

1108375 [2012] RRTA 228 (11 April 2012)

DECISION RECORD

RRT CASE NUMBER:	1108375
DIAC REFERENCE:	CLF2011/9254
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Jonathon Duignan
DATE:	11 April 2012
PLACE OF DECISION:	Sydney
DECISION:	The tribunal remits the matters for reconsideration with the direction that the first and second named applicants both satisfy s.36(2)(a) of the Migration Act.

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 to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of the People's Republic of China (China), applied to the Department of Immigration and Citizenship (the department) for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2011.
3. The delegate refused to grant the visas [in] July 2011, and the applicants 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:

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. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.
16. 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

17. 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').
18. '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.
19. 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.

Member of the same family unit

20. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include a dependent child.

CLAIMS AND EVIDENCE

21. The tribunal has had regard to material contained on tribunal case file 1108375 and departmental case file CLF2011/9254, oral evidence given at a hearing before it and material available to it from a range of other sources as referred to in this decision.
22. The applicants made application to the department for protection visas on the basis of both being followers of the Local Church in China. The first named applicant indicated that she had fears of return to China, while her son, the second named applicant, indicated that he was a member of the same family unit as his mother.
23. Both applicants indicated that they had used fraudulently obtained passports to travel to Australia and had difficulty in securing passports and leaving China legally. The first named applicant gave details of her associations with the Local Church in China, noting that her church was classified as an evil cult in China. The first named applicant came from a farming family with seven children in Henan Province. She finished primary school but then worked on the family farm. She married [in] 1990 and moved to her husband's home and had two children. The first born on [date deleted: s.431(2)], and the second being the second named applicant. The first named applicant then began working in the [warehouse] owned by the uncle of a friend, where she then worked for five years. She then opened her own business and ran this smoothly for some years. She frequently purchased [items] from Fujian province and travelled there regularly, meeting the aunt of a supplier, a [Ms A], who was an activist in the Local Church. At this time the first named applicant was in a vulnerable position because she had been abandoned by her husband and cheated by a business associate. [Ms A] was a strong support and evangelised to the first named applicant about the Local Church. In March 2009 [Ms A] visited the applicant in her home and assisted the applicant to run her business and also to establish study sessions in respect of the Recovery Version of the Bible used in the Local Church at night. The applicant and some others involved in the meetings were baptised together and since that time the applicant was Christian and an activists in the Local Church.
24. The business warehouse near the first named applicant home became a meeting centre for the Local Church and the group involved grew from 3 to some 30 members. [In] January 2010 a meeting at the warehouse was raided by police and a Recovery version of the Bible was located. The members present were taken to the police station. [Ms A] took responsibility with the police for the events, claimed ownership of the Bible and claimed that other members present were innocent. Her case was transferred to the Public Security Bureau at [county deleted: s. 431(2)] and she was eventually sentenced to three years imprisonment.
25. Because the first named applicant owned the premises where the meeting was held she was detained for a longer period than other members who were released after two weeks with fines paid of some RMB5 000.
26. The first named applicant was detained for 40 days between [January] and [February], was subject to interrogation and forced to study official documents which detailed why the Local Church was regarded as an evil cult. The applicant was physically mistreated in detention, forced to work as a cleaner and humiliated and abused. The applicant's father bribed police and paid a RMB15 000 penalty and she had to promise in writing not to follow the Local Church. The applicant was ultimately released, her warehouse closed as an illegal meeting place and she was told to be ready to accept further investigation.

27. After her release the first named applicant remained of interest to police, being interrogated regularly, having to study official documents through her village committee and she found it difficult to restart her business. She made arrangements to leave China but was forced to do so using false documents because she was already on a black list according to a person assisting her. The applicant received passports in the name of her sister-in-law and nephew and these were ultimately used to depart China. The second named applicant arrived in Australia [in] August 2010, while the first named applicant arrived [in] October 2010.
28. Even after her detention the applicant had not ceased her activities with the Local Church, with associates attending her area in May 2010 to assist with re-establishing the study group. The first named applicant was active on organising this. The first named applicant claims that after her departure the police against tried to arrest her, however she had left the country. Her brother and sister-in-law were both detained for two weeks and were not released until they paid a RMB 50 000 penalty. The first named applicant has continually attended the Local Church in Australia and was fearful that if she returned to China she would be subject to persecution.
29. The applicants provided copies of Chinese passports issued in their claimed genuine identities to the department which were accepted.
30. The applicants subsequently provided a written statement signed by [Mr B] and [Mr C] indicating that both of them had regularly been attending meetings of the Local Church in [City 1] since November 2010.
31. Document examination of the passports used by the applicants for travel to Australia was undertaken and in the opinion of the examiner they were not fraudulently altered.
32. The first named applicant attended an interview with an officer of the department [in] March 2011 at which her claims were discussed. She reiterated her claims of association with the Local Church, difficulties experienced in China and the fears she held of return in the same terms as detailed above.
33. The applicants subsequently provided evidence of DNA testing which established to over 99 per cent probability that the first named applicant was the mother of the second named applicant.
34. The delegate was not satisfied as to the credibility of the applicants' claims, noting vagueness in some areas of response and implausibility in some areas of the claims. The delegate believed that the applicants may have taken on the identities and claims of relatives, rather than those of their own experiences. The applicants sought review of the decisions to refuse them visas.
35. The applicants both attended a hearing before the tribunal at which they gave oral evidence. The applicants provided a handwritten letter and a translation of that document signed by persons identified as Brother [names deleted: s.431(2)] which attested to both applicants loving God and living their lives as pious followers. Every week they were said to attend small group gatherings, Bible studies, prayer gatherings, Sunday service and youth gatherings. They also participated in the annual [activity], monthly religious training and video training and were a great brother and sister of their church.

36. Both applicants gave evidence on oath to the tribunal in terms of their past experiences, involvement with the Local Church and fears of return to China consistent with the above claims. They were able to independently describe the structure, size and staffing of the first named applicant's business in China and were consistent in their accounts of Local Church activities, police interest and the detention of the first named applicant. They both gave evidence of continual involvement with the Local Church in [City 1] from shortly after the arrival of the first named applicant in Australia. The second named applicant had not approached the church in [City 2] because he was only young, new to Australia and was awaiting the arrival of his mother. Both of the applicants had been baptised into the Local Church, the second named applicant most recently [in] March 2011. Photographs of the applicants at Local Church gatherings, and of the baptism were provided to the tribunal.
37. [Mr B], an elder of the Local Church in [City 1] gave evidence to the tribunal by telephone. He referred to the association of the applicants with the Local Church in [City 1] in the way that they had claimed and as attested to in the letter from other followers. He believed they were genuine followers of the Local Church faith and he believed that they exhibited this in their attendance at gatherings and behaviour towards followers. [Mr B] was aware of information from others which suggested that some followers returning to China had been subjected to persecution, particularly if they were involved in larger gatherings of groups.
38. On the day of the hearing, the tribunal received anonymous correspondence which indicated that the applicants had made false claims. This was a letter in Chinese characters which in translation indicated that the applicants were falsely claiming association with the Catholic church. This indicated that using petty favours the first named applicant had gotten photographs with members of the church and referred to the names of three people, two of whom shared the names of those who had signed the letter presented by the applicant. The letter indicated that the first named applicant had followed Buddhism in China and was now living with her husband in Australia. She came to church mainly to deceive the Australian Government. It was signed "followers of the Catholic Church".
39. The applicants were asked to comment on this during the hearing and in writing subsequent to the hearing. The first named applicant indicated that she had never attended a Catholic church and had not made such claims. She indicated during the hearing that she had twice attended an Anglican church in [City 1] when first having arrived and before making contact with the Local Church. She was truthful and genuine in her faith and did not attend church only to strengthen her claim to be a refugee.
40. The movement follows the teachings of Watchman Nee's disciple, Li Changshou (known as Witness Li or Witness Lee). According to Human Rights Watch, Witness Lee was primarily responsible for organising the splinter movement in the mid-1930s and he is regarded as the group's founder. He has not lived in China since 1949. According to his obituary (1997, Wall Street Journal, 13 June), Witness Lee was a follower of Watchman Nee who left China for Taiwan following the Communist takeover in 1949. In Taiwan, Witness Lee helped establish the Local Church as Taiwan's third largest. He then went to the USA in 1962 where he established the Local Church and an organisation, the Living Stream Ministry, which publishes his and Watchman Nee's work. He died in 1997. The Shouters follow Witness Lee's teachings by reading his books and listening to his tapes. The Living Stream Ministry (LSM) website (<http://www.lsm.org/>), which is available in English and Chinese, contains the works and teachings of Witness Lee (as well as Watchman Nee) in addition to tape catalogues, publications and downloads.

41. Human Rights Watch notes that Witness Li was:
primarily responsible for organizing the Shouter splinter movement. Its roots date back to the mid-1930s when "Local Church" congregants added external vocalizations, such as "Oh, Oh Lord and "Amen," to quiet prayer.
- The Shouter creed is evangelical, mystical, subjective, intuitive, apocalyptic, and individual. According to Shouter literature, believers reject any human thought that goes beyond what the Bible says because they consider it the completed divine revelation. Thus, Bible reading is central to religious practice, and it is the duty of every Shouter to go out and preach the gospel to relatives, neighbors, friends, and colleagues. The Shouters then "nourish" the converted by visiting their homes regularly and leading them in Bible reading, singing, and prayer. Members meet in small groups with neither "appointed speakers or teachers." Anyone moved to preach can, although it is usually the already recognized leaders, or elders, who do so. There is no professional ministry, and each local group is autonomous. Congregants meet clandestinely in each others' homes; hence they are categorized with other Protestants who resist association with the official Chinese Christian Church, as "house church" members.
42. The 2007 United States Department of State *Country Reports on Human Rights Practices* in respect of China note the following:
- The authorities continued a general crackdown on groups considered to be "cults." These "cults" included not only Falun Gong and various traditional Chinese meditation and exercise groups (known collectively as qigong groups), but also religious groups that authorities accused of preaching beliefs outside the bounds of officially approved doctrine.
- Actions against members of such groups continued during the year. In spring police in Liaoning Province sentenced Gu Changrong and Gu Zhaohong, members of the Society of Disciples, to one-year terms of reeducation-through-labor for allegedly preaching to a local CCP member. Police confiscated several Bibles from the home of Gu Zhaohong. Police also continued efforts to close down the underground evangelical group Shouters, an offshoot of a pre-1949 indigenous Protestant group. Government action against the South China Church (SCC) continued. SCC founder Gong Shengliang and other imprisoned SCC members reportedly continued to suffer serious abuses and poor health in prison. Gong was serving a life sentence for rape, arson, and assault, even though the women who testified against him in his original trial in 2001 reported that police had tortured them into signing statements accusing Gong of raping them.
43. The Australian Department of Foreign Affairs and Trade have advised over time of their knowledge of the treatment of the followers of the Local Church in China. It appears that definitive information is difficult to locate, although they confirm that the movement remains classified as a cult and this could result in detention and there have been past reports of arrests of followers (see most recently, Department of Foreign Affairs and Trade Report 844, *CHN33508*, 3 July 2008).
44. In respect of specific and recent episodes of mistreatment of Local Church followers in Henan province in China, The US Congressional-Executive Commission on China reported that, in January 2009, Henan security officials arrested a man after he responded to an anonymous call to pick up books and videos associated with the Local Church. The man had previously spent 14 years in prison for his association with the Local Church (US

Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p.139). The China Aid Association reported that 50 house church members were arrested in December 2008. Officials had accused the Christians of belonging to a “Shouter evil cult”. Of the 50, three church leaders were sentenced to one year of re-education through labour. A further 20 were sentenced to 15 days of administrative detention and a 1,000 Yuan fine (‘Three Christians Sentenced to One Year of Re-education Through Labor in Zhoukou, Henan’ 2008, China Aid Association website, 6 January http://www.chinaaid.org/qry/page.taf?id=105&_function=detail&sbtblct_uid1=1120). A November 2008 report by the Department of Immigration and Citizenship (DIAC) stated that reports of suppression of the Local Church by Henan authorities had decreased; however, reports of harassment of Henan house church followers more generally had continued (Department of Immigration and Citizenship 2008, *China’s Protestants and Catholics*, November p. 38-39)

45. Advice from the Australian Department of Foreign Affairs and Trade in April 2011 (see DIAC Country Information Service 2011, *Country Information Report No. 11/15 – CHN11513 Falun Gong Update*, (sourced from DFAT advice of 6 April 2011), 8 April) refers to the continued unevenness of treatment of members of underground churches by the Chinese authorities:

According to the Chinese Constitution, the Chinese Government lawfully protects citizens' freedom of religious belief...

In reality... they continue to arbitrarily harass, intimidate, detain, or imprison those who worship in China's unregistered congregations (underground or house churches), communities that have been growing larger and more conspicuous over the past few decades. There have been many international media reports that Christian priests and followers of underground Christian churches have been detained by the authorities.

At the same time, however, we have also seen many other reports – both domestic and international – that say authorities in larger and more wealthy cities tended to turn a blind eye to underground churches, while at the same time encouraging them to become part of the mainstream (and therefore government-controlled, churches).

FINDINGS AND REASONS

46. The tribunal accepts that both applicants have the identity they have now claimed and being that identified on the cover of this decision. The tribunal also accepts that they are nationals of China and no other country. They have provided documentation issued by Chinese authorities in those identities and despite having travelled to Australia using different identities they have consistently claimed that these were false documents. The tribunal accepts this is the case, although the departmental examination indicates that those false documents were in fact genuinely issued in China. This is the country against which the applicants' claims must be assessed.
47. The delegate has put forward reason to doubt the veracity of the applicants' claims and the tribunal believes that on the information then available these doubts were reasonable. Having reviewed the interview with the first named applicant in light of the evidence subsequently provided, however, the tribunal finds that it does not believe that deficiencies identified in that interview are a sufficient foundation to undermine the claims of the applicants overall. In the tribunal's view, having considered the evidence of the first and second named applicants independently and in some detail, they appear to have given a

broadly consistent and credible account of their circumstances over time and importantly from the commencement of this application. They were able to independently refer to circumstances in China which affected the first named applicant in particular, and although there may have been some minor difficulties with their evidence this was not sufficient to undermine their credibility overall. While during the interview and hearing the first named applicant may have exhibited some small areas of hesitation in answering questions the tribunal believes that this can as easily be explained by a lack of understanding of the context of questions asked through an interpreter as by any desire to deceive. In most cases when difficulties were explored she was able to provide the information that one would expect of a follower of the Local Church faith. Both applicants appeared relatively familiar with the tenets and teachings of the Local Church to the tribunal's mind and no obvious areas of inconsistency in their evidence over time was apparent. This tends to support the view that they are being truthful with the tribunal.

48. Furthermore, [Mr B] has now given both written and oral evidence about his assessment of the applicants and their commitment to his faith which accord with their view. He has supported their claims that they commenced regular and ongoing attendance at the Local Church from shortly after the first named applicant's arrival in Australia. While the second named applicant did not make immediate contact with the Local Church on arrival in [City 2], the tribunal accepts that as a younger person in a new country and separated by his parents he may have sought to await the arrival of his mother before associating with the church.
49. The parties have also been able to substantiate the claims of their relationship, having provided DNA evidence strongly supporting the view that they are mother and son as claimed.
50. The claims of mistreatment of the first named applicant in China as a result of her faith are also consistent with the information referred to above about the treatment of followers of the faith. Those perceived to be leaders, such as [Ms A], are subject to strict treatment including lengthy prison terms, while others such as the applicant and other followers could be subjected to administrative detention and subsequent official interest. The country information referred to above tends to support the view that the authorities would treat followers in this way.
51. The tribunal is in receipt of a claim that the applicants are being fraudulent, however, this is not reliable in the tribunal's view. It is anonymous and suggests on several occasions that the applicants are associated with the Catholic faith which is not and never has been their claim. It does refer to people who could be those who had provided a statement in support of the application, however, makes no reference to the Local Church in its content. The letter suggests that the person making the allegation is in fact not known to the applicants through their association with the church but is otherwise associated with the applicants and seeking to damage their credibility but may have seen material presented in support of the claim. Were those making the allegation known to the applicants through the church one would expect they could correctly identify the denomination involved. For these reasons, the tribunal has not given the allegations any weight in assessing the application and does not believe that the applicants have falsely associated themselves with the Local Church.
52. In considering the applicants' conduct in associating with the Local Church in Australia, the tribunal looks to the evidence of [Mr B] and those who signed the letter in support of the applicants which attests to their genuine involvement with the Local Church.

In the tribunal's view, the available evidence overall supports the view that the applicants have been truthful about their association with the Local Church in China and in the tribunal's view this would support a conclusion that the continuation of that faith in Australia was drawn from genuine commitment. As a result, the terms of s.91R(3) require that the tribunal have regard to this when assessing the fear of being persecuted.

53. The tribunal has also considered the information available to the department which indicated that the applicants were adopting the claims of relatives. In the tribunal's view, in so far as this arises from information provided to support the application for visas to travel to Australia, it does not support such a conclusion. It would be expected that where fraudulent travel authorities were being sought that would be supported by other fraudulent documentation. While such material would undermine the veracity of the earlier application, in the tribunal's view it tends to support the claims that the initial application for travel and documents to support that were not genuine. This has been the claim of the applicants even from the very first.
54. In the context of the country information referred to above, the tribunal believes that there is a real chance of the first named being persecuted if she returns to China at the current time. While there has been more harsh repression of the Local Church in the past, it remains classified as an evil cult in China giving it particular emphasis by authorities when it comes to their attention. In this case, the tribunal accepts that the first named applicant has come to adverse attention of authorities in China in the past and that this raises the possibility of increased official interest in her on return to China. She has maintained an association with the Local Church in Australia consistent with a genuine follower of the faith, as has her son. There has been some interest in family members since their departure from China and the tribunal accepts this is genuine. There have been recent reports of interest in followers of the Local Church in Henan province and elsewhere, and the situation remains variable and uncertain throughout China according to the most recent information. Advice last year from the Australian Department of Foreign Affairs and Trade supports the view that arbitrarily harassment, intimidation, detention, or imprisonment remains a possibility for those who are of adverse official interest.
55. In the tribunal's view there is a chance, which is not insubstantial, that if the first named applicant returns to China at the present time she would be of adverse interest to authorities. This could result in her arbitrary detention and possible physical harassment or mistreatment during such detention amounting to serious enough harm to be considered persecution. This would occur in the context of a highly centralised system which has given the faith of the first named applicant a special focus and status in the Chinese system. It would extend throughout the country because of the centralised nature of record keeping and the likelihood that she would continue to follow her faith and come to attention wherever she was.
56. The second named applicant initially made this application on the basis of being a member of the same family unit as that of his mother. That relationship has been verified. It is the view of the tribunal, however, that the available evidence supports the conclusion that he also is owed protection obligations by Australia. In the tribunal's view, he has now genuinely adopted the faith of the Local Church and this is attested to by the same evidence as that provided in respect of his mother. The tribunal accepts that he has been baptised into the Local Church and accepts that this is a genuine expression of faith such that it should not be disregarded. By virtue of official interest in his mother in the past and the likelihood of his continuing to follow that same faith on return he is also at risk of persecution in the tribunal's

view. Again the tribunal believes this would extend throughout China as a whole for the same reasons as identified in respect of his mother.

57. Therefore, the tribunal is satisfied that the applicants are both persons to whom Australia has protection obligations. Therefore they satisfy the criterion set out in s.36(2)(a) for a protection visa. This was the basis on which both applications were rejected and given these findings the applications should be returned to the department for consideration of remaining criteria for the visas sought. Given the conclusions in respect of s.36(2)(a) it is not permissible for the tribunal to consider s.36(2)(aa).

DECISION

58. The tribunal remits the matters for reconsideration with the direction that the first and second named applicants both satisfy s.36(2)(a) of the Migration Act.