

1203370 [2013] RRTA 31 (15 January 2013)

DECISION RECORD

RRT CASE NUMBER: 1203370

DIAC REFERENCE(S): CLF2011/169075

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Pamela Summers

DATE: 15 January 2013

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of China (PRC), applied to the Department of Immigration and Citizenship for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2011.
3. The delegate refused to grant the visa [in] February 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file 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.

Protection Visa claims made to the Department

20. In his application, the applicant wrote that he was a [age deleted: s.431(2)] year old man from Fujian Province. He wrote that he could speak, read and write in Mandarin and was Han Chinese. He did not give details of any religion. He gave a single residential address in [Village 1], [Town 2], [City 3] as his residence from [date deleted: s.431(2)] to August 2007 which was when he departed China. He completed 12 years of schooling, finishing at [school details deleted: s.431(2)], [City 3] in July 2007. He stated that after arriving in Australia he studied at [institution deleted: s.431(2)] for a year then at [institution deleted: s.431(2)]. He stated that his occupation before departing China was "student" and he gave no details of any employment in China. His divorced parents and one older [brother] remained in China.
21. With his application he provided a partial photocopy of his Chinese passport issued in [2006].
22. The applicant provided a statement of his claims in Chinese with an English translation which he signed and dated 28 August 2011, stating as follows:

I come from Fujian of China. I am applying for a Protection Visa because of religious reason. I was persecuted by Chinese local government. Then I resignedly said goodbye to my family and came to Australia.

I had no belief as a child. I happened to become a Christian under God's guidance. One of my aunts believed God. My mother did not accompany me much and it was my aunt who looked after me. But soon she developed heart disease. I cried when I learnt she had heart disease. She comforted me and asked me not to cry because God must protect her. It was in May of 1999 when Dr talked to her about her situation. Doctor told her that the cost of heart surgery was very high and the surgery was very risky. She could live for one year without the surgery. But my auntie said she was willing to try it out because she believed that God would protect her. In June of 1999, she undertook the surgery. The surgery took about 6 hours. I was crying while waiting outside of the surgery room. Even doctor was surprised that surgery was successfully finished. My aunt recovered very well in those days. I sillily asked her why did her chose to accept the surgery since the rate of success was very low. She answered that she believed Jesus Christ; if she died, it was still a happy thing to enter the eternal world. She also told me that God love us; our lord Jesus die on cross to cleanse our sins. He resurrected in 3 days. Whoever believes in him must have eternal life. Then I often followed her to join in various church activities. All are God's child in church and we praise God for his Glory. We felt complete in heart.

In April 2006, [Sister A] prayed to our Lord Jesus because something happened in her home. My aunt took me and other brothers and sisters to [Sister A]'s home for prayer meeting. One day we were praying in [Sister A]'s home. Suddenly a lot of policeman broke in. They said we were illegally gathering. All were taken to police station and forced to be detained. I was also arrested. They kept on questioning me in police station. I prayed constantly. I prayed to God, our father, to strengthen my faith to follow Jesus Christ. I was detained for one week. My parents look for relationship to bail me out with a fine of 20,000 RMB and the reason that I was still a teenager, knew nothing, and was still studying at school. The police warned me not to join in such private meeting again when I was released. Otherwise they would arrest me again. I went to school after I was set free. The police also asked teachers in school to observe my behaviour. In school I was asked from time to time to admit that I was wrong. They kept on infusing atheism theory into me till I agreed to refuse God. I had enough with such a life which I lived in fear of being arrested any time.

I know that Australia is a country having religious freedom. I can only glorify God's name here. Then I asked my family to apply for a visa to Australia through relationship. After I came to Australia, I heard from my family that the police harass my family with different excuses because of me. They lived under monitor. Therefore I sincerely hope that immigration officer can let me continue to live in Australia so that I can freely follow God. May God be with you.

23. The delegate invited the applicant to attend an interview to discuss his claims on 9 February 2012 however the applicant did not attend the interview. The delegate decided to refuse the Protection Visa application on 9 February 2012. The applicant applied to the Tribunal for review of that decision on 14 March 2012.

The Tribunal hearing on 3 September 2012

24. The applicant appeared before the Tribunal on 3 September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

25. The applicant was represented in relation to the review by his registered migration agent who did not attend the hearing.
26. Invited to make some opening remarks about the reasons he fears harm on return to China, the applicant said that, as he wrote in his statement, in April 2006 he was at [Sister A]'s house where he was arrested by the police for no good reason. He said that the police put him in a place like a detention centre and asked him why he joined this illegal gathering. The police tried to stop him going to this local church. The applicant said that the authorities were depriving him of his right to believe in God. His family bailed him out and his family then asked him not to go to the church gatherings but he is a person who believes in God so...[implying that he continued to attend]. The authorities asked his teachers also to keep an eye on him. The Tribunal asked what the applicant feared would happen if he returned to China now. The applicant said that he didn't know but because of what happened to him in China he has this fear in his heart and if he goes back he will feel like he is being monitored.
27. Concerning the making of his application for a Protection Visa, the applicant said that he did have someone to assist him in making the application to the Department but it turned out that that person had no registration as a migration agent. The applicant said that he typed his statement of claims in Chinese and the person that assisted him translated the statement into English. The applicant said, when asked if he understood and was satisfied with the content of his statement, that this was indeed his own statement.
28. The applicant said that he arrived in Australia in August 2007. He does not have any relatives in Australia. Concerning whether he had a Student guardian as he arrived in Australia when he was [age deleted: s.431(2)] years old, the applicant said that it was arranged through a student agency. His family went through a connection to get his visa for Australia. The applicant confirmed that he was still residing in [address deleted: s.431(2)]. Concerning his marital status, the applicant said that he is single; he used to be in a de facto relationship but is not in one any longer.
29. Concerning his family in China, the applicant said that he has his parents and his elder brother there. The Tribunal asked if the applicant's parents are divorced as indicated in his Protection Visa application. The applicant said this was incorrect and that his parents are still married. He said that his elder brother is [detail deleted: s.431(2)]. The aunt mentioned in his written statement of claims also remains in China.
30. The applicant lived in [Village 1] in [City 3]. He lived at the address given on his application form for about 10 years before coming to Australia. The Tribunal asked who lived there with him. The applicant said that both his parents and his brother have "gone out" now and don't live at that address any more; that is, his parents have gone to another province, probably to Hubei Province, but he didn't ask them exactly where they were. His aunt lived less than 100 metres from his house in his village. He said he thought that his aunt still lived in the village.
31. Concerning whether he keeps in touch with his family, the applicant said that he just keeps in touch with his parents by telephoning them sometimes. He thought the last time he had spoken to his parents was a couple of weeks before the hearing. He is able to telephone them on their mobile phone number.
32. Of his schooling the applicant said that he was at [school details deleted: s.431(2)] in [Town 2] until [date deleted: s.431(2)]. He stayed at school in the dormitory from Monday to Friday

and returned home each weekend. After that, he attended [school details deleted: s.431(2)] until July 2007. He stayed at school there too during term time.

33. The Tribunal put to the applicant that on his Protection Visa application form, he did not indicate that he had a religion; that is, he left the question blank. The applicant said that the form was completed by the person who helped him, and that that person did not give him the pages to fill in himself. He said that he did indeed have a religion and that it is Christianity.
34. Concerning how he first became involved with Christianity, the applicant said that in May 1999 his aunt took him to a meeting which was a house church gathering. His aunt used to attend regularly and she sometimes took him along also. The Tribunal asked whether the applicant attended regularly. The applicant said that it was the local church but they don't hold meetings on a regular basis. Concerning which day of the week the meetings were held, the applicant said he was not sure; sometimes there was a meeting on a Saturday or Sunday but some weekends there was no meeting at all.
35. Asked to estimate how many times he had attended local church gatherings between May 1999 and April 2006 when the incident happened at [Sister A]'s house, the applicant said maybe 30 or 40 times. Most of the times that he attended were Saturdays because on Sundays he would have to go back to school. He said when asked that the meetings usually commenced at 6:30 p.m. Concerning how long they lasted, the applicant said they mostly lasted 6 hours. He then added that they sometimes went for one or two hours only. The meetings were held in homes, that is the homes of other church brothers and sisters. The meetings were not always held in his village but also in surrounding villages. He said when asked that the meetings were never held at his aunt's house because he went with her. The Tribunal asked how many people usually attended the gatherings. The applicant said he was not sure; he thought probably more than 15. He said when asked that there were other children who attended the gatherings. There was no leader at the gatherings; the brothers and sisters would just contact each other to set up arrangements for the next gathering.
36. Concerning what happened at gatherings, the applicant said that they prayed, read the Bible and sang. The Tribunal asked why the applicant liked to attend these gatherings if they were long and not very exciting. The applicant said that he went there to listen. The applicant said that the group read from the Bible and also had another book, the Holy Word for Morning Revival. He had his own copies of the books. His parents did not attend and did not approve of the gatherings because they are not Christian. His older brother is not Christian either. The Tribunal asked why the applicant's aunt did not take the applicant's older brother to the gatherings but took only the applicant. He responded that his brother is [years] older than him and did not like those gatherings very much. The Tribunal asked the applicant why he liked the gatherings. The applicant said it was because it made him feel good.
37. The Tribunal asked if there was a registered church in the applicant's village or in [Town 2]. The applicant said that he didn't think so. The Tribunal asked if there were any church buildings with crosses on them in the village or the town. The applicant said that there were but he thought these were called Catholic churches.
38. Concerning what happened when the police came to the gathering at [Sister A]'s house in April 2006, the applicant said that he went there with his aunt and then the police burst in because maybe someone reported the gathering. The police said it was an illegal gathering. This was maybe after 8 p.m. He said that it was on [a particular day in] April 2006. More than 15 people were present and some of them were children. About 10 police came and took

them all to the detention centre in [Town 2]. He thought it was at the police station there but he does not know the address. It took about 7 or 8 minutes to drive there. The police asked him why he participated in the illegal gathering. He answered that it was because he believed in God. The Tribunal asked how long the applicant was detained. He answered that he was kept for 2 or 3 days. Concerning whether all the others at the gathering were also detained, the applicant said that they were.

39. The Tribunal asked whether the applicant's aunt was detained. The applicant said that she probably was. He said that all the males were kept together but the females were in a different part of the centre. The Tribunal asked when the applicant next saw his aunt after being released from the detention centre. The applicant said that he saw her after his release. His father paid money (RMB 20,000) through a friend of his to get the applicant out of detention. The applicant did not know when the others from the gathering were released.
40. The Tribunal asked if the applicant was mistreated while kept in detention. The applicant said that they stopped him from sleeping; for example, just as he was about to fall asleep they woke him up to talk to him about atheism. The Tribunal asked if this meant that the authorities entered the cell where the applicant was kept at night with other men and when he was about to sleep they woke him up. The applicant said they woke him up and said to him that he must not believe in this religion in the future because it was against the law.
41. The Tribunal asked if the applicant was asked to sign anything by the authorities. The applicant said 'yes', that he was required to write an undertaking. The Tribunal asked if the applicant or his family received any documentation from the authorities either when he was detained (to notify his family) or when he was released. The applicant said that there was no documentation. His family were made aware that he had been detained because [Sister A]'s neighbours would have heard the noise when the police came and would have spread the word in his village. When he was released, the authorities just told him that he was not allowed to attend religious gatherings in future and that if he participated he would be arrested again and he should view this as an opportunity.
42. His parents came to collect him when he was released from detention. The Tribunal asked if he required any medical attention after his release. The applicant said he was so stunned and scared that he just went home.
43. The Tribunal asked whether the applicant's aunt was mistreated while detained. The applicant said that he didn't know; he didn't dare to ask her. The applicant said that he didn't want to talk about it.
44. Given the authorities' warnings to him, the Tribunal asked if the applicant continued to attend house church gatherings after his release from detention. The applicant said that he did continue to attend but secretly and that he was feeling very scared. The Tribunal asked if the applicant knew if the group was still meeting now. The applicant said that he did not know because he had not been in touch with his aunt. The Tribunal asked whether there were any problems for the church group during the period from April 2006 after they were released from detention to August 2007 when the applicant left to go to Australia. The applicant did not answer this question but said he was so afraid of being arrested again that he asked his family to get him out of China. The Tribunal asked again whether he heard of any problems for the church group during the year or more that he was there before leaving for Australia. The applicant said that he thought everybody else in the group was scared too and so there were not very many meetings. He was also studying at that time so he didn't go often either.

45. The Tribunal put to the applicant that he asked his family to get him out to go for study in Australia after being detained in April 2006, and yet it was not until the end of July 2007 that he obtained his visa for Australia. The applicant said that he handed in his papers a long time before that but the agency did not lodge it for him until then.
46. The Tribunal asked whether the applicant had said earlier in the hearing that his church in China was “the local church”. The applicant said this was so. The Tribunal asked whether the Chinese authorities called that church by any other name. The applicant said he didn't know. The Tribunal asked if there was anything different about his church from other kinds of family church. The applicant said he did not know.
47. The applicant said when asked that he was baptised in China in 2005. This took place in the house of a church brother or sister in some other village. His whole body was lying down in water. Concerning the meaning of baptism, the applicant said that it was to wash off one's sins and to start a new life. The Tribunal asked if Jesus was baptised. The applicant said that he was but he could not say when asked by whom he had been baptised. By way of explanation of this gap in his knowledge, the applicant said that he just learnt Christianity from books. Asked what books he learnt from, the applicant said that ‘they’ gave him the books, and he did not know, but it could have just been the Bible.
48. The applicant confirmed that he did have his own Bible in China and that he had brought it with him to Australia. He said it was at home. The Tribunal asked what words it had on the cover. The applicant said it just said, “Bible” The Tribunal asked if there was anything different about the Bible used in his church compared with the Bible used in other places. The applicant said he didn't know because he only went to this church. The Tribunal asked whether the Bible is divided into books or chapters. The applicant said that it is and he was able to name the books of Matthew, Mark, Luke and John. He said that he did not know of any other book or chapter names. The Tribunal asked if he had heard of the Old and New Testaments. The applicant said that he had but he did not know if his Bible had both of these in it, but thought perhaps it was only the New Testament.
49. Referring to the applicant's statement of claims, the Tribunal asked in what way the applicant's family had been harassed since his departure. The applicant said that his parents told him ‘they’ sent someone to ask if there was any news of the applicant. The Tribunal asked what his parents told the police about him. The applicant said they just told the authorities some lies because they didn't want to tell his whereabouts. The applicant thought that if his parents said that he was overseas studying, the authorities would just ask when he would be getting back to China.
50. The Tribunal asked the applicant what his beliefs were as a Christian. The applicant said he believes in the washing away of sins because we are slaves to sin and he believes in starting a new life. The Tribunal asked what the applicant believed about Jesus Christ. The applicant said that Jesus Christ was crucified because he wanted to wash away people's sins. The Tribunal asked what the applicant knew about the life on earth of Jesus Christ. The applicant said he could not say anything about the life of Jesus Christ because he was only just reading books. The Tribunal put to the applicant that if they were religious books, they must have talked about the life of Jesus. The applicant said that when they were communicating with each other, they read off the books. The Tribunal asked if the applicant remembered anything that he read. The applicant said he did not because his memory had never been good.

51. The Tribunal asked if the applicant knew who were the main figures in the history of the local church. The applicant replied that they were Watchman Nee and Witness Lee. Asked what their role was, the applicant said that Witness Lee wrote the Holy Word for Morning Revival but he hadn't read anything of Watchman Nee. The Tribunal asked if the Holy Word for Morning Revival was just one book with that title. The applicant said it was just one book. Asked if he has a copy of it here in Australia, the applicant said that he does; he bought it at church at a primary school next to [Suburb 4] shopping centre where he goes for meetings on Sundays. He said he did not know what street it was in, but it is next to the shopping centre because he usually parks under the shopping centre and walks there. The Tribunal asked if it is in a park and the applicant agreed that it was. The Tribunal asked if the building might be a community centre rather than a primary school. The applicant said that the others told him it was a primary school.
52. He first started going to that church about two years after his arrival in Australia. His friend took him there. The Tribunal asked if he started around August 2009. The applicant said he started roughly in 2009. Concerning whether he has been attending regularly since then, the applicant said that sometimes he has to work on a Sunday and can't go. The Tribunal asked why the applicant did not find a church in the first two years he was in Australia. The applicant said he did not know where a church was until he heard from a friend.
53. The applicant said when asked that he last attended about three weeks ago. The Sunday services start at 10am and usually finish at 12 or 12.30pm. At the meetings, some people pray then they sing hymns and read the Holy Word for Morning Revival. Asked whether anyone is in charge there to direct the worship, the applicant said it is [Brother B]. Concerning whether [Brother B] has a particular title, the applicant said they just call him [Brother B]. The applicant did not know his last name. He is Chinese. Of whether it is a Mandarin speaking congregation, the applicant said that there are some Westerners who sing in English and there are some Chinese who do it in Chinese. Asked if the praying is in Chinese, the applicant said that it is. The Tribunal asked if the reading from the Holy Word for Morning Revival is just one person standing up to read to everyone else. The applicant said this was so. Sometimes it is a Westerner who reads in English and someone translates for them.
54. The Tribunal asked the applicant to describe what happens when they pray. The applicant said they bow their heads and everyone speaks saying their own prayers. The Tribunal asked if they just pray by themselves or if they pray with a partner or a group. The applicant said that he has his eyes closed. He did open his eyes to see what everyone else was doing. He said everyone was saying their own prayers but he did not listen in. The Tribunal asked the applicant if he could give an example of something he might pray about and what kind of words he would use. The applicant said he said words like, "do not let me encounter what happened in China again" and "God give me blessing".
55. The Tribunal asked if the applicant knew the prayer that Jesus Christ taught his followers to say. The applicant said he did not know it; sometimes he arrived at 10:30am so perhaps they had already finished.
56. The Tribunal asked if the applicant knew anything about the Lord's Table or Holy Communion. The applicant said he did not know.
57. The Tribunal asked if he had heard of the term, "God's Economy" The applicant said he did not know it. He only read the Holy Word for Morning Revival. The Tribunal asked if he remembered anything he read in that book the last time he went to the church three weeks

before. The applicant said that they just stand up, one after another, and say, “turn to this particular page” and then they turn to that page and read. The Tribunal asked if there are quotations from the Bible in the Holy Word for Morning Revival book. The applicant said he did not know. The Tribunal asked if the applicant could himself remember any Bible verse or anything from the Bible. The applicant said he did not know; his memory was never good...he just read the book.

58. The Tribunal put to the applicant that he had said that Jesus Christ was crucified to wash away our sins. The Tribunal asked if the applicant knew who had crucified Jesus. The applicant said he did not know.
59. The Tribunal asked if the applicant knew the term “Pray Reading” (*dao du*). The applicant said he did not know it.
60. The Tribunal asked if the applicant would consider worshipping in a registered church if he returned to China. The Tribunal added that there are registered churches in China which are not Catholic churches. The applicant said he would not because the Bible used in the local church is different from that of other churches. The Tribunal asked in what way the Bible was different. The applicant said that ‘that’s what they all say’. The Tribunal asked if the applicant would prefer to attend a church with the Bible he is used to. The applicant said, ‘yes’.
61. The Tribunal asked why the applicant waited more than four years after his arrival in Australia before making his Protection Visa application. The applicant said that he heard from others that refugee protection was available in Australia. The Tribunal asked if the applicant did not know about refugee protection until October 2011. The applicant said that he knew about it and wanted to lodge his application in August 2011 but it was the migration agent who delayed lodging the application until October 2011. The Tribunal said that it could see that the applicant signed his statement at the end of August 2011. The Tribunal put to the applicant that even if it was August 2011, it was still four years after he arrived in Australia. The Tribunal said that he had been mixing with other people from the Chinese community in Australia including attending church since 2009. The Tribunal said that it was hard to accept that he would not have heard about refugee protection until 2011. The Tribunal said it thought that if he were genuinely in fear of persecution on return to China he would have taken the first available opportunity to seek Australia’s protection after arriving here to avoid having to return to China. The applicant said that people did talk to him about Protection Visas but didn’t tell him about migration agents and he didn’t have any money at that time to do these things.
62. The Tribunal asked if the applicant was in immigration detention at any point. The applicant said he was in detention in March 2009 for around two weeks. He went to Melbourne to work and was found working in excess of his entitlements. The Tribunal asked if the immigration officers asked him at the time he was being put in detention whether he had reasons for fearing returning to China. The applicant said that he was asked that but he doesn’t remember what he said; he was just conscious that his parents spent a lot of money getting him to Australia. He was afraid that if it happened again in China he would feel like he was under police surveillance. He did not tell the immigration officers that; he was a student at that time and working.
63. The Tribunal asked the applicant why he did not attend the interview to which the delegate invited him in relation to his protection visa application. The applicant claimed that the

previous migration agency did not tell him. The current agency then told him about that interview but he had a fever that day.

64. The Tribunal said it had some concerns about the applicant's evidence; the Tribunal had concerns about whether the applicant was telling the truth in claiming to be a Christian and about whether he was telling the truth in relation to being a member of the Local Church in particular. The Tribunal said it would outline its reasons and provide an opportunity for the applicant to comment.
65. The Tribunal put to the applicant that if he had been thirty or forty times to the family church gatherings in China and if he had been attending the Local Church here in Australia since 2009, it would have expected that the applicant to know more about Christianity than he had been able to tell the Tribunal at the hearing. The Tribunal put to the applicant that he had been able to say very little about Christian beliefs or about the life of Jesus Christ. The applicant commented that it was all from reading (that is, what he knows is only from what he has read). The Tribunal put to the applicant that for someone to consider themselves a believer and seek baptism in the faith, it would have expected that the person would understand and know what they believed in, and be able to explain to another person what it means to be a Christian and what being a Christian meant in their own life. The applicant did not comment.
66. The Tribunal put to the applicant that he did not seem to be familiar with the main beliefs and practices of the Local Church. He had been able to name the founders of the Local Church and to say that the Bible is different from that used in other denominations, but was not able to say what was different about the Bible or to comment on the meaning of the Lord's table/Holy Communion or God's economy or pray reading and didn't know what other name the Chinese authorities might give to the Local Church. The Tribunal said that these things suggested that if he was involved with a church in China it was not the Local Church. The applicant said that the Local Church are *huan pai* (the Shouters). The applicant said that when the Tribunal asked about other names, he thought the Tribunal meant that whether the church had different names in different places. He said he did not hear the Tribunal correctly when it asked whether the Chinese authorities had a different name for his church. The Tribunal said, leaving that issue aside, that the applicant still did not appear familiar with beliefs and practices of the Local Church including the practice of pray reading which the Tribunal had been told all Local Church believers would be familiar with.
67. The Tribunal put to the applicant that, even though he claimed to be baptised, he appeared to know so little about Christian doctrine that it seemed that if he wished to pursue an interest in Christianity he could do so in a registered church on return to China. The applicant said that Government churches like Catholic churches and some Buddhist temples don't believe in Jesus. The Tribunal put to the applicant that there are many registered churches in China, both Protestant and Catholic, where Chinese Christians worship Jesus. The applicant indicated he was surprised to hear that they believe in Jesus.
68. The Tribunal put to the applicant that he had not provided any evidence of his attendance at the Local Church in Australia whereas other applicants had brought to the Tribunal witnesses or documentary evidence from the church about their regular attendance and sometimes brought their Bible and other holy books to show the Tribunal. The applicant said he did not know this was required. The Tribunal said it was not 'required' a such but the fact that the applicant did not volunteer any evidence of his attendance in combination with his low level of knowledge of the Christian faith contributed to the Tribunal's doubts about the credibility

of his claims in relation to his religion. The applicant said he was only reading. Even the Holy Word for Morning Revival was just for reading. Asked to explain, the applicant said that he just reads out what is written then he lets the whole group feel it. The Tribunal asked whether the applicant had learnt anything himself without reading it from the book. The applicant said he had not.

69. The Tribunal put to the applicant that it had doubts about the applicant's claims that the police raided a church gathering he was present at in April 2006; it had doubts as to whether that event actually occurred. The Tribunal put to the applicant that he had said this happened on [a particular day in] April 2006 and that it was a Saturday night. The applicant said this was true. The Tribunal put to him that [the particular day in] April in 2006 was a Friday. The applicant said it was when he finished school and was going home and his aunt asked him if he would like to go to the meeting.
70. The Tribunal put to the applicant that he told the Tribunal earlier that he was detained at the police station or detention centre for 2 or 3 days but in his written statement he claimed that he was detained for a week. The applicant was surprised to hear this and checked his personal copy of the statement he wrote in Chinese. He checked the statement and ascertained that it did say he was detained for a week. The Tribunal said it seemed that there was quite a difference between saying he was held for two days and saying he was held for seven days. Invited to comment, the applicant said that because he was in detention, the time seemed very long.
71. The Tribunal put to the applicant that in his written statement there was no mention of the Local Church and asked if the applicant agreed. The applicant said he wrote that he went to [Sister A]'s house and it was Local Church, however he was not able to point out any such reference apart from where he wrote that he was attending a prayer meeting. The Tribunal put to him that this could have been any house church gathering then, and not just a Local Church. The Tribunal put to the applicant that country information available to it indicates that there are very many house church groups operating in Fujian Province and that they no longer operate in strict secrecy because the Fujian authorities are relatively liberal and tolerate those groups to a great extent. The applicant said his group secretly informed each other about meetings. The Tribunal explained that it had doubts about whether the group was a Local Church group rather than a Protestant house church. The applicant said that if it was just a Protestant house church they wouldn't have been arrested. The Tribunal said its understanding was that there are occasional crackdowns on house church groups but the Local Church is a banned sect in China. The applicant said that they held their meetings secretly and didn't do it openly.
72. The Tribunal put to the applicant that there is a section of the Migration Act which says that it must disregard conduct engaged in by the applicant in Australia (such as attending church here) unless it is satisfied that this conduct was engaged in otherwise than for the purpose of strengthening the applicant's claims to a Protection Visa. The Tribunal put to the applicant that he had not attended church for the first two years he was in Australia and so it raised some doubts about the applicant's motivation for starting to attend church as he claimed in 2009. The applicant said he came here in 2007 for study and also for evading the surveillance by Chinese authorities. He was still living in the shadows at that time. The Tribunal asked why the applicant felt the situation was different in 2009. The applicant responded that it was because a friend took him to the church.

73. The Tribunal put to the applicant that after he was detained in China and released again, he said at hearing that he continued to attend the house church gatherings but more secretly and not so often, but in his written statement he wrote that under pressure from teachers at school he eventually ‘agreed to refuse God’ The applicant said that was in school only but every Saturday he went home and they wouldn’t follow him to his home. The Local Church was not held at his own home so they wouldn’t know about it.
74. The Tribunal asked when the applicant’s parents and possibly his brother went to Hubei Province. The applicant said it was a few years ago, and even before that, they lived in another province. The Tribunal asked if this meant they had not lived at his home in [Town 2] for quite some time. The applicant said this was so. The Tribunal asked if the applicant’s parents were living in Fujian Province at the time he left China to come to Australia. The applicant said that they were not, but they came back to see him off. They do go back to Fujian every year for Chinese New Year but when he was studying at school they were not at home. The Tribunal asked when the police harassed his family then as referred to in his written statement of claims. The applicant said it was after he had that incident (in 2006). The Tribunal asked if the applicant thought his parents had been harassed since the applicant has been in Australia given that they are not living in Fujian Province. The applicant said that they did come back to Fujian Province for Chinese New Year. The Tribunal asked if the applicant meant that while his parents were in Fujian for Chinese New Year, the police harassed them by asking where the applicant was. The applicant said that it was not the police but some other people in charge of something. The Tribunal asked if the applicant was claiming that someone asked his parents about him at Chinese New Year. The applicant said, ‘yes’ Asked for any other detail about this person or people, the applicant said it was the leaders in the village. He said that there are other people who know he has gone overseas but he does not know if they have told ‘those guys’ The Tribunal asked why the village committee would be trying to find out where he is. The applicant said he did not know but perhaps they wanted to know whether he had come back and was continuing with the meetings.
75. Of whether his aunt is still attending the meetings, the applicant said that he did not know because he had not been in touch with his aunt. He said that he thought she is a believer and would have continued attending.
76. The Tribunal invited the applicant to say anything more that he wished about any other harm he feared which had not already been discussed. The applicant said he did not think there was any other harm he needed to mention. Asked if he wished to tell the Tribunal anything more before the hearing concluded, the applicant said he did not.

Information from other sources

Regarding the Local Church

77. Concerning the Local Church, pejoratively known as the “Shouter Sect” (*huhan pai*):

An offshoot of the biblically-based Little Flock, the Local Church looks to Witness Lee – Li Changshou – for inspiration. Li, based first in Taiwan and then California, “made no secret of his virulent anti-Communism” and his close political ties with the Kuomintang.¹

¹ Tony Lambert, *China’s Christian Millions*, (2nd Edition), Monarch Books, 2006, p.136

...The authorities pejoratively labelled the group the “Shouter Sect” (*huan pai*) because of adherents’ practice of repeatedly and raucously “calling on God” (*Zhuaaaaa!!*). Resilient in the face of the repression of the 1980s and early 1990s, the Local Church has continued to expand its operations and attract new converts, swelling to an estimated 800,000 adherents.

...The Local Church presence in China dates to the late 1970s, when missionaries arrived from the United States and Taiwan, initially targeting Little Flock strongholds in the southern coastal areas such as Wenzhou, Zhenjiang, Fujian and Guangdong Provinces. By 1983, RAB [Religious Affairs Bureau] authorities were so alarmed by the extent of Local Church activity that a nationwide alert was issued denouncing the group as a heretical cult and directing local officials to repress their activities. Crackdowns were unleashed for the purpose of “exterminating the Shouters” in strongholds such as Baofeng, Ye and particularly Lushan in Henan Province. The campaign was internationalised when two Local Church missionaries from Taiwan were accused of conducting espionage for the Kuomintang (KMT) and executed on charges of spying.²

78. The 2009 US Department of State report on religious freedom in China states:

Beginning in the 1980s, the Government banned groups that it determined to be “cults”... The Government also considers several Protestant Christian groups to be cults, including the “Shouters” (founded in the United States in 1962)...³

79. The Chinese authorities banned the Local Church in 1984, labelling it the “Shouter Sect” (*huan pai*) and designating it an “evil cult”.⁴ An elder of the Local Church in Melbourne advised the RRT in 2006 that:

According to our understanding, local churches in China are generally considered as “shouters” by the Chinese government particularly [sic] in Fujian province. ”.⁵

80. The Local Church uses the unique *Holy Bible Recovery Version*, heavily annotated by Li Changshou.^{6 7} Those in the Local Church are encouraged to read the Bible regularly: “We read the Word, we study the Word, and we take the Word by prayer as spiritual food”.⁸

81. The Local Church uses the term “God’s economy” to refer to “God’s divine arrangement to dispense Himself into us for the producing and building up of the church”.⁹ According to Local Church belief:

God’s economy is His plan to carry out His eternal purpose in order to satisfy His heart’s desire... The goal of God’s economy is to have many believers who are fully transformed by Christ (2 Corinthians 3:18) and conformed to His glorious image

² Jason Kindopp, “The Local Church: a transnational Protestant sect,” *The Politics of Protestantism in Contemporary China: State Control, Civil Society and Social Movement in a Single Party-state*, Faculty of Columbian College of Arts and Sciences, George Washington University, 2004, CISLIB#15663

³ US Department of State 2009, *International Religious Freedom Report 2008 – China*, 26 October

⁴ Kindopp, J. 2004, *The Politics of Protestantism in Contemporary China: State Control, Civil Society, and Social Movement in a Single Party State*, 16 May, p.430

⁵ Yee, P. 2006, ‘RE: Request for information from the Refugee Review Tribunal’, 18 October.

⁶ *Holy Bible Recovery Version* 2003, Living Stream Ministry, Anaheim (MRT-RRT Library); see also *The New Testament Recovery Version Online* at <http://online.recoveryversion.org/index1.asp>

⁷ Kindopp refers to the *Holy Bible Recovery Version* as a “highly subjective interpretation of scripture”; see Kindopp, J. 2004, *The Politics of Protestantism in Contemporary China: State Control, Civil Society, and Social Movement in a Single Party State*, 16 May, p.441

⁸ ‘Beliefs & Practices – Concerning the Church Life’, The Local Churches website <http://localchurches.org/beliefs/church-life1.html> – Accessed 13 February 2012

⁹ ‘FAQs’ (undated), The Local Churches website, source: *The Beliefs and Practices of the Local Churches* (1978) <http://www.localchurches.org/beliefs/faq.html> – Accessed 8 July 2009

(Romans 8:29)... Ultimately, God's economy will consummate in the New Jerusalem, which will exist throughout eternity as the complete expression of the Triune God in humanity.¹⁰

82. The term “pray-reading” is used by the Local Church to describe the practice of “simply praying the words of the Bible” An elder of the church in Melbourne has advised the Tribunal that a person who has regularly attended the local church in China or Australia would be familiar with both the term and the practice of Pray Reading.¹¹

83. Li Changshou provided the following guidance on Pray Reading:

There is no need for you to compose any sentences or create a prayer. Just pray-read the Word. Pray the words of the Bible exactly as they read. Eventually, you will see that the whole Bible is a prayer book! You can open to any page of the Bible and start to pray with any portion of the Word... The world has only the words of human beings, but the Bible has the Word of God! Every word in this Book is the Word of God. Although you may not understand a certain passage, still you are nourished while pray-reading it, because there is really something of God in His Word; the Word of God is His very breath. There is no need to explain or expound the Word; simply pray with the Word. Forget about reading, researching, understanding, and learning the Word. You must pray-read the Word. Then eventually you will really understand it.¹²

84. The beliefs of the Local Church (as set out on the Sydney and Melbourne websites) are:

- The Bible is the complete divine revelation inspired word by word by God through the Holy Spirit (2 Pet. 1:21, 2 Tim. 3:16)
- God is uniquely one, yet triune — the Father, the Son, and the Spirit (1 Tim. 2:5a, Matt. 28:19)
- The Son of God, even God Himself, was incarnated to be a man by the name of Jesus Christ (John 1:1, John 1:14)
- Christ died on the cross for our sins, shedding His blood for our redemption (1 Pet. 2:24, Eph. 1:7a)
- Christ resurrected from among the dead on the third day (1 Cor. 15:4)
- Christ ascended to the right hand of God to be Lord of all (Acts 1:9, Acts 2:33, Acts 2:36)
- Whenever any person repents to God and believes in the Lord Jesus Christ, he is regenerated (born again) and becomes a living member of the one Body of Christ (Acts 20:21, John 3:3, Eph. 1:22-23, Rom. 12:5)

¹⁰ ‘Summary’ (undated), God’s Economy website <http://www.godseconomy.org/summary/index.html> – Accessed 7 July 2009

¹¹ Elder of the Church in Melbourne 2010, Email ‘RE: RRT Information Request CHN35196’, 18 January

¹² ‘9. Pray-reading’ (undated), The Meetings and Spiritual Exercise of the Local Church website <http://www.local-church-meetings.org/pray-reading-local-church.htm> – Accessed 8 July 2009

- Christ is coming again to receive His believers to Himself (1 Thes. 2:19)¹³

85. Regarding Local Church meetings and the weekly celebration of the Lord's table (Holy Communion):

We pray, praise, sing, give testimonies, and minister the Word. Every Sunday we have the Lord's table at which all the Lord's children are welcome to partake with us of the bread and wine. The church meetings are open, and all believers are free to participate.¹⁴

86. [Information deleted: s.431(2)].

87. Regarding the publication, Holy Word for Morning Revival, the Local Church's Living Stream Ministry has advised the Tribunal as follows:

The Holy Word for Morning Revival is a derivative work, which includes Scripture verses from the Recovery Version Holy Bible and selected readings from various ministry publications of Living Stream Ministry (LSM)...

In general, the basic structure of a particular volume, or series of volumes, of The Holy Word for Morning Revival follows a recent conference or training sponsored by LSM...

There are several volumes, or sets of volumes, of The Holy Word for Morning Revival that are topical in nature. These would include the two-volume set with the subtitle "Topic for New Believers." These are not updated but are available for ongoing use by the churches as the need may dictate.

Currently, we produce nine new volumes of The Holy Word for Morning Revival each year. These nine volumes provide a total of fifty-eight weeks of material.¹⁵

Regarding the treatment of Christians in general and Local Church members in particular in Fujian Province

88. Tony Lambert, author of *China's Christian Millions*, notes that the south-eastern coastal province of Fujian, with a population of some 35 million, was one of the first to be evangelised from the nineteenth century and has "a thriving and rapidly-growing Christian community" In 2004, it was estimated that the city of Fuqing had 350,000 Christians meeting in 520 churches, and that 26 per cent of the city's population was Christian. In general, he noted, the official religious policy had been applied relatively liberally in Fujian, although there had been occasional crackdowns on house churches.¹⁶

89. Lambert's characterisation of Fujian as a relatively liberal province in relation to religious policy was supported by a Canadian government fact-finding mission to the province in 2000¹⁷ and the executive secretary of the Hong Kong Christian Council in 2005.¹⁸ A 2009

¹³ www.churchinmelbourne.org/beliefs/index.html accessed 14 February 2011.

¹⁴ 'FAQs' (undated), The Local Churches website, source: *The Beliefs and Practices of the Local Churches* (1978) <http://www.localchurches.org/beliefs/faq.html> – Accessed 8 July 2009

¹⁵ Living Stream Ministry 2010, Email 'FW: Request for Information from the Refugee Review Tribunal, Australia', 12 January

¹⁶ Lambert, T. 2006, *China's Christian Millions*, Monarch Books, Oxford, pp.240-1

¹⁷ Immigration and Refugee Board of Canada 2000, CHN34099.E 'China: Report of a fact finding mission to Fuzhou by political counsellor, Canadian Embassy, Beijing', 23 March.

report on the Protestant Church in Fujian Province in a Global Chinese Ministries newsletter confirms that there are large numbers of independent house churches in Fujian. The report also indicates that ‘[i]n general, local government in Fujian seems fairly tolerant of unregistered believers as it is rare that one reads of cases of persecution of house-church Christians in this province’ It should be noted that one of the sources for this report is the TSPM/CCC.¹⁹

90. Fujian is rarely mentioned in reports on breaches of religious freedom by the US Department of State, the United States Commission on International Religious Freedom, Amnesty International, Human Rights Watch or the various Christian NGOs that report on China.
91. Members of unregistered Protestant groups that the government arbitrarily deems ‘evil cults’ are the most vulnerable to detention and harassment. The government has banned at least 18 Protestant groups including the Local Church.²⁰ The Congressional Executive Commission on China annual report for 2009 refers to reports from two localities in Fujian province having indicated that “the Local Church has been singled out as one of the targets that public security forces must ‘strike hard’ against.”²¹ However, an elder of the Local Church in Melbourne in 2009 relayed reports that fewer arrests of Local Church members in Fuqing and in Fujian province, more broadly, were taking place, and there was “now more dialogue between members of the local church and the authorities”.²²

FINDINGS AND REASONS

92. The applicant submitted to the Department as evidence of his identity an uncertified partial photocopy of his Chinese passport which was valid from 2006 to 2011. The applicant advised the Tribunal that this passport has been lost, and provided the Tribunal with another photocopy of the partial copy previously provided to the Department with his Protection Visa application. The applicant claims to be a citizen of the People’s Republic of China and there is no evidence before the Tribunal that the applicant has the nationality of any other country. The Tribunal accepts for the purposes of the review that the applicant is a citizen of the People’s Republic of China and has assessed the applicant’s claims against China as his country of nationality.
93. The Tribunal has summarised the applicant’s claims as follows. The applicant claims to have been introduced to Christianity by his aunt in May 1999. His parents and older brother are not Christian and do not approve, but were living in another province for many years. He attended house church gatherings, which he said were Local Church gatherings, with his aunt at various church brothers’ and sisters’ homes in his village and surrounding villages. Around

¹⁸ In comments to the Immigration and Refugee Board of Canada (Immigration and Refugee Board of Canada 2005, *CHN100387.E – China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2001-2005)*, 1 September.

¹⁹ Global Chinese Ministries 2009, ‘The Protestant Church in Fujian Province’, OMF (Overseas Missionary Fellowship) International website, April
http://www.omf.org/omf/us/resources__1/newsletters/global_chinese_ministries/gcm_newsletter_2009/global_chinese_ministries_apr_09/the_protestant_church_in_fujian_province – Accessed 2 November 2009. The information is said to be taken from information has been taken from November 2008 *Tianfeng* and *History of Christian Missions in China* by K.S. Latourette. *Tianfeng* is a Protestant magazine published by the TSPM/CCC and can therefore not be taken to be unbiased in relation to house churches.

²⁰ Congressional Executive Commission on China 2010, Annual Report 2010, October, pp.110-1
<http://www.cecc.gov/pages/annualRpt/annualRpt10/CECCannRpt2010.pdf>.

²¹ Congressional Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 138-139

²² Yee, P. 2009, Email to RRT Research & Information: ‘Re: Request for information from the Refugee Review Tribunal, Sydney’, 9 February.

15 or more people usually attended. Gatherings were held on Saturday evenings from 6.30pm or on Sundays, but some weekends there were no gatherings. The gatherings mostly lasted 6 hours but sometimes were as short as 1 hour. The applicant claims to be a Christian and that he was baptised by immersion in 2005.

94. The applicant claims that on [a particular day in] April 2006, a gathering at which he was present was interrupted by about 10 police who detained all those present at a police station or detention centre about 8 minutes' drive away. The applicant was deprived of sleep while detained and asked why he participated in the illegal gathering. He was released from detention after a period of days (either 2 to 3 or 7 days) when his father used a connection and paid RMB 20,000 for his release. He signed an undertaking that he would not attend the house church meetings in future. The authorities threatened to arrest him again if he attended further house church gatherings.
95. After release, his teachers at school kept an eye on him and taught him atheism theory until he agreed to 'refuse God' At home on weekends, he continued to attend house church gatherings but less frequently and more secretly. He asked his family to organise for him to leave the country to study in Australia. His visa was granted in July 2007 and he arrived in Australia in August 2007 for study. By the time he left China, he estimated he had attended 30 or 40 house church gatherings since May 1999. He does not know if the house church in China still meets because he has not been in touch with his aunt but he thinks she would have continued to attend as she is a believer. Since he has been in Australia, his family told him that the village committee harassed them when they returned to Fujian Province for Chinese New Year by asking them the applicant's whereabouts. The applicant claims to have attended Local Church worship some Sunday mornings at a building in a park in [Suburb 4] since being introduced to the church by a friend sometime in 2009. The applicant fears that if he returns to China, something like the April 2006 incident will happen again; he will not be able to worship freely and will feel as if he is living under surveillance. He does not wish to attend a registered church in China because they are possibly Catholic, might not believe in Jesus and may use a different Bible.
96. The Tribunal put to the applicant at hearing that it had trouble in accepting his claims to be a Christian. The applicant claims to have been introduced to Christianity by his aunt and to have attended approximately 30 or 40 house church meetings in China in the more than 8 years between May 1999 and August 2007. The applicant claims also to have attended Christian worship in Australia since 2009. Asked what occurred at worship gatherings in both China and Australia, the applicant said that participants prayed, sang and read both from the Bible and the Holy Word for Morning Revival. However, despite these activities during his claimed involvement with Christian worship over an extended period, the applicant could demonstrate to the Tribunal only a very superficial understanding of Christianity.
97. In his written claims he stated that his aunt told him that Jesus died on the cross to cleanse our sins and was resurrected three days later and that whoever believes in him would have eternal life. At hearing however, when asked about his beliefs as a Christian, the applicant was only able to say he believes in the washing away of sin and in starting a new life. Asked the significance of baptism, he gave the same answer (that it is for the washing away of sin and starting a new life). He could not say anything when asked about the life of Jesus Christ. He knew that Christ had been baptised but did not know by whom. Similarly, he knew that Christ had been crucified but did not know by whom.

98. The applicant could not when asked remember anything he could recount from the religious books he had read (the Bible and the Holy Word for Morning Revival). He said that he owned his own copies of these books but was nonetheless unclear whether his Bible contained both old and new testaments and did not know whether the Holy Word for Morning Revival contained quotations from the Bible. Of the books of the Bible, he could name only the four gospels. He could not remember any Bible verse and did not know about the prayer Jesus taught his disciples. He was not able to say anything about Holy Communion.
99. When the Tribunal put to the applicant at hearing that it would have expected him to have a better knowledge of Christianity given the number of years he claimed to have been involved, he said that he did not have a good memory and was only reading aloud leaving others to react to the experience. The Tribunal does not accept these reasons for the applicant's lack of understanding of basic Christian beliefs. Regarding his memory, the applicant has not presented any evidence of any medical condition affecting it and the Tribunal found he was readily able to answer other questions such as when and for how long he had been placed in Immigration detention in Australia. Regarding his response that he just worships by reading, the Tribunal took this to mean that the applicant did not expect to read in order to understand but only for the experience of reading aloud as part of worship. Information before the Tribunal such as that quoted above indicates that the Local Church has a set of beliefs which it seems reasonable to expect followers would share, and that of the many Holy Word for Morning Revival booklets available there are two expressly covering topics for new believers. The information quoted above concerning the Local Church indicates that followers "study the Word" The Tribunal acknowledges that the description of pray reading quoted above indicates that followers need not immediately understand everything they are reading but would come to understand it over time. The Tribunal considers that with over ten years of claimed Christian worship, the applicant would have come to understand and be able to discuss more than he can about the Bible itself, the life of Christ and the meaning of Christianity. The Tribunal finds that the applicant's inability to do so reflects adversely on the credibility of his claims.
100. The details the applicant could give about the church gatherings he attended in China appeared to the Tribunal to be vague. He said at first he was not sure which days of the week gatherings were held. He then said that gatherings could be on Saturdays or Sundays but were not always held. He said that he mostly attended on a Saturday evening because on Sundays he had to travel back to school. When it was put to him that [the particular day in] April 2006 when he claimed to have been arrested while attending a gathering was a Friday, he seemed to indicate that this was a Friday night gathering he attended after he travelled to his village from his school, even though he had not previously mentioned that there were gatherings on Fridays. He said that gatherings usually commenced at 6.30pm and that they usually lasted for six hours, then added that sometimes they were only one or two hours long. The Tribunal found his evidence concerning the gatherings to be imprecise, considering that he claimed to have attended 30 or 40 such gatherings.
101. The applicant claimed at hearing that the church he attended in China was a Local Church though this claim was not made in his written statement. The Tribunal accordingly questioned the applicant about his knowledge of beliefs and practices particular to the Local Church as the Tribunal understands them from the independent information quoted above. The applicant was able to name Watchman Nee and Witness Lee as the founders of the church but could not say anything when asked about Pray Reading (a term and practice which

a person who has regularly attended the local church in China or Australia would be familiar with, according to an elder of the church in Melbourne, as quoted above). He could not say anything when asked about the concept of God's Economy, a belief of the Local Church as outlined in the information quoted above. He knew that the Bible used in the Local Church was different from the version used in other churches but could not say in what way this was true. He did not name the Local Church Bible as the Recovery Version, and did not mention the annotations by Witness Lee throughout its text. His response that he had only used the Local Church bible and so had no point of comparison might have satisfied the Tribunal had it not been for the fact that the applicant could say very little at all about the Bible and its content.

102. Regarding the claimed incident in 2006 in which the police broke into a religious gathering and arrested the attendees including the applicant and his aunt, the applicant gave inconsistent evidence about the period of time he claims to have been detained (7 days in his written claims but only 2 or 3 days in his account at hearing). The applicant gave a reason for this inconsistency when it was put to him, saying that it seemed to be a long time because he was in detention. The Tribunal does not find this reason satisfactory given that the period of detention is more than twice as long in one account than it is in the other. The Tribunal considers that if this period of detention occurred, it would have been a traumatic event in the applicant's life and he could reasonably have been expected to remember how long it lasted.
103. The applicant claimed that because of this event in April 2006, and because of monitoring by his school teachers of his behaviour and a constant fear of arrest, he asked his family to get him a visa for study in Australia. As put to him at hearing, the Australian visa was not issued until July 2007, more than a year after the applicant claims to have been arrested, which is another factor which the Tribunal considers reflects adversely on the credibility of the applicant's claims. The applicant claimed that he completed forms much earlier but the agent used by his family for the visa application did not lodge them until close to when his visa was issued in late July 2007. The applicant did not make this claim previously and presented no evidence in support of it beyond his assertion at the hearing. The Tribunal does not find this a satisfactory explanation for the delay in arranging the applicant's departure from China if he was in genuine fear of persecution there.
104. The applicant claimed in his written statement that after his arrival in Australia, he heard from his family that the police harassed them because of him. When asked for more detail about this at hearing, the applicant gave inconsistent evidence, explaining that it was not the police but the village leaders who asked his parents about the applicant's whereabouts when his parents returned to Fujian Province for Chinese New Year. They did not apparently tell his parents the reason for their enquiry. The Tribunal finds that applicant's oral evidence does not support his written claim that his family were harassed by police on his account. The Tribunal does not accept the applicant's written claim of police harassment and finds that an enquiry by village leaders about the applicant's whereabouts does not amount to serious harm.
105. The Tribunal finds that the applicant waited more than four years after arriving in Australia before making his application for a Protection Visa. As put to him at hearing, the Tribunal considers that the applicant would have taken the first available opportunity to seek Australia's protection had he been genuinely in fear of persecution on return to China. The Tribunal does not consider satisfactory and rejects the applicant's explanation that he was not at first aware of the availability of refugee protection in Australia given that this information is freely available from many sources including the Department's website, and given that he

was mixing with other members of the Chinese community in which the availability of Protection Visas would be widely known. The applicant later said that he was aware of the possibility of applying for protection in Australia but could not do so until he had enough money to do so and could find a migration agent. The Tribunal does not find this explanation satisfactory given that a Protection Visa application can be lodged without immigration assistance on payment of a small lodgement fee. The applicant also acknowledged that he was asked by Departmental officers when detained by them in March 2009 whether he had any reason to fear returning to China and so would have had a further opportunity at that time to make a Protection Visa application had he been genuinely in fear of persecution. The Tribunal does not accept as credible the applicant's explanation that he did not tell the Immigration officers about his fear of harm in China when asked because the issue for him at that time was that he was a student found working in breach of his visa work limitations.

106. The applicant claims that since some time in 2009 he has attended the Local Church gatherings at a primary school in the park in [Suburb 4] and that there is a [Brother B] in charge of worship there. The Tribunal accepts, from advice quoted above from the Local Church, that there is a regular Sunday meeting place in a community centre in [Suburb 4] and that [Brother B] is one of the elders there. The applicant has provided no corroborative evidence of that attendance but the Tribunal is willing to accept that the applicant has had some contact with the group at that location. However, as the Tribunal found that the applicant was not a Christian in China, and given the applicant's very limited knowledge of Local Church beliefs and practices, the Tribunal cannot be satisfied that the applicant's involvement in religious activities after his arrival in Australia signifies his genuine commitment to the doctrines of the Local Church or his devotion to the Christian faith generally. The Tribunal cannot be satisfied that the applicant's engagement in religious activities in Australia was otherwise than for the purpose of strengthening his claim to be a refugee within the meaning of the Convention. The Tribunal finds that s 91R(3) applies with respect to the applicant's conduct in Australia and the Tribunal will disregard such conduct in determining whether the applicant has a well-founded fear of being persecuted.
107. Having considered all of the applicant's evidence and the information available to it from other sources, the Tribunal finds that the applicant's knowledge of Christianity in general and of the beliefs and practices of the Local Church in particular are superficial given the personal experience he claims. The Tribunal finds that the applicant's description of church gatherings in China is vague and imprecise. The Tribunal finds that the applicant gave inconsistent evidence about his claimed detention in China. The Tribunal finds that the applicant was unable to give evidence supporting his claim that his parents were harassed in China following the applicant's departure. The Tribunal finds that the applicant delayed for more than a year in leaving China despite claiming to be in fear of arrest. The Tribunal finds that the applicant delayed more than four years in applying for a Protection Visa after arriving in Australia. For all of these reasons, the Tribunal finds that the applicant is not a witness of truth concerning his claims. The Tribunal does not accept that the applicant was a Christian in China or a member of the Local Church there. The Tribunal finds that the applicant was not detained in 2006 for attending a religious gathering or threatened with future arrest by authorities should he attend religious gatherings. The Tribunal does not accept that the applicant's parents were harassed by authorities since his departure from China.

108. The Tribunal finds that the applicant was not a Christian in China and was not involved with a Local Church group there from 1999. The Tribunal does not accept that the applicant suffered any harm in China on the grounds of religion.
109. The Tribunal finds that the applicant will not engage in the practice of Christianity in a protestant house church or Local Church group if he were to return to China. The Tribunal does not accept that the applicant will be perceived as a house church member or Local Church practitioner if he returns to China and does not accept that the applicant will be arrested, detained, tortured or subject to any persecution because of his religion on return now or in the reasonably foreseeable future.
110. The Tribunal has considered all of the applicant's claims, both individually and cumulatively, in assessing his claims to a Protection Visa. The Tribunal does not accept that the applicant has been harmed in the past, or that in the reasonably foreseeable future, if he were to return to China, there is a real chance that he will be harmed for reasons of his religion, actual or imputed, or any other Convention reason. The Tribunal is not satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution for a Convention reason.
111. The Tribunal has not accepted the applicant's claims that he will suffer harm on return to China. The Tribunal does not accept therefore that the applicant will suffer significant harm on return to China. The Tribunal has not accepted that the applicant was a Christian or adherent of the Local Church in China and has found that the applicant would not attend Christian including Local Church worship on return to China. As indicated above, the Tribunal accepts that the applicant has attended the Local Church in Sydney on one or a small number of occasions, but does not accept on the evidence before it that there is a real risk the applicant will suffer significant harm as a result of that attendance on return to China.
112. The Tribunal finds that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that the applicant will suffer significant harm.

CONCLUSIONS

113. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
114. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
115. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s36(2) for a protection visa.

DECISION

116. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

