

071638082 [2007] RRTA 346 (20 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071638082

DIAC REFERENCE(S): CLF2007/69747

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Suzanne Leal

DATE DECISION SIGNED: 20 November 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of China (PRC) arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention

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

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

RELEVANT LAW

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

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

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 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.

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 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 applicant and the Tribunal's own file.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

The applicant was represented in relation to the review by his registered migration agent.

Visa application

The applicant told the Tribunal that he wrote his statement in Chinese which was then translated into English and read back to him in Chinese.

Application for review

The applicant made no further claims in his application for review.

Evidence at hearing

The applicant told the Tribunal that he is seeking asylum because he had to flee China as a result of his involvement with the religion Yiguan Dao, which he also referred to as Tian Dao.

At hearing, the applicant confirmed that he has been in a de facto relationship for a number of years and that he has a child. After leaving school, he worked in sales and as a manager before opening a business. The business was successful although the applicant told the Tribunal that government officials would expect to be serviced for free and that this impacted upon the business' viability.

Person A opened a business next door to the applicant. Person A would come to the applicant's business and the two became friends. Person A introduced the applicant to Yiguan Dao. According to the applicant, Person A had spent a number of years in Country X and Country Y before returning to China. The two would discuss the applicant's business. When Person A commented on the success of the applicant's business, the applicant told him that a lot of the profits were taken away through corruption. When Person A asked why the applicant continued to continue to run the business, the applicant said he had no choice given

that that was the way China's society worked. In response, Person A told the applicant that 'he would take [him] to a place that is truly different.' Person A then showed the applicant some leaflets about Yiguan Dao or Tian Dao. He told the applicant that he was from Yiguan Dao and that his purpose in coming from China was to encourage people to join Yiguan Dao. The applicant read the leaflets which, he said, were about the origins, doctrine, purpose and scriptures of Yiguan Dao.

The applicant was able to discuss the movement's origins in detail. He told the Tribunal that the movement started during the time of Emperor Fuji. He spoke of the 16th master, Liu Qing Xu, and the 18th master, Zhang Hao Lan, who lived during the Republican Years (roughly between 1900 and 1940). He described Sun Hui Ming as the mistress of the movement, who is also the Yue Hui Buddha, and Zhang Hao Lan as the master of the movement, who is also the Jigong Buddha.

According to the applicant, the three primary doctrines of Yiguan Dao are:

- Giving up the bad elements and taking up the virtues;
- Return to your true self;
- Be an honest person.

The applicant told the Tribunal that he was aware that Yiguan Dao is banned in China and that it was therefore a dangerous movement to join. In answer to the question why he joined the movement, the applicant said:

Because only Tian Dao can save China, because there is so much corruption in society. I experienced it myself. I opened the [business], worked hard to make money and then had to share it with other people. Tian Dao makes people honest and kind. If all were like that there would be no corruption. I joined because only Tian Dao will save the world.

According to the applicant, the adherents of Tian Dao are very ambitious and the movement has spread worldwide.

To show his commitment to Tian Dao and to provide a place of worship for its adherents, the applicant arranged for the availability of a house in a nearby village where he and Person A set up a Dao shrine.

When asked why he arranged the availability of the house rather than Person A, the applicant said:

He's not local. He doesn't know the place well and I do and I wanted to do something for Tian Dao, so I [arranged for it to be available]. I wanted to do something for worship, for burning incense and other activities.

The applicant was able to describe in detail the shrine he and Person A set up in the house.

In the middle of the shrine, hanging from the highest point of the altar, is a sign which says;

Bright (ming-ming) God; Boundless pureness and emptiness; 3 borders, 10 directions; To god, to brightness.

According to the applicant, the ming-ming god is the one above everything else. He is the one everyone worships.

In front of the sign is a lamp, called the mother lamp, which the applicant said was made of a material like smooth marble, coated with copper or brass. In front of the lamp is a Mila Buddha. According to the applicant, in the movement's white phase, the Mila Buddha - a smiling Buddha with a fat stomach - was in charge of the Dao.

To the side of the lamp is the Guanying Buddha, the 'southern seas living ancient who is in the shape of a woman,' and on the other side, the Jigong master, who wears a hat and carries an alcohol container.

Guardi, who according to the applicant, is a master of the law, and Fudi, another master of the law, are also placed on the shrine.

According to the applicant, the Ming-Ming god has to be in the middle and the lamp has to be in the middle. A Tian Dao shrine is effectively the same as a Buddhist shrine but the Tian Dao shrine must have the Ming-Ming god.

The applicant would attend the shrine on the 1st and 15th of every month (using the Chinese lunar calendar) and on Sundays, as he was available to attend. According to the applicant, the 'moon is brighter on the 1st and the 15th'

The applicant did not tell his de facto wife about his involvement with Yiguan Dao. He told the Tribunal that this was because she was busy looking after their child. He was intending to tell his wife when their child was a little older.

The house used for worship was a distance away from the applicant's place of work. To get there, he would take a motorbike taxi.

The group originally had few members but grew to a larger number as new members were recruited.

The applicant described his initiation ceremony into Yiguan Dao. When he entered the house, Person A was already there, as were a small number of people. They each wiped his hands. The applicant then changed into a Dao gown which is a long grey gown with buttons. He then greeted the 'mother' before two people entered in the role of deacons. The applicant then described an elaborate ceremony of kowtowing to the various parts of the shrine and tea-drinking, including the offering of tea and fruit to each of the gods. After the offering, incense was burned. Person A was the applicant's initiator. The applicant described a further series of kowtowing and incense burning to the Ming-ming god and the other gods.

Person A then passed on the 3 treasures to the applicant. The applicant refused to describe the treasures, stating that:

The three treasures I can't say. You have to be in the shrine when you say it, otherwise you can't.

The applicant was, however, prepared to give some indication of the nature of the treasures and spoke of handprints and cavities.

The applicant was aware of Ren Cai and the process of spirit-writing although his group didn't use spirit-writing as you 'need a big shrine.'

Contained on the departmental file are photocopies of material written in Chinese. When I asked the applicant to identify the material he said that they were copies of the leaflets he had distributed in China. When I asked how the applicant managed to have brought the leaflets to Australia, he said:

When I was running away, I had them with me. As I was in the shrine worshipping when the police came, so I packed them up. They are all the Tian Dao leaflets.

During the hearing, I had the interpreter translate a portion of one of the leaflets which considered an aspect of the doctrine of Tian Dao.

I asked the applicant why he hadn't had the documents translated when he made his application. The applicant told me that his agent had simply told him to bring the documents with him to the Department.

The applicant explained his distribution of the leaflets as follows:

We printed them and went around [Province 1]. We would go to a remote, quiet place where we would not draw attention, in some quiet corner in [Province 1]. I would give the leaflets to small business people or to peasants.

In answer to my query how he could guarantee that these people wouldn't inform the authorities, the applicant said:

I couldn't guarantee it but as I am a believer in Tian Dao, then I believe that it is the only thing to save China and I am not afraid, but I had to be discreet to try to avoid being found out by the Communist Party. Basically, as soon as the people saw the leaflets they wouldn't report it because it says to be good people.

The applicant stated that he had begun to distribute brochures.

On a particular date, the applicant was in the house in the village worshipping for a significant occasion. The applicant and the other members of the group were having worship.

During the worship, the applicant received a phone call on his mobile from a childhood friend who worked for the Public Security Bureau (PSB). He was a close friend of the applicant and the applicant had confided in him in relation to his involvement in Yiguan Dao. The applicant's friend warned him that the PSB were 'coming and were closing in on our place.' He warned the applicant to leave immediately.

In response to my query that a person from the PSB would give such a warning, the applicant said:

We grew up together, we are friends. Whatever you do, you have the same background so it is no problem. My friend can secretly notify me without other people there knowing.

After the warning was given, the applicant and Person A started to organize everyone to leave. It took between 10 and 20 minutes for the house to be packed up: for the leaflets to be collected and for the shrine to be covered up. To disguise the shrine, there was a curtain hung

across it that, when drawn, looked like there was simply a wall behind it. Person A and the others ran out of the front of the house. The applicant was the last one to leave. He took the leaflets about Tian Dao with him in his backpack. When he realized he had not given himself enough time to escape, instead of running to the front of the house, he ran to the back of the house, and hid himself. He spent the night hiding. At dawn the next day he got out. He took a motorbike taxi to a friend's house and stayed there overnight. He spoke to another friend who owned a business in City 2 to say that there had been some trouble and to request a place to stay for a while. The next day he left City 3 by train. He didn't visit or contact his family before leaving. In City 2, he hid in his friend's shop while his friend tried to arrange a way for the applicant to get out of China. The applicant told the Tribunal that his name was on a 'computer wanted list' which meant that he would be unable to obtain a passport under his own name.

About a month later, the applicant's friend introduced him to a man from Country Z, Person B, who spoke some Chinese and who would take the applicant out of China. A couple of days later, Person B took the applicant to a location in City 2. At the location was a vehicle. The applicant's friend told him to get into the vehicle. The applicant travelled in the vehicle to Person B's hometown in Country Z.

The next day the applicant again travelled in the vehicle until they arrived in a city Person B said was City 4. They traveled to Australia. Person B handed the applicant a passport. Person B then took the applicant to Chinatown and left him there.

The applicant was later told that Person A and a number of other members of the group had been arrested. The applicant found this out after he rang a friend who lived near the village where the applicant had lived. The applicant said to his friend, 'That day, were there any arrests?' His friend replied that there had been a lot of arrests, including the leader. From this the applicant assumed that Person A had been arrested.

The applicant explained that the information about the arrests had not, to his knowledge, been reported in the media but had rather been passed by word of mouth.

According to the applicant, a member of his family, Relative 1 is still being detained by the Public Security Bureau. He knows this because he telephoned a friend of Relative 2. He wouldn't dare to telephone Relative 2 directly as he is afraid that she would then be implicated in his situation. Relative 2 is currently caring for the applicant's child.

Since he has been in Australia, the applicant has been involved in a Yiguan Dao group. The applicant provided the Tribunal with a copy of a reference from Person C, an important person of a Temple in Australia. In part, the letter states:

This is to certify that [the applicant] joined Tian Dao (AKA Yi Guan Dao) on [date] (i.e. [date] by the Lunar Calendar) through the introduction by [Person A], the Heavenly Taoist in the Mainland of China so as to become one of the Tian Dao members from then on.

In order to re-establish and promote the Tian Dao organizations and activities in the Mainland in China, in recent years there have been Tian Dao members risking their lives to be engaged in the activities underground in the Mainland of China, among whom were [Person A] and [the applicant], the two activists. Due to their

engagement in such activities, they were persecuted by the Chinese Communist Government. [Person A] is still in prison while [the applicant] has fled to Australia.

On arrival in Australia, [the applicant] soon found [Temple]. Since [date], he has weekly and regularly attended the temple service at our Temple and every 1st and 15th Lunar Calendar days of a month he would come to Pilgrimage at our Temple.

[The applicant] is a pious and loyal Tian Dao follower and an activist at our [Temple] We believe that if he were back to the Mainland of China being still ruled by the Chinese Communist Party, he would definitely be persecuted.

If he were to return to China, the applicant told the Tribunal that he feared being arrested by the Communist Party. If he were arrested, he told the Tribunal that he would be treated like Person A and would be imprisoned for many years or executed by shooting.

Independent information

Hsien-Tien Tao (way of former Heaven) sects

Following the defeat and departure of the Japanese army in China, this religion was outlawed by both the Nationalist and Communist governments for its perceived collaboration with the Japanese puppet government, and many leaders fled to Taiwan where it became established. The group was heavily suppressed in China during the 1950s. Its history in China since then is little known.

A website source (<http://philtar.ucsm.ac.uk/encyclopedia/china/hsien.html>, accessed 10/03/01, CX50872) says that China possesses a rich tradition of popular sectarianism that has produced numerous individual sects. Five contemporary representatives of a sectarian subsystem, the Way of Former Heaven (Hsien-t'ien Tao), had been most influential in the twentieth century. These included the I-kuan Tao ("Way of Unity"). All these sectarian societies shared a number of basic doctrinal features, most importantly a belief in the existence of a cosmic creator deity above and beyond the crowded folk pantheon. This deity was most typically visualised as a cosmic Mother who had given birth to the universe and humanity and continued to be greatly concerned about the spiritual wellbeing of her human children. Humanity, however, had forgotten its divine origins and had become mired in the profane world of desire and material form. The Mother grieved over her children's waywardness and, out of her infinite compassion, made a continuous effort to call them back to her primordial paradise. However during two cosmic eras only a small number made the trip back to her side. Now the world had entered the third and last era, at the end of which it would come to a cataclysmic end. The Mother was redoubling her efforts to remind her children of the divine spark within their natures and of the necessity to cultivate it so that they could escape from the doomed world of dust and return to her eternal paradise.

The individual Hsien-tien Tao sects all saw themselves as carrying out the Mother's intentions by converting people and guiding them on a path of cultivation and reform that would ultimately lead them back to Heaven. The cultivation urged on members was divided into "inner" and "outer" work, i.e. meditation and good deeds, so as to accumulate merits and purify the mind. As the focus was on a primordial deity superior to all other gods, these sects claimed to represent a Way (Tao) that transcended and united all other religions. The variations on the central theme were many: for example, different sects used different names

for the supreme deity, the I-Kuan Tao calling her "Venerable Mother of Limitless Heaven" (Wu-chi Lao-mu). Despite these and many other differences in liturgy, organization and doctrine, ultimately each sect represented a variation on a central theme.

I-Kuan Tao ("Way of Unity"), also called T'ien-tao ("Way of Heaven") was founded in 1930 in Shantung province, and in 1934 the sect moved its centre of activity to T'ien-chin and from there spread rapidly all over mainland China. After Chang T'ien-jan's death in 1947, its nominal leadership passed into the hands of his second wife Madame Sun Hui-ming. Effectively, however, the sect split up into a number of separate branches (usually said to be eighteen) that continued to develop more or less independently. There thus existed today no independent leadership for the sect, which had become a family of closely related yet autonomous branch associations. This organizational format helped it survive under adverse political conditions: like the other Hsien-t'ien Tao sects, it was prohibited by the communist regime after 1949 and was effectively stamped out in the PRC. Unlike most of the other sects, however, the I-kuan Tao in addition suffered persecution by the Nationalist government as well. This source stated (contrary to other sources) that it was legalized in the Republic of China in 1987 and eventually established a national umbrella organization. In addition, the sect maintained a strong institutional presence in Hong Kong and was proselytizing actively and successfully among overseas Chinese communities in Southeast Asia, Australia, North America and Europe.

Other sources note that this religion, known as Yiguan Dao or Tian Dao, has two names in Chinese but, due to different systems of romanisation, there are many different ways to spell the group's name, most commonly Tian Dao or Tien Tao (the Way of Heaven, Heaven's Way or the Celestial Way), and Yiguan Dao or I-Kuan Tao (the Way of Unity, Path of Unity, Unity Sect, Religion of One Unity, Way of Basic Unity, Unity Teachings, Way of Pervading Unity, Unity Way). Most information on it comes from studies of the group in Taiwan, where it is both widespread and legal (Bosco, J. 1994, 'Yiguan Dao: "Heterodoxy" and Popular Religion in Taiwan' in Rubenstein, M.R., 1994 *The Other Taiwan: 1945 to the Present*, East Gate, NY Ch.16 pp.423-444).

With regard to the organisation of the group, Bosco notes:

Yiguan Dao operates secretly, Its temples are in ordinary homes and members seek converts discreetly. Its ceremonies are only open to initiated members. Initiation involves receiving the secret three treasures ... (p.424)
[It has] temples located on the top floors of private homes. Believers are organized in temple cells of eight to ten core followers per temple. Religious activities include morning and evening Prayer sessions but only the most devout do them daily. Believers are expected to attend at least on the full and new moon. The ceremonies themselves involve group kowtowing to a long list of gods. ... (pp.425-6)

In 1998 one source gave the following information about its suppression and survival on the mainland:

... In spite of political repression, it seems to have continued to exist underground, and to have been particularly active from 1959 to 1962, with a further resurgence during the Cultural Revolution (1966-1969). At present, the situation of these syncretic "new religions" in the PRC is not clear; they lead a clandestine existence but are seeking a legally recognised status. During the 1980s, the government frequently opted for repression, and some leaders of the heterodox religions were executed for "counter-revolutionary activities". They received

severer punishments than the founders of other social groups. ... In recent years the authorities have become very concerned at the growing success of these religions. (Micollier, E. 1998, 'Yiguan Dao: An Example of a "New Religion"', China Perspectives No 19, September/October 1998 p.40).

She also claims "As a proselytising movement ... the Yiguan Dao is regaining ground in the PRC and overseas" (p.41).

A *South China Morning Post* article notes that the group's resurgence in Sichuan in the 1980s led to more arrests ('Superstition tightens its grip on peasants' 1990, *South China Morning Post*, 12 November). An expert advising the Immigration and Refugee Board of Canada in 2001 gave this opinion on the group's status in Fujian:

If any believers do exist in Guangdong and Fujian, they are likely to have learned the faith secretly and relatively recently from Taiwanese businessmen or tourists, who have been known to proselytize in the PRC. Given the intensity of pressure against the sect, I would be rather surprised to see any sort of Yiguandao remaining in Fujian or Guangdong at all, except, as mentioned, in the context of relatively recent missionization from Taiwan. ... I have seen Chinese government reports [from 1985] that mention fears of a revival of Yiguandao in remote inland provinces, but nothing specifically relating to Fujian or Guangdong (Immigration and Refugee Board of Canada 2001, CHN36541.E 'China: Reports of arrests and detention of Tian Dao (also Yiguan Dao, various spellings) believers in the provinces of Fujian and Guangdong' (2000)', 6 April).

Thus the PRC government has attempted to suppress the religion during campaigns in the 1950s and 1980s. During these campaigns believers and leaders were arrested and some executed. Since that time there has been little information on the active existence of the *Yiguan Dao* in China. Some commentators believed it had been eliminated by the government campaign, although the secret nature of the organisation has made an accurate assessment difficult. No reports have been found to conclusively indicate whether it is still operating and few reports were found by the Tribunal of arrests of members in China since the early 1980s. Reports, as well as the recent experience in relation to the Falungong movement, indicate that the government remains suspicious of any movement it considers a "cult" (Amnesty International 2000, *People's Republic of China: the Crackdown on Falungong and Other So-Called "Heretical Organizations"*, ASA 17/11/00, 23 March). Micollier makes the following observations on the state of the *Yiguan Dao* in China:

... At present, the situation of these syncretic "new religions" in the PRC is not clear; they lead a clandestine existence but are seeking a legally recognised status. During the 1980s, the government frequently opted for repression, and some leaders of the heterodox religions were executed for "counter-revolutionary activities" They received severer punishments than the founders of other social groups. In recent years the authorities have become very concerned at the growing success of these religions. (Micollier 1998, p.40).

Writing in 1994 Human Rights Watch described the attitude of the government towards traditional Chinese sects (of which the *Yiguan Dao* was one of the major representatives):

... by 1985 (according to the authorities), traditional or neo-traditional sects had reemerged "in every region and province of China with the exception of Tibet" This dramatic upsurge in sectarian activity has apparently continued to the present day, despite a severe and sustained government crackdown. Under a September 1983 amendment to the Criminal Law, the crime of "organizing and using a reactionary sect or secret society ... for counterrevolutionary purposes" is punishable by death. On average, the typical sentencing range for traditional

religious sect leaders in China lies somewhere between 10 years and life imprisonment. (Human Rights Watch 1994, *Detained in China and Tibet: A Directory of Political and Religious Prisoners*, Sec.IV. p.250).

The *Yi Guan Dao* is included in the book's "List of Proscribed Sects" on page 271.

An assistant professor of East Asian Religions at the University of Missouri-Columbia and the head of the Department of Chinese Studies at the University of Malaya in Kuala Lumpur, who specialized in Chinese religions stated in 2001 that the sect remained banned in mainland China.

A January 2005 REFINFO response provides some recent information:

In correspondence sent to the Research Directorate, a professor emeritus from the University of British Columbia who has written a book on religion in contemporary China indicated that the Tian Dao continues to be a banned sect in China (9 Dec. 2004). Both the professor emeritus and the World I-Kuan Tao Headquarters, based in El Monte, California, stated that they had no recent information on the situation of sect followers in China (9 Dec. 2004; 15 Dec. 2004). Likewise, the communications director of the non-governmental organization Human Rights in China (HRIC) explained in 9 December 2004 correspondence sent to the Research Directorate that it has not obtained recent information on the treatment of Tian Dao followers from the media it monitors or from Tian Dao followers themselves. However, the human rights organization pointed out that this "doesn't mean there hasn't been persecution of Tian Dao" (HRIC 9 Dec. 2004).

While the professor emeritus commented that "it is unlikely that [the sect] still exist[s] [in China]" (9 Dec. 2004), the secretary general of the World I-Kuan Tao Headquarters, in correspondence sent to the Research Directorate, noted that the religion is still being practiced in China, though not in public (15 Dec. 2004). The Headquarters did not provide further information on sect followers in China. (Immigration and Refugee Board of Canada 2005, *CHN43233.E – China: The treatment of Tian Dao (also Yiguan Dao, various other spelling) followers by authorities; any reports of arrests in Guangdong (2001-2004)*, 6 January).

FINDINGS AND REASONS

The applicant claims to be a national of the People's Republic of China. He arrived in Australia on a false passport in the name of Person D. At hearing, I sighted the applicant's identification card which was issued by the Public Security Bureau of the People's Republic of China. On the basis of the applicant's identification card, I am satisfied that he is a citizen of the People's Republic of China. There is no evidence to indicate that the applicant has the right to enter or reside in any other country. Accordingly, I will assess his claims to refugee status against the People's Republic of China as his country of nationality.

In his statutory declaration and in his oral evidence before me, the applicant claimed to fear persecution because of his religion, namely his belief in Yiguan Dao (or Tien Dao).

The applicant gave detailed and credible evidence about his introduction to and subsequent involvement in Yiguan Dao. He spoke of his commitment to the religion with a fervour and sincerity that would, I think, be difficult to manufacture.

I accept that the applicant was introduced to Yiguan Dao by Person A, a Chinese national who had spent several years living in Country Y.

I accept that the applicant arranged for the availability of a house in a small village in which the applicant and Person A set up a Dao shrine.

The applicant was able to discuss in detail the origins of Yiguan Dao and to describe the rituals and ceremonies of the religion. In describing his initiation ceremony, the applicant spoke of having the three treasures passed onto him by Person A but was unwilling to disclose the details, given that they are to be kept secret. I accept that the applicant was initiated into Yiguan Dao and that his unwillingness to discuss the details of the three treasures but rather to keep to a general description of the treasures was in deference to the requirement that they remain secret and not due to a lack of knowledge.

I accept the applicant's evidence that he had been distributing brochures about Yiguan Dao in the year before he left China.

I accept that the applicant was worshipping in the house he had made available in a nearby village when he was warned by a friend working in the Public Security Bureau that the authorities were on their way there. I accept that the applicant escaped and hid until the following morning when he travelled to seek refuge at a friend's house. I accept that this friend arranged for the applicant to be smuggled out of China and for the provision of a false passport.

I accept that the applicant received information from a friend of Relative 2 that Person A and other members of their group had been arrested while trying to escape the authorities.

I accept that the applicant has been attending a Temple and that he continues to be an adherent of the Yiguan Dao religion.

Based on the external information set out above, I accept that Yiguan Dao is banned in the People's Republic of China. If he were to return to China, I am satisfied that the applicant would not be able to practice Yiguan Dao without fear of arrest. I accept the external information set out above that the practice of Yiguan Dao is prohibited in China and that practitioners have, for this reason, been forced to practise in secret and at risk of arrest and detention.

If the applicant were to try to practise his religion in the People's Republic of China, I am satisfied that he would risk being arrested and detained, given the prohibition on the practice of Yiguan Dao. I find that the applicant would be at risk of being detained for a lengthy period and of being physically mistreated. I accept the applicant's evidence that it is highly likely that he would come to the attention of the authorities should he return to China given that he is associated with the village house used as a Tian Dao retreat or temple by the applicant, Person A and the other members of their group. I am of the view that if forced to return to China, the applicant would seek to continue to practise Yiguan Dao and would therefore be at risk of apprehension by the authorities and subsequent arrest and detention.

As Yiguan Dao is a religion prohibited by the Communist government in the People's Republic of China, I am satisfied that the applicant would be unable to avail himself of protection from his country of nationality, namely China.

I am further satisfied that as the prohibition on Yiguan Dao applies throughout the People's Republic of China, the risk of persecution to the applicant on the basis of his religion exists wherever he might be in China. On this basis, I find that it would not be reasonable for the applicant to relocate to another area within China.

There is no evidence before me to show that any third country protection is available to the applicant.

Based on the evidence and for the reasons set out above, I am satisfied that the applicant has a well-founded fear of persecution in the People's Republic of China for reasons of religion.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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