

DECISION RECORD

RRT CASE NUMBER: 071964921

DIAC REFERENCE: CLF2007/146286

COUNTRY OF REFERENCE: People's Republic of China (PRC)

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE DECISION SIGNED: 8 February 2008

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

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

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

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

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

RELEVANT LAW

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

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

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

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

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

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant. 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.

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

The applicant was represented in relation to the review by a registered migration agent, who was not present at the hearing.

Submissions to the Department (DIAC)

The applicant provided a certified copy of her PRC passport to DIAC which showed when she had left the PRC, and when she arrived in Australia 1.

She provided biographical details on the protection visa application forms as follows. She was born in X Province. She had completed several years of education, in Y Province She had married in Y Province Her family remained in China.

There were three addresses listed outside Australia where she had lived for six months or more in the last 10 years

Of her past employment, she worked in 2 different jobs in the last 10 years.

In a statutory declaration she claimed to have been identified by the Public Security Bureau (PSB) as an organiser of "anti-government" materials, and so feared persecution if she returned to China.

Details of these claims were as follows: several years ago the applicant's relative, relative A returned from Y Province to her hometown in X Province The applicant often visited relative A there.

In one year the applicant's other relative told her that relative A had been arrested by the PSB. She went to X Province and found that relative A's partner had been killed in a coalmine accident, and relative A had led a protest outside the offices of the government in the county. As the mine's owner had bribed corrupt officials, relative A was arrested by the PSB for inciting an anti-government movement. She was released a few weeks later because of bribes.

After this relative A continued unsuccessfully to ask the coalmine's owner to give compensation to the family. About a month later the mine owner gathered some "bullies who were belonged to Mafia" (sic) to break into the house in which the applicant and relative A

were living. They seriously beat relative A. Later the applicant learned that the solicitor who had helped write "an authorization letter" seeking compensation from the owner, had been assaulted on the same date.

The applicant was outraged and felt she had to do something. However it was useless reporting these matters to government agencies at county level because corrupt officials and police had been bribed by the owners of the coal mines. Therefore she encouraged coal miners and their families to send petitions to the Provincial Government and to the central government in Beijing. She visited several villages, contacting many miners and their families. She urged them to "strive for their basic human rights". She distributed anti-government materials calling on people to join in this activity.

The solicitor, tried to dissuade her but, finding she could not be stopped, used contacts to arrange the applicant's trip overseas "in case that I would be in troubles".

The PSB started investigating the source of the anti-government materials The solicitor immediately arranged for her to hide at the solicitor's friend's place "even if the PRC had not found that I had been the actual organizer for those materials".

Later, assisted by a close friend of the solicitor, she left China. Shortly after, police officers came to relative A's home in X Province and another family member's home in Y Province with a warrant. The applicant stated that she did not know how they had located her as the organiser of the anti-government materials. However since then she had been a target of the authorities. Relative A, and several other relatives, as well as the solicitor and other people suspected of having a relationship with her, had been investigated by the police. Therefore she believed she would be persecuted if she returned to China.

Evidence before the Tribunal

No documentary evidence or submissions were provided to the Tribunal before the hearing. The applicant gave oral evidence that she had been living with her family in Y Province until she went to stay with relative A. She stated she was unsure where her husband was at present. She had most recently spoken to him when he rang her on her mobile a couple of months ago, at which time he was in Y Province. She said that he did not ring her too often because he feared his calls were monitored.

She said that for several months prior to her departure she had been living with relative A at her home in X Province. She said that no one was living there now. She was unsure where relative A was now but a month ago she had been staying with a friend. Relative A had left her home and no one lived there now.

She said that relative A had last been employed up until she was detained by the police. She had been dismissed from her job after that.

As to why the applicant had moved to X Province, she said that when another relative had rung to tell her that relative A had been arrested by the PSB. He asked her to bring money to help him pay any bail that was required She had taken leave from her job and arrived in X Province shortly after

She said that after relative A's release from detention she had been emotionally unstable and had needed the applicant, so she had not returned to visit her husband. She had continued to

live at relative A's home for several months. After that she had gone to Province Z. She had stayed with a friend of her lawyer. She had continued to live there until she left China.

She confirmed she had not been involved in any protest activities in China before the events discussed here.

She gave details of the accident at the coalmine. She said that relative A's partner had been working in this mine with other miners.

She said that in remote areas like this local government officials "cooperated" with businessmen. That had been the situation at this particular coalmine. Of the circumstances of the accident, she said that relative A's workmates had told her that it occurred because the owner had not taken sufficient safety measures.

As to why the Tribunal might have been unable to locate a record of any fatal mine accidents in X Province at the time that the applicant states that this accident occurred, she said that there was no documentary evidence she could provide about this accident. She said that the mine accident had been reported twice to the PSB, but police officers did not visit the mine or investigate, and did not care about the incident.

Of the efforts that had been made calling for compensation, she said that through the lawyer relative A had obtained documentation proving that she had a right to pursue a claim for compensation. Her aim was to get compensation. Initially relative A, not the applicant, had pursued this compensation. Relative A had wanted to pursue compensation through the People's Court because the company refused to pay anything. However a few months later "a tragedy struck" the applicant and relative A.

She stated that on that day several men came to relative A's home. They told relative A they would kill her if she dared go to court. They offered relative A money and told relative A and the applicant to go back to Y Province. Relative A refused to accept this money and told them she intended to go to court. They then assaulted relative A and the applicant.

The applicant told the Tribunal that both she and relative A were hospitalised after this incident, the Applicant being in hospital for a few days. Police officers came to get a statement from her in that period but she did not want to tell them anything at that time. However subsequently she went to another police station with her solicitor and told the whole story. On that day the most senior police officer told her that one of the men she accused was a successful businessman and that it was "impossible" he had assaulted her. She told the Tribunal that, while at the police station that day, she recognized another man as one of the men who assaulted her. She informed the head of the PSB of this. He told her solicitor that it was a serious crime to "point the finger" at this person. Her solicitor apologised on the applicant's behalf, saying that the applicant was "too upset". The applicant told the Tribunal that the PSB laid no charges against the mine owner. She added that there was no law in that place, which was in such a remote area.

She said that about a week later she had called on mineworkers to unite to bring the mine owner to court. Later she wrote a letter to various government departments in X Province. In the letter she asked that the government fight corruption and protect human rights of coalmine workers. She asked that workers be given the right to freedom of speech and human rights, and that miners who had been detained for demanding their rights be released. The letter was signed anonymously.

She said that the next month she also wrote letters to 2 other regional organisations. The second letter was also anonymous. She said that the content of these two letters was similar but that the second letter named the owner of the mine and said that the police had been involved in an assault on the letter's author and relative A. In the letter she referred to a miner's family being denied compensation, while people in power participated in assault. She asked the authorities to look into this matter.

The Tribunal suggested to her that she must have known that the mine owner would become aware of the letter and assume she was its author. The Tribunal asked her why she had willingly remained in relative A's house, where she could easily be harmed again, until shortly before she left China. She responded that she was not afraid, she wanted to be brave and to fight against them. The Tribunal asked her to explain more clearly why she had continued to live at relative A's house knowing that the mine owner could return at any time. She agreed that her lawyer had told her she was "mad" and "wasn't being normal". However she felt she had nothing to lose. He had nearly taken her life. The Tribunal put to her that the mine owner could have returned and taken that too, and it was unclear why she had not tried to protect herself. She responded that she was not afraid of losing her life, and at that time had not thought about living or dying. She had just wanted to fight. She had wanted to help the miners, and wanted the mine owner and the PSB officers to be punished.

As to whether she had done anything else in terms of complaining, apart from writing the above-mentioned letters, she said that she had printed many "petition letters". Because she had often visited relative A before the mine accident and many local people knew her, it was easy for her to hand out these letters to households in the area. She said that she had no car but that a man in relative A's village had helped her do this. She said that after the assault she had visited the families of other miners, who had helped her.

As to whether there was any reaction to her letters from any source, she said that a few months later government officials came to investigate miners in another village. She heard from a relative of one of the miners that the investigators had told people that she was going to be a target of their investigation. He advised her to "run away". The Tribunal asked her why she was afraid of officials, given that they appeared to be investigating her allegations as she had requested. She said that they had told villagers that she had organised a petition. She said that her lawyer, who had contacts among officials, also had heard she was a target of the government. As to why the fact that the authorities were investigating her complaints did not indicate that they were sympathetic to her, she said they were not, and that they had been telling people that no more petition letters should be sent.

She said that her lawyer told her to stop lodging complaints, warning her that there was no law in that remote place. She told the Tribunal that her lawyer had also been assaulted.

As to why her lawyer and relative A had not left China when she did, she agreed that both had been frightened. However relative A had decided to stay in China for personal reasons. Of the lawyer, she said that she had not participated with the applicant in lodging any of the complaints, and that the applicant was the main target of the authorities.

She said that the lawyer had repeatedly warned her to "forget it", but she had wanted the government to help, had not wanted to give in and was not afraid.

The applicant said that she had had no contact with government officials, police, the mine owner or his thugs again despite remaining at relative A's home, some 10 days after officials

had visited the village and apparently expressed suspicions about her. As to why they might not have visited her, she indicated that she did not know. However villagers nearby warned her that officials were heading her way in a PSB vehicle, and she and relative A had run away. The applicant had hidden for a few days. Her lawyer advised her to leave China at that time.

As to news that she had received since her departure from China, she said that 10 days after arriving in Australia she had rung relative A to give her her mobile phone number here. Relative A had told her that X province government officials had come with a warrant to her husband's home in Y Province. Her husband had been told the warrant related to her being "anti-government" and stirring up coal miners to act against the government. Another of her relatives had told her that her solicitor had also been arrested, but the applicant did not know any more details about this.

The Tribunal discussed with her evidence that complaints lodged at provincial or central government level about corrupt activity at local level were known to result in the investigations of mine owners and off corrupt government officials. I asked her why she thought this had not applied in the situation she was describing. She said that there had been no investigation of the mine owner, who was still free. She thought the authorities wanted to arrest her because, it was rumoured, he had relatives in the provincial and central government. She says she was unsure if this was true, but had also heard that every year he gave a lot of money to government officials.

As to why she had got a passport, before she had any problems with the authorities in China, she said that she had applied for work reasons prior to these events. However in the end she had not gone because her husband had not wanted her to do so. As to why she had left China several weeks after her travel document was issued, she said that she had not known anyone in Australia, had not wanted to leave at that time and had still wanted to "do something" in China. However relative A and the lawyer had been encouraging her to leave. Relative A had arranged the travel documents. She said that relative A had also been assaulted by officials when she was in detention and did not want the applicant to be at risk of any further such treatment.

She agreed that she did not know what had prompted a charge to be laid against her since her departure - that is she did not know if the mine owner through his own contacts had arranged for this to take place or whether the authorities had wanted it anyway.

As to why her name was not on an alert list at the airport when she left China with her own passport, she said she did not know. She said she only knew that the police had gone to Y Province to arrest her after she left the country.

She told the Tribunal that she was very unhappy in Australia and was suffering from nightmares because of what had happened to her in China.

Evidence from other sources

According to the China Labour Bulletin, during 2005-2006 there were 3,341 accidents and 5,986 deaths in the coal mining industry. Accidents decreased by 10.9 percent to 2,945, and the number of deaths fell by 20.1 percent to 4,746. However, many coal mine accidents were either not reported or deliberately covered-up by mine owners in a bid to avoid harsh financial penalties. As such these official government statistics could not be relied upon to

present an accurate picture of China's coal mining industry. Moreover, many unsafe mines were closed down in the study period, reducing the accident rate in the short term but not addressing the underlying causes of accidents. Indeed, as the demand for coal continued to rise, the likelihood was that the number of accidents and deaths would increase (2007, CLB Research Reports No.5, "Speaking Out - The Workers' Movement in China (2005-2006), p.6, http://www.clb.org.hk/en/files/File/research_reports/Worker_Movement_Report_final.pdf, accessed 4 January 2008).

[Independent country information regarding coalmining accidents in China deleted]

The China Labour Bulletin reported recently that China's coal miners worked daily in one of the most life-threatening environments imaginable. Each year, at least 6,000 miners lost their lives in China as a result of preventable gas explosions and underground flooding.

One recent case involves an appalling accident in which 166 miners were killed in a massive gas explosion at the Chenjiashan Coal Mine in Tongchuan, Shanxi Province. The compensation sums initially offered to the bereaved families by the local authorities were dismally inadequate. CLB is currently assisting 13 of the bereaved Chenjiashan miners' families to seek punitive damages from the mining company in the amount of around 1 million yuan per dead miner, and we have obtained the services of a leading Chinese law firm to pursue this case aggressively through the courts. Underlying our strategy in this case is our firm belief that the families affected must be awarded exemplary compensation not only for basic humanitarian reasons, but also because a court ruling to this effect would send a powerful warning signal to coal mine owners throughout the country: miners' lives can no longer be seen as a cheap and easily expendable cost of production, but as something that will cost the mine owners dearly should they knowingly place them at risk through gross negligence of China's own work safety laws. (CLB website, Industrial Injury Cases 2007 "Coal Mine Cases", <http://www.china-labour.org.hk/en/node/100052>, accessed 4 January 2008).

In 2006 the official government newspaper, the China Daily, reported that a senior work safety official had vowed a further crackdown on illegal investment by government officials into coal mines, in a drive to clean up the industry. "As Premier Wen Jiabao has required, we will continue to strike hard at any illegal investment in coal mines by government officials," Zhao Tiechui, vice-minister of the State Administration of Work Safety, reportedly said. Zhao, also director of the State Administration for Coal Mine Safety, issued the warning on the sidelines of the ongoing annual session of the National People's Congress (NPC), China's top legislature. In his government work report to the NPC, Premier Wen placed an unprecedented emphasis on improving work safety. "We will conduct in-depth investigations into cases of dereliction of duty and corruption related to work safety and severely punish those responsible," Wen said. This report observed that illegal investment in coalmines by government officials had been widely blamed for their disregard of illegal or unsafe operations in the lucrative business. Zhao reportedly encouraged the public to report on corrupt practices and help seek out the officials who had invested in coalmines. To curb rampant coalmine accidents, his administration issued new safety rules for mines in September 2005, ordering the closure of illegal mines and the suspension of those failing to meet safety requirements (Zhigang, X., 2006, "Corruption in mining investment faces action", China Daily, 10 March, http://www.chinadaily.com.cn/english/doc/2006-03/10/content_530476.htm, accessed 4 February 2008).

222 people were punished after being held responsible for six catastrophic coal mine accidents that occurred across China since November 2004, the government announced in Beijing in December 2005. Of the central government investigation into and handling of the six major accidents, it said that 126 officials, including two vice provincial governors,

received disciplinary penalties within the Party or the government, while 40 others were stripped of their administrative posts (2005, "222 people punished for coal mine accidents", China Daily, 23 December, http://www.chinadaily.com.cn/english/doc/2005-12/23/content_506125.htm, accessed 4 February 2008). Another report observed that in 2007 a coalmine owner was fined one million yuan (US\$129,800) and sentenced to life in prison for covering up a gas blast that killed 21 people in Shanxi Province. Two of his managers were sentenced to 20 years' imprisonment, and another 19 defendants, including eight civil servants, were jailed. One of the owners of the illegal coalmine in Shanxi Province, where 14 people were killed in an explosion in April, was arrested. The police were searching for the other owner. Five other organizers had been detained. Another coalmine owner was detained after fleeing a coal mine in Puxian County, after a gas blast killed 28 people. Twelve other people connected to the accident had also been detained. State media reported that 133 people had been punished after being held responsible for five serious accidents that resulted in 249 deaths. Fifty-one people had been transferred to judicial departments while another 82 government officials at city and county levels had been disciplined. Three private coal mines involved in these accidents were fined more than 30 million *yuan* (US\$3.9 million) each (2007, Human Rights in China, "Labor", 31 May, <http://www.hrichina.org/public/contents/press?revision%5fid=42222&item%5fid=42212>, accessed 4 February 2008).

The U.S. State Department reported in 2007 (Country Reports on Human Rights Practices - 2006, released by the Bureau of Democracy, Human Rights, and Labor March 6, 2007) that in 2006 the State Administration for Work Safety (SAWS) acknowledged that occupational health and safety concerns remained serious. SAWS, which was elevated to ministry status in 2005, continued to develop the national framework for work safety. SAWS was responsible for workplace health supervision. In 2006 the law was amended to provide for criminal sanctions against individuals responsible for industrial accidents. In August 2006 SAWS announced a five-year US\$58 billion plan to invest in safety projects, including coal mine accident prevention, in an effort to reduce the industrial accident rate. The coal industry continued to suffer the largest number of accidents and fatalities as soaring demand and increasing prices drove companies to increase production of coal. During 2006 the number of deaths in coal mine accidents fell to 4,746, a decline of 20% from 2005. The government took other steps throughout the year to improve mine safety. However allegations of local government complicity in the cover-up of mining disasters continued. The central government announced plans to close 2,652 unsafe small coalmines during 2006, but extended the deadline to the first half of 2007 following resistance from local governments. Throughout the year, central and provincial authorities punished a number of mine managers and local government officials for their involvement in mine accidents.

The report went on to say that at times police used excessive force against demonstrators. Demonstrations with political or social themes were often broken up quickly and violently. Widespread market reforms and rapid growth had resulted in increased social unrest, with large-scale public disturbances on the rise for more than a decade. As in past years, the vast majority of demonstrations during 2006 concerned land disputes, housing issues, industrial, environmental and labour matters, government corruption, taxation and other economic and social concerns. During the first half of 2006, public security authorities reported 39,000 "public order disturbances". While the scale of disturbances and incidents varied, some included thousands of participants.

It also observed that some workers acted outside the ACFTU structure to demand back wages, pension or health insurance contributions, or other benefits owed by employers. The government took action against some of these workers, especially when they engaged in organized campaigns. Some workers who complained to local labour and social security bureau offices about working conditions reported that they faced harassment from their employers and police, and sometimes from labour bureau officials. Labour rights activists complained throughout 2006 of police surveillance, including interviews with police and police background investigations of their family members.

The government reported that 102 million workers participated in the country's work-injury insurance system, an increase of 17 percent over 2005. However, NGOs reported that local labour and social security bureaus frequently rejected claims for compensation by workers because employers failed to provide them with documentation as required by law. Workers showed a willingness to use lawsuits to pursue injury and illness claims against employers, but there were few sources of legal aid available.

The work safety law stated that employees had the right, after spotting an emergency situation that threatened their personal safety, to evacuate the workplace. Employers were forbidden to cancel the labour contracts or reduce the wages or benefits of any employee who takes such action. In practice such protective provisions were difficult to enforce. There were reports of serious accidents in which miners were killed when mine managers forced them to continue work under unsafe conditions.

FINDINGS AND REASONS

The Tribunal is satisfied, and finds, that the applicant is a national of the People's Republic of China.

Her evidence with regard to a serious accident in a coalmine at the time she stated is entirely consistent with evidence from the US State Department report above that there have been reports of serious accidents in which miners were killed when mine managers forced them to continue work under unsafe conditions. The Tribunal has noted reports of other such accidents in various parts of China in this period. However the Tribunal does not infer from its inability to locate a report about this particular mine incident that that incident did not occur. It is noted in the US State Department report (2007) that, although the government took steps to improve mine safety, allegations of local government complicity in the cover-up of mining disasters continued, and that there is endemic corruption in China. The Tribunal considers this evidence reliable. If the applicant's account is true, corrupt local officials would have been highly motivated to ensure there were no independent reports about it at the time it occurred, and it is relevant the accident took place in a remote part of the country where, presumably, such things could be hidden for a time.

The applicant has claimed that she subsequently alerted various bodies outside local government control to the fact that there had been a fatal accident at a particular coalmine and that she had thus drawn attention to the corruption of local officials. On this point the Tribunal notes evidence from the US State Department (2007) that in the PRC the press cannot report on corruption without government and party approval, despite authorities having approved reports regarding some "high-profile cases". In 2006 the Propaganda Department issued strict guidelines forbidding unsanctioned commentary and ordering all publications only to print Xinhua News Service reports. Publishers printed original material at their own risk. During the year journalists and editors who exposed corruption scandals

frequently faced problems with the authorities. The Tribunal is of the view that the absence of any press report about this accident does not mean did not occur.

The applicant gave her oral evidence in a manner which indicated to the Tribunal that she was being truthful about the events she described. The Tribunal considers her to have been a credible witness. It accepts that there was a serious mining accident, that she was seriously assaulted by a number of men as a result, and that the local authorities effectively refused to protect her or investigate these matters. The Tribunal accepts that a police officer was one of those who assaulted her and that the most senior police officer at the local police station refused to investigate this allegation and instead made an implied threat to her. That claim is entirely consistent with the evidence from the US State Department (2007) that corruption at the local level is widespread, and that police officers coerce victims, take individuals into custody without just cause, and mentally and physically abuse victims and perpetrators.

The Tribunal has considered her claim that she embarked on a campaign of petitioning various government departments to expose these matters. It does not seem consistent with that claim that she continued to live at relative A's home for a further two months or so, given the risk of reprisals. Notwithstanding that the complaints were anonymous, it seems clear, given their content, that her identity would be apparent to the police and her assailants once they came to know of the existence. As to why she chose to risk continuing to live at relative A's home, the Tribunal is satisfied that she was, and remains, very distressed and disturbed as a result of the serious assault on her, and that she was outraged by the actions of the mine owner, local government officials and the police. The Tribunal is satisfied that her judgement was impaired, and does not infer from her willingness to remain at relative A's home that she was not petitioning the authorities at the time. The Tribunal is also satisfied that her lawyer and relative A were concerned about the consequences to her of her high risk behaviour, and that is why they made arrangements for her to leave the country.

She claimed that no one came to relative A's home until some 10 days after officials came to a neighbouring village to investigate the matter. The Tribunal is unable to establish why there might have been this delay but considers it possible that news of the complaint did not reach the mine owner or local police until then.

The applicant claims that she has been told by relative A and husband that the authorities now intend to arrest her in relation to "anti-government" activities. In light of the evidence from the US State Department (2007) that central and provincial authorities have punished a number of mine managers and local government officials for their involvement in mine accidents, in theory her efforts to expose information about a mine accident to the proper authorities should not give rise to any effort to arrest her. However, the US State Department report also observes that some people having complained to local labour and social security bureau offices about working conditions who have faced harassment from employers and police, and sometimes from labour bureau officials. Labour rights activists have complained of police surveillance, including interviews with police and police background investigations of their family members. The Tribunal infers from this that the official responses to individuals who attempt to expose such matters as dangerous working conditions, police abuses of citizens and corruption among local officials may vary considerably. In the present case a number of people, particularly local police and officials, have an interest in labelling the applicant as "anti-government" in order to undermine the credibility of her allegations about them.

In the Tribunal's view the assault of the applicant by the mine owner, a police officer and other unidentified men was intended solely to intimidate her and relative A into silence. The assailants were effectively criminals who wanted to protect their interests and avoid prosecution. In other words the Tribunal is satisfied that, despite the very serious assault to which the applicant was subjected at relative A's home, at that stage the reason for it was not one of those enumerated in the Refugees Convention.

Of particular relevance in the present case the comments of Hill J who held, in the Full Federal Court in *V v MIMA* ((1999) 92 FCR 355), that:

The exposure of corruption itself is an act, not a belief. However it can be the outward manifestation of a belief. That belief can be political, that is to say a person who is opposed to corruption may be prepared to expose it, even if so to do may bring consequences, although the act may be in disregard of those consequences. If the corruption is itself directed from the highest levels of society or endemic in the political fabric of society such that it either enjoys political protection, or the government of that society is unable to afford protection to those who campaign against it, the risk of persecution can be said to be for reasons of political opinion. (*ibid*, at 367)

The evidence from the US State Department report (2007) is that safeguards against corruption in China are vague and poorly enforced, and that the authorities' method of dealing with corruption allegations is highly ambiguous. Although authorities severely penalise certain corrupt officials (Zhigang, X., 2006 et al), some individuals who expose corruption are punished. Journalists and editors who expose corruption scandals frequently face problems with the authorities, including one who was charged with blackmail and extortion and sentenced to one year in prison, having reported for his newspaper on alleged corruption among county officials in Hunan Province. Of particular relevance to the present case is the evidence from the US State Department (2007) that petitioners against corruption continue to face harassment, detention and incarceration. In the Tribunal's view the applicant's escalating campaign against both the criminal activity of police officers and against the corruption which contributed to the death of mineworkers was an expression of a political opinion. Her complaints to the appropriate authorities did not activate an investigation into these matters but instead appear to have attracted harm to her through an allegation that she was involved in anti-government activities.

The Tribunal is satisfied that, if the applicant were to return to China, she is likely to renew her campaign to publicise the above injustices. Under the circumstances the chance is not remote that she would face "harassment, detention and incarceration" because of her political opinion. As the US State Department's report makes clear, administrative detention is used frequently to intimidate political activists, and torture, sexual and physical abuse and extortion have been reported in detention centres and police stations across China. Under the circumstances the Tribunal is satisfied that there is a real chance the applicant will face treatment amounting to persecution.

Therefore the Tribunal finds that the applicant has a well founded fear of Convention related persecution in the People's Republic of China.

CONCLUSIONS

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

DECISION

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

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

Sealing Officer's I.D. PRRT42