

**060978673 [2007] RRTA 17 (16 January 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060978673

**DIMA REFERENCE(S):** CLF2006/114330

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

**TRIBUNAL MEMBER:** Robert Wilson

**DATE DECISION SIGNED:** 16 January 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 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 on a second occasion and applied to the Department of Immigration and Multicultural Affairs 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 a letter of the same date.

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 (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 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, 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, CLF2006/114330, relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources, including its file 060978673.

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.

### ***Application for a Protection visa***

The document indicated that the applicant is a single Christian man born in Hainan, PRC. His level of education was stated and he can speak, read and write Mandarin. He was employed at Organisation C, Hainan in a stated role for a named period. His mother and father live in the PRC and he rings one parent regularly.

### ***Typed Statement provided with the Application***

My name is [name and date of birth]. I wish to apply for a protection visa. I would like to emphasize on my claim for the Refugee Status. I think it is quite necessary for me to declare that I fully understand the definition of a refugee. A refugee is defined in the Convention relating to the status of Refugee (1951) as amended by the protocol relating to the Status of Refugees(1967) as a 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 a fear, is unwilling to avail himself of the protection of that country of his former habitual residence, is unable or owing to such fear, is unwilling to return to it.

I would like to explain my situation and status with following statement:

I am a Chinese Christian, I suffered hard for my faith when I was in China where Protestants has a long complained of persecution by Government authorities. The human rights claims to be challenged.

In China, there are a lot of large-scale Christian gatherings and I see some Christians were detained, severely tortured in jail and even sentenced to death. I was once questioned when I participated in the pray activity in China. But government crackdowns - and even torture - may not make me give up my faith. I believed that despite all the persecution and suffering, God is calling more and more people like me.

When I first time entering Australia, I truly experienced that this a country of protecting freedom of religion and democracy. People, including Christians here have enough encourage cultivating their belief. To contrast, China is a totally different story. I did really enjoy the multiple cultural and co-existence society of Australia and wish I could realize my dream of similar living style when I return home to China.

Acting as [stated role in Organisation C], I have been working hard in teaching while conveying the religion to my students who shown a great interest in Christians. Unfortunately, I have been informed that "you can believe, but you can't evangelize," But that is a natural act for Christians. The bible commands us to preach the gospel." I had eventually received a serious warning notice from our [group] and questioned by our local policy. More over, my family had been requested to report my information while I am in Australia.

Although Chinese Authorities have kept on saying that "In China, no one is to be punished due to their religious belief" and "citizens of the People's Republic of China enjoy freedom of religious belief" according to the Chinese constitution.

The reality is that our Christians in China have to worship in the tightly regulated state-registered churches otherwise we will be wiped out according to the local authorities.

To avoid being supervised by policy, we Christians have to worship in unofficial buildings or even each others' homes - hence our description as "house churches". But it is against regulations to worship in groups risking fines, imprisonment, torture and even, in some cases, death.

Because of my religious activities, I have been watched out and ill treated with prejudice in whatever means including employment. No companies want to hire me when they aware of the rumors of mine in religion. To avoid further threat in China, I tried all my best to have my entry visa to Australia granted by bribing the local officials in China. I tell myself that I must get out of this country which can not protect my belief and security for my rest of life and I fear to return again.

I therefore lost my confidence in surviving under such pressure caused by the community and aspire to freedom of human right and freedom. I stick to my decision of moving and settling in Australia for rest my life.

I sincerely hope that Australian government could protect me and consider my application favorably.

***Section 424 letter addressed to the applicant***

**INVITATION TO PROVIDE INFORMATION**

The Tribunal requests that you provide the following additional information.

1. If you have any further claims, please provide them.
2. Please provide all documents you wish to rely on that are with you in Australia, including your Certificate of Baptism.
3. Please provide a further letter or letters from the Minister/Priest/Head Pastor of the church(es) that you attend in Australia, on their letterhead, indicating the frequency of your attendance, whether you have been baptised (when and where,) whether you have or have had any particular role(s) in the church (e.g. member of the choir, usher, Bible group attendee) and whether the Minister considers that you are a Christian. Please also provide in the letter(s) reference to which denomination the church falls under, if any.

4. Please provide any further evidence (Statutory Declarations) from your friends who can attest to your Christianity.
5. Please advise what denomination you are, which church you attended in the PRC and its location.
6. Please provide more information about your role, and a further and better description of Hainan [name of Organisation C]. Does it teach religious matters? Does it teach Christianity?

This information is to be provided in writing and must be received at the Tribunal by [date].

### **Section 424A letter addressed to the applicant**

#### INVITATION TO COMMENT ON INFORMATION

The Tribunal has information that would, subject to any comments you make, be the reason, or part of the reason, for deciding that you are not entitled to a protection visa.

The information is as follows:

1. Your statement indicates, and the Department's Movement Details show that you arrived in Australia on [date] and then left on [date] only to return again on [date].
2. Your passport was issued on [date], in your name.
3. The photo in your passport appears to be different to your photo attached to the Application for a Protection visa.
4. The Tribunal would normally expect a committed Christian to attend church upon his arrival in Australia, and to attend regularly thereafter.

Why this information is relevant to the review (numbers below correspond to the numbers above):

1. The fact that you returned to China, only to return to Australia again indicates that you did not have a fear of persecution in China. If this is the case then you may not satisfy the definition of refugee.
2. The fact that you were able to obtain a passport in your own name and you waited [number of] years to leave China, may suggest that you were not in need of protection in China. It may suggest that you were not under any suspicion by the Public Security Bureau in China. This may mean that the Tribunal considers that you do not need Australia's protection, and reject your claims.
3. This may suggest that there is some identity fraud involved, which if known, may seriously reflect negatively on you credibility and claims.
4. If you do not provide evidence of such commitment, as requested in Q.3 of the accompanying letter, the Tribunal may find that you are not a Christian.

You are invited to comment on this information. Your comments are to be in writing and in English. They are to be received at the Tribunal by [date].

***Document provided by the applicant at the Tribunal hearing***

[Name of] Church

Sunday Service: [Location]

[Street address]

Mails: [Postal address]

Tel. [telephone numbers and Pastor's name]

[Date]

To whom it may concern Dear Sir/Madam

Re: [Applicant]

D.O.B. [date]

Add. [residential address]

This is to certify that [the applicant] has been attending our church's Sunday service at [location and address] from [times]. He attended also the singing and bible study group prior to the service.

In my opinion he is a gentle person, has a good manner and personality. He is sincere in worship God and to listen to God's teaching.

We were told that he was baptised in [year] in a family under ground church. It was due to some members of the church who were persecuted by the government, he was unable to attend the church since. Now he is in Australia, he enjoys the free will to worship God here. He would not like to return to China as he may be persecuted again if he returns to worship God in the family church. He does not want to attend the government controlled church service as the Minister are not preaching the true teachings from the bible.

Our church would support [the applicant] in his application to settle comfortably in Australia. We would help him spiritually in worshipping God, in living a honest life and in contributing to the society here. We will also support him in the daily living basis when he is in need.

***Hearing conducted at the Tribunal***

The applicant stated that a student helped him prepare his Application for a Protection visa, and typed statement. The information written in those forms was not read back to the applicant. As a result, the applicant stated he did not understand the documents and did not know what was in the documents.

The applicant stated that he first came to Australia with a number of other persons and they went back to the PRC.

He stated when he last arrived in Australia. He stated when he lodged his application for a protection visa. He was asked why it took him that period of time to apply for protection. The applicant stated that he attended a private church in the PRC. He stated that Mr Z is the head pastor, a friend, and a work colleague in China. The applicant stated approximately when he received his visa and came to Australia soon after. Mr Z obtained a visa, however, he could not come as scheduled. The applicant stated he had planned to go back to China with Mr Z. However, Mr Z was arrested and sentenced to quite a few years of imprisonment. Further, the applicant came out to Australia with another member of his church, Mr W. When Mr W returned to China, some months later, he was also arrested and was sentenced to a term of imprisonment. The applicant stated that he wants to return to China as well, but if he does he will be arrested.

The applicant stated that some friends were arrested for 'illegal gathering.' The applicant stated that Mr A, an assistant pastor, who didn't come to Australia, was also arrested in China. As a result of these arrests the applicant delayed his departure from Australia because he too feared arrest. He stated that he had been waiting in Australia to see what happens in China. He stated that recently the local PSB went to his family member's home to look for him. The applicant denied that it was an idle enquiry. He stated that he rings home and that's where he gets his information. He stated that his wife had also contacted him from China regarding the arrest of his colleague.

The applicant stated that if he were to return to the PRC his fate would be the same as his colleagues in that he would be placed in prison. He used his motor vehicle to drive Mr Z and Mr W, and two other fellow churchmen to a church at a village on the outskirts of his city on the weekends. He stated that he drove them because it was his duty to take them and himself to the weekly service from where he lived.

The applicant thought that since Mr Z could not obtain a visa, and there has been a lot of trouble, perhaps he made a confession as to who the members of the church were.

The applicant stated that he travelled with the members of the church to the neighbouring village so that an underground service could be conducted. He stated when he joined the Church. Before that he was not a Christian. He stated that from the time he met Mr Z he went with Mr W and some other people to the village for the service.

The applicant stated that there were church services conducted in Haikou (the capital city of Hainan), where he lived, as well, but they were frequented by the elderly and were conducted by the official church in China.

The applicant stated that he speculated that after two arrests the authorities found out that he was in Australia and was part of the organisation. He postulated that was why they went to look for him. He stated that if he were to return to the PRC he would have the same fate as Mr W.

The applicant produced the s.424A letter sent to him. The tribunal asked why he did not reply to it. He asked, 'reply?' The Tribunal then went through some of the questions with him.



The applicant stated that Organisation C trained people for the whole province. There were other affiliated Organisations. Organisation C is like a subsidiary company to the main bureau.

The applicant stated that the first time he came to Australia was for the purpose of visiting an Australian city. He stated that a group of them came. His stated that they all came from the affiliated subsidiary Organisations and they returned to China together. On the second trip the applicant, and Mr W remained in Australia because of the trouble.

The applicant stated that he lived in Hainan all his life.

The applicant stated that he attended church regularly and his function was to drive the others to the service.

He stated he attended church regularly in Australia in recent times. Prior to that, he had been to many different churches. At the Church, which he presently attends, the services are conducted in other languages.

At this church during the week he attends the office and everyone bring something with them for Bible Study. On Sundays he goes to church to pray, and attends Bible studies, and if the church organises activities, he participates in them. His stated that he sings and goes to Bible study.

The applicant's family member was a Christian and she had an influence in him becoming a Christian when he did. She attended church in China but it was the government church. He explained she did so because she was old and can't walk very far so it was convenient for her to go to that church.

The applicant stated that neither he nor his family had been subjected to the adverse attention of the PRC authorities because of their religion. This was because it wasn't until Mr Z was arrested that his church was implicated.

The applicant stated that he did not worship at the government church in China. He stated this was because that church is different from the private churches. He stated that the ministers were appointed by the government. He said that he had never been to one of these government churches and however his family member has. She said to him that what they do is different to what happened at her previous church. She was not happy with it and said they changed it quite a lot.

The applicant stated that he did believe that he had a responsibility to tell other people about Jesus and being saved. He stated that he had introduced one person to his church in China. He had not introduced anyone in Australia because he usually moved around by himself and with his current status ('like illegal') he wants to avoid people. He stated that the things he would tell a person to bring them to church included all the aspects of Jesus, including how Christ taught people to behave on earth. He said he would do evangelical work.

The applicant stated that he had read the Bible. He said that he knew that Jesus helped people on earth with difficulties. He stated that when he was introduced to the church, he was told how Jesus had behaved and what he did. He was told how Jesus gave blessings to people on earth. The Pastor had taught him how to pray. He was baptised by his Pastor in the sea.

The applicant stated that during the recent Christmas period he went to church to learn about the birth of Jesus. The applicant stated that he had heard of the Gospels. He said the Gospel Scriptures were for people on earth. He stated that he prayed to Jesus to bless him and to protect him and his family. He stated that the Bible was split into the New and Old Testaments. He was able to refer to the book of Mark in the New Testament.

On the other hand, the applicant did not know the meaning of Easter.

The tribunal referred to the applicant's written statement that he said that he was once questioned by the police. He denied that this was the case and said that no such thing happened. He stated that perhaps the student who had helped him was trying to make his claims more severe.

The applicant stated that if he were to return to China he would attend a private church. The tribunal telephoned the Pastor at the applicant's Australian Church. He confirmed that the reference given to the applicant was his and he confirmed that he preached in other languages. The services were bilingual.

He stated that the applicant is a genuine believer. The Pastor knew when the applicant had been baptised, and that he came from Hainan. He referred to the arrests in China of the applicant's colleagues. He knew that the applicant had attended various churches in Australia before coming to the current Church. The Pastor stated that the applicant wanted freedom of worship and knew the difference between the government church and the underground church. He stated that the applicant was honest, good mannered and gentle. He fits in with the rest of the congregation.

The Pastor said at what time they have a Sunday service and there was a prayer group, learning of Bible verses, and hymn practice beforehand. There is also Bible study later after the service at another location. He stated that there was a cell group meeting during the week.

The Pastor stated that the applicant attended the Sunday meeting and follows the worship from beginning to end. He stated that the applicant also attended the weekday meetings, but not each one.

The Pastor said that if he personally were to go back to China he could not attend the government church, and if he attended the underground church everyone would watch him. He stated that in that situation the applicant would then be faced with the question, 'How can he worship?'

## **INDEPENDENT COUNTRY INFORMATION**

### **Background**

The United States Commission On International Religious Freedom report, states:

The Chinese government continues to engage in systematic and egregious violations of religious freedom. The State Department has stated publicly that conditions for human rights, including religious freedom, deteriorated in 2004. Chinese government officials control, monitor, and restrain the activities of all religious communities – including Uighur Muslims, Tibetan Buddhists, various spiritual movements such as

the Falun Gong, “underground” Catholics, and “house church” Protestants – maintaining final authority over leadership decisions and doctrinal positions. Prominent religious leaders and laypersons alike continue to be confined, tortured, imprisoned and subjected to other forms of ill treatment on account of their religion or belief. Since 1999, the Commission has recommended that China be designated as a “country of particular concern,” or CPC. The State Department has followed the Commission’s recommendations and named China a CPC (United States Commission On International Religious Freedom 2005, *Annual Report Of The United States Commission On International Religious Freedom May 2005*, May

INTERNET:

<http://www.uscirf.gov/countries/publications/currentreport/2005annualRpt.pdf#page=1>

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### **The situation of Christians (underground Protestants) in Hainan and surrounding area**

The September 2004 and November 2004 issues of a Christian online journal called *Asia Harvest* provide recent information on the situation for Christians in Hainan. The articles concentrate on Protestant worship and provide optimistic estimates of the number of Christians in the province.

The September 2004 issue examines the history of Christian worship on Hainan, and looks at the Three-Self Patriotic Church, which is the government-controlled Protestant body. Points of note include:

- Four percent of the island’s 8 million inhabitants are thought to be Christian (pp.2, 4).
- Contact with Christianity dates back to 1630, when Jesuit priests from Macau built a chapel in Fucheng town. The first known Protestant missionary arrived in 1881. From 1885 onwards, Presbyterian missionaries and other evangelists worked on the island (pp.5-7).
- The government-controlled Three Self Patriotic Movement claims that there are about 37,000 Christians in their churches on Hainan. In the mid-1990s two of their own pastors were pressured to be less zealous and to stick more closely to the Communist Party line. One was arrested and imprisoned, the other placed under house arrest (p.8-9).
- The article gives an account of the Three Self Church in the city of Nada from the time of its reopening after the Cultural Revolution in 1986. In 1993, the pastor was forcibly removed and government officials took charge of the church (pp.9-10) (Hattaway, Paul & Joy 2004, ‘Hainan Island – Part 1 – Missions history & the Three-Self Church’, *Asia Harvest, Newsletter #75*, September, <http://www.asiaharvest.org/pages/newsletters/75-Sept2004-HainanIslandPart1.pdf> – Accessed 13 September 2005).

The November 2004 issue of *Asia Harvest* looks at house churches (unregistered churches) in Hainan.

The authors dispute the figure of 37,000 Christians which is given by the Three-Self Church, stating that there is credible evidence that there are about 360,000. However they point out that this still amounts to less than 5% of the population. They state that this large number is due to the “exponential growth” of house churches, which took place throughout the 1990s due to systematic training programmes in evangelism which were introduced at that time:

By 1996, the number of house churches affiliated with this movement had grown to more than 100, with a combined membership of over 16,000 Christians.

As a result of this amazing growth, by 1996 each of the 19 counties on Hainan Island contained at least two reproducing churches, and every Chinese language group and minority group except the Utsat Muslims had at least two churches from this movement in their midst also...

...Practically all of the members of these churches were the result of new conversions, and not the transfer of members from existing churches.

Because of the focus on evangelism and training, growth continued to be exponential. By 1998, the number of Christians on the Island had mushroomed to more than 80,000; and by the middle of 2000 a thorough survey put the number of all Christians on the island at 360,000... (Hattaway, Paul & Joy 2004, ‘Hainan Island – Part 2 – The house church revival’, *Asia Harvest, Newsletter #76*, November, pp.4-5,

<http://www.asiaharvest.org/pages/newsletters/76-Nov2004-HainanIslandPart2.pdf> – Accessed 13 September 2005).

A 2003 survey of the Chinese Church by Tony Lambert includes a section on Hainan which put the number of Christians in the province at much lower than the previous sources:

## **HAINAN**

**Population:** 7.9 million

**Capital:** Haikou (570,000)

Tropical Hainan island is a new province at China’s southern tip. There are more than 21 registered churches and 41 meeting-points, but only 9 registered pastors. A large TSPM church, seating 2,000, has been recently opened in Haikou, the provincial capital. There are many house churches and church growth has been most apparent on the east coast in Wanning. Total number of believers was 37,000 according to a TSPM estimate, but reliable house-church estimates in 2002 also put the number not above 50,000. Reports that there are over 300,000 believers on the island have been denied as not credible by both local house-church evangelists and TSPM pastors. There are also about 6,000 Catholics, mainly in the northern half of the island.

(Lambert, Tony 2003, ‘Survey of the Chinese Church – Part II’, *Global Chinese Ministries Newsletter*, April. <http://www.us.omf.org/content.asp?id=22860> – Accessed 15 September 2005).

An older article by Paul Davenport, dating from 1998, is of relevance since it discusses the growth of house churches in Hainan through the 1990s; gives some examples of church buildings being demolished and meetings being stopped; and provides details of local regulations on religion. It states:

The house churches in Hainan have generally escaped the sharper persecution of the inland provinces further north. Despite the very real pressures related above, I found no

evidence of Christians imprisoned or beaten for their faith. However, house church leaders in Haikou were certainly cautious. One young, well-educated evangelist questioned me as to whether it was safe to discuss matters in the hotel room, fearing “bugs.” We then investigated the hotel coffee shop. Still, he was clearly uneasy when we could not find a quiet corner. He was only satisfied when we found an empty cafe down the street. Such reactions speak more eloquently than a thousand words of the real situation lurking behind the facade of “freedom of religious belief.”

This young preacher and an older colleague told me that the urban house churches in Haikou had come under increasing pressure in recent months. At the beginning of October 1997 the authorities took decisive action. The Public Security Bureau sent police to their house church and told them to stop meeting. On a second occasion, when the women were holding a weekday meeting, officials from the Religious Affairs Bureau turned up. They confiscated some Christian booklets said to be illegal, as the booklets had come from overseas. As a result of these pressures, the church split -- at first into six or seven smaller cell-groups. Because these were difficult to pastor, lacking trained leaders, they later regrouped into just three smaller house churches. One of these still has over 100 members. They meet together at different times each week to make discovery more difficult. The younger preacher said that the government’s policy on religion was quite cunning and two-faced. At the central level in Beijing they published laws proclaiming religious freedom for the benefit of people overseas. However, all the time they were winking and conniving for the continued suppression of house church Christianity at the local level by local officials.

It was interesting that this view of the real state of affairs was repeated to me a little later in Guangzhou (Canton) by the well-known house church leader Lin Xingao (Pastor Lamb). Pastor Lamb pointed out the difference between the government’s “White paper” on religion, which seemed to grant some freedom for house churches, and the very detailed restrictions in the local provincial regulations. In Haikou I was shown a copy of the “Regulations for the Control of Religion in Hainan Province” published in the “Hainan Daily” on October 22, 1997. These 50 very detailed regulations declare, among other things, that:

“Places of religious worship can only operate religious activities after registering with the Religious Affairs Bureau of the People’s Government above County level.” (No. 10)

“All places of religious worship must submit an annual report of their situation in the first quarter of the year to the original organization with which they registered.” (No. 12)

“No religious organization or individual may propagate religion, evangelize, preach or distribute religious propaganda outside [registered] places of religious worship.” (No.17)

“With the agreement of the local People’s Government Religious Affairs Bureau, religious personnel may undertake necessary religious rites for religious citizens according to religious custom, such as funerals, and in hospitals and at home.” (No.27)

“Self-appointed evangelists cannot undertake evangelism and preaching activities and other illegal evangelistic activities. If the management organizations of places for religious worship [e.g. Three Self or China Christian Council] discover illegal evangelistic and preaching activities undertaken by self-appointed evangelists, they must prohibit it and immediately report to the Religious Affairs Bureau of the People’s Government.” (No. 31)

It is quite clear from these regulations that unregistered house-churches on the island are regarded as illegal. My friends’ caution would appear to be justified (Davenport, Paul 1998, ‘With the House Churches in Hainan: Church Growth Continues Despite Literature and Bible Shortage’, *Compass Direct*, 20 March,

<http://www.missionreview.com/index.php?loc=kb&view=v&id=1357&fto=561&fty=6&>  
– Accessed 13 September 2005).

Two recent articles contain brief references to the situation of Christians on Hainan.

A May 2006 report describes a recent meeting of three Christian activists from China, all active in the underground Protestant church, with the US president. One of the activists had had his weblog closed down by the Hainan Internet Monitoring Office (Mann, William C. 2006, 'Bush hosts 3 Chinese rights activists', *Associated Press Newswires*, 12 May).

The Christian website The Joshua Project contains information on the Lingao minority ethnic group in Hainan. It mentions in passing that "the persecution of Christians in Hainan is less severe than in other parts of China" ('People in country profile: Lingao of China' 1999, The Joshua Project website, source: the Bethany World Prayer Centre <http://www.joshuaproject.net/peopctry.php?rog3=CH&rop3=114173> – Accessed 21 December 2006).

The Holy Bible, King James version, Thomas Nelson Inc, Camden New Jersey.

## **FINDINGS AND REASONS**

On the basis of the evidence, including the applicant's passport, I find that the applicant is a Chinese national and I have assessed him as such.

I will consider the applicant's claims that he will be persecuted due to his religion and that he will not have freedom of religious worship. The applicant's evidence, both written and oral, has been set out in detail in the preceding pages. I accept that the applicant's claims contained in his Application for a Protection visa and typed statement were not correct and they had been exaggerated by the student who helped him prepare the documents. I only accept the claims made at hearing as being correct, and I find that those claims are genuine. In this regard, during the hearing the applicant referred to his wife having contacted him from the PRC, whereas in his Application for a Protection visa it was noted that he had never been married. Having regard to the applicant's explanation above regarding the student, I accept the applicant's evidence at hearing that he has a wife and that he is married.

I find that the applicant and the witness gave clear oral evidence and I accept their evidence.

I accept the applicant's oral evidence which demonstrated that he has a good understanding of his faith, and he is committed, as demonstrated by his driving members of the underground church for services and his proselytising in the PRC. At the hearing he was able to demonstrate his knowledge of Christianity, which I find to be roughly commensurate with a person who has been a Christian for the period of time he has been. He was able to answer a number of questions at the hearing in relation to his religion (e.g. the essential difference between the private or underground churches, and the government or Three Self Patriotic Church; who Jesus was; the division of the Bible; and the role of prayer). The Tribunal accepts that he was baptized in the PRC. I accept that the applicant was a member of a

Christian underground church in the PRC from the date he claimed to when he departed the PRC on the second occasion.

I accept the written and oral evidence of the Pastor of the applicant's current church. He spoke with fervour about his church and its services, Bible Studies, prayer sessions, and 'hymn practices.' He knew the applicant and his background. He identified the applicant as a genuine believer, and knew his history, which was consonant with that told by the applicant to the Tribunal. In his written and dated reference the Pastor stated that the applicant was sincere in his worship and to listen to 'God's teaching.' I accept that the applicant looked at different churches when he first arrived in Australia, but has chosen this particular Church. I accept that he has attended the weekend service on an essentially regular weekly basis. I also accept that he has attended the prayer groups, singing and scripture learning group beforehand and has occasionally attended the cell group meetings held through the week. I find that the applicant has demonstrated his faith in this way in Australia by participating extensively in the church life.

There are very restrictive Regulations for the Control of Religion in Hainan Province, including a ban on the propagation of religion, and it is clear that house churches are regarded as illegal (Davenport). The Tribunal finds that the motivation for prosecution or punishment for an offence under this Regulation can be found in a Convention ground, religion, and Convention protection is attracted.

Whilst the independent country information suggests that the house churches in Hainan have generally escaped the sharper persecution of the inland provinces further north (Davenport), nevertheless it is clear that although less severe, it is still persecution (Joshua Project website). The Tribunal finds that based on the country evidence and the evidence of the applicant and the Pastor of the applicant's current church, there is persecution of members of house churches in Hainan.

The applicant has accepted the commission to proselytise and I find that because of his commitment to his faith that he would continue to proselytise and attend the underground church if he were to return to the PRC.

I accept the independent country information and the applicant's evidence that if he carried out these activities, he would come to the adverse attention of the PRC authorities, and would be arrested and imprisoned, for 'illegal gathering' as have his colleagues, or some other breach of the Regulation.

The applicant's response to the Tribunal's first and second points raised in its s.424A letter satisfies my concerns. I accept that the applicant came to Australia on the first occasion for the purpose of visiting an Australian city. Later, it wasn't until Mr Z was arrested that he was implicated. Before this incident neither he nor his family had been subjected to the adverse attention of the PRC authorities because of their religion.

As a result of these findings, I am satisfied that there is a real chance of persecution occurring to the applicant in the reasonably foreseeable future, if he were to return to the PRC. I am satisfied that the applicant faces the prospect of persecution in the nature of serious harm on his return to China in accordance with paragraph 91R(1)(b) of the Act. This harm would involve arrest and imprisonment. I am satisfied that the applicant's religion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a)

of the Act. I further consider that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harm for a Convention reason. I am satisfied that the applicant engaged in attendance and participation in church activities other than for the purpose of strengthening his claim to be a refugee (s.91R(3)).

The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country: *Randhawa v Minister for Immigration Local Government & Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 440-1. However, this principle only applies to people who can genuinely access domestic protection, and for whom the reality of protection is meaningful. If relocation is not a reasonable option in the particular circumstances, it may be said that, in the relevant sense, the person's fear of persecution in relation to that country as a whole is well-founded: *Randhawa* per Black CJ at 442-3, Beaumont J at 450-1.

In this case, I have considered whether relocation is a reasonable option. I note the country information that suggests that persecution because of membership of the Christian underground church is pervasive in the PRC (United States Commission On International Religious Freedom report; Joshua Project website). In this case, relocation is not a reasonable option. This finding in relation to relocation is unaffected by any inconsistencies in country information as far as Hainan Province is concerned.

I have considered whether the applicant has a legally enforceable right to enter and reside in any other country other than the PRC (s.36(3) of the Act). I am satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than the PRC.

Therefore I am satisfied on the evidence before me that the applicant has a well-founded fear of persecution for a Convention related reason.

Accordingly, I am satisfied that the applicant is a refugee.

## **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.



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

Sealing Officers ID: PRRTIR