

**060766436 [2006] RRTA 212 (8 December 2006)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060766436

**COUNTRY OF REFERENCE:** China (PRC)

**TRIBUNAL MEMBER:** Paul Fisher

**DATE DECISION SIGNED:** 8 December 2006

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant is 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 Multicultural Affairs 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 in early 2006 and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa in mid 2006. The delegate decided to refuse to grant the visa in late 2006 and notified the applicant of the decision and her review rights by letter in late 2006.

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

The applicant applied to the Tribunal in late 2006 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, in this case 7 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 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. '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) 205 ALR 487 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 departmental file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, including the oral evidence of the applicant at the departmental interview, and other material available to it from a range of sources.

### **Protection Visa Application**

The applicant's claims in support of her protection visa application were set out in the following statutory declaration dated in late 2006.

1. I am from the People's Republic of China ("PRC").
2. In early 2006 I arrived in Australia, using a PRC passport with a different name and date of birth. I had to do so solely for the reason that I was unable to get the passport in my own genuine name. As a matter of fact, I have been chased by the Public Security Bureau ("PSB") Owing to my involvement in the Local Church (a.k.a. "the Shouters") in China; and my only purpose to leave my home country is to escape from persecution by the PRC authorities.
3. I was born in the Province S in the PRC. My father has passed away; and my mother is from another Province. I have one sibling.
4. [Details deleted in accordance with s. 431]
5. From early 2000 to mid 2000's I worked as a shop assistant.
6. [Details deleted in accordance with s.431]
7. [Details deleted in accordance with s.431]
8. In late 2003, unfortunately, my father, and another worker, was seriously injured in an accident; and a few days after that, my father passed away! Since then, my whole family has had to face the music. My mother was just a housewife without any employment; and my sibling was still in the school; and therefore, my little income as a shop assistant became the only source of financial support for my family.
9. [Details deleted in accordance with s.431]
10. In early 2004, my mother was seriously ill, and she needed to go to the hospital for medical treatment, but we really did not have any money to pay for very expensive medical fees. Although we got some help from some of relatives or friends, I thought that it was not enough. Without any choices, I had to write to the local newspaper, TV station, and radio station; and wished to get social support for us. Unexpectedly, I immediately got into troubles. [Details deleted in accordance with s.431]
11. In that difficult situation, I was greatly helped by many kind Christians in the Local Church. One of them was Person A who was a group leader of the Local Church in my hometown; and she organized some of religious brothers or sisters at her gathering group to financially support my family, so that my mother could eventually be saved.

12. From early 2004, I started attending religious gatherings organized by Person A . It was normally held at Christians' homes in the weekend, but it was moved from time to time in order to avoid attention of the PRC authorities.
13. In late 2004, which was my birthday, I was baptized.
14. Unfortunately, my religious belief and practices have not been tolerated by the PRC authorities, because the Local Church has been regarded as an "illegal" and "anti-government" church. As a result, I have many times been questioned and interrogated by the PSB; and particularly, I have been detained by the PSB twice, respectively, in early 2005 and in late 2005.
15. In early 2005, I was dismissed by work as shop assistant, because I was detained by the PSB for several days at that time when I had been discovered to attend a gathering of the Local Church at a religious brother's home. Since then, I have devoted myself to the development of the Local Church in my hometown
16. In late 2005, I was detained for the second time, while I was found to distribute some religious propaganda materials in a village near to my home village; and I was detained for a few weeks at that time; and was subjected to inhuman mistreatment by the policemen.
17. From early 2006, Person A asked me to organize about some young children, who were families of the Christians in the Local Church, to distribute religious propaganda materials, particularly copies of books written by Watchman Nee or Witness Lee.
18. The Local Church had to decide to arrange me to leave the country in the end, because I have become the target of the PSB for the third time when I was suspected to organize distributing "illegal" religious propaganda materials. I was first arranged in, a secret place in early 2006, and then started preparing to go to the overseas. However, my "bad" record with the PSB made it impossible for me to get a passport; and thus I had to use a passport not in my genuine name to leave my country.
19. In mid 2006, I finally arrived in Australia.
20. I cannot return to China, because I believe that I must be subjected to persecution on my return.

## **Review Hearing**

The applicant appeared before the Tribunal via videolink in late 2006 to give evidence and present arguments. The Tribunal was assisted by an accredited Mandarin-English interpreter.

The applicant was represented in relation to the review by her registered migration agent, who did not, however, attend the Tribunal hearing.

At the hearing, the Tribunal began by clarifying whether an interpreter had been used in the preparation of the applicant's protection visa application and supporting statement. The applicant indicated that an interpreter had been used. Nevertheless, the Tribunal felt it appropriate to go through the statement of claims to check its accuracy with the applicant, as there was no interpreter's jurat on that statutory declaration. The applicant began to confirm the claims about the background to the circumstances which led to her protection claims, namely her father's business activities, his death in an industrial accident, and the struggle they had to try and gain compensation from his former employers. However, the applicant became so distressed at this time that she was unable to continue for quite a few minutes.

The Tribunal then took her to a point further along her chronological history in an attempt to enable her to calm down to some extent. The latter aspects of the claims contained in her statutory declaration were confirmed by the applicant. Eventually she indicated that she was able to return to the earlier material, and that was also confirmed up to a point, until she again became quite distressed.

The Tribunal then asked the applicant about a statement in Chinese which was on the Departmental file, but which had not been translated. The statement was shown to the applicant. The applicant confirmed that this was in fact a copy of her original Chinese-language statement, which she had prepared and submitted to her migration agent. It was confirmed therefore that this was not new or additional evidence, but simply the Chinese-language version of the statutory declaration that the Tribunal had already taken the applicant through.

The applicant was then also asked whether there was any new or additional information which she had to add to her claims. She said that there was not. The Tribunal then began to question the applicant in more detail about her claims. The Tribunal did feel it was appropriate to clarify aspects of the underlying situation concerning the applicant's father. It proceeded with some questions about this as the applicant indicated she now felt comfortable about talking about those issues. The applicant indicated that her father himself didn't have his own business, but he just worked for his employer, Person B. She couldn't recall the actual name of the business, but indicated that it was a proprietary limited company, and knew the name of the street in City T where it was located.

The applicant was asked whether there was any independent evidence of her father's death, such as a death certificate, which might show the cause of death. She indicated that she believes there is such a document in the possession of her mother. The applicant was asked whether she had managed to contact her mother since she had arrived in Australia, and she said that she had, and that her mother had indicated to her today that the authorities were still looking for her, which suggested that they weren't aware that the applicant had left China with a false passport. The applicant was asked whether she thought it was safe to speak about these things over the telephone with her mother, and whether, if the authorities were interested in her, they might not be monitoring those calls. She said that she didn't know whether the calls would be monitored. The Tribunal inquired whether it might be possible for the applicant to provide a copy of the death certificate and the applicant indicated that she would try to arrange it.

The applicant was then asked about the sequence of events which led to her first coming into contact with the Chinese authorities. In particular, she was asked whether her attempts to contact the media to try and raise the issue of her father's death and the lack of compensation were actually relevant to her claims, or whether it was her attempts to directly lobby the former employers. The applicant explained that despite their attempts to actually get the media interested in this problem, no articles published nor was any air-space given to the issue. As a result, it was not of significance to the adverse interest that the applicant experienced. That adverse interest arose, rather, because of her attempts to lobby her late father's employers directly. She indicated that she had tried to get compensation out of them and they had used their connections with the local authorities to harass her in return, to deter her from taking the issue any further. She clarified that when her statement referred to her being questioned several times by the Public Security Bureau, it was in fact several instances of interrogation during the first occasion of detention. This happened not long after her father had passed away in late 2003. She had asked for compensation and been refused, and

furthermore been reported to the police that she had been making a nuisance of herself with her father's former employers, and the police had questioned her as a result of this. She was questioned several times and asked why she was persisting with her actions, and she had explained herself and her reasons to the police. However, they were not sympathetic, and she was threatened with arrest if it happened again. This questioning occurred at the local government offices where there is a police station. The authorities didn't take any further action, but they released her with a warning not to persist in her activities.

It was after this that eventually that Local Church members made contact with her and her family, when they heard of their plight, namely that her mother was ill and couldn't afford treatment and the family had been left without income after the death of the father, which had not been compensated. Some of the Local Church members who were neighbours and friends came forward and offered material and spiritual support. Person A was one of these, but a number of the other sisters and brothers in the Local Church also assisted. The applicant clarified that the objectives were twofold: firstly, they wanted to help, but secondly, they also wanted to recruit the family to the church and spread the message of their religion. The applicant indicated that her family were not Christians before these overtures. The applicant joined their group in early 2004. Her mother and sibling also became Christians in these circumstances.

The applicant was asked what the gatherings of the Local Church, which she had begun attending in early 2004, involved. She explained that there were different types of gatherings, including for children, women and newcomers. She started off with the newcomers gatherings, but was not limited to these. The initial meetings focused on the spread of God's love among the brothers and sisters, and making newcomers open themselves up to accept the love of God. Her sibling and mother also came along to these meetings. The applicant was asked how her religious development progressed leading up to baptism. She said that she attended regularly during this period, and noted that the venue kept moving around for security reasons. The word would be passed via the brothers and sisters about what the location of the meeting was. There were usually a number of people and on some occasions there were a large number of people at the same meeting. In addition to attending the meetings, she had to study in preparation for the baptism by reading the bible in bible-study groups, which were separate from the normal meetings and took place on another day. She said that the choice of her birthday as the day of her baptism was significant in a couple of ways. Firstly, it was her birthday, but secondly, it was the day of her rebirth as a Christian and the beginning of her new life. She explained that it was only after her baptism that she could participate in the communion.

The applicant was then asked to clarify aspects of her statement concerning her interrogation many times by the PSB, including detention twice in early 2005 and late 2005. Similarly, with the previous reference in her statement to having been questioned on several occasions, the applicant clarified that in fact she had simply been detained on a few occasions, during which she had experienced many interrogations. The applicant was asked about the first detention in early 2005. She explained that she had been discovered attending the gathering at the local church at one of the members' homes, and thinks that someone had dobbed them in. The door was forced open and all of the brothers and sisters were arrested, several people in total. The home belonged to Person C, and all of the people were taken to the police station at the government office in City U. The people were initially detained together, and then were taken away for interrogation one by one. During the period she was detained, after having been taken away for initial interrogation she did not see her fellow detainees again.

She was questioned about why she had come to the meeting, about how many people had attended, about what the identities of those people, whether it was the usual venue, and whether there was any anti-government discussion. The applicant refused to answer their questions. She was asked whether any pressure was brought to bear, and she indicated that she was threatened with further detention if she didn't talk. Nevertheless, she refused to talk and was detained for several days as a result. The applicant was then released, with a warning not to attend any further gatherings otherwise she would be arrested. The applicant was asked about what happened to the others who were detained, and she indicated that this depended on whether they had been arrested before. She said some of them were detained for months, and some were put in prison for reform by labour. She said that the owner of the house was detained for several months.

The applicant was asked whether she adhered to the warning given to her, and she indicated that she had not, but rather she had resumed her activities with the church. Nevertheless, nothing further happened to her between early 2005 and late 2005, although she confirmed that she had lost her job as a result of having been detained.

During this period she devoted herself to the church activities, helping people like herself who had been abandoned by the government, accepting new people into the church and helping the church to organise its activities, such as contacting the brothers and sisters to arrange times and places for the meetings.

She was asked about what helping people who had been abandoned by the government entailed, and she indicated that they would open their hearts to them to forgive them and also organise material and spiritual assistance. She was asked for examples of this, and she gave a number, including that of a family who was experiencing great difficulties after the death of the household head in an accident. She was also involved, along with Local Church members, in spreading the word of God to non-believers.

The applicant was asked whether this was not a dangerous undertaking and whether they needed to exercise care, and she indicated that it was. She was asked how they knew who to approach and who to avoid, bearing in mind the risk of possible betrayal. She said that they followed God's guidance in this respect.

The applicant was asked whether she knew of any other Local Church leaders, apart from Person A . She named Person D, one of the elders of the group who she knew personally.

The applicant was asked whether she knew of any of the leaders who had problems with the authorities, for example having been sent to jail. She named one, Person E, an elder of the church who had been sent to reform via labour because of his activities, and suffered from a disability as a result of the mistreatment in custody. She also referred to Person F, who had been detained and whose home had been sealed up.

The applicant was asked about the second period of detention in late 2005. She explained that she had been distributing religious propaganda materials in a village near to her home village, called Village V, not far from her own village, and part of City U. She indicated that she was distributing copies of religious works, when she believes that someone reported her to the police. She was detained in the street, forced to kneel down, handcuffed and brought to the police station; first in City U, and then, after a day, transferred to City T. She had been on her own when she was distributing these propaganda materials. She was asked what the materials entailed, and she said they were photocopies of writings by Ni Tuosheng and Li



Changshou. She gave a number of examples of the works she had been distributing including Ni's *Normal Religious Life* and Li's *Life's Experience*.

She indicated that when first detained in City U, she had been interrogated, but not mistreated, but also told that as there was a precedent she was being sent to City T. She was then taken to the prison at City T. There she was detained for a few weeks, forced to work in the vegetable garden, interrogated and subjected to harsh treatment. She said they had to work from morning to night without rest on the vegetable garden within the prison compound, where at that particular time they were growing vegetables. However, she was also interrogated and asked about the church, and when she refused to speak she was beaten, had her face slapped, was punched in the abdomen, and had her hair pulled. She was also handcuffed and deprived of food and medication, for example when she complained that she had a stomach ache, they didn't care. Another problem that she had to deal with was that both men and women were detained at the prison, so it was very difficult to shower or have any privacy or security, and she had experienced harassment by other prisoners in respect of which the guards would take no action. She described the prison uniform as being [Details deleted in accordance with s.431]

The applicant indicated that she had not been able to contact her family, either at the time of her arrest or during the period of detention. She was therefore asked how then she managed to get released. She said that the church leaders bailed her out, although she was not sure quite how they managed to do this. Nevertheless, they did manage to get her out through the use of their connections. The applicant was asked how they would have known that she was even there, given that she had not been able to communicate with anyone. She indicated that firstly she had disappeared and they knew what she was doing at the time, and secondly that local villagers had seen her arrested and would presumably have passed this information on.

The applicant was asked whether any charges or ongoing reporting obligations arose out of the period in detention. She indicated that she was warned that if she were arrested again the punishment would be more severe. She was then released and had to make her own way home. In fact, she had to walk from City T to City U, a trip of a number of hours as she had no choice but to make it on foot.

The applicant was then asked about the proposal mentioned in her statement that she organised a group of young children to distribute propaganda. She was asked whether there was any particular strategy behind the decision to use young children to distribute this material, and she said that she didn't know. She was asked whether this was not a very risky plan for her to engage in further activities, given her recent experiences, and she conceded that it was. She was asked what her role was, and she said that it was to decide the place and manner of the distribution of the leaflets and to instruct the children what to do. She said that others were preparing and providing the materials for distribution. However, the Local Church got wind of the fact that she was under suspicion, even before the plan had come to fruition. The applicant was asked whether any preparatory work had been done at all, and she said that the materials were ready and were stored at another house, not her own house, and the next step would have been to distribute the materials to the children involved, who were the children of Local Church members. However, her part in it was aborted before it even got to that stage and so she did not actually meet with or learn the identities of the children in question.

The applicant was asked what propaganda materials were involved, and she said that once again it was the same materials that she had been caught distributing which she had named earlier.

The applicant was asked how the church had found out that she in particular was under suspicion, and she indicated that they had contacts in the authorities, and that although she didn't know the details, it was presumably someone in the PSB who had tipped them off. The Local Church people recognised that she was at risk of severe punishment and decided that it would assist her to escape. She was initially placed in hiding in the City U, in Province R, in the special administrative zone. Her travel there was arranged by the church. She travelled there on a truck, a journey which took many hours, and was then contacted again when the paperwork for her departure was ready.

The applicant was asked what instructions, if any, she had been given about what to do when she came to Australia, but she indicated that she had not been given any detailed instructions. She had been told that it would be necessary for her to write out a detailed statement of what had happened to her, and this was document which she prepared in Chinese which was discussed at the outset of the hearing. She indicated that once she arrived she found a Chinese-language newspaper and found somewhere to stay, and that is where she has resided ever since. She had responded to an ad and moved into a house, paying \$65 a week in rent. The landlord is a Chinese man.

She then went to try and find somewhere that would be able to translate her statement, and it was from there that she was referred to a migration agent. She had been told by Person A back in China that it would be necessary for her to write a statement setting out what had happened to her, but she indicated that she had not been told what to actually write in the statement and that it had not been written for her.

The applicant was then asked about her religious activities in Australia, and whether she had made contact with any church here. She indicated that she had, and that she had located a branch of the Local Church, which conducts services in City W. She indicated that she has been going to services there regularly, since about a few days after her arrival in Australia, and that these take place in the morning. The priest's name is Person F and she has some difficulty following the services, although they are conducted bilingually through the use of an interpreter. A large number of people attend the meetings. She hasn't really talked to them much because they are mostly Australian. The applicant was asked to confirm whether it was, in fact, a branch of the Local Church, where the teachings of Watchman Nee and Witness Lee were observed, and she indicated that it was. She was asked whether she had obtained a bible or any of their materials since she had come to Australia, and she indicated that she had not been able to as the only ones the church have available for distribution or sale were in English. She was asked whether she thought there were any other branches of the Local Church in City W, and she said she did not think there were. She was asked whether she had made enquiries about this, and she expressed the belief that the Chinese-language versions of these works could only be obtained from China.

The applicant was asked what she feared would happen to her if she returned to China. She said that after she had become the target of suspicion for the last time, she could no longer stay in China because she risked being detained again for a longer period.

The applicant was asked whether she couldn't simply stop her activities. She responded that the blessing from God which she had received was tremendous, and that as a Christian she

could not stop her activities. She said that she felt compelled to continue to practise within the framework of this particular church.

The applicant was asked about her mother and sibling, and whether they hadn't also come to the adverse attention of the authorities. She responded that it was because they hadn't yet been arrested and therefore weren't under suspicion to the extent that she had become.

The applicant was asked whether there was anything else she wished to add, and she indicated that she had been abandoned by her country, and hopes that the Australian government would give her some fair treatment, with the blessing of God.

The applicant was asked whether she could obtain a letter from the Local Church to confirm that she had in fact been a regular attendee at their services. She said that she thought she could. As the applicant's adviser was not present, the Tribunal indicated that it would write to the applicant and formally request that these documents be provided, namely letters of supports from the Local Church to confirm firstly, that the applicant was indeed a regular attendee there, and also to confirm that they did not have Chinese-language versions of the works of Witness Lee and Watchman Nee available for distribution or purchase. Secondly, the applicant would be requested to provide a copy of the death certificate of her father, confirming that he had in fact died in an industrial accident.

The applicant had been asked whether she had any evidence to demonstrate that she had been detained by the authorities, but she had replied that the only evidence of that would be the records of the PSB themselves, and that it would be impossible for her to obtain those records.

### **Post-hearing**

In late 2006, the Tribunal received from the applicant's adviser a faxed copy of a death certificate with authorised translation, indicating that the applicant's father had died in late 2004 of "palsy shock caused by external injury amputation", after being admitted to hospital. Also received was a statutory declaration by the applicant explaining that there would be a slight delay obtaining the letter from the church as the responsible elder was not available until the weekend, and also correcting one aspect of her evidence given at hearing, as she had now learned, after making inquiries, that her branch of the local church did in fact have available the works of Watchman Nee and Witness Lee in Chinese. She explained that as she was in Australia she had wrongly assumed such works would not be available.

That evening, the Tribunal received a further fax from the applicant's adviser enclosing the aforementioned letter from the Local Church in City W on its letterhead, signed by both the Elder and the Responsible Brother, indicating that the applicant has been meeting regularly with the church since mid 2006, and inviting further contact if required.

### **Independent Country Information**

The Situation of the Local Church (or Shouters) in China

The US Department of State's International Religious Freedom Report 2006 includes the following information about the situation in the PRC:

The Government has banned all groups that it has determined to be "cults," including the "Shouters" (founded in the United States in 1962), Eastern Lightning, the Society

of Disciples (Mentu Hui), the Full Scope Church, the Spirit Sect, the New Testament Church, the Guan Yin (also known as Guanyin Famin, or the Way of the Goddess of Mercy), the Three Grades of Servants (also known as San Ba Pu Ren), the Association of Disciples, the Lord God Sect, the Established King Church, the Unification Church, the Family of Love, the South China Church, the Falun Gong, and the Zhong Gong movements. (Zhong Gong is a qigong exercise discipline with some mystical tenets.)

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Officials sometimes refused to issue passports to religious figures, especially those from unregistered groups. Zhang Yinan, a house church historian released from reeducation in 2005, was denied a passport on such grounds during the period covered by this report.

### *Abuses of Religious Freedom*

During the period covered by this report, unapproved religious and spiritual groups remained under scrutiny, and in some cases officials harassed members of such groups. In some areas, unregistered Protestant and Catholic groups, Muslim Uighurs, Tibetan Buddhists, and members of groups that the Government determined to be "cults," especially the Falun Gong spiritual movement, were subject to government pressure and sometimes suffered abuse.

Offenses related to membership in unapproved religious groups are often classified as crimes of disturbing the social order. According to the Law Yearbook of China, 8,119 cases of disturbing the social order or cheating by the use of superstition were filed in 2004, of which 7,751 resulted in formal charges, criminal, or administrative punishment. The number was approximately the same as in the previous year. Government officials said that no persons were prosecuted for their religious belief or activity. However, religious leaders and worshippers faced criminal and administrative punishment on a wide range of charges, including those related to the Government's refusal to allow members of unregistered groups to assemble, travel, and publish freely or in connection with its ban on proselytizing. The Government's restrictions on unregistered religious groups increased in 1999 in response to large public protests by the Falun Gong in sensitive locations including Tiananmen Square and the Zhongnanhai Communist Party leadership compound.

Religious adherents were beaten, and some died in police custody after being detained in connection with their religious belief or practice. In June 2004, the government-run Legal Daily newspaper reported that Jiang Zongxiu had died in police custody in Zunyi, Guizhou Province, after being arrested for distributing Bibles. A Legal Daily editorial comment condemned local officials for mistreating Jiang. In 2004, Gu Xianggao, allegedly a member of the Three Grades of Servants Church that the Government considers a cult (discussed below), was beaten to death in a Heilongjiang Province security facility. Public security officials paid compensation to Gu's family. In September 2005 government agents reportedly broke bones of Christian businessman Tong Qimiao at a police station in Kashgar, Xinjiang, while he was being interrogated about the activities of local house churches. In November 2005 hired thugs beat sixteen nuns, one of whom was blinded and another partially paralyzed, when the nuns protested demolition of a Catholic school in Xian. Hundreds of Catholics marched on Government offices in protest, and the Vatican publicly protested the incident.

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Protestant Christians who worshipped outside of government-approved venues or in their homes continued to face detention and abuse, especially for attempting to meet in large groups, traveling within and outside of the country for religious meetings, and otherwise holding peaceful religious assemblies in unregistered venues. U.S. legal permanent resident Wu Hao was detained by security officials in February 2006 after filming house church services in Beijing for a documentary film. As of the end of the reporting period, he had not been charged, and the Government refused to clarify his whereabouts. Henan Province house Christian pastor Zhang Rongliang was convicted in June 2006 of obtaining a passport through fraud and illegal border crossing. He was sentenced to seven-and-a-half years in prison. In August 2004 in Zhejiang Province, the Government convicted Beijing-based house church Christians Liu Fenggang, Xu Yonghai and Zhang Shengqi on charges of disclosing state secrets after they provided an overseas Chinese magazine information about abuse of Christians in the country. Xu and Zhang were released at the expiry of their sentences, but Liu's three-year sentence had not yet expired. In May 2006 after President Bush met with Christian intellectuals in the White House, security officials harassed relatives of at least one of the meeting's participants.

Police and other security officials disrupted Protestant religious retreats and large meetings on many occasions. In July 2005 the Government reportedly detained one hundred Sunday school students in Hebei Province. In August 2005 police reportedly raided a training class in Jiangxi Province for Sunday school teachers. On Christmas Day 2005, police reportedly raided an unregistered church in Manasu County, Xinjiang, destroying property and detained several worshippers. The U.S.-based China Aid Association said more than 200 were detained, including Pastor Guo Xianyao. In February 2006, Lou Yuanqi was reportedly detained for holding unauthorized church services in Xinjiang. In April Li Huimin was reportedly sentenced to reeducation in Henan Province for holding house church meetings at his home. In May several house church activists were detained in Henan Province's Fugou County. At least three remained detained at the end of the period covered by this report.

The Amnesty International 2006 Report includes the following information about China:

### **Repression of spiritual and religious groups**

Religious observance outside official channels remained tightly circumscribed. In March, the authorities promulgated a new Regulation on Religious Affairs aimed at strengthening official controls on religious activities.

The crackdown on the Falun Gong spiritual movement was renewed in April. A Beijing official clarified that since the group had been banned as a “heretical organization”, any activities linked to Falun Gong were illegal. Many Falun Gong practitioners reportedly remained in detention where they were at high risk of torture or ill-treatment.

Unregistered Catholics and Protestants associated with unofficial house churches were also harassed, arbitrarily detained and imprisoned.

The following information, dated 7 September 2005, was accessed from the Immigration and Refugee Board of Canada's database on 5 December 2006, located at <http://www.irb->

[cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=449522](http://cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=449522). Responding to an information request concerning the situation of Christians in Fujian...

[T]he executive secretary of the Hong Kong Christian Council commented that Fujian and Guangdong have "the most liberal policy on religion in China, especially on Christianity",

[However, he then went on to point out that...]

In cases where arrests have been made.... groups such as the Shouters and the Eastern Lighting, which are considered "heretical" by many Christians, have been targeted.

### Local Church Practices Generally

A 2004 PhD dissertation by Jason Kindopp of George Washington University provides detailed and authoritative information on the Local Church's beliefs and practices, including the following relevant points:

Li further developed "the Little Flock's anti-bureaucratic principles and theological emphasis on subjective experience". The Local Church re-translated the entire Bible and added extensive commentary by Li throughout the text; the new version is called the *Recovery Bible*. Li also authored study guides, commentaries and pamphlets, which are in use today (p.437).

The Local Church tends to depict humanity as "totally sinful", and mainstream Protestant churches as corrupt. The Local Church sees itself as being "the 'Lord's recovery' of Christianity through Li's subjective interpretations of the Bible, unique worship methods, and exclusivist organizational form" (p.438).

Li's theology depicts the human being as "divided into flesh, soul and spirit". The flesh is sinful, and the soul "has been corrupted into self-centredness". Salvation for the individual is through the spirit: it "occurs through the 'mingling' of man's spirit with God's" (p.440).

This "mingling" is achieved through practices devised by Li. "Pray-reading" involves the group practice of reading aloud from passages of scripture, which are viewed as "not merely God-inspired, but literally as God's Spirit", which can be literally imbibed by the believer (p.441). The very act of "pray-reading" is said to "kill the self", which is "the most subtle enemy of the Lord" (p.442). Kindopp regards Ni and Li's theology as appearing to "meld the doctrines of fundamentalist Protestant Christianity with traditional Chinese notions of spirituality". The concept to "pray-reading", for instance is "similar to that of *qigong* masters who claim to tap into cosmic forces" and both have an emphasis on breathing as a way of "imbibing the divine or cosmic power" (pp.442-3). The "Calling on God" method consists of repeatedly shouting out "*Zhuaaaaa!!* (Lord aaaah)" (p.472). The emphasis on vocal practices has led to the group acquiring the derogatory title of "Shouters" in China (p.453).

Local Church communities become tightly knit "through frequent and highly participatory scheduled activities. Group rituals carefully follow Li's prescribed format, and are geared toward bringing adherents into total conformity with Li's dogma and into submission to his authority while eliciting total commitment to the church...Former members report that members are expected to attend from four to six scheduled meetings each week" (p.444). In China, groups can meet up to ten times a week (p.461).

The Living Stream Ministry publishes the works of Ni Tuosheng (Watchman Nee) and Li Changshou (Witness Lee). Publications listed on its website, located at <http://www.lsm.org/> and accessed on 5 November 2006, include those mentioned by the applicant at the Tribunal hearing.

#### The Local Church in Australia

On 31 July 2006, the Tribunal received the following information from the elders of the Local Church in City W:

[Details deleted in accordance with s.431]

#### Prison Conditions in China

The 2006 US State Department Country Report on Human Rights Practices, published on 8 March 2006, includes the following information about prison conditions in China:

Conditions in penal institutions for both political prisoners and common criminals generally were harsh and frequently degrading. Prisoners and detainees often were kept in overcrowded conditions with poor sanitation. Prison capacity became an increasing problem in some areas. Food often was inadequate and of poor quality, and many detainees relied on supplemental food and medicines provided by relatives; some prominent dissidents were not allowed to receive such goods. Political prisoners were segregated from each other and placed with common criminals, who sometimes beat political prisoners at the instigation of guards. Newly arrived prisoners or those who refused to acknowledge committing crimes were particularly vulnerable to beatings. In January 2004 political dissident He Depu was reportedly beaten by guards at Beijing No. 2 Prison and made deaf in one ear. Authorities acknowledged He's deafness, but asserted that he was already deaf when he entered prison. Prolonged use of electric shocks and use of a rack-like disciplinary bed were reported. Inner Mongolian cultural activist Hada was among those reportedly tortured. Chinese prison management forced prisoners to engage in labor, both as punishment and a source of funding (see section 6.c.).

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Adequate, timely medical care for prisoners continued to be a serious problem, despite official assurances that prisoners have the right to prompt medical treatment. Labor activist Yao Fuxin suffered a heart attack in prison in August and foreign residents Yang Jianli and Wang Bingzhang previously suffered strokes in prison. In all three cases, authorities rejected their requests for outside medical care. Yao and fellow labor activist Xiao Yunliang also had to withstand frequent prison transfers while in ill health.

*The Report into the Allegations of Organ Harvesting of Falun Gong Practitioners in China*, by David Matas and David Kilgour, details a number of accounts of sexual abuse of female detainees in China by both inmates and officials, such as the following, located at p 32 of the appendices:

In June 2000, 18 Female Practitioners at the Masanjia Labour Camp were stripped naked and thrown into prison cells with violent male criminals who were encouraged

to rape and abuse them. Practitioners were forced to stand naked in front of video monitors as a form of humiliation, and to stand naked in the snow for extended periods of time.

Female practitioners in the Masanjia Labour Camp are constantly subject to being stripped and shocked on their genitals with electric stun batons. They are sexually degraded and humiliated while being interrogated – all in an effort to force them to renounce Falun Gong.

The following is account by a Falun Gong practitioner of conditions in a prison in Guangdong, the neighbouring province of Fujian, accessed on 6 November 2006 from the website located at <http://www.faluninfo.net/displayAnArticle.asp?ID=8976>:

Exposing Crimes Committed by Police in the First Jail in Jieyang City, Guangdong Province (By a practitioner in Jieyang City, Guangdong Province, China 10/7/2004 5:13)

Since Jiang Zemin's regime began its persecution of Falun Gong, the First Jail has become the most severe place for persecuting practitioners in Jieyang City. It is infamous in the city for the abuse of practitioners.

In Jieyang Jail, it is a common practice for inmates to beat other inmates under the police's direction. Although the Jieyang District Attorney's Office has an office in the jail, it does nothing to stop this. It even sometimes collaborated with the police in illegal activities.

The jail has both male and female inmates, and usually only male police do patrol duty. While the female prisoners showered or changed clothes, the police would watch from the window above, speaking foul and filthy language.

The most steadfast practitioners were beaten up by the inmates in groups. A lot of the beatings occurred under the coercion of the jail police. Sometimes more than ten people would hit and kick one male practitioner at once. For those who went on a hunger strike, the treatment would be even worse.

Another measure employed by the police is nighttime interrogations, where they subjected the victims to physical violence and intimidation. They did this to practitioner Cai Yonghua, who was later given an illegal prison sentence, as well as other male practitioners including Xie Huiliang, Sun Jiefeng, Wu Kaitao and Hua Huajie.

When female practitioners went on hunger strike, they would face extremely filthy treatment. The police would direct seven to eight male inmates to force the female practitioner on a chair, holding down her hands, feet, and head, and pinch her nose to force feed her. Sometimes they held her on the ground with their feet and force fed her. Meanwhile, with the police supporting their actions, they would take the chance to fondle and grope the female practitioner's body.

Rather than releasing the practitioners during their hunger strike, the jail would aggravate the persecution. Practitioner Huang Sujun died right after being released from jail, where she was tortured nearly to death and then released.

As recognition for their persecution, the jail was commended as a Grade-III Jail. The proclamation plaque still hangs on the gate today.



Jieyang First Jail has now moved to Dongshanwei in Dongshan District. It is temporarily housed in the same compound as the Second Jail. The original location in Yanei of Rongcheng District is now occupied by Zhongshan Police Station of Rongcheng District. (By a practitioner in Jieyang City, Guangdong Province, China (10/7/2004 5:13))

## Departure from China

The same US State Department report also includes the following:

There were instances in which the authorities refused to issue passports or visas on apparent political grounds. Cheng Yizhong, the editor of Guangdong Province's Southern Metropolitan Daily newspaper, was banned by authorities from traveling abroad during the year to accept a UNESCO press freedom award. Members of underground churches, Falun Gong members and other politically sensitive individuals sometimes were refused passports and other necessary travel documents.

## **FINDINGS AND REASONS**

The applicant travelled to Australia on a PRC passport issued in the name of another person. However, she readily admitted this at the time she lodged her protection visa application, and provided other evidence of her identity, contained in the departmental file, in the form of a PRC identification card issued in her own name. There is no evidence to suggest that this document is not genuine. The Tribunal therefore accepts that the applicant is a national of the PRC. In the absence of any evidence to suggest that she is a national of, or has any right to enter or reside in, another country, the Tribunal has assessed her protection claims against the PRC.

The Tribunal has considered the applicant's account of the death of her father, and how she initially attracted the adverse attention of the authorities as a result of her efforts to obtain some justice. The Tribunal found the applicant's account to be entirely credible, as it was delivered without hesitation, including responses to follow-up questions which went beyond the scope of the applicant's original statement. It was also evident to the Tribunal that the applicant was still deeply distressed about the death of her father and the injustice this event caused her family. The Tribunal has also had regard to the death certificate, the relevance of which did not appear to have been considered by the applicant previously, but which was provided promptly when requested. The Tribunal therefore accepts this aspect of the applicant's claims.

The applicant has claimed to be a member of the local church. The Tribunal considers that the claimed genesis of her involvement in that church is significant, because the local church members were the ones who offered assistance to the applicant's family in their time of crisis. From the evidence given at the departmental interview it was clear that the extent of her religious knowledge was patchy and that in fact she had some serious misconceptions about Christian doctrine, such as the view that Li Changshou was the author of the bible. However, it was also clear from the applicant's account that she was attracted to the local church on an emotional rather than on an intellectual or doctrinal level, because it was the members of the local church who had offered her family comfort and financial assistance. The fact that her understanding is simplistic and flawed does not necessarily mean that her religious conviction is not genuine, because although the country information does suggest that bible 'study' does play an important part of Local Church worship, it also shows that the bible used within that

church is not a conventional one. Indeed, given that the country information above indicates that *[t]he Local Church re-translated the entire Bible and added extensive commentary by Li Changshou throughout the text; the new version is called the Recovery Bible*, it is not surprising that a new adherent to the Local Church with no prior exposure to Christianity such as the applicant, might actually believe, and have been led to believe, that Li Changshou wrote the bible. The country information also suggests that the worship practices are both doctrinaire and formulaic, and do not encourage independent thought.

The Tribunal considered the applicant's account of her activities on behalf of the Local Church in the PRC and her experiences of detention and mistreatment by the Chinese authorities. At the Tribunal hearing the applicant went into considerably more detail about her claims, but the additional detail was consistent with her core claims, and with country information such as the US State Department material on prison conditions, and (subject to minor variations the Tribunal considers to be attributable to the vagaries of translation) the information concerning Local Church publications. The Tribunal also notes that in late 2004, the applicant's birthday on which she claimed to have been baptised, did in fact fall on the stated day, which is consistent with her claim to have attended Local Church services on the same day.

Furthermore, the Tribunal considered the evidence to have been delivered in a straightforward manner, and not overstated. For example, the plan by the Local Church to have her organise for children to distribute materials does sound like a strange plan, but the applicant did not deny it, or offer any explanation as to its purpose, she simply reiterated that this is what she had been instructed to do (although she did explain that the plan never got off the ground in any case). However, there are possible explanations to account for such a plan, such as that children might be less likely to attract suspicion, or that they might be less likely to be punished harshly if apprehended, and that the applicant herself by playing a non-operational role might thereby continue to contribute while not exposing herself to the risk which had, on her account, caused her to be detained and mistreated by the PRC authorities. Given that the country information indicates that the PRC authorities view the Local Church as an illegal cult whose members are liable to detention and punishment, it would hardly be surprising if the Local Church tried unorthodox methods of pursuing its evangelical agenda. The Tribunal considers that the applicant's agreement to participate in such a scheme would be consistent with her being a blind adherent to a faith which does not appear to encourage independent thought.

Despite the spontaneous manner in which she delivered this evidence, the Tribunal initially had concerns about some aspects of the applicant's claims detailed for the first time at the hearing. For example, it initially found difficult to accept the applicant's claims that male and female prisoners were detained at the same prison, that she had no privacy in the shower, and that she was subjected to harassment by male inmates. However, accounts of other former Chinese prisoners set out in the country information suggest that the sorts of experiences the applicant recounted do indeed occur in Chinese prisons, and that her claims in this respect are therefore not far-fetched at all.

The Tribunal accepts, therefore, that the applicant became genuinely involved with the Local Church in the PRC as claimed, and was detained and mistreated by the PRC authorities as a result of her religious activities. It accepts also that members of the Local Church arranged for her to depart the PRC on another's passport, in order to protect her from further punishment, as this would be consistent with both the country information concerning possibility of people such as the applicant being refused a passport, and also with the

church's own earlier actions in coming to the aid of the applicant in the first place. The Tribunal accepts that the PRC authorities maintain an adverse interest in the applicant as a member of a cult who has re-offended despite having been previously punished, and come under suspicion for a third time.

Relying both on her own evidence and on the supporting letter from the Local Church in City W, the details of which accord with other information received from that church and reproduced above, the Tribunal also accepts that the applicant has, since shortly arriving in Australia, been involved with the Local Church in City W as a regular worshipper. The Tribunal is also satisfied, on the basis of the applicant's own evidence, that if she returns to China she is likely to continue to participate in the Local Church.

The Tribunal does have concerns about the applicant's claims with respect to the circumstances under which she obtained her travel document, journeyed to Australia, and established contact with the Local Church here. If, as the Tribunal accepts, the Local Church in China arranged for the applicant to travel to Australia on false papers, the Tribunal doubts that the applicant arrived in Australia without the knowledge or assistance of someone at this end of the route. However, even if the applicant has withheld information of this nature, perhaps because the people who arranged the travel forbade her to reveal any such details in order to protect the identities of others involved, the Tribunal has concluded that this does not affect its other findings.

Given that it accepts the applicant's claims of having been a member of the Local Church in the PRC, the Tribunal is satisfied for the purposes of section 91S of the *Migration Act* 1958 that the applicant's religious practice in Australia has been conduct engaged in otherwise than for the purposes of strengthening her claim to be a refugee.

The country information indicates that the Local Church has been designated an illegal cult and that not only its leaders but also its members risk detention and punishment by the PRC authorities as a result. The Tribunal finds that at least some of the treatment to which members of the Local Church and other illegal cults in the PRC are at risk of being subjected to by the Chinese authorities, including detention and physical mistreatment, is clearly capable of amounting to persecution for the purposes of s91R of the Act.

Given the applicant's involvement in the Local Church, her past mistreatment in the PRC as a result of that involvement, the ongoing and adverse interest the Chinese authorities have in her, her intention to continue her involvement in the Local Church even if forced to return to the PRC, and the country information discussed above, the Tribunal finds that if the applicant returns to the PRC there is real chance, one which is more than remote, that she will face such persecution by the PRC authorities, for reason of her religion, in the reasonably foreseeable future.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. 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 is a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependent of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.

Sealing Officers I.D. rander