

060848136 [2006] RRTA 190 (10 November 2006)

DECISION RECORD

RRT CASE NUMBER: 060848136

DIMA REFERENCE(S): CLF2006/77055

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Kira Raif

DATE DECISION SIGNED: 10 November 2006

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

The applicant, who claims to be a citizen of China (PRC), arrived in Australia 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 letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. The applicant applied to the Tribunal for review of the delegate's decision.

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

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged, in this case 12 July 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

The documentary material before the Tribunal is contained in Tribunal case file 060848136 and the Departmental case file CLF2006/77055. 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.

Primary application

According to the Protection Visa application, the applicant is a male born in China. He has completed eight years of schooling. He claims to have been the owner of a business for eight years. The applicant is married and his spouse continues to reside in China.

When making the application, the applicant made the following claims:

- Since coming to power in 1949, the Chinese government persecuted religious groups including organisations that are capable of organising their followers into action.
- The applicant set up his own business. He later met some friends who were practising Falun Gong. In a specific year he joined his friends for exercises. They went to the parks to practice it every morning. The applicant found the exercises to be good for active people and he started talking to people about the exercising, wishing that they would join.
- A number of years later the applicant was questioned by the local security people about practising Falun Gong. He told them that he did not attend any anti-government activities and that he was a practitioner because he wanted to be healthy. He was warned to stop immediately.
- The applicant continued to practice Falun Gong. In the following year he was formally warned by the local security and they checked his home. He was told that he would lose his job and that he would be arrested if he continued to practice. The applicant's wife separated with him because she was fearful. His family encouraged him to go abroad.
- The applicant bribed the local government officials to obtain the passport. After he arrived in Australia, he was told that police checked his home and his home phone had been monitored. His friend told him not to return because he may be put in jail.
- The applicant is scared about his family's situation and believes it is related to Falun Gong.

Application for review

When lodging the application for review, the applicant provided the Tribunal with a statement outlining his claims. The applicant states that his agent did not submit all the

information about his practice of Falun Gong and he was providing supplementary details. The applicant's claims may conveniently be summarised as follows:

- In a specific year the applicant's friend (Person A) introduced him to practice Falun Gong. Person A was a busy manager and he found that Falun Gong improved his health. After Falun Gong was banned by the authorities in 1999 Person A was required to sign a statement repenting his involvement in Falun Gong and undertaking not to practice again. However he continued to practice at home.
- In the late 1990s the applicant had health problems and Person A suggested that he should practice Falun Gong. For about ten days Person A came to the applicant's home to teach him Falun Gong practice. After that the applicant was able to practice on his own and he did not ask Person A to visit his home any more.
- Person A gave the applicant a copy of Zhuan Falun. After reading this book, he had a better understanding of Falun Gong. He practiced it every night in the living room with the curtains drawn after his family went to bed. His health improved.
- On a specific night after he started daily practice, there was a knock on the applicant's door. He hid the Zhuan Falun book, the tape recorder and the exercise cushion in the washing machine. Three people came in, one a cadre from the street committee and two police officers. The applicant was told that they received information that he practiced Falun Gong at home. The applicant denied that he did so. They searched his premises and not having found anything, they left.
- After that the applicant was scared of being sent to a labour camp and he stopped practising. At the beginning of the following year he again developed pain and he resumed the practice of Falun Gong. His health improved.
- A number of months later Person A told the applicant that the police and the local street committee escalated their watch of Falun Gong practitioners. At 11 pm on a particular night two police and a person from the local street committee came in. The applicant was practising at the time and he hid the effects in the laundry. The police told the applicant there were reports that he continued to practice Falun Gong. The police searched the applicant's home and found the Zhuan Falun book, the tape recorder and the exercise cushion. He was taken to the police station.
- The following day the applicant was interrogated. The applicant said that he bought the Zhuan Falun book at a market and was looking at it out of curiosity. The book included a disk showing the exercises and the applicant performed these, which improved his health. The applicant was accused of glorifying Falun Gong. He denied that his practice was a result of someone's advice. He was not believed and he was beaten before again being placed in a small room. He was released at midnight.
- Through a friend of Person A's younger sibling the applicant found out that the chief of police was corrupt. The applicant's family spent a sum of money

so that his case would be closed. The case would not be reported to the superior authority and the applicant's name did not appear on the 'black list', so that he was able to leave China.

- Due to the 'escalating persecution' on the applicant, his wife was worried and divorced him.
- After arriving in Australia, the applicant continued to practice Falun Gong. He joined Falun Gong activities in a particular area. Each Friday he joins the Falun Gong learning and experience sharing gathering at another area. He also joined Falun Gong demonstrations with other practitioners. He took part in distributing Falun Gong material.
- Due to his involvement in Falun Gong, the applicant was forced to give up his business.

Included with the statement were two photographs which were said to depict the applicant participating in rallies in Australia on different dates. The Tribunal received a further submission from the applicant, comprising a number of statutory declarations and photographs depicting the applicant at various rallies. The declarations state that the applicant participates in Falun Gong activities and participates in demonstrations in Australia. The content of some of the declarations appears identical.

Immediately before the hearing the applicant provided a number of documents to the Tribunal. These included general information on the treatment of Falun Gong practitioners in China and arrests of some of them and a statement from his place of work indicating that the applicant was subjected to harassment. Some of the documents were untranslated. The Tribunal asked the applicant if any of the documents related specifically to the applicant. The applicant stated that of the people who were arrested, he is sure that one is his fellow practitioner. The applicant stated that the statement from work was written by the manager.

Hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant's evidence at the hearing is summarised below.

The applicant confirmed that the contents of the statement outlining his claims, which he provided with his application for the Protection visa and all other information contained in his primary application were true and correct and that he did not wish to add or change anything.

The applicant stated that a migration agent assisted the applicant with the application. The agent's surname was mentioned, the applicant did not know the agent's full name or address. The Tribunal pointed out that the documents provided to the Department and the Tribunal did not indicate that the applicant received assistance with the application or the completion of the forms. The applicant said that he did not understand English so he does not know what was put on the form. He completed the Chinese version and gave it to his friend, who had provided it to the agent. The Tribunal requested the applicant to provide a business card of the agent. The applicant said that he had never met the agent and he may ask his friend.

The applicant gave evidence about his educational background. He stated that in China he completed university. The Tribunal pointed out that the applicant form indicates that he had completed eight years of schooling and had not done further studies. The applicant said that

he had not completed high school and was sent to the army. While in the army he was trained in a military school.

The applicant gave specific details of his work history. The applicant states that he is married and his wife and child reside in China.

The Tribunal asked the applicant about his involvement with Falun Gong. He said that he became involved in a particular year. In the late 1990s he had a medical condition, he was often hospitalised. He sought treatment in different places. In the late 1990s he could no longer continue working. At that time he invested 20% but because he could not run the business, his friends ran the business.

Before this he heard about Falun Dafa and knew that it was very good. Because he was suffering too much, he started to practice. The Tribunal asked the applicant how he started and how he knew the practice. The applicant said that at that time he was in very bad condition, he could not get up in the morning. His classmate, Person A, who came to visit him, advised him to start practising. From then on, he started to teach the applicant and gave him the book Zhuan Fa Lun. The applicant said that Person A was his high school classmate and they kept in touch since high school. The applicant did not know when Person A started practising, but when Falun Gong was banned, Person A wrote letters to protest.

The Tribunal asked the applicant how Person A introduced the applicant to Falun Gong. He said that his classmate had a medical problem, but his condition improved after he started practising. Person A came to visit the applicant when he was sick at home, he also suggested that the applicant should practise before. The applicant had a problem and he had treatment for many years with no improvement.

The applicant started to learn from Person A for a few days, he also read the book, it was magic. The applicant learned at his home. After he learned for about three months, the applicant felt an improvement. Reading the book on Zhuan Fa Lun, he felt that he could learn from it. Since then he started to practice. The following year, after summer, he started to run the business. The year after, he registered a company. The applicant chose a particular name because that name is part of his name and according to the Master, one had to have virtue. The company was doing well for a year. After two years the applicant registered another company. After practising Falun Gong the applicant felt better and was able to engage in business.

The Tribunal asked the applicant if he ever practised in public or only at home. The applicant said that he practised publicly only four or five times in a particular year. He had not practised publicly before or after that year.

The Tribunal asked the applicant how he came to the attention of the authorities. The applicant said that one of his fellow practitioners went to Beijing and he passed away. The Tribunal again asked the applicant how he came to the attention of the authorities. The applicant said that he guessed he had something to do with him. They learned the Falun Dafa together. The Tribunal asked the applicant how the person passed away. The applicant said that the local police went to Beijing to get him there. The Tribunal asked the applicant why the local police had to go to Beijing to get him there when they could do that not locally. The applicant said that he went to Beijing to demonstrate and the police got him in Beijing. The Tribunal asked the applicant what it had to do with him. The applicant said that because they were fellow practitioners, maybe he said something about the applicant and the authorities paid more attention to the applicant. This occurred in a particular year.

The Tribunal pointed out that the applicant earlier stated that he practised privately until the following year. The Tribunal asked the applicant how he got to know this person. The applicant said that they were learning Falun Dafa together at Person A's home. The Tribunal asked the applicant if the police paid more attention to Person A as well. The applicant said that the police also paid more attention to Person A and he was required to write a promise. This was in the late 1990s.

The Tribunal again asked the applicant if he or Person A came to the attention of the police because of the incident in Beijing in a specific year. The applicant said that they did. Two years later the police came to his home to warn him. The Tribunal asked the applicant what happened between the incident in Beijing and when the police came to warn him. The applicant said that during that period nothing happened to him because during that period he was not involved in politics.

The Tribunal again asked the applicant why he said he came to the attention of the police in a particular year when the police did not approach him until two years later. The applicant said that they paid attention to Person A and then they paid attention to him. This was in a particular year. The Tribunal asked the applicant why, if the police paid attention to him in that year and he continued to practice, there was no contact from the police until two years later. The applicant said that maybe his neighbours reported him. The Tribunal again asked the applicant why there was no action by the police. The applicant said that at the time he felt no danger. The Tribunal put to the applicant that the police had no interest in him between those years. The applicant said 'maybe' because at that time he was not involved in politics, he was only practising.

The Tribunal asked the applicant if he knew that Falun Gong was banned. The applicant said that he did. The Tribunal asked the applicant why he felt no danger if he continued to practise. The applicant said that he was only practising at home, he was only learning Falun Dafa with a few people. The Tribunal pointed out that the applicant previously stated that he had not practised publicly before or after a particular year. The applicant said that several years earlier he went to a park early in the morning to practise, he does not consider this to be practising in public.

The Tribunal again referred the applicant to his statement that he did not practise publicly since a specific year and that he said he felt no danger because he practised at home. The Tribunal asked the applicant what had changed. The applicant said there was a change because somebody may have reported him, maybe his neighbours.

The Tribunal asked the applicant about the events in the following year. The applicant said that in that year the local committee and the police came to his home. They warned the applicant that someone reported that the applicant was practising Falun Gong at home. The applicant denied that he did so. They searched the applicant's home and found no evidence, so they left. The Tribunal noted that the applicant earlier stated that Person A was required to sign a statement denying Falun Gong. The Tribunal asked the applicant if he was required to sign a similar statement. The applicant said that in that year the community committee asked him to sign a pre-typed statement denying Falun Gong. The applicant did not sign because he told them that he never practised. The Tribunal asked the applicant if he was believed. He said that he was not, but there was no evidence. The Tribunal asked the applicant why Person A was forced to sign a statement. The applicant said that they found the book and the disks in Person A's home, so there was evidence against him.

The Tribunal asked the applicant why in his statement to the Tribunal he did not mention that he was forced to sign a statement. The applicant said that he mentioned this when making the statement to his friend but he does not know what is in the statement. The Tribunal asked the applicant if anybody had read the statements he had given to the Tribunal or the Department to him. The applicant said that somebody did. He stated that all the important things were covered. The Tribunal pointed out that being forced to sign a statement denying Falun Gong was fairly important. The applicant said that at the time he did not think it was important, he was in a rush when he was asked to sign the statement.

The Tribunal asked the applicant if he continued to practise after the incident with the police. The applicant said that he stopped for a period, he was struggling at that time. He stopped for a number of months because he was scared. His wife argued with him all the time. He was scared because some Falun Gong practitioners died or were jailed. The Tribunal pointed out that the applicant said earlier that he was not scared, even though he knew that Falun Gong was banned. The applicant said that he decided not to get involved in politics, he was practising for health benefits, he did not expect that he would be threatened. After he stopped practising, he felt physical pain again.

The applicant started practising again in the following year at home. At that time Person A was encouraging the applicant to practise and he continued to teach the applicant. They always had discussions, so the applicant started practising. The applicant stated that Person A was living in the same town. The Tribunal asked the applicant how Person A was able to avoid persecution. The applicant said that Person A was arrested recently.

The applicant said that a number of months later he was taken to the police station because they found the book Zhuan Fa Lun at his home, they also found the cushions for practising and the tape recorder. The Tribunal asked the applicant how often he was practising from when the police warned him until this incident. The applicant said that he stopped when the police left in the previous year. After he started again, he practised on Saturdays and Sundays. Before that year he was also practising on Saturdays and Sundays. The applicant confirmed that he practised at least once a week with the exception of the few months when he stopped. The Tribunal asked the applicant about studying the book. The applicant said that he studied more frequently, whenever he was at home and he had time. He attended formal study groups a few times in a specific year.

The Tribunal asked the applicant about the events in a particular year. The applicant said that he was taken to the police station because they found evidence at his home. The Tribunal asked the applicant why they came to his home in that year. The applicant said that perhaps his neighbours reported him. Since coming to Australia, he called his mother who told him that his neighbour reported him. When the police came to his home and found the book, they took him to the police station. His wife and child were at home at the time and witnessed what happened. Once taken to the police station, the applicant was placed in a small room. The applicant remained there till the following morning, then a couple of people came to interrogate him. The applicant was asked to give the names of his fellow practitioners, but he did not do so. The applicant told them how Falun Dafa saved him. The applicant told the police that he was never involved in politics. Then one person beat him and sent him back to his cell. The applicant was released at midnight. The Tribunal asked the applicant why he was released. The applicant said that the younger sibling of Person A bribed the head of the police station. The applicant said that he had met the younger sibling of Person A.

The applicant said that during that period the local committee kept an eye on him every day, but he could not give up his practice. The Tribunal asked the applicant if anyone from the committee ever approached him. The applicant said that because the police were bribed, the head of the police station sometimes called the applicant and told him not to practise. He regarded the applicant as a friend.

The applicant said that he paid the bribe. The applicant's wife gave the money to Person A's sibling and the sibling himself paid a sum from his own pocket. He was later paid back by the applicant.

The Tribunal asked the applicant if he continued to practise after he was released. He said that he practised at home during weekends. The Tribunal noted that after the police came to his home in the previous year, the applicant said that he was scared and he stopped practising, while he continued to practise after the detention in the following year. The applicant said that he could not stop, if he stopped he would feel guilty to Falun Dafa and the people who saved his life. The Tribunal asked how this was different in the previous year. The applicant said that in that year he was really scared. The Tribunal asked the applicant if he was not really scared in the following year. The applicant said that he was, but he did not want to use his belief.

The Tribunal asked the applicant how he obtained the visa and the passport to come to Australia. The applicant said that a local government officer did it for him. The applicant cannot give the name of that person because that person works for the government. The applicant paid that person a sum of money. The applicant had his passport from a long time ago, from the late 1990s so this person obtained the visa for him. The applicant said that his passport was valid for five years. The Tribunal pointed out that the applicant could not travel to Australia on that passport when he did. The applicant said his first passport was issued in the late 1990s, the latest passport was issued a particular year, a number of years later. The Tribunal asked the applicant if it may have been in the following year, as noted on a copy of the passport he provided to the Department. The applicant said that he could not remember the exact date. The applicant said that he left China from Shanghai. He stated that he had no problems leaving the country.

The Tribunal asked the applicant why it took him several months to leave the country, from the time he was detained by the police to the time he came to Australia. The applicant said that he started to ask the person to help him with the visa several months before he left. The Tribunal noted that it was still six months after he was released. The applicant said that he initially thought that because he bribed the police, he would be okay, he did not expect to be watched by the police. The Tribunal pointed out that Falun Gong practitioners were persecuted by the government as a whole. The Tribunal asked the applicant how he thought he could avoid persecution by bribing one police officer. The applicant said that he was the head of the police station and if he gave orders, nobody could disobey him. The Tribunal asked the applicant why this did not happen. The applicant said that he felt that it was because of his neighbour. Whenever he left home, the neighbour always looked at him. He now knows that the community committee gave money to the neighbour. He knows this because his mother told him, she heard from other neighbours. The Tribunal asked the applicant why the chief of the police, whom the applicant bribed, could not protect the applicant. The applicant said that the officer could not protect him because the neighbour could report him not only to the police station, but to other offices. Every time he reported, the applicant would be arrested. The Tribunal asked the applicant how the neighbour would

be aware that the applicant was practising Falun Gong at home in private. The applicant said he had no idea.

The Tribunal asked the applicant about his activities in Australia. The applicant said that not long after he arrived in Australia, he came to know a Falun Gong practitioner (Person B) and his wife. They took the applicant to attend a book study class. The applicant participated in the activities, telling the truth to passers-by. The applicant said that he did not know who organised these activities but every Friday when he attended the study group, they would be notified. The applicant said that he attends study groups every Friday and he practises in another suburb every morning. On Sundays the group practise together. On Friday night they study together and they study as a group on Sunday evening. The applicant attends every activity.

The Tribunal asked the applicant why he got involved with Falun Gong in Australia. The applicant said because he had to tell the truth to the public. The Tribunal pointed out that the applicant was not involved in any political activity in China. The applicant said that he was not before a specific year. In the following year he recommended Falun Dafa to some of his friends and he told the truth to them. The Tribunal asked the applicant what he meant by telling the truth to his friends. The applicant said the truth about the communist party persecuting Falun Gong practitioners. The Tribunal asked the applicant what he did. The applicant said that in Australia he distributed pamphlets and participated in activities. The year before he left he only told the facts to his friends, he did not attend any activities. The Tribunal asked the applicant how this constituted an expression of a political opinion. The applicant said that he told them about the Tiananmen Square. The Tribunal pointed out that this was fairly well known. The applicant said that in China it was not known that this incident was created by the government.

The Tribunal asked the applicant if he was now claiming that he was involved in political or anti-government activities in China. The applicant said that he was not involved in anti-government activities, he only told the truth about the facts. The Tribunal asked the applicant how he knew the truth. The applicant said he learnt the information from Person A. He told his friends about the Tiananmen Square and also about Falun Gong practitioners being beaten to death. The Tribunal asked the applicant why he did not mention any of his political activities in China at any time throughout the processing of his application. The applicant said that he did not think the political activities were important, he only told them the truth while they were chatting. The Tribunal again asked the applicant whether he was involved in any political or anti-government activities in China. The applicant said that he did not think telling the truth is an anti-government activity.

The Tribunal again asked the applicant why, if he was not involved in anti-government activities in China, he became involved in Australia. The applicant said it was not an anti-government activity, he was only telling the truth as the Master teaches. The Tribunal asked the applicant why he was not telling the truth publicly or distributing leaflets in China. The applicant said that in China he did not have many pamphlets. The applicant said that he suspected that those people who were recently arrested had pamphlets. The applicant said that Person A once asked him to distribute pamphlets but he did not go. Person A provided him with all the materials. The Tribunal asked the applicant why he did not mention that in his statement to the Tribunal. The applicant said that he did not mention it because he did not participate in any big activities. The Tribunal asked the applicant if he participated in any small activities. The applicant said that they learned Falun Dafa together. The Tribunal asked the applicant if he participated in any activities involving distribution of information to the

public in China. The applicant said that he did not. The Tribunal asked the applicant why he was doing it in Australia if he was not doing it in China. The applicant said that it was very dangerous to do that in China and many practitioners who did it were arrested. The applicant said that he only did it to his friends that he was familiar with, he showed them materials that Person A gave to him.

The Tribunal asked the applicant whether the police found these materials when they came to his home. The applicant said that they did not because he put these things in a very secret place under the bed or under the quilt. The applicant said that the police did not look there, they did not search thoroughly. The applicant said that in the following year he did not keep these materials at home but in the office. The Tribunal pointed out that this was even more public. The applicant said that he locked these materials in the drawers, it was convenient to put these things there. Before he left China, the applicant gave these materials to Person A.

The Tribunal asked the applicant why he continues to practise Falun Gong. The applicant said that he practises Falun Gong every morning with Person C. If he does not have time, he practises at home. He practises because Falun Dafa is more important than his life. The Tribunal asked the applicant what it meant to him. He said that he has to practise to improve his health and to be a good person and to be good to others.

The Tribunal asked the applicant what the principles of Falun Gong were. The applicant said that Falun Gong promotes people to upper stage and removes karma from inside. According to the Master, if we do not practise, we would be punished. We do not talk about location, the time or orientation. The Holy Body of the Master is always protecting us from evil. The Tribunal asked the applicant about the Master. The applicant said Master Li was born on 13 May 1951. He began to preach in Changchun, China in May 1992. He went to the US in 1996 and he is now teaching Falun Dafa.

The Tribunal asked the applicant when Falun Gong was accepted in the Chinese Qigong Research Association. The applicant said that Falun Gong left the Association in 1995. The applicant said that he did not know when it joined the association. The applicant said that Master Li was awarded in China many times. The Tribunal pointed out that Falun Gong left the Association in March 1996 and not in 1995.

The Tribunal asked the applicant when the Chinese Falun Gong Association was established. The applicant said that he had no idea, it separated from the Qidong association in 1996. The Tribunal put to the applicant that it was established on 30 July 1993. The applicant said that he did not know.

The Tribunal asked the applicant when the Zhuan Falun book was unveiled. The applicant said it was unveiled in 1995 by Master Li. The Tribunal asked the applicant when the first international Falun Dafa conference was held. The applicant said it was in 1996 in Sydney. The Tribunal pointed out it was held in Beijing. The applicant did not have any comment. The Tribunal asked the applicant when Falun Gong was officially banned. The applicant said it was 20 July 1999. The Tribunal pointed out it was 22 July. The applicant said that the crackdown started on 20 July, on 22 July it was regarded as an evil cult. The Tribunal asked the applicant when the "610 office" was established. The applicant said it was 10 June 1999. The Tribunal asked the applicant if he learned the history of Falun Gong while he was learning the book or at another time. The applicant said that he did not know much about history when he started, but he gradually learned. Because he is a practitioner, he must have some knowledge about the history. The Tribunal asked the applicant when the international arrest warrant for Mr Li was issued. The applicant said that he did not know.

The Tribunal asked the applicant about the exercises. The applicant said there were five exercises. The first one was Buddha Showing a Thousand Hands. The second is Falun Standing Stance. The third is Penetrating Two Cosmic Extremes. The Fourth is the Great Heavenly circuit and the fifth is Strengthening Divine Powers. The applicant wrote down the sentences to be pronounced when performing the exercises. He offered to demonstrate the exercises to the Tribunal.

The applicant said there were 9 lectures in the Zhuan Falun book. The applicant explained what each lecture was about. At this point the interpreter who assisted the Tribunal indicated that she had some difficulties with interpreting specific terms used by the applicant.

The Tribunal asked the applicant to explain the concept of the Wheel. The applicant said that Falun Gong is an advanced way of practising. It is the way to have harmony in the universe. People can live simple lives and get along with each other well. As a result, people can achieve physical and mental health. As long as one practises, one can improve. The Tribunal asked the applicant about the Wheel. The applicant said that the Wheel includes everything in the universe. The Tribunal asked the applicant about the concept of the Wheel being within one's body. The applicant said the Wheel is located in the abdomen and it revolves all the time. By self-revolving it promotes oneself and by revolving about objects it promotes others. The Wheel revolves in different directions, clockwise and anti-clockwise. Clockwise is helping oneself, anti-clockwise removes karma from oneself and helps people absorb energy from the universe and helps people to help others.

The Tribunal asked the applicant about his business. The Tribunal asked the applicant how he will manage the business if he stays in Australia. The applicant said that according to the Master, one cannot take one's fortune to the grave, so he will leave the business to others. He was born with Falun Dafa and it will die with him. The Tribunal asked the applicant if he intended to give up his business because that is what the Master teaches, why he had not done that prior to coming to Australia. The applicant said that the business does not belong only to him. The Master says that one can practice regardless of one's wealth. The Tribunal asked the applicant why he did not apply these principles before coming to Australia. The applicant said there is no reason for the business to be given up. It is a legal company and it is operating well, he will keep the shares but he is not involved in the operation of the business.

The applicant said that he continues to be in contact with his wife and he is still married to her. His wife went to live with her mother and they were separated for a while because they hold different opinions about Falun Dafa. She sent him to the airport. Now things are better since he explained things to her.

The applicant then said that he wanted to make a statement to the Tribunal. He said that Falun Gong practitioners are persecuted in China. There is strong evidence that Falun Gong practitioners are persecuted. The Tribunal indicated that it was aware that Falun Gong practitioners were persecuted and it was familiar with the evidence. The applicant said he had nothing else to add.

The Tribunal took oral evidence from a witness nominated by the applicant. She stated that she knows the applicant because they study Zhuan Falun together on Friday nights. She has known the applicant for a few months. The witness stated that a fellow practitioner came to Australia as a tourist. When he left the airplane, he was taken by the authorities because he was known by the authorities to be a Falun Gong practitioner. Also, the 610 office still exists and they persecute Falun Gong practitioners. Now their persecution has become even more severe. There are also organs taken from living Falun Gong practitioners for profit. The

applicant has participated a lot in Falun Gong activities here, as described in the statement. There are a lot of spies in Australia from China so it would be dangerous for the applicant to return back. The witness expressed the wish that the Australian government could protect the Falun Gong practitioners.

The Tribunal asked the witness what the applicant did other than study the book. The witness said that the applicant studies the book on Friday nights and on Sundays they study at the witness' home. They practice in the mornings in a park. The applicant went to another area for Falun Gong activities to distribute the pamphlets and to show the banners. He also attended activities in a different location. He participates in a lot of demonstrations. He attends demonstrations to distribute pamphlets. The Tribunal asked the witness why, in her opinion the applicant was so involved in these activities. The witness said that the Master teaches to do three things: to study the book, to tell the truth and to have righteous thoughts. When he distributes the pamphlets, that means he is telling the truth to the public.

Evidence from other sources

The practice/philosophy/religion that is known as Falun Gong was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese cultivation system known as qigong, but it is novel in its blending of qigong with elements of Buddhist and Taoist philosophy. Despite its own protestations to the contrary, it also has a well-organised and technologically sophisticated following and has deliberately chosen a policy of confrontation with authorities.¹

The movement was branded a “threat to social and political stability” and was banned on 22 July 1999. From July 1999 Falun Gong protests were countered by police roundups in which thousands of practitioners were detained in police lockups and makeshift facilities for short-term “reeducation”. The crackdown was accompanied by a coordinated media campaign by China’s public institutions, highlighting the alleged dangers of Falun Gong and attempting to justify the crackdown. According to the Department of Foreign Affairs and Trade (DFAT):

“Chinese Authorities ... are more concerned by the ability of Falungong members to organise themselves and to propagate Falungong beliefs. Laws banning Falungong are aimed at preventing the formation and public assembly of groups and the use of public means (books, videos, leaflets, mass media etc.) to promote Falungong.”²

A 2005 DFAT report confirms that this advice is still valid.³ On 1 March 2005, new religious affairs regulations came into effect which bring regulatory practices within a legal framework

¹ Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, pp.14-24, pp.91-95.

² DFAT, 2002, Country Information Report No 136/02, Falun Gong Practitioners, 20 June – CISNET China CX64757)

³ DFAT 2005, *Country Information Report No. 05/34: China: Update on Falun Gong*, 30 June – CISNET China CX125116. See also Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Penny, Dr Benjamin 2003, *Falun Gong: What was it? and what is it now? A talk for the Refugee Review Tribunal National Members' Conference*, 29 August; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press; DFAT, 2002, *Country Information Report No 136/02, Falun Gong Practitioners*, 20 June – CISNET China CX64757; DFAT 2005, *Country Information Report No. 05/34: China: Update on Falun Gong*, 30 June.

and into compliance with China's Administrative Licensing Law. The new regulations protect the rights of registered religious groups, but critics say they give the authorities broad discretion to define which religious activities are permissible. Only groups which meet government requirements can be registered, and the government tends to perceive unregulated religious groups as a potential challenge to its authority. The Falun Gong and other groups labelled as "cults" remain banned, and Premier Wen Jiabao's 2004 Government Work Report emphasised that the Government would "expand and deepen its battle against cults", including Falun Gong.⁴

The 2006 US State Department Report on Religious Freedom states that The Chinese government continued its repression of groups that it categorized as "cults" in general and of small Christian-based groups and the Falun Gong in particular. The Report states that "Falun Gong practitioners continued to face arrest, detention, and imprisonment, and there have been credible reports of deaths due to torture and abuse. Practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, reeducation through labor camps, and extra-judicial "legal education" centers, while some who recanted returned from detention. Reports of abuse were difficult to confirm within the country and the group engaged in almost no public activity within the country. Overseas Falun Gong practitioners claimed this was a result of the harsh government campaign, which began with the 1999 crackdown against the group. There were continuing revelations about the extra-legal activities of the Government's "610 office" including torture and forced confessions, a state security agency implicated in most alleged abuses of Falun Gong practitioners".⁵

With respect to exit procedures operating in China, the available sources indicate that freedom to travel overseas is generally the case, although passports are difficult to obtain for certain classes of dissident. More recently, following the defection in May 2005 of a political affairs counsellor at the Chinese Consulate in Sydney and his applying for asylum in Australia, the media reported that China's rules for issuing and renewing passports were becoming more stringent.

The sources also indicate that the Chinese government maintains lists of people wanted by the authorities for whom arrest warrants have been issued. These lists are usually called "wanted lists" or "most wanted lists".⁶

⁴ US Department of State 2005, *International Religious Freedom Report 2005: China* (includes Tibet, Hong Kong, and Macau), 8 November; UK Home Office, 2002, *Revolution of the Wheel – the Falun Gong in China and in Exile*, April; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press, p.24-31.

⁵ US Department of State, *International Religious Freedom Report 2006: China*

⁶ Human Rights Watch 1995, *China: Enforced Exile Of Dissidents: Government "Re-entry Blacklist" Revealed*, Vol. 7, No. 1, 6 January, p.3

<http://www.hrw.org/reports/1995/China.htm>; 'Second List of Banned Dissidents Found' 1995, *Eastern Express* (Hong Kong), 6 January; Shea, Nina 2002, 'China's crackdown on Christians', *China Brief*, Volume 2, Issue 2, 17 January; 'Illegal Use of Residents' ID Cards Analysed' 1994, *Zhongguo Xiangzhen Qiye Bao* (Beijing), 27 August

FINDINGS AND REASONS

The applicant travelled to Australia on a valid Chinese passport and claims to be a national of China. The Tribunal accepts that the applicant is a national of China and has assessed his claims against P.R. China as his country of nationality.

The Tribunal is concerned about some aspects of the applicant's evidence. The Tribunal is concerned that lengthy periods elapsed from the time the applicant claimed to have started to practice Falun Gong and the time when he came to the attention of the authorities and also the time when he was detained. The applicant also did not explain to the satisfaction of the Tribunal why it took the applicant several months to leave the country after he was detained. The applicant was unable to explain to the satisfaction of the Tribunal how his neighbour, who he claims had denounced him to the authorities, was aware that the applicant practiced Falun Gong if he only practised in private. The applicant's evidence about his political activities in China was confused and inconsistent. Because of these concerns, the Tribunal cannot accept the applicant's evidence about the events in China. The Tribunal cannot be satisfied that some of the events described by the applicant as occurring in China did in fact take place.

However, because of the reasons that follow and the Tribunal's findings with respect to the applicant's activities in Australia and his activities if he were to return to China now or in the foreseeable future, the Tribunal did not consider it necessary to resolve these issues. The Tribunal makes no findings with respect to these matters.

The Tribunal questioned the applicant about Falun Gong. The Tribunal found that the applicant displayed an extensive knowledge of the history and philosophy of Falun Gong. The applicant gave coherent and ready responses to the Tribunal's questions and he provided detailed evidence in response to Tribunal's questions. The Tribunal is of the view that the applicant is familiar with the philosophy and practice of Falun Gong and that he did undertake the study of the Zhuan Fa Lun book. The Tribunal also accepts that the applicant is familiar with the exercises.

The applicant provided a significant amount of evidence to the Tribunal concerning his involvement with Falun Gong in Australia. Much of the evidence presented by the applicant related to his own circumstances. The applicant provided photographic evidence of his involvement in various Falun Gong activities and also a number of declarations from third parties confirming that the applicant is actively involved in Falun Gong activities and exercises. The Tribunal also took oral evidence from one of the applicant's fellow practitioners. Based on the entirety of evidence, the Tribunal finds that the applicant is engaged in the practice of Falun Gong in Australia, that he attends study groups and that he is involved in other activities relating to Falun Gong. The Tribunal finds that the applicant is a genuine and committed Falun Gong practitioner.

The Tribunal questioned the applicant about his motivations for being involved in such activities in Australia, particularly as he stated that he was not engaged in similar activities in China. The applicant stated that Falun Gong teaches to tell the truth and by distributing information about the Falun Gong and participating in other activities he tells the truth about Falun Gong. The Tribunal accepts that evidence. The Tribunal is satisfied, for the purpose of s 91R(3) of the Act, that the applicant's conduct in practicing Falun Gong and participating in Falun Gong activities in Australia has been engaged in for a purpose other than the purpose of strengthening his claim to be a refugee.

The Tribunal accepts that, if he were to return to China now or in the reasonably foreseeable future, the applicant will wish to continue to practice Falun Gong. The Tribunal has had regard to independent country information, referred to above, concerning the treatment of Falun Gong practitioners in China. The Tribunal accepts that practitioners of Falun Gong are subjected to persecution and repression by the Chinese government and that this applies to practitioners as well as to the leaders of Falun Gong. The Tribunal accepts that the applicant may be imprisoned, tortured or be required to undertake re-education in a re-education camp. The Tribunal finds that the persecution that the applicant fears involves 'serious harm' within the meaning of s 91R(1)(b) of the Act. The Tribunal considers that Falun Gong falls within the terms of Article 1A in three ways. The movement has the qualities of a religion, although it is purportedly not identified as such by adherents. It is also a particular social group in China, being a group with a shared world view and physical practice. Harm could also be said to arise by virtue of the imputation of an anti-Government political view. The Tribunal considers that the applicant's religion or membership of a particular social group or the imputed political view form an essential and significant reason for the persecution which he fears. The Tribunal also finds that the persecution which the applicant fears involves systematic and discriminatory conduct in that it is deliberate or intentional and involves selective harassment for a convention reason.

The Tribunal finds that the applicant is outside his country of nationality. For the reasons stated above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of his religion if he returns to his country of nationality. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the government of the People's Republic of China. Nothing in the evidence before the Tribunal suggests that the applicant has a legally enforceable right to enter and reside in any country other than China. The Tribunal finds that the applicant is not excluded from Australia's protection by s 36(3) of the Act.

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. The applicant satisfies the criterion set out in s 36(2) of the Act for the grant of the protection visa.

CONCLUSION

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

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

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