

060879859 [2006] RRTA 227 (21 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060879859

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Alan Gregory

DATE DECISION SIGNED: 21 December 2006

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

In accordance with s.431 of the *Migration Act 1958*, the Refugee Review Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of China (PRC) applied to the Department of Immigration and Multicultural Affairs for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights..

The primary applicant states she married in the early 1980s, and is a Chinese national. She came to Australia in the mid-2000s. Included in the application is the husband of the applicant also a Chinese national and he entered Australia later. Application for a Protection visa was made in the mid - 2006.

The applicant claimed to the Department that she came to Australia to accompany her child who is studying in Australia.

Who is not included in the application.

The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.

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

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

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged, in this case 31 July 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is either:

(a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol

or

(b) a non-citizen in Australia who is the spouse or a dependent of a non-citizen (i) to whom Australia has protection obligations under the Refugees Convention and (ii) who holds a protection visa.

'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees

respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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

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

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not

satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

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

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

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants. 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.

In the application made by the applicant (form C), she states at **question 40**, that she left China for Australia for two reasons "to accompany her child in Australia"(sic), and to "pursue freedom of religion". She stated that a few years ago, relatives from Australia visited them in China and from the conversation with them she learned that they were Christians. She stated "since then I paid attention to religion activity around me." She said "I noticed that people were secretly gathering together in residential house for singing and reading Bible. As I showed my interest in it a friend took me to their home church service a couple of times". She goes on to relate how a family member who was working in a law enforcement authority warned them not to participate in such activities especially relating to either religion of Falungong. She said the public security officers maintain constant monitoring on people's group activities and have power to put them into custody. She stated that the same family member also informed her of many underground churches being destroyed and participants being taken away. She stated she was also angry that the Chinese government "was so cruel and inhumane to persecute the Christian followers. She stated that she found the Christian people "kind-hearted, helpful and loving people", she did not feel they did anything wrong or bad. She stated that her longing to approach God remained strong. When her child had the opportunity to study in Australia she realised how lucky the people in Australia were as they did not have the fear of participating in church activities.

The applicant stated that when she obtained her visa to Australia and flew out, she attended Church with her relatives. The people at the church warmly welcomed her like a family member and she moved and touched by their actions. She listened to the pastor's sermons during the service and said "I enjoyed it so much as I felt my soul had been purified. I also

joined them to sing hymns.” She stated that since then she has gone to Church regularly and sometimes goes to a house for fellowship or a prayer meeting. At home she studies the Bible and other materials to understand God’s words. She stated “This has inspired me a lot and deepened my understanding of the bible and has led me to believe in God more, adore him more and I can’t live without him.” She stated that during the mid-2006 period she was baptized and formally became a Christian and she prays a few times a day.

In response to **question 41**, the applicant stated that if she returns to China she will lose her freedom to practice her Christian religion. The church she joined in Australia was originated by Country A people. She stated that if in China she registers with the official church her Country A church background would be unlikely to be accepted by Chinese official Christian organisations. She stated she would find it hard to practice with the official church in China because their interpretations and sermons have suffered many restrictions. If she does not register she would attend underground churches where she could enjoy the pure Christian sermon, but she risked being assaulted, attacked by policemen and being put in jail.

She stated that she had called relatives and friends and sought their opinions on her future and the risks, and they all urged her not to return because they heard many events that home churches people were arrested or missing. They feared this would happen to her if she returned to China and especially her mother, who knew someone who was jailed. Her mother said she could not return because she has joined a Christian church and she will be arrested. Her mother was critical of her being stubborn. She reminded her that the Communist Party did not believe in God. She said “fear has filled my body and my heart”.

In response to the **question 42**, the applicant stated that if she has to return to China she may be forced to give up her religious belief and service activities. She cannot give them up as she is devoted to God. She outlines her creed about belief in God. She stated that the Chinese Government and public security officers would harm her and her family. She stated that policemen crack down on underground house churches and arrest pastors and Christians and place them into custody. She could be placed in a detention centre for a long time and tortured physically and mentally. She stated that she believed some are sent to ‘brain washing’ classes and forced to make confessions and some are sent to labour camps or mental hospitals.

In response to question 43, the applicant stated that if she returns to China she will continue her religious belief and practices.. She states God is with her all the time and she cannot imagine life without God, the church or the fellowship of Christian people. She stated that she would risk her life if she returned to China as the Chinese authorities will not allow Christian church activities. She stated that there are many home churches that have been attacked and people arrested all over China. She stated that the Chinese authorities are heartless when they deal with religion. She stated that the Communist Party rule in China and wish to control people’s ideology. She stated that while there is officially freedom of religion there is in fact no freedom and many are put in jail or tortured to death for their religion. She stated that very limited numbers of Catholics and Christians are allowed to have services after they register. These churches are under constant supervision by government authorities and suffer many restrictions in the interpretation of the Bible and in church activities. She said that many churches are unable or unwilling to register.

She said a friend in China told her by telephone that someone she knew had been reported by Chinese authorities for participating in underground churches and has been charged. The family suffers fear and anxiety. She stated that she has seen reports that last November 3000

Christians in China had been kept at 125 office for church services, the government applied harsh measures to control all outdoor religious activities.

In response to **question 45**, the applicant stated that the Chinese authorities would threaten and harm her, as the government regards religious groups as threatening their power. So they destroy any potential or minor force. She stated that the Chinese government had taken extreme inhumane action against Falungong practitioners and many placed in jail. Many she stated have been tortured to death. While the Chinese government allows Catholic and Christian churches to exist they must do so under the supervision of the Chinese Communist Party. Those who do not accept the Three-Self Patriotic Churches are regarded as illegal home church and subject to closing down and persecution.

Attached to the application were various Notarial Certificates:

- The visa applicant's Marriage Certificate; and
- Birth Certificates.

There were also certified copies of their Chinese passports.

There is a letter from an Elder, stating that the visa applicant joined their church services in 2005 and was baptized in the early 2006 and she and her husband attend worship services and adult Sunday School. He states that the visa applicant has become a Christian.

The delegate in refusing the application in the late 2006 stated that they were not satisfied the applicant would take a leadership position in any church she joined on return to China or would come to the adverse attention of the authorities and that she had scope to practice her religion without facing arrest and detention. The delegate also noted that the applicant entered Australia in the mid-2000s and did not make an application for a protection visa until 2006. She joined the Chinese Christian Church in the early 2005 and was baptized in the mid-2006. The delegate noted that the delay in submitting her application raised concerns as to the immediacy, gravity and credibility of her claims to fear persecution in China. The delegate quoted the opinion of Heerey, J in *Velanther Salvaduri v MIEA and Anor*. No. VA114, 1994 Fed. No. 301/7A.

The applicants appeared before the Tribunal in the late 2006, to give evidence and present arguments. The Tribunal also received oral evidence from her husband. The applicants were represented in relation to the review by a registered migration agent.

The applicant said she and her husband had one child, who was studying at a college. This visit to Australia she said was her first trip outside of China. She had always lived in China. She met her husband there, and he had been a manager for a private firm. She worked as a **manager in the transport industry**. She said she and her husband paid for their child to come to Australia.

Asked about her religious views when she was younger she said she had not given attention to religion although her parents were conservative and said that three feet above ones head was the spirit of God and that God watched her and she should fear God and be good. She was not sure of the kind of religion her parents subscribed to. She was taught by them to be a good person and to abide by the law. She said her mother and father were still alive and she rang them regularly. They were elderly and lived in City A.

The applicant said that she and her husband owned property in City B. She said she lived in a unit with her husband and her child. She said they do not work but support themselves from their savings.

Asked about the relations that had first introduced her to Christianity she said she had found out since coming to Australia that they were not relatives but close friends linked to her husband. She said they had come to China in the early 2000s on a visit and stayed for a while. There was no Christian church in her area she said and so the visitors did not attend church but in conversation they discussed their religion. On a visit to the mountains for sight seeing they would not visit some temples and so she became curious about their religion. She was interested in people from overseas being Christian.

The applicant said after these visitors left China her curiosity about religion remained and she was attracted to some singing by a work college and discovered that he was singing Christian hymns. She found them very beautiful and she expressed interest and he invited her to attend a gathering. She went to the gathering and heard more hymns being sung but had not realised initially that it was a Christian worship. There was no printed hymn book but loose pages with hymns on them. She had not realised they were Christian songs from the Bible.

The applicant said she went to these gatherings several times, but she was not aware of what they were except they worshipped God. However after these visits her family urged her to stop and this she did. Her husband's sibling, who worked for a law enforcement authority criticised her and warned her of the severe consequences of going to such a group.

The applicant said that when she came to Australia she rang people in China and the place she had visited for the worship had been closed and seized by the government, and there was a notice on the house sealing it. She said a relative had warned her that if she went to an underground church group she would be arrested by the police and bring trouble to the family.

The applicant said she came to Australia in the mid-2000s and not long after her arrival she went with friends to their church. Asked if she was aware that there were other churches, she said she was, and asked if she was aware that there were other churches that used the Mandarin language she said she was but had only attended the Chinese Christian Church. Asked if the Chinese Christian Church had links with any other church, she said she was not sure. She said there was a Pastor who was Country A and elderly, and also another person who was an elder. She thought the pastor was full time but that the elder worked as well. She had no knowledge of what the church was attached to or of other Christian denominations. She said she had only attended the one church.

Asked if she was familiar with some Biblical texts for example "To render unto Caesar that which is Caesars and to God that which is Gods", she had not heard of that, nor was she familiar with the Beatitudes in the Sermon on the Mount. She said in response Jesus was the light – and the guide to the right pathway. She said her favourite piece of Scripture was the word of love. Asked what she had studied she said the four Gospels and five books of Moses. Asked if she found any differences in the Gospels she said they all spoke the word of God and were similar to each other. Asked her favourite she replied Luke. Asked if there was a cycle of readings followed, like many churches do in Australia, she said she was unaware of any cycle or pattern of readings.

The applicant said she was told in church about the pathway leading to eternal life and to understand the mystery of God. Asked if there were psalms read she said there were. She said each Sunday a brother or an elder provided a sermon or talk and they were taught to be disciplines of the Lord. Asked the form of baptism she underwent she said it was full immersion. Asked if there was Holy Communion she said on the first Sunday of the month with wine and bread without yeast. She said her husband went with her to church and he was baptized in the late 2006.

Asked what she knew about the Three-Self Patriotic Church the applicant said before she came to Australia she did not know of such a thing. She said there were two churches permitted in China by the government a Catholic Church and the Three-self Patriotic movement. Asked why she had not thought of worshipping at the Three-self Patriotic Church, the applicant said that her husband told her there was not such a church in their area.

The applicant said that her husband told her there were signs saying that a building was the Three-self Patriotic Church but there was no active church there only the sign. She said there was no such active church in her city. She said there were underground and family church groups, her sibling who was a law enforcement officer had a lot of information about such groups. She also searched the Internet and she knew there were many underground church groups.

The applicant said the elder at her church went to City C and came back and shared his knowledge from this trip and said that in China churches are not allowed to exist except in large cities. He said churches there are not allowed to teach or provide people with a true sermon. He said there were secret mission groups and he said they had to be careful and even swap mobile phones and not contact family members.

Asked why she would not consider going to the official sanctioned church she said the Three-self Patriotic Church seemed controlled by the government, and even interpretations of the Bible are controlled. She said the Communists do not believe in God and the official church would not allow them to be concerned about political affairs. Asked if her church was involved in politics she said it was not.

The applicant said that the Three-self Patriotic church did not allow people to talk freely about salvation and truth in the Bible. Asked if she was a person of interest to Chinese authorities for any reason she said she was not but she had become a committed Christian. She said some people associated with the official church were not true Christians but Christians only in name. The applicant said she would follow the teaching of the Bible and attend Christian meetings and live a Christian life. She said she had a duty to spread the Gospel and follow the way of Christ and spread his message. The Gospel to her meant telling people of the love of God and of human sin. She said the Lord Jesus Christ saved the world and we must follow his example and tell people of the true God.

The applicant said that she wanted to tell the world about God who is the saviour and lead to eternal life. She said heaven and earth were created by God. God existed before. He brought peace happiness and joy. She said if she returned to China to spread the message she would place herself in a dangerous position. She said Communists do not believe in God. She said missionary work in China put your safety in danger and she would be arrested by police and sentenced. She had all this information from the elder of her church that went to China and from the web and from her husband. In China she said the Government cracked down on family churches. Good people who read the scriptures and who sang hymns, were detained

arrested and treated violently and forced to repent and confess. She said they faced forced labour and some were sent to psychiatric hospitals.

Asked if she had a leadership role in the church she said she helped translate and she was also in the choir and had spoken in study groups and so considered herself a spiritual leader.

Asked why she had delayed in making her application, and pointing out that this was a factor in the refusal of her visa by the delegate she said she did not realise such a visa as a protection visa existed.

The husband of the applicant gave evidence. He said he also came from City B. He said he and his wife had one child who was a student here at a TAFE college. Asked what he did with his time as he was not permitted to work he said he stayed at home and studied the Bible and also did family chores and went shopping with his wife. He said they lived on their savings and he financially supported his child. He outlined his wealth, he brought to Australia. In China he said he was employed in a goods company.

He said his wife became interested in Christianity in early 2000s when relatives came on a visit. These people spoke something of their religion and his wife became interested. He said his sibling found out his wife had attended a home study group as people had told him. He warned them and told them they should not go. He said he had not attended.

Asked about the official church he said there were signs on doors that there was a church but this was not real and there was no active church there. He said he became a Christian in Australia. He came here in the mid- 2005 and he went with his wife to the Christian Church, and he also joined in a scripture study group with her. At first he was reluctant but gradually became a Christian. He said there was one dramatic event which affected him. He had missed the train and so did not go to a 9am class study group at the church. He shortly experienced a strange headache and was very uncomfortable and he could not even sleep. There was no logical reason for this pain. Next day, thinking of these matters he realised God was behind all things and he offered prayers and asked God's forgiveness.

God promised to help him and the miracle did happen and his headache disappeared and his ill feeling was gone. Behind everything is the hand of God he said, and the great love of God. He said he became serious in his Bible study and in the study of his faith. He said he met the requirements to be a Christian and a meeting constituted by the elders and pastors accepted him and he was baptized in the late 2006. He knew God existed. He said all life depends on God who brings hope and he could walk a pathway to eternal life.

Asked about his child he said his child had come to church sometimes and listened but had not become baptized.

Asked why there were many Christians in China who were not persecuted he said the official church just assembled people to show there was no real content in what they did. It was simply show. A true Christian would not attend as the official church did not follow the teaching of the Bible. The official church was under the leadership of the Communist party and followed their will. Christians were not allowed proper worship. He said God is our saviour and the official church accepts the communist party as the saviour. He said if he attends that kind of church it is an insult to God and they should not attend that church.

The applicant was asked to make her own case. The applicant said that she had a fear of persecution if she returned to China. The applicant said a friend of her mother was arrested in the simple circumstances of having attended an underground family church. He knew to attend an underground church would bring trouble to the family. She had run friends in China and knew that to be an active Christian in China brought trouble. She said in the scripture study group a person there who had been to China to teach English had been warned about being involved in any Christian church activity. The couple explained the situation in China and how they could not give an address. There was a fear of persecution, and she dare not inform her family in China that she was baptized. She dare not return to China. She had heard dreadful cases of persecution in nearby provinces. She said she was very worried about returning to China.

Asked whether she could re-locate to another part of China the applicant said wherever you go in China it was the same.

The applicant stated that she was a member of the Communist Party and so now as a Christian her situation was extremely dangerous.

The agent for the applicant asked if additional information or a submission could be made after the hearing, the Tribunal said this could be done.

In late 2006 the Tribunal received a submission from the migration agent for the applicant. Enclosed in this submission are:

- Statement by the primary applicant;
- Statement by the secondary applicant;
- Copy of BBC News article entitled “Chinese Christians suffer for their faith”;
- Copy of an article from Asia News, entitled “Nuns beaten in Xian”;
- Copy of an article entitled “China release ‘Underground Church’ Bishop after ten years sentence”.

In the statement by the applicant, she states that congregation members suffer as much as leaders of church groups and she has learned of cases where people are detained and if they are in unregistered house churches, and some are tortured and sent to jail or a brainwashing centre. She states while she has been a Christian for only a few months, she is active and attends Church service and a Bible study group and she has an obligation to evangelize to non-Christians. Her husband was initially shocked when she told him of her conversion but she preached to him and he came to see how she was transformed, and more tolerant and so he understood the power of God and he changed his perceptions of the Christian religion. She states that her husband was baptized in the late 2006. She states that she evangelises her friends and family and everyone that comes to her house.

Commenting on why she did not apply for a protection visa earlier she states that when she came to Australia in the mid-2000s she did not know much about Christianity but was interested to find out more. Gradually she became a Christian and the peace and joy outweighed the fear of facing persecution. She also had a fear of being “objected” by her husband and friends and putting them in danger and she did not tell her husband and friends

she was baptised during the mid -2006. Her husband was shocked when he found out and that he told her of persecution of Christians in China where the Government is regarded on top of God and that official churches are restricted. She said it was a bad time with her husbands then her parents' displeasure at her actions.

The husband of the applicant in his statement states he became aware after arriving in Australia in the mid - 2006 that his wife had been baptized and was shocked and scared. She is a stubborn person and she continuously evangelised him and took him to church. He did not take it seriously at first. But he recounts the miracle of a headache after he missed church and his prayer that cured him and he became converted. He was baptized in the late 2006 but is fearful of returning to China as one cannot evangelise legally, and he could not be a Christian without other Christians. He outlines the risks of being a Christian in China. He also states the Communist party does not believe in God and will not allow religion to exist. His sibling warned him of persecutions against Christians and how people are arrested and some tortured to death.

The BBC item relates to Mr Peter Xu Yongze founder of a large religious movement in China and outlines his jail sentences and suffering. The Asia News item relates the story of Nuns being beaten up in Xian, but also indicates that the government would compensate the injured nuns.

The article on the release of a Bishop refers to the release of Bishop An Shuxin who was Bishop of the Chinese Catholic Church not recognised by the Chinese government.

The Tribunal also examined other country information reports:

BLOSSOMS IN CHINA Site China Infodoc, accessed on 09 March, 04
Source: The Atlanta Journal reports:

As the 08 Olympics approach, religion gets a hand from a Government striving to make a good impression on the world. For years, Christians in Beijing have sought government permission to build churches, and for years, the government rebuffed them.

With church pews packed beyond capacity, many Christians had nowhere to worship but at home. Secretive "house churches" operate throughout the vast country. But last month, Chinese authorities announced groundbreaking news for two churches in Beijing, the first to be built in the capital since the Communist Party took power in 1949, according to the state-run People's The Chinese Catholic Church, which is not affiliated with the Roman Catholic Church, plans to build a large national seminary in Beijing and has been giving language training to its clergy so they can celebrate Mass in German, French and other languages, Chan said. "It's not just the games," he said. "It's the image of Beijing as an international city, an open, modern city."

Christianity has been growing rapidly in China. Official figures put the number of Protestants at 15 million and Catholics at 10 million. Tens of millions more Christians, including Roman Catholics loyal to the Vatican, belong to unauthorized churches.

In the USA Commission on “International Religious Freedom” (May 2005), it is stated “The Chinese government continues to engage in Systematic and egregious violations of religious freedom.” It also states how the government and government officials “control, monitor and restrain the activities of all religious communities...”. It specifically mentions “house” or “underground” Christians. It also states “prominent religious leaders and laypersons alike continue to be confined, tortured, imprisoned and subjected to other forms of ill treatment on account of their religion or belief.” While from November 2004 the Chinese government announced a new set of regulations on religious affairs, which suggested the protection of religious freedom, the Commission is sceptical about the reforms. It notes that the reforms specify that official recognition is limited to five “official religions” – Protestantism, Catholicism, Islam, Buddhism and Taoism. The Commission suggests the reforms rather than grant freedoms, tends to regularize management practices, so giving authorities more control over religious groups.

What is called mainly (there are variations on the name) the “Three-Self Patriotic Movement” or church is the only government sanctioned Protestant church in China. There is also an officially recognised Catholic Church in China - the Chinese Patriotic Catholic Association (often referred to as the CPA or CPCA or CCPA).

In the **Human Rights Watch 2006**, ‘China: A Year After New Regulations, Religious Rights Still Restricted’ 1 March <http://hrw.org> (accessed September 2006) it is stated:

Arrests, Closures, Crackdowns Continue

(New York, March 1, 2006) – One year after China’s Regulations on Religious Affairs came into force, Chinese citizens’ ability to exercise their right to freedom of religion remains as subject to arbitrary restrictions as ever, Human Rights Watch said today. The regulations took effect on March 1, 2005. At the time they came into force, the Chinese government asserted that the national regulations, the first comprehensive set of regulations on religion in China, constituted “a significant step forward in the protection of Chinese citizens’ religious freedoms.” However, local officials continue to repress religious activities that they determine to be outside the scope of the state-controlled religious system. Their decisions are often made arbitrarily and in a manner inconsistent with the right to freedom of belief or religion. Chinese officials continue to detain and arrest religious believers, close religious sites, and impose restrictions on the movements, contacts, visits, and correspondence of religious personnel.

“Chinese officials claim the new regulations safeguard religious freedom through the rule of law, but the intentional vagueness of the regulations allows for continued repression of disfavored individuals or groups,” said Brad Adams, Asia director of Human Rights Watch. “There’s nothing accidental about the vagueness – it gives officials the room they need to legitimize closing mosques, raiding religious meetings, ‘reeducating’ religious leaders, and censoring publications.” Human Rights Watch said the most significant problem with the regulations is that arbitrariness is implanted in the text. The regulations state that “normal” religious activities are allowed, but then fail to define what the term “normal” means, leaving practitioners unclear about what is allowed and what is banned. The regulations also include other undefined key terms, such as “religious extremism,” “disturbing public order,” and “undermining social stability,” each of which only adds to the ambiguities and the potential arbitrariness of the application of the regulations. In the year since the regulations went into effect, attempts to rein in

unsupervised religious activities concentrated on preventing like-minded believers from working together to propagate their beliefs, to “plant” new religious sites, or to educate their children. Thus, the size and composition of religious meetings, personnel, literature, and religious education for minors all came under attack.

The Tribunal also noted the visit in October 2006 by the Archbishop of Canterbury to Christian Churches in China, (See Archbishop of Canterbury’s web site) which went without incident and made the Archbishop aware of the millions of Christians activity practicing their faith in China.

In the late 2006 the Tribunal received additional information post hearing from the agent for the applicant. In regard to the point about the applicant making a delayed application for a protection visa, the agent states that the applicant was not yet a Christian when she first arrived in Australia, and it was only after the influence of her friends when she attended church regularly that she was baptized in the mid-2006. Because she was aware of the danger of being a Christian in China she did not tell her husband or relatives. The agent also states that the applicant wanted to remain in Australia but didn’t know how to. The agent also claims that the applicant became baptized and has been “actively evangelizing” and reiterates the claim of a leadership role.

The agent also addresses the issue of the Three-self Patriotic Church, and reiterates the response by the applicant that she would not join such a church as it places the Communist Party of China on top of the Mighty God. The agent attaches the Wikipedia entry on the three –Self Patriotic Church, which states that the church insists on the leadership of the Communist Party and as such is regarded as a false church by members of house churches. The agent states that the applicant cannot accept this and that the church restricts freedom of religion in China and is only a pretext. The agent quotes Zhang Jian a clergyman of home churches making comments about the official church in the context of the Archbishop of Canterbury’s visit. The agent also attached further country information – An article from Epoch Times on Freedom of Religion in China from Freedom Asian Radio Station, and the Wikipedia entry on the Three-Self Patriotic Church.

In the late 2006 there is a further letter from the agent for the applicant, which encloses further country information, namely a new report entitled “Chinese Authorities Raid Wuhan Underground Church Last Friday, Hundreds of Followers Arrested” (6 June 2004) , and an article “Church Demolished in Hangzhou, 3000 Followers Clash with 500 Police Officers”(31 July 2004).

FINDINGS AND REASONS

- *In the application made by the applicant, she stated that she left China for Australia for two reasons “to accompany my child’s study in Australia”(sic), and to” “pursue freedom of religion”. The Tribunal accepts that one of the reasons was to be with her child, but does not accept that she came to pursue freedom of religion as she by her own admission had not become a Christian when she left China. Her interest was very superficial, limited to hearing hymns sung and she did not associate this initially with Christianity or religion. The Tribunal did not see her curiosity about religion that she came across, mainly from the visiting relatives, to be a genuine interest in religion as such but more a curiosity for an activity she saw people engaged in, as she would tai-chi, or a sport.*

- The applicant claims, stating it in various ways, that the Chinese authorities through local officials maintain constant monitoring of group activities by people in underground or family churches, restrict their practice and have power to put them into custody. Furthermore that some of these people are detained, arrested, tortured and put into forced labour camps or mental hospitals. Some are forced to confess errors and recant their religious views.* Country research supports this general contention of the applicant that there is discrimination against religious groups, especially those involved in underground or home church activities. There are examples found of people who have suffered detention and other forms of punishment because of such an involvement. At the same time there are millions of Chinese Christians who are still able to practice their religion both in official and underground churches, and officially the Chinese government has conferred by its regulations of March 2005 more religious freedom upon its citizens. The visit by the Archbishop of Canterbury which has been referred to in this case has also indicated a tolerance by Chinese authorities.
- The applicant claims that she had become a Christian being baptized in the mid - 2006 and that she attends church regularly, joins bible study groups and prays daily and participates in the activities of the church.* On the evidence presented to it the Tribunal accepts that the applicant has become a baptized Christian and attends the Chinese Christian Church. The Tribunal found the applicant naïve in her understanding of Christianity and not well versed in her Christian knowledge but that she expressed the slogans of a simple faith of a Biblical- evangelical type. The Tribunal also took into account her statements that she had studied the four Gospels, her favourite being Luke and had also been in Bible study, doing five books of Moses. However, her comments did not indicate that she had any real knowledge of these specifics mentioned. There was nothing in her responses to indicate she had a real knowledge of the four Gospels and differences between them, or of the significance of the books relating to Moses. Her specific references strengthened the Tribunal's finding that her Christian knowledge was superficial and simplistic. The applicant has also claimed to "evangelise" but no evidence was presented to the Tribunal to support this statement other than her own assertion. The letter from the elder of her church did not refer to such activities by the applicant. The agent in his letter also refers to the applicant "actively evangelizing" but no details are supplied as to what is the nature or form of this evangelical activity. The Tribunal does not accept that she has been evangelizing.
- The applicant was adverse to the Three-self Patriotic church in China, the official church and while she had no direct personal experience, based on what others had told her she would not accept that she could attend that church or that attending the church would be a satisfactory practice of her religion.* While the Tribunal understands that the Three-self Patriotic Church is an officially sanctioned church it does not follow in all cases that a Christian could not participate in a form of Christian worship that would be satisfactory.
- The applicant indicated that she was a member of the Communist Party in China.* It is difficult to assess the effect of this on her should she return to China. As a member she would be in an advantageous position over other people, and therefore it could be argued that she would have an advantage in practising her Christianity because she is a party member. Conversely it could be argued that as a party member, being a

Christian is incompatible with this and would make her subject to more severe treatment. The Tribunal was not able to find any evidence either way to determine whether membership of the Party would help her or hinder her if she was known to be a Christian.

The **Tribunal finds** that from the evidence presented to it, that the applicant and her husband are citizens of the People's Republic of China.

The **Tribunal finds** that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

While the Tribunal accepts that the applicant has become a baptized Christian and attends the Chinese Christian Church, the Tribunal remains unsure of the applicant's seriousness as a Christian. The Tribunal realises that while her understanding of the Christian faith may be simplistic and flawed, it does not follow her conviction is not genuine. The Tribunal found the applicant's knowledge of Christianity and the Christian Church to be shallow, she did not seem well versed in the Bible, despite statements that she attended regular Bible study, and her responses tended to be broad statements such as "Jesus is the Light Jesus is the Pathway" without any underpinning understanding. The applicant has admitted she has a firm desire to remain in Australia. Her child is a student here and with the possibility of him/her achieving permanent residence at the end of his/her studies, the applicant would seem to wish to continue family life resident in Australia. The applicant's claims that she would spread the gospel, her firm view that from what friends had told her the official churches would not be satisfactory and that she would have to join a house or underground church did not ring true in the light of her limited religious experiences in Australia.

The Tribunal has considered the country information provided, noting the March 2006 data of the Human Rights Watch – but as well as reports of local officials repressing religious activities is also the introduction of new regulations (of March 2005) which purport to give more freedom of religion to the citizens of China, and are regarded by authorities as a "significant step forward in the protection of Chinese citizens' religious freedoms". The applicant has provided considerable country information, including material lodged after the hearing.

She was not a leader in activities of the church here, she had a limited knowledge of Christianity and her insistence that she would spread the Gospel in China, and join an underground church in China is inconsistent with her limited knowledge and limited religious experience. Certainly if she made strong efforts to spread the Gospel in China she could be exposed to risks of serious harm, but the Tribunal is not satisfied, on the evidence before it that she would.

The role she attributes to herself in China on return is quite speculative. The Tribunal does not accept that the applicant plays a leadership role in her church in Australia, or that she has any strong Christian knowledge or scholarship of the Bible that would place her in a leadership role. While the Tribunal accepts that there are instances of persecution of Christians in China and more so of non-official religious groups, there are many millions of Christian in China who do not face arrest or detention or persecution. The indication in the article supplied by the applicant about the beating of the nuns (the Asia news items relating to nuns beaten in Xian) also shows that the Government and authorities did not approve of this and were going to compensate the nuns involved. Also the prospect of the Olympic Games

suggests the Chinese government has modified its stand against religious groups such as Christians.

The Tribunal is unsure whether the applicant would seek to practice her religion in China by attending a house church. In the light of its level of uncertainty, the Tribunal has given her the benefit of the doubt and considered whether the applicant, as a participant in the Three-self Patriotic Church or a house church, would face a real chance of persecution. The Tribunal is satisfied that Christians who attend churches registered with the PRC authorities are not subjected to persecution for the reason of their religion, and the Tribunal is also satisfied that most Christians whether attending official or non official churches, are not subject to persecution for reason of their religion. Country information suggests that those Christians persecuted are not only a minority but are a few leaders of underground churches who have been persistent in their challenge to authorities. The Tribunal accepts that such leaders have faced arrest and persecution of various forms. The Tribunal has given attention to the country information provided in this regard. In terms of the applicant in applying the test as in *Chan v MIEA*, and given her limited involvement, her lack of knowledge that would equip her for a leadership role, and the level of her potential involvement there is not a real chance that the applicant would be subject to persecution. She has not displayed the mastery of Christianity or of the Bible to be capable of a leadership role. The applicant would not be required to modify her involvement to avoid persecution.

In considering the case of her husband, it is not clear if he has made claims of his own. While making claims at the review stage by his evidence, he did not make claims at the time of application. The husband's conversion to Christianity seems more reluctant and slower than that of his wife. His knowledge of Christianity was limited and the incident he recounts that made him take the step to Baptism, of him missing the train and then promising God he would come in the future, and the cure of his headache is not an incident that would be widely accepted in Christian circles as valid. The Tribunal acknowledges a role for faith healing but the sudden change is questionable and also fits as a convenient conversion for visa purposes and for the mother, child and father to establish a new life in Australia. The husband has not indicated he would seek to practice his religion on return to China and the Tribunal finds that he would have no interest in doing so.

The Tribunal therefore finds that neither the applicant nor her husband would have a well-founded fear of persecution for the reason of religion if she returned to China.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicants do not satisfy the criterion set out in s.36(2) for a protection visa and cannot be granted protection visas.

No specific Convention claims were made by or on behalf of the other applicant at the time of application. The fate of the other applicant's application therefore depends on the outcome of the first named applicant's application. As the first named applicant cannot be granted a protection visa, it follows that the other applicant cannot satisfy the alternative criterion set out in s.36(2)(b) and cannot be granted a protection visa.

DECISION

The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

Alan Gregory
Member

Date:

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 *Migration Act 1958*.

Sealing Officer's I.D. Rosario Lampugnani