was sharing the content of the bible. She does not remember what passage of the bible was being discussed. Police started banging at the door and kicked it. She said they rushed in and took the gathered away. She said there were around 10 police. They entered the house and had sticks. They asked the gathered people to stop. The applicant closed her bible, but said the group continued sharing the bible. She then stated that she was hit twice by one police person. She indicated she was hit on the lower back region. She relates that the group was then taken to [a] police station, which is within [Town 1]. The police station was around 20 minutes away by car. At the station, the group was told to face the wall and not to talk. They were asked for other places they gathered but refused to provide any information. They were told to stop having gatherings, and were verbally abused. They also told the group to stop promotion, as the group had fliers to tell others about God. The fliers were found on the table by police. She does not remember the content of the fliers in any detail. She relates that she was held for three days at the police station in a room which had iron bars around it. There were five females in her room, including her. She again confirmed she was [age deleted: s.431(2)] at the time. She was asked to comment on whether police would detain a young child for three days. She believed that police would, despite her young age. She related that every day the police would tell them to stop their activities, and attempt to get them to divulge information about where other gatherings were held. She recounted experiencing several incidents of verbal and physical abuse. She said she was hit in the head and kicked in the buttocks. At the same time, the police were telling them to stop their activities.
27. The applicant related that her parents came to the prison and paid money to the police. She does not remember how much was paid, but believed that the payment was what secured her release. She was asked if the police asked her to do anything, other than divulge information. She said no. She was asked if the police asked her to sign any documents. She then said yes: that she was asked to sign a document which said that she should stop attending such activities and that she should obey the Party leadership. This occurred after her parents had arrived.
28. She was asked to confirm that she did not want to change anything in her application, that their contents were true and accurate, and that she prepared them herself. She was asked if she typed the forms herself. She said that she did. It was pointed out that the entire form was in English. She said that a person from church helped her with translation. She wrote in Chinese first, and the person translated it into English, and then the applicant entered the English into the form herself. She says that the form was not translated back to her after she entered the content into the form.
29. She confirmed that she had only been arrested once in China.

30. It was put to her that in her Form 886C, her written statement asserts that she was arrested at the end of 2007 and detained for two weeks. She was informed that a material discrepancy of this kind could lead the Tribunal to doubt her claims in general. She was asked to comment on this apparent discrepancy. She said she had no comment. She was informed that the Tribunal had not made up its mind and that the hearing was an important chance for her to clarify anything. She asserted that her oral testimony at hearing was correct. She was asked if she could offer an explanation for why the account differs in her written application. She said she could not, but had observed that it might have been a translation issue.
31. The applicant was asked what being a Christian meant to her. She said it was to believe in God. She continued, that it was to believe in God's word, and share God's work with others. She confirmed that she read the bible often. She does not remember when she started reading the bible, but that it was when she attended church. Her parents and grandparents also read the bible to her and told her bible stories.
32. She was asked for her favourite stories. She noted the story of Adam and Eve and that of Noah. She related that God wanted to destroy a village, whose inhabitants did not believe in God's word. God said that he would destroy the village. No one believed him except for Noah. Noah followed God's word and made an Arc. God told Noah to bring his family and a female and male of each kind of animal. People who believed in God could get on board, but no one except Noah and his family did. God made it rain and floods came. Only Noah and the animals got in and survived.
33. She was asked the significance of Easter. She said it was the day Jesus was reborn. She was asked for details. She said God was crucified and three days later he was alive again. She was asked if she could relate the story in the 24 hours leading up to his crucifixion. She said he was betrayed by Jews and had the Last Supper, and God told his disciples that a Jew betrayed me. This represented his self-sacrifice. God took out bread and grapes to share. Later, Christians would call this communion. The next day God was crucified.
34. She was asked what being a Christian meant to her personally. She said that it meant to believe in God and if you believe, you can go to heaven. She was asked where Jesus is. She said, in heaven.
35. She confirmed she attends church in Australia. She said she did not know where to go and was afraid. She said she began attending church in 2010 in [Suburb 2] North. The church is called the [church name deleted: s.431(2)]. She confirmed she has been attending the church since 2010 and still attends the church. She was asked if she had any documents from people at the church to submit. She said she did not. She was asked for the pastor's name. She said his surname was [name deleted: s.431(2)], but she did not know his given names. She was unable to supply the church address or how one might get to the church. She said her friend drives her to church. She confirmed that is the only church she has attended in Australia. She said she used to live in [a suburb], which was not far from there, and she has got used to this church. She said that services were in Mandarin on [Sundays].

36. She was asked if she has engaged in any other Christian activities other than attending church and bible study. She said that she has gone out to tell others about God in Australia. She was asked how many times she had done this. She said she went to the city a few times. She would tell people about God and the God stories. She would look for Chinese people and sometimes people did not want to listen. She would introduce herself and what church she was from. If they were willing to listen, she would ask if they believed in God. She was asked if she approached such people alone. She said that she had others with her. She was asked to confirm how many times she had done this. She said, three. She was asked why she stopped. She said she was not good at speaking and did not speak much, and would watch others do the talking, and so she stopped. She said she wished to work on her speaking. The last time she went out was in December, while others have been out since then. She was asked why she did not go with them. She said she had mainly been at church listening to the pastor's lessons. She was asked for what evangelising meant to her. She said it was the spread the word of God. She was asked if it was compulsory. She said it was not. She was asked what her preference was. She said she wanted to go, but that she was not a good speaker.
37. She was asked what happened after her release from the police station in China. She said that the school found out about her arrest and criticised her through a broadcast. She explained that other students had also been arrested. She related experiencing social isolation from that point and felt that she had no dignity.
38. She was asked what else occurred after her release. She said that she continued attending church and handing out fliers near her school. She said that the location of the church meetings was changed and the fliers read 'Believe in God and come to our church'. She was asked if the flier told people where the church was. She said it did not. She said, at first they were given mostly to students and that they relied on people approaching them. When prompted as to whether a phone number or name was printed, she said it was the contact details of a 'brother' She was asked when she started distributing fliers. She said she could not remember. She was asked to give an estimate of how old she was. She said, perhaps [age deleted: s.431(2)]. It was pointed out that this was around the time of her arrest. She said that was just a guess and she really could not remember. She was asked if she remembered distributing fliers before her arrest. She said she did. She was asked how long before. She said it was more than a year.
39. She was asked if she continued to distribute fliers at school after having been criticised. She replied that she did it because she just wanted to, and wanted more people to attend their gatherings. She was asked if she thought this was risky. She said she was scared, but said she needed to continue. She was asked if she talked to people when giving out fliers. She said, she told them if they wanted to know more about God, they could call that number.
40. It was put to her that the Tribunal was having some trouble reconciling the applicant's statement that she lacked confidence in her speaking ability and did not evangelise more than 3 times in Melbourne on the one hand, and able to hand out fliers in a school where she had been publicly criticised, socially isolate, and after having been arrested, detained, and beaten. She sought to draw a distinction between speaking with people and handing out fliers. The Tribunal postulated that handing out fliers nevertheless might invite consequences. She noted that the

criticism was mainly regarding having church meetings. The Tribunal noted that she had said that one of the purposes of the fliers was to get more people to come to such gatherings.

41. The Tribunal invited her to comment on its concerns. She said that distributing leaflets did not require much talking. The Tribunal allowed the applicant a short adjournment to rest and consider these concerns. After the break, the applicant said that at that time she was young, [a teenager], and did not think much before distributing the leaflets. She confirmed that no adverse consequences were experienced after handing out the leaflets. She confirmed that she continued attending church until 2008 when she left China. She was asked what other activities she engaged in from her release to 2008. She said she attended youth church and mostly house gatherings. She was asked if she engaged in any other kinds of Christian activities. She said, no. She was asked if she was distributing leaflets. She said she was, but not often. She confirmed that this would have been at her school.
42. It was put that if she was released around [age deleted: s.431(2)] years old and left China in 2008, that was around 4-5 years. She agreed. She agreed that nothing bad happened to her during that time, but that her freedom was restricted. Asked to clarify, she said she feared that non-Christians might tell the police on them. She was asked how they might know in order to inform the police. She said she feared this, but did not know how people might know about her family. She feared that she would be detained again. She was asked if she had any kind of interaction with the police after her release. She said, No.
43. The applicant was asked if she had problems obtaining her passport. She said that money was paid, and if it were not, she would have to wait a long time. She said that it was ordinary for normal citizens to pay more money in order to get their passports faster. She did not experience any problems exiting China. She said she has been back to China once since arriving in Australia. She provided her original passport at hearing. The passport, [number deleted: s.431(2)], shows one visit to China from [July] 2011 to [August] 2011. She was asked why she went home. She said she missed her mum and wanted to go shopping. She also went to church, around twice a week. She did not experience any problems doing so. She stated that the church is now held in a different location. She confirms her family have been attending church since 2008 and have not had any problems.
44. The Tribunal informed the applicant that one possible inference of her return was that she did not fear return to China, and that fear was one requirement of being a refugee. She was told that this was important and she should take the chance to comment. She said twice that she had no comment.
45. The Tribunal put to her that country information suggested that the authorities in Fujian seem to be quite lenient towards unregistered Christians in Fujian and relatively few reports of arrests and abuse. It seems also that the few reported arrests seem to be of high rank church leaders and elders. It was explained that this was important because the Tribunal had to decide what might happen to the applicant in the future if she were to return. She was encouraged to consider making comments about this information. She said twice that she had no comments.

46. The Tribunal also put to her that country information suggested that someone who had been arrested and detained would have a record with police and might experience difficulty obtaining a passport or exiting through immigration. It was explained that this information might be used to decide whether the applicant was in fact arrested and detained. The applicant declined to make comments.
47. The Tribunal recapped concerns regarding the arrest event and inconsistencies with her statement, and concerns regarding her account of distributing leaflets at her school in China. It was explained that these concerns may add up to a point where her general credibility might be questioned and that she was invited to comment on this. She said that she was telling the truth.
48. The applicant confirmed that she arrived in Australia in 2008 and did not apply for a protection visa until 2012. She was asked why she did not apply earlier. She said she did not know that she could, and was told by church people in January 2012 of the option. She confirmed that she entered Australia on a student visa, ceased to study, and discovered that that visa had expired soon after November 2011. It was put to her that delay in applying for protection can lead to an inference that she does not fear returning to China, or does not fear it as much as claimed. She was invited to comment. She had no comments.
49. She was asked if there were any parts of her story she wanted to discuss more. She said she had none. She was asked if she felt she had a chance to tell her story. She said she had.
50. She was asked if she was given any documents by police when she was released. She said she was given her 'promise' letter, not to attend any more Christian gatherings. It was put to her that she said she had refused to sign the promise letter. She said she refused at first, but later signed when her parents arrived. She was asked if police gave her any other documents. She said, No. It was put that country information suggested that after arrest and detention, normally police in China issue documents to record the arrest and detention. She said that she does not remember getting such documents.
51. The applicant was asked what would happen to her if she returned to live in China. She said that if she kept going to church, she would be worried. She was unsure as to what would happen to her if she returned and attended church regularly. She was worried that she would not have freedom to practice religious beliefs. She said she would not go to church. It was put that she did go to church last year. She said that she would go, but that she was unsure what might happen. She was asked if she would do anything more as a Christian apart from going to church. She said, No. She was asked if there was anything she would want to do which she could not do in China. She said she could not think of any. She was invited to sum up by stating why she thinks she is a refugee. She said that in china, one does not have freedom to practice religion. It was put that registered churches exist. She said that her family does not attend those churches and that they might be under the control of the Communist Party. She was asked if that was a problem. She said it was a problem, but could not articulate why. She was asked why her family does not attend those churches. She said there was no reason. She was asked if it was coincidence that her family ended up at an unregistered church. She said she did not know. She was asked if she would attend a registered church knowing that she

would have no problems with the police. She said she would not, but had no reason for her decision. She said she just wouldn't go. She said she does not object to the registered churches, but said she would not wish to go to them.

52. The applicant was invited to make any further comments she wished. She did not have any.

COUNTRY INFORMATION

Control of religion

53. The Chinese government has granted much greater religious autonomy to Christian groups since the end of the Cultural Revolution; freedom of religion has, however, been circumscribed by requirements to be registered and by the banning of some groups. Official policy has allowed both liberal and repressive interpretations of the relevant laws, and the implementation of religious control has varied widely at different times and in different places.¹ In criminalising some Protestant groups as cult organisations, the government prohibits their members from exercising religious freedom. The government reserves for itself the right to determine what is and what is not a religion.²
54. Kindopp notes that the law, along with a judicial interpretation by the Supreme People's Court, offers a definition of a cult which encompasses any unauthorised groups which "disturb social order and jeopardize people's life and property" or "endanger society by fabricating and spreading superstitious heresies." The "especially serious" crimes committed by such groups include "setting up transprovincial, transregional, and transmunicipal organizations", "collaborating with overseas organizations and individuals", and publishing "large amounts of materials". According to Kindopp, the law effectively bans as a cult "any autonomous social group capable of staging large-scale concerted action", and does not primarily take aim at the beliefs and practices of the group.³

Unregistered Christians in Fujian province

55. There is conflicting information or opinions about the treatment of underground Christians in Fujian. Unregistered Christian churches in Fujian, are by virtue of not being registered, not operating legally; however, some reports suggest that underground churches in Fujian are generally tolerated by authorities. Other reports establish that isolated arrests do occur.
56. Several reports were located that claim local officials in Fujian generally allow underground Christians to practice their religion. In 2009, a Global Chinese Ministries newsletter said "[i]n general, local government in Fujian seems fairly tolerant of unregistered believers".⁴ The 2005 Canadian Immigration and Refugee

¹ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.80-81

² Spiegel, M. 2004, 'Control and Containment in the reform Era' in Kindopp, J. and Hamrin, C. 2004, *God and Caesar in China: policy implications of church-state tensions*, Brookings Institution Press, Washington, p.42

³ Kindopp, J. 2002, 'China's War on "Cults"', *Current History*, September, p.262

⁴ Global Chinese Ministries 2009, "The Protestant Church in Fujian Province", Overseas Missionary Fellowship website, April

Board (IRB) report recorded the Executive Secretary of the Hong Kong Christian Council (HKCC), a grouping of Hong Kong Christian churches and organisations, as saying that Fujian has “the most liberal policy on religion in China, especially Christianity.”⁵ In the 2010 IRB report, the HKCC Executive Secretary commented that officials in Fujian province “allowed non official bishops to operate openly”.⁶ By the same token, during 2005 field research in Fujian Professor Joseph Lee of Pace University, New York, observed that “many unregistered Christians such as the Local Church, the True Jesus Church and the Seventh-Day Adventists had no difficulty of practicing their religion”.⁷

57. A 2005 research report from the Canadian Immigration and Refugee Board (IRB) mentions two incidents of arrest of unregistered church attendees or leaders in Fujian:

In 2003, a group of seminarians in Changle, near Fuzhou, were also arrested while reading the book containing the day’s service during a picnic (Cardinal Kung Foundation n.d.). Most recently, in July 2005 Father Lin Daixian, along with nine parishioners and one seminarian, was arrested while conducting mass in a private home in Fuzhou (ibid., 28 July 2005).⁸

58. In 2006, Tony Lambert notes the official religious policy is “applied relatively liberally in Fujian”, but “there have been occasional crackdowns on house churches and underground Catholics”.⁹ He gave the following overview of the expansion of Christianity in Fujian:

Fujian has a thriving and rapidly growing Christian community. As a coastal province in the south-east, it was one of the first to be evangelised from the early nineteenth century. By 1949 there were about 100,000 Protestants. Official estimates of numbers of Protestant Christians in 2004 were 1,179,000 – a twelve-fold growth after fifty-five years of Communism. In early 1999 a TSPM spokesman stated there are 4,000 registered churches and meeting points. In 2000 the TSPM magazine Tianfeng revealed there were over 1,200 pastoral workers in Fujian.

Fuzhou, the capital, with its six surrounding rural counties and two smaller municipalities had at least 350,000 Protestants in 2002, meeting in 300 registered churches and 2,000 meeting points. In 2004, Fuqing City had 350,000 believers meeting in 520 churches, according to a Hong Kong pastor. After Wenzhou, it is the area with the second greatest number of churches in the whole country, and has been dubbed “China’s Second Jerusalem” About 26 per cent of the population are Christian. Pingtan, a large island off the coast, has also seen incredible growth, from under 5,000 Christians in 1959 to 60,000 today, divided equally between registered

http://www.omf.org/omf/us/resources__1/newsletters/global_chinese_ministries/gcm_newsletter_2009/global_chinese_ministries_apr_09/the_protestant_church_in_fujian_province – Accessed 2 November 2009

⁵ Immigration and Refugee Board of Canada 2005, CHN100387.E – *China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2001-2005)*, 7 September

http://www.ecoi.net/local_link/27741/262163_de.html – Accessed 24 February 2011

⁶ Immigration and Refugee Board of Canada 2010, CHN103501.E – *China: Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong (2005 – 2010)*, 6 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453030&l=e – Accessed 24 February 2011

⁷ RRT Information Request 2008, *E-mail message reply by Professor Lee* – CHN33901, 25 July

⁸ Immigration and Refugee Board of Canada 2005, CHN100386.E – *China: Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong (2001-2005)*, 1 September

⁹ Lambert, Tony 2006, *China’s Christian Millions*, Monarch Books, Oxford pp240-241

and unregistered congregations. At least 15 per cent of the island's population are Christians.¹⁰

59. In 2008 the Department of Foreign Affairs and Trade (DFAT) advised that attendees of unregistered local churches could be targeted by police. The advice notes that local churches are considered illegal sects and that 'those who attend churches which are not officially sanctioned may be subject to detention',¹¹
60. The US Congressional-Executive Commission on China reported in 2009 that unofficial churches in Fujian have been identified by the government as an institution that authorities must "strike hard" against.¹²
61. In October 2010, *China Aid*, reported that Chinese authorities detained a worker and sealed three unofficial churches in Fujian.¹³ According to *Asia News*, in March 2010 an underground Catholic priest from Mindong in Fujian was arrested for organising a Christian camp for university students.¹⁴

Obtaining a passport

62. In January 2003 DFAT advised the Tribunal as follows:

Checks with the Public Security Bureau in the applicant's place of registered residence would reveal any adverse record held by the public security organs on the applicant. An applicant "whose exit, in the judgment of the relevant department of the State Council, would be harmful to state security or cause major loss to national interests" would be likely be denied a passport. Illegally obtaining a passport in the applicant's own name would be possible, but highly risky and expensive.¹⁵

Police records

63. In September 2006 DFAT also advised the Tribunal as follows:

The Ministry of Public Security has advised that a person who was warned for what was deemed unacceptable behaviour in public might not have a police record if their misdemeanor was considered minor and received an on-the-spot warning only. If they were detained for any period or were subject of other administrative penalties or procedures, then they would have a police record.¹⁶

The Golden Shield project

¹⁰ Lambert, Tony 2006, *China's Christian Millions*, Monarch Books, Oxford, pp. 240-241

¹¹ Country Information Service 2008, *Country Information Report No. 08/66 – RRT Request CHN33508 – China – Shouters – additional information*, (sourced from DFAT advice of 14 July 2008), 15 July

¹² US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October

¹³ China Aid Association 2010, *Abduction and Building Closures in Fujian*, 19 October, http://www.chinaaid.org/qry/page.taf?id=105&_function=detail&sbtblct_uid1=1582&_nc=8e483cd76c2e159254f7a7430ec53b24 – Accessed 14 October 2010

¹⁴ "Another underground priest arrested in Fujian" 2010, *Asia News*, 24 March <http://www.asianews.it/news-en/Another-underground-priest-arrested-in-Fujian-17965.html#> – Accessed 20 April 2010

¹⁵ (DIMA Country Information Service 2003, *CIR No. 12/03- Passport and exit procedures*, (sourced from DFAT advice of 15 January 2003).

¹⁶ DFAT Report 540, 28 September 2006

64. In 2011¹⁷ the United Kingdom Home Office reports the following:

8.05 On 2 July 2009 the Canadian IRB advised:

“In 17 June 2009 correspondence with the Research Directorate, a counselor at the Embassy of the People’s Republic of China in Ottawa provided the following information on Public Security Bureau (PSB) information sharing:

1. The national computer network of policing is called the Golden Shield Project.
2. The aim of the project is to improve policing. Non-policing information and information from other departments, such as family planning information, is not stored in the project. There are strict regulations on how to use the data in the project.
3. The Project has eight databases:(1). Population information, mainly the information on the citizen ID; (2). Criminal record information; (3). Criminal fugitive information; (4). Information on stolen and robbed cars; (5). Information on passports and exit and entry; (6). Information on registered cars and drivers; (7). Information on police officers; (8). Information on key fire-prevention units.
4. Now all police departments at county level and above (namely police departments at provincial, city and county levels) and most police stations and other grass-roots units (namely police under the county level) can connect to the system. Some small police stations and grass-roots units in remote areas cannot connect to the system.
5. The system used by PSB in Beijing is the same national system. It is part of the national system.
6. Chinese police are in charge of exit and entry administration. Just like CBSA [Canada Border Services Agency], in all ports of entry including international airports there are police units in charge of examination and they can connect to the system...

The Embassy Counselor stated that the Golden Shield is not used to track an individual who is not a criminal suspect according to Chinese criminal law... According to a 13 April 2006 article from the New York-based Epoch Times, an official from the Ministry of Public Security indicated that the objective of the Golden Shield project is to facilitate the transmission and sharing of data among police so as to enhance the capability of the police to solve cases.’ The article also describes the Golden Shield as a digital system for information management within the Public Security Ministry,’ with 640,000 network computers that are grouped into 23 operating systems,’ which contain population, crime, vehicle registration and border control information... A researcher... stated the following in correspondence with the Research Directorate: China’s Public Security Departments absolutely do have nationwide computer information sharing networks, and have been working hard to develop and expand those for at least a decade’... the Laogai Research Foundation describes China’s Golden Shield project in the following way: This project includes monitoring and censoring the Internet, including individuals’ emails. It also includes monitoring phone conversations with advanced speech recognition technology, and monitoring citizens’ movement through a vast network of surveillance cameras, equipped with face recognition technology... The ultimate goal is for police to use Smartcard’ technology to scan an individual’s state-issued identity card and gain instant access to all of the information the government has collected on this individual’... According to the Epoch Times article, an official from the Ministry of Public Security

¹⁷

Country of Origin Information (COI) Report: China 24 August 2011
http://www.ecoi.net/file_upload/1226_1314789419_report-0811.pdf - Accessed 17 August 2012

stated that the Golden Shield is an internal network within public security services that is totally separate from the Internet that ordinary citizens use'. Several additional sources indicate that the Golden Shield project includes monitoring civilian Internet use... Amnesty International (AI) broadly describes the Golden Shield as a project that aims to develop an online database with an all-encompassing surveillance network which would allow the authorities immediate access to records on every citizen in China'... Legal Affairs magazine similarly notes that the Golden Shield project is designed to create instantaneous access to a database that contains the work records, financial data, and law-enforcement histories of almost every adult Chinese citizen'... Both Legal Affairs and AI indicate that 'Policenet' is part of the Golden Shield project and operates in all but one province... Through this system, local branches are connected to each other, as well as to PSB citizen records...

FINDINGS AND REASONS

65. The Tribunal finds that the delegate's decision is an RRT-reviewable decision within the meaning given to that term in s. 411 of the Act, that the applicant has made a valid application for review of the delegate's decision under s. 412 of the Act, and that the Tribunal has jurisdiction to review the decision.

Country of reference

66. The Tribunal finds that the applicant is a national of China. There is no evidence before the Tribunal that she is a national of any other country, and the Tribunal finds that she is not. There is no evidence before the Tribunal that she has a right to enter and reside in any country other than China, and the Tribunal finds that she cannot. The Tribunal finds that for the purposes of assessing her claims against s.36(2)(aa), if she were removed from Australia, the receiving country to where she would be removed is China.

Christian religion

67. The Tribunal has considered the applicant's claim to be a genuine practicing Christian. The Tribunal considers that the applicant's knowledge of the bible and Jesus' life to be basic and on one view not as detailed or deep as one who had been a Christian and who has studied the bible for a long a period as she claims. Nonetheless, she was able to relate major events in the Christian narrative with some nuance. The Tribunal has considered that Christians may practice their faith in ways which do not place heavily reliance on biblical teachings, and that in this light, some latitude may be afforded when assessing a person's knowledge of traditional Christian teachings.
68. The Tribunal accessed the website of the [church name and URL deleted: s.431(2)] [in] August 2012. The website confirms [the pastor's name who] delivers sermons and that the service is held at 10am Sundays. The address of the church is given as [address deleted: s.431(2)] [Suburb 2] South. Given that the applicant claims not to know the address or exact location of the church, the Tribunal does not consider it material that she believed the church was in [Suburb 2] North.
69. The Tribunal accepts that the applicant considers herself to be Christian, and that she attended home church gatherings in China, and that she attends church in Australia. The Tribunal does not consider that Christian conduct engaged in by the

applicant in Australia was or is for the purpose of strengthening her claim to be a refugee, and finds that s. 91R(3) of the Act is not engaged.

The claimed arrest

70. The Tribunal had concerns regarding the credibility of the applicant's account of being arrested. These concerns were put squarely to the applicant at the hearing. It was put to her that in her written application she typed that she was arrested at the end of 2007 and was detained for two weeks. However, at hearing she maintained that she was detained for three days and that she was around [age deleted: s.431(2)] years old, which would make the year 2003 or 2004. She was invited to comment and declined to do so at first. Later she asserted that her oral testimony was correct. She postulated that the inconsistencies in her written statement may have been the result of a translation error with the person who helped her translate her claim into English.
71. The Tribunal finds it difficult to accept that if the applicant, as she asserts, had typed her application form herself, and typed 'at the end of 2007' and 'locked up there for 2 weeks', that she would not have realised that she was typing dates and times in numerals which did not correspond to key facets of her story. The logical import of what she asserts is that she wrote her age at the time of detention ([age deleted: s.431(2)] years old) and the period of detention (3 days) in Chinese and that, after it was translated into English, she herself entered a year of detention (2007) which was at least 3 years after the age she claims to have been when detained and a time of detention (2 weeks) which was also significantly different, into her typed application form. The applicant at first declined to make any comment on the inconsistencies put to her. Her explanation later was more in the form of a hypothesis of what might have happened. The Tribunal does not accept that explanation.
72. The Tribunal considers that the claims of past harm included in her statement did not actually occur, that they were inserted to strengthen her refugee claim, and that she has had difficulty replicating those (false) claims in her oral testimony. She was unable to replicate her written claims because she has no independent recollection of such an event, because the event itself did not occur, and because she could not accurately recall the (false) contents of her statement.
73. The Tribunal finds that the applicant was never arrested as claimed or at all, was never abused by police, and is not known to police, and has no record with police for this or any other reason.

Public "criticism" and distribution of Christian material at school

74. The applicant's claim is that police either informed her school, or her school otherwise discovered that she had been arrested. This then led to her public 'criticism' at school, which then led to her social isolation and discrimination against her.
75. The Tribunal has found that the applicant has never been arrested or otherwise abused by police. She was put on notice that the Tribunal's concerns regarding inconsistencies regarding her arrest might affect her general credibility. As the

Tribunal has found that the applicant was never arrested, the Tribunal finds, that her school never discovered any claimed arrest or detention of the applicant and therefore never subjected her to any form of public or private ‘criticism’ or other exposure, and that the applicant did not suffer social isolation or discrimination at school.

76. The Tribunal put to the applicant separate concerns it had in believing that she would attempt to hand out Christian material at school after having been arrested, abused, and publicly ‘criticised’, and that in Melbourne she only accompanied other Christians to evangelise three times before deciding that she was shy and was not a good speaker, and deciding not to evangelise further. The applicant sought to draw a distinction between distributing fliers and speaking with people, and that distributing fliers does not require a deeper conversation. The Tribunal pointed out that her distribution of fliers in the context which she claims, might nevertheless invite consequences. The Tribunal gave the applicant a short adjournment in order to consider her responses. When the hearing resumed, she said that she was young when she gave out fliers and did not think much before deciding to distribute the fliers.
77. The applicant only claims to have accompanied other Christians three times in Australia, when they went out to preach the Christian message to Chinese members of the public. She admitted that she did not do much of the talking and that she accompanied others. She said she decided to stop because she was not good at speaking. Although she claimed that distributing fliers involved less speaking, she did not claim that she attempted to distribute fliers in Australia.
78. Given her hesitancy in evangelising in Australia, and the fact that she has stopped accompanying church members, even as a passive companion without a speaking role, it is difficult for the Tribunal to accept that she would place herself at risk by distributing Christian material in a school where (she claims) she was ostracised, publicly criticised, and after having had a police record. The Tribunal finds that she did not distribute any Christian material at that time, or any other time, anywhere in China.
79. Although the applicant claimed to be interested in evangelising, her actions do not bear this out. The applicant claims no fear on account of her religion in Australia. She accompanied Christian friends three times in Australia to preach. She did not do much of the talking, and decided she was not good at speaking and was shy. She decided to stop and has not decided to further attempt to evangelise. While she claimed that distributing leaflets requires less talking; imply that it was easier for her to do, she has not claimed to have tried this in Australia. The Tribunal has considered her brief attempts at evangelism in Australia and finds that she has stopped all forms of evangelism here, not out of any fear, but because she has decided that she does not wish to engage in those activities. The Tribunal finds that she will not engage in any form of evangelism in the reasonably foreseeable future, in Australia or China, for reasons other than for any fear of harm.

The applicant’s return to China in July-August 2011

80. The applicant claimed that she returned to China because she missed her mother and wanted to go shopping. She said she attended church twice a week in a new

location, experienced no adverse consequences. She also agreed that her family had been attending church since 2008, without problems. She had no comment when it was put to her that these facts might lead the Tribunal to conclude that she had no fear of return to China.

81. The Tribunal finds that the applicant's return to China for purposes including shopping, her attendance at church without consequences twice a week, and her family's attendance at church without consequences since 2008, all lead to the conclusion that she has no or negligible subjective fear of practicing her religion in China, and the Tribunal so finds.

Delay in applying

82. The Tribunal has found that the applicant has no or negligible subjective fear of practicing her religion in China. This fact, it is considered, explains why she states that her return to China in 2011 was for, among other things, shopping. The Tribunal considers and finds that this lack of any appreciable subjective fear explains why she did not seek protection until after her stay in Australia had become unlawful. It does not accept that her delay was because she was unaware of the option of applying for protection. The Tribunal finds that the applicant applied for a protection visa to prolong her stay in Australia for reasons other than because she fears harm if she were to return to China.

Christian activities in the future

83. The Tribunal's task requires it to come to a conclusion as to what Christian activities the applicant might engage in if she were to return to the China. The Tribunal finds that the most accurate indication as to her future Christian practice is her actual current practice and conduct in Australia, where she claims no fear of engaging in Christian activities, and where she makes no claim to have modified her behaviour due to fear. Guided by her own account of her activities in Melbourne, the Tribunal finds that the applicant would wish to attend church, attend bible study, and read the bible. These features of her practice are taken from her own account of her practice in Australia, as asserted by her.
84. The Tribunal has already found that she would not, for reasons not related to any fear, evangelise in any way, whether by speaking with people or distributing Christian material.
85. The Tribunal finds that the applicant does not, from what it accepts of her past experiences, have a public or political profile or any record with police in China. Based on what it finds she would do if returned to China, it finds that she will not acquire any such profile or record in the future.

Prospect of future persecution

86. The Tribunal has considered the country information set out above. The Tribunal makes the following findings based on that information: the authorities in Fujian are one of the most lenient on unregistered Christians in China; those authorities are more concerned with groups that are capable of staging large-scale concerted action; large numbers of Christians exist in Fujian and a significant proportion of

them worship in unregistered groups; small groups meeting in private dwellings are not of particular concern to authorities; few arrests have been reported; and, senior Christian leaders or those with a public or political profile may run higher risks of adverse attention.

87. The Tribunal now considers what it has found that the applicant will do in China against the conclusions it has reached regarding the situation in Fujian. The Tribunal considers that if the applicant were to return and attend an unregistered church, attend bible study with church members, read the bible, not seek to evangelise, and not possess either a public or political profile, the chance that she would come to the attention of the authorities and that they would act to harm her is remote. Given current information, the Tribunal finds that this will be so, as far as can be reasonably foreseen. The Tribunal therefore finds that the applicant does not face a real chance of serious harm for the reasonably foreseeable future on account of her Christianity.
88. Apart from her religion, the applicant did not advance any other basis on which she might be a refugee and the Tribunal finds that she is not a refugee.

Complementary Protection

89. The Tribunal has considered if the applicant meets the criterion in s.36(2)(aa). The Tribunal finds that the chance of her being harmed in China by any person or organisation, for any reason, is remote. The Tribunal therefore finds that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that she will suffer significant harm.

CONCLUSIONS

90. 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).
91. The Tribunal has considered the alternative criterion contained in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
92. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s. 36(2) by virtue of ss. 36(2)(b) or (c).

DECISION

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

