

0801639 [2008] RRTA 205 (27 May 2008)

DECISION RECORD

RRT CASE NUMBER:	0801639
DIAC REFERENCE(S):	CLF2005/5049
COUNTRY OF REFERENCE:	People's Republic of China
TRIBUNAL MEMBER:	Giles Short
DATE DECISION SIGNED:	27 May 2008
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision and the application for review was lodged with the Tribunal.
2. The applicant is a citizen of the People's Republic of China. He arrived in Australia and he applied for a Protection (Class XA) visa.

RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Parts 785 and 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

‘(2) A criterion for a protection visa is that the applicant for the visa is:

 - (a) 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; or
 - (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.’
4. Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the ‘Refugees Protocol’ as ‘the Protocol relating to the Status of Refugees done at New York on 31 January 1967’. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.
5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a ‘refugee’ as a person who:

‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such 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.’
6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear ‘persecution’. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve ‘serious harm’ to the person and ‘systematic and discriminatory conduct’. Subsection 91R(2) states that ‘serious harm’ includes a reference to any of the following:
- (a) a threat to the person’s life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person’s capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:
- ‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:
- ‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’. Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’ It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions

or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

13. The Tribunal has before it the Department's file CLF2005/5049 relating to the applicant. The Tribunal also has before it the Tribunal's files including the tapes of previous hearing. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Mandarin language. The applicant was represented by a solicitor and registered migration agent.

The applicant's original application

14. According to the details in his original application he completed several years of education in his home town and he worked there as a farmer for many years. The applicant said that he had not had any difficulties obtaining his passport and that he had left China legally.
15. In a statement accompanying his original application the applicant said that he had been persecuted in China by the City Government for reasons of his membership of a particular social group which he defined as 'farmers of deprived land fighting for Living Right'. He said that in early 1990s the City Government had acquired 10,000 square kilometres of land without seeking consent from the farmers. He said that a fee had been paid to farmers. He said that in the late 1990s 'farmers lost their land and homes' and that '[t]ill [date], most of the farmers used out all the removal fee, [number] of farmers were facing living problems'.
16. The applicant said that the farmers had sued the government '[f]rom City to province, till Beijing, the central government' but that '[a]ll levels of courts and government bodies refused to take our appeals'. He said that there had been many ups and downs in 'the [number] years appeal process' and that some [number] 'members' had been 'detained, arrested and sentenced'. The applicant said that a media had broadcast a programme which had brought them great hope and that a local newspaper had published an item referring to this programme and saying that officers from the provincial land office were to investigate

the land problem. The applicant said, however, that the leader of the team conducting the investigation had been the person who had initiated the occupation of the farmers' land. He said that '[t]he sluggish case for farmers suing government finally restarted'.

17. The applicant said that in early 2000s his house and the house of a man named Mr Z had been demolished and all their belongings had been confiscated 'because we were fighting with government for protecting farmers' right on land'. He repeated that he and Mr Z and the other farmers had been suing the government for several years without success. The applicant said that the leader of the investigation, Mr X, had announced that 'this was a commonplace case' and had proposed compensation of a sum of money a month for the farmers who had lost their land. He said that the farmers who had lost their land had surrounded the city government to demand an explanation but no government officials had come out to see them. He said that armed police had been sent to force them to go.
18. The applicant said that the government had sent hundreds of police, public servants and leaders to carry out 24 hour supervision of himself, Mr Z and other 'delegates' who were fighting for the farmers. He said that several days later they had led the farmers to the city government asking them to solve the problem but that not long after they had arrived armed police had arrested him, Mr Z and a number of other 'representatives'. He said that he and Mr Z had been detained for several days and that they had been hit and tortured in the detention centre. He said that after a month they had received a decision from the Provincial Government refusing to review their appeal. He said that a couple of 'backbone members of representatives' had been arrested but he and Mr Z had luckily escaped from China. He said that they had been informed by relatives that the City Government was trying to arrest them and he said that he feared that the City Government would arrest, detain and torture him if he returned to China.

The applicant's evidence given to the second Tribunal

19. The applicant did not attend the hearing before the first Tribunal. At the hearing before the second Tribunal the applicant said that he had completed his original application form himself with the help of a friend because he did not understand English. He said that his friend had asked him the questions in his own language and had written down his answers on the form in English. He said that to the best of his knowledge the information in the application form was correct. He said that his friend had also prepared the statement accompanying his original application. He said that he had told his friend his story and then his friend had prepared the statement. He said that what his friend had written in the statement was true and correct and that there was nothing he wished to change.
20. The Tribunal asked the applicant his exact address - where he had lived - in China. The applicant gave the address which he had given in his original application, Address 1. The applicant said that he had been living at this address immediately before he had come to Australia and that he had lived there for some years. He said that this was not his home village, the place where he had been born. He said that he had moved to the new village when he was in his mid twenties. The Tribunal put to him that this meant that it had been in the late 1990s. The applicant said that it had been a long time ago and that his child had been born while he had been living there. The Tribunal asked the applicant how long it had been before his child had been born that he had moved to this address. The applicant responded that sometimes he had lived there and sometimes he had not. He said that it was a long time ago and he could not remember. He said, however, that his wife had been pregnant when they had moved to the new address.

21. The applicant said that before he had moved to the new address he had lived in Address 2. He said that this had been the village where he had been born. He said that Address 1 and Address 2 were about three to four *po* apart and that it took him an hour or one and a half hours to walk one *po*. He then said, however, that he had never walked between the two villages but that in a three-wheeled motor car it took one and a half hours. The Tribunal referred to the applicant's earlier evidence that sometimes he had lived at the new address and sometimes he had not. The applicant said that after their child had been born he and his wife had been living at the new address all the time. He confirmed that their child had been born in early 2000s. He said that his wife and child were still living at Address 1.
22. The applicant confirmed the details of his education set out in his original application. He confirmed that he had been a farmer 'at home' for many years. He confirmed that he had still been farming immediately before he had left China to come to Australia. The Tribunal asked the applicant if he had farmed the same land. The applicant said that he had farmed some bigger pieces of land and also some smaller pieces of land here and there. He said that the land he had farmed had been both in Address 1 and Address 2. He said that 'we have land in my home village and also in the village where I was married'. He confirmed that first he had farmed the land in the place where he had been born and then, after he had moved to Address 1, he had worked on a farm in that village. He said that he had owned most of the land he had farmed in Address 1 and the remainder had belonged to two other people. He confirmed that he had been working on the land he had owned in Address 1 until he had left China. He said that he had owned certain square metres of land and that the address he had given was also where the land was located.
23. Asked what he had farmed the applicant said that he had 'grown something to sell in the market', 'different things', like vegetables. He said that every year he grew different things, according to the demands of the market. Asked what he had grown he repeated that he had grown vegetables and he added that he had grown other produce. The applicant said that the amount he had grown had depended on the weather. He said that he had sold his produce to wholesalers. Asked who else had worked on the farm with him the applicant said that some of his friends had worked on his land with him. He said that sometimes they had made their own money and sometimes they had worked together and they had shared the profits. He said that sometimes he had contracted out his land to his friends. Asked roughly what his income from the land had been before he had left China the applicant said that it had been 30,000 to 40,000 yuan. He said that the weather was very important. The Tribunal asked the applicant again when he had moved to his house and land in Address 1. The applicant said that he had moved to Address 1 two years before his child had been born. He agreed that this would have been approximately in the late 1990s although he said that he was not sure.
24. The Tribunal asked the applicant how he had obtained the visa which he had used to travel to Australia. The applicant said that some friends had been trying to come over and he had taken the opportunity to come over as well. He said that his friends had told him that they were going to tell the Embassy that they were in business. He said that he had met these friends at the market. The applicant confirmed that he had left China travelling on a passport in his own name. He said that in Australia he was working.
25. The Tribunal asked the applicant why he had come to Australia. The applicant said that in early 1990s the City Government had taken land without the agreement of the farmers. He said that they had wanted 10,000 square kilometres. The applicant said that his land had been taken. He repeated that his friend had been talking about coming to Australia and he had taken the opportunity to come here. The Tribunal asked the applicant why he was afraid to

return to China. The applicant said that he was an 'ordinary member', part of the owners of the land which had been taken by the government. Asked again why he did not want to go back to China, he said that the farmers had had to protect their rights so they had joined an organisation of the farmers to protect their rights. He said that he had been a member. He said that if he went back to China the government would arrest him because his relatives in China had appealed to the Provincial Government. He said several of them who had been related to each other including him had been shareholders in the land. He said that they had appealed for compensation and the team leader had made his own decision on the grant.

26. The applicant confirmed that the farmers had been offered compensation of a sum of money per month for their land but the farmers had not been satisfied and had gone to appeal to the City Government. He confirmed that this was the reason why he feared he would be arrested if he returned to China. He initially said that apart from his land having been confiscated nothing else bad had happened to him in China. He said that he had not had any difficulties with the authorities in relation to the land and that he had not had any problems or bad experiences with the authorities apart from the confiscation of the land. However when the Tribunal asked him if he had ever been arrested or detained he said that because of the land problem he had been detained by the authorities with Mr Z for several days. He said that he had been arrested and taken to the detention centre. He said that many of them had gone to the city government to appeal because of the land and not long after they had arrived there the police had come. He said that a number of people - himself, Mr Z and 'other representatives' - had been arrested. He said that in the detention centre he had been tortured, beaten and mistreated. Asked why he had been released he said that he had told them his story about his land and he had been 'temporarily' released.
27. The applicant said that after one month they had received the decision from the Provincial Government. He said that they had refused to accept the application. Asked if anything else had happened to him after he had been released the applicant repeated that he had been 'temporarily' released and he said that they had still been investigating. He repeated that the money offered per month was not enough compensation and that this had been why they had appealed. He repeated that in early 1990s the City Government had confiscated or taken away the land without the consent of the farmers. The Tribunal noted that the applicant had nevertheless been able to continue farming until he had left China to come to Australia.
28. The Tribunal noted that the applicant did not claim that anything had happened to him after he had been released. The applicant said that his relatives had not been satisfied and had gone to appeal to the government so the government believed that the problem was not settled yet. He said that this was why they still wanted to arrest him. The Tribunal noted that the applicant had obtained a passport many months later and had left China legally so if the government had wanted to arrest him it had had the opportunity to do so. The applicant said that at that time the matter had not been fully investigated by the government yet. He said that he had left China because he had known he would be in trouble after further investigation. The applicant said that he had waited several weeks after his visa had been issued before leaving China because he had had to wait for other people to come together.
29. The Tribunal asked the applicant why he had said in his statement that in early 2000s his house and had been demolished and all his belongings had been confiscated. The applicant said that this was correct. The Tribunal put to him that he had said earlier that he had been living in Address 1 and farming land there from the late 1990s until he had left China. The applicant said that he had been living at his father-in-law's home, not his own home. The Tribunal noted that in his original application the applicant had said that he had lived at

Address 1 since mid 1990s. The applicant said that in mid 1990s he and his wife had just started to fall in love with each other. He said that ‘sometimes I lived there, sometimes not’. He said that Address 2 and Address 1 were a long distance apart so sometimes when it had been late he had lived there.

30. The applicant said that he could not remember whether he had taken part in any demonstrations besides the one he had mentioned. He said that this had happened long ago in China and he was living in Australia now.
31. The second Tribunal invited the applicant to comment in accordance with section 424A of the Act in relation to the discrepancies in his evidence with regard to where he had been living and also his delay in leaving China after his visa had been issued. The applicant responded as follows:

‘Firstly, about my address, [Address 1] was recorded at my National ID card, so usually I say I live at the above address. But after I got married, I lived in my wife’s home with my parents-in-law because my wife’s parents did not have a son. This address is [Address 2]. It is true that I said the house was demolished in [date] in my statement. It can not be lived until I repaired it. You know in countryside, the land and the house are my life. Where can I live else?’

Secondly, I paid money to the person who arranged me run away from China. I can not control anything, but I just followed the instructions.’

The applicant’s evidence given to the Tribunal as presently constituted

32. In a submission to the Tribunal as presently constituted the applicant’s representative said that the applicant claimed that he feared persecution in China on the Convention grounds of membership of a particular social group, which she defined as ‘dispossessed farmers’, and political opinion, based on his involvement in farmers’ protests against the resumption of their land. She produced copies of what purport to be a ‘Notice of Detention’ issued by the Public Security Bureau (PSB) stating that the applicant had been detained ‘at the 11th hour on [date] for disturbing official affairs through public gathering’ and a ‘Certificate of Release from Detention’ issued by the Public Security Detention Centre stating that the applicant had been detained for several days.
33. The applicant’s representative produced a press report in relation to the requisition of land in the applicant’s home city which indicates that it was approved as a state-level development zone in early 1990s and that it has a developed area of 10 square kilometres. She also produced various press reports and articles referring to the fact that the requisition of land for roads, factories and housing and office developments has become one of the most controversial topics in China because farmers evicted from their land and local residents evicted from their homes often complain of poor government compensation and forced removals. The reports and articles suggest that social unrest because of these and other problems in China is growing and that activists involved in violent confrontations with the authorities have been detained. The applicant’s representative submitted that as a dispossessed farmer who had protested against the government there was a substantial threat to the applicant’s personal security, human rights and human dignity on return to China. She submitted that China had put in place a legal system and procedures which systematically denied farmers their basic rights ‘available to others in their country’. She submitted that China systematically violated the human rights of anyone who opposed the government.

34. In a further submission the applicant's representative said that the answer in the applicant's original application in relation to his previous addresses (question 34 on Part C of the application form) had not been completed correctly and that it should have stated that he had lived in Address 2, from birth until the late 1990s and at Address 1, from the late 1990s until he had left China. She said that the home at Address 2 was the applicant's ancestral home and that the home in Address 1 was his wife's ancestral home. She said that it had been the applicant's ancestral home that had been confiscated and demolished by the Chinese authorities without any compensation and that the applicant and his family had then moved to his wife's ancestral home. She submitted that it had been the Chinese authorities who had confiscated the applicant's ancestral home and farmland, that the same authorities had assessed whether he would be compensated or not, and that the same authorities sent the police to disperse farmers when they protested against the authorities robbing them of their land, place to live and livelihood.
35. At the hearing before me the applicant said that he had his family in China. He said that he was the youngest in the family. He said that his child had been born in early 2000s. He said that his mother lived in his brother's house in Address 2. I asked the applicant when his father had died. He said that it had been a long time ago, more than ten years ago, and that he had not asked his mother. He said that when his father had died he had been living in the same household but he said that he could not remember when his father had died because it had happened a long time ago.
36. The applicant said that when he had been growing up he had lived in Address 2. The applicant said that when he and his siblings had been growing up they had lived in the same place but after they had got married they had moved away. He confirmed that his mother still lived with one of his brothers in Address 2. He initially said that they lived in the house where he had grown up but he then hastily corrected himself and said that the house where he had grown up had been damaged by the government so his mother lived in his brother's house. The applicant said that he himself had moved to live with his wife's family in the late 1990s but that he had sometimes lived there since mid 1990s. I noted that he had said that he and his wife had not married until 2 years later. The applicant then repeated that he had moved to live in his wife's house in the late 1990s. He said that his wife's home was in Address 1.
37. I noted that in the letter which the applicant had sent to the Tribunal after the first hearing he had said that his wife's home was in Address 2 and that his home was in Address 1. The applicant said that his wife sometimes lived in his village and she sometimes lived in her village because he had had to look after his mother. I noted that the applicant had said in the letter that he had given Address 1 in his original application because this had been the address on his National Identity card. The applicant said that after his marriage he had entered into his wife's household registry so he had used his wife's home address as the address for his ID card. He said that he had had to look after two families: He had had to look after his own mother and he had had to look after his wife's parents. I noted that he had told me that his own mother was living with his elder brother in Address 2. The applicant said that before his marriage he had lived in Address 2 but after he had married he had had to move to his wife's home to avoid persecution.
38. I asked the applicant again why he said that he had had to look after two families, given that he had said that his mother had been living with his elder brother in Address 2 at the same time that he had been living with his wife's family in Address 1. The applicant said that what he meant was that in his family there had been many boys but in his wife's family there had

been no boys so after the marriage he had agreed to look after her family. I noted that this had been what he had said in the letter he had sent to the Tribunal after the hearing that he had gone to live with his wife's family because his wife's parents did not have a son. I put to the applicant that this suggested that he had been looking after his wife's family and that someone else - his elder brother - had been looking after his mother. The applicant said that before it had been him who had looked after his mother. He said that his mother's land had been passed on to him.

39. The applicant confirmed that, as he had said in his original application, from the 1990s until he had left China he had worked as a farmer in his home town. He likewise confirmed that, as he had said at the first hearing, he had farmed land both in his home village, Address 2, and also in his wife's village, Address 1. I noted that he had said that he had owned most of the land he had farmed in Address 1. The applicant said that he had owned one part of it. I noted that he had said that the remainder had belonged to two other people. The applicant said that he had had part of the land in Address 1 and that the other part had belonged to other villagers and villagers from the next village. I asked him how much land he had owned and he said that together the land he had owned in Address 2 and Address 1 had amounted to a number of square metres. He confirmed that his annual income from his land had been 30,000 to 40,000 yuan depending on the weather.
40. I referred to the applicant's evidence that in early 1990s the City Government had acquired 10,000 square kilometres of land. I put to him that the document his representative had produced suggested that the City Government had a developed area of only 10 square kilometres. The applicant said that maybe it was a wrong calculation or a mistake made by his friend who had helped him to prepare his application. I noted that the applicant had repeated this figure at the first hearing before the Tribunal. The applicant confirmed that he claimed that 10,000 square kilometres had been acquired by the City Government. I put to him that the development zone did not consist of 10,000 square kilometres of land but only 10 square kilometres. The applicant said that maybe the reference to 10 square kilometres in the document produced by his representative was a mistake. He reiterated that he claimed that the development zone had an area of 10,000 square kilometres. I asked him if he had any idea how large an area 10,000 square kilometres was. The applicant said that he knew it was very big. I explained to the applicant that these questions went to whether I believed he was telling me the truth. I noted that he obviously had some conception of the measurement of area because he had been able to tell me the size of his own land. I noted that 10,000 square kilometres was many times the size of his own land. The applicant said that when he talked about how big his land was he used the local dialect. He said that he was not sure how to calculate between the units.
41. I asked the applicant how much of his mother's land - which he had said had been passed on to him - had been affected by the development zone. The applicant said that all of his land had been used by the development zone. I noted that the applicant had said that between 1990s and up until he had left China he had farmed land both in his home village, Address 2, and also in his wife's village, Address 1. The applicant said that this had only been a little bit. He said that most of the land had been taken so he had not been able to support his family. I noted that the applicant had said that he had been earning 30,000 to 40,000 yuan. The applicant said that he had had to pay for fertiliser and salaries so he had not had much left after deducting the expenses. I noted that at the previous hearing the applicant had said that he did not employ anyone. The applicant said that he meant that he had made 30,000 to 40,000 yuan but this had not been all in his pocket, he had had to pay others as well. I noted

that what the applicant had been asked at the previous hearing was what his annual income from the land had been and he had confirmed again at the hearing before me that his annual income from the land had been 30,000 to 40,000 yuan. The applicant said that his income had been 30,000 to 40,000 yuan but after deductions, after paying salaries and deducting expenses, he had not had that much in his pocket. I put to the applicant that it appeared that he was altering his evidence and that this was relevant to whether I believed he was telling the truth. The applicant said that he was telling the truth.

42. I referred to the applicant's evidence that a fee had been paid to farmers of a certain age group and that some farmers had been paid a sum of money a month. The applicant said that he had received his payment but this was not much for a big block of land. I referred to the applicant's evidence that in the late 1990s 'farmers lost their land and homes'. The applicant said that this was correct. He said that this was a separate acquisition from that made by the City Government in early 1990s. He said that in early 1990's they had acquired the land and in the late 1990s they had acquired the land again. I put to him that they could not have acquired the same land twice. The applicant said that there had been two pieces of land involved, one in the village where he had been born and the other in Address 1. He confirmed that he claimed that in the late 1990s farmers had lost their land and homes in Address 1. I noted that as we had discussed the applicant had said that he had continued to farm land in both Address 2 and Address 1 up until he had left China. The applicant said that only a small piece of land had been left and that it had not been enough to make a living.
43. I asked the applicant if, when he referred to a small piece of land, he meant the size of land we had discussed earlier. The applicant initially said that he did, but he then said that he did not. He said that he had had this land before but after the land had been acquired by the government he had not had such a large piece of land. I noted that this was not what he had said at the previous hearing and it was not what he had told me earlier in the hearing before me. The applicant said that he had meant that before the land had been acquired by the government he had been able to make 30,000 to 40,000 yuan from that land but after the seizure by the government he had not been able to make a living.
44. I noted that at the previous hearing the applicant had been asked what he had earned from his land in the year before he had left China to come to Australia and that it had been in this context that he had said that his annual income had been 30,000 to 40,000 yuan. I noted that earlier in the hearing he had said that this had not in fact been his income and that after expenses he had had almost nothing but now he seemed to be saying that this had been what he had earned from the land but that he had not earned this after the land had been confiscated. I put to the applicant that if he kept changing his evidence I might not believe that he was telling the truth. The applicant said that he had not changed his evidence. He said that he did not have much education and he did not know how to say some things in Mandarin.
45. I referred to the applicant's evidence that in early 2000s his house had been demolished and all his belongings had been confiscated. I noted that the applicant's representative had said that this referred to the applicant's ancestral home in Address 2 but that the applicant had said that he had already moved to live with his wife's family in Address 1 some years ago. I noted that the applicant had said in the letter he had written to the Tribunal previously and he had confirmed again at the hearing before me that he had moved to live with his wife's family not because his own home had been demolished but because his wife's parents did not have a son. The applicant said that after the ancestor's house had been demolished his mother had had nowhere to live and she had moved to his brother's home to live there.

46. I noted that this might mean that the applicant's mother had had nowhere to live but it did not mean that the applicant had had nowhere to live: he had already moved to live with his wife's parents. The applicant said that he had had nowhere to live as well. He said that it had not mattered whether he had lived in Address 2 or Address 1: if the government had wanted to arrest him they could still have found him. I noted that we would come to these claims but the applicant's representative had claimed that the applicant had been left without a home because his home had been demolished. The applicant said that during the 1990s he had lived in both homes, in his own home and in his wife's home as well. He said that he had needed to support his wife's parents because his wife's father had passed on the land to him to farm.
47. I referred to the applicant's evidence that he and the other farmers had been suing the government for several years without success and I asked him when they had started doing this. The applicant thought for a long while, repeated the question, and then said that it had been a long time ago and that he did not remember. I noted that he had given various dates for various things. He had said that the land had been acquired by the City Government in early 1990s. He had also said that farmers had lost their land and homes in the late 1990s. He had told me that this was a different land acquisition from the previous one. I put to the applicant that I did not understand what period he was referring to. The applicant asked me to repeat what had happened in early 1990s and what had happened in the late 1990s. I noted that this was all in his statement. The applicant repeated that the City Government had started to acquire the land in early 1990s and farmers had lost their land and homes in the late 1990s. He said, however, that he could not remember when he had started to appeal. He said that he had been in Australia for a few years and there were many things he did not remember clearly. He said that he was working now and he did not think much about what had happened before so he could not remember well some of the things that had happened before.
48. I noted that the applicant had said in his statement that he had appealed to all the levels of government: the city, the province and even the central government in Beijing. I put to him that this was something I would expect him to be able to remember if he were telling the truth: it would have been a significant event in his life. The applicant repeated that he had been in Australia for a few years, that he had a stable job now and that he did not think much about what had happened before. He said that it was a long time ago. I asked the applicant what his role had been in these appeals or what he himself had actually done. The applicant repeated that he could not remember. I asked him if he could tell me anything about his involvement in these years of appeals to the city, to the province, to the central government in Beijing. The applicant said that he might not be able to tell this in sequence and that he would only tell me what he could remember. He said that on a particular date he had led a number of farmers to the city government.
49. I noted that I was not asking about this but about the appeals he claimed to have made for several years prior to that. I asked the applicant again whether he could tell me anything he had done in relation to these appeals. The applicant said that he had been a member to organise for this land because the land had been taken. I asked him again what he had done. The applicant said that the other farmers and himself had not got any help from the government. They had lost their land, their homes and their jobs. He said that it had been exposed by the media but for a period of time the government had still not served the programme. He said that they had sent the police to monitor them: 24 hours monitoring including him and Mr Z. They had stopped them from appealing to any government authority. The applicant said that they had lost their quiet life.

50. I referred to the applicant's evidence that a media had broadcast a programme about the requisition of land. The applicant confirmed that this had been about the issue of land. I referred to his evidence that a few days later a local newspaper had published an item referring to the previous programme. The applicant confirmed the date of the local newspaper had reported. I noted that the applicant had said that after the programme, and two days before the newspaper had published the item, that the compensation of a sum of money a month for the farmers had been proposed. The applicant said that this was correct. I noted that I did not understand the sequence of events or the significance of the item in the local newspaper. The applicant said that the land had been taken and the farmers had appealed to the city government. I noted that according to the applicant by this time they had appealed not only to the city government but to the provincial government and the central government. The applicant said that they had had to but nobody had paid any attention.
51. I referred to the applicant's evidence that a number of farmers who had lost their land had surrounded the city government to demand an explanation. The applicant said that he had been part of this protest. He said that the government had not shown up. He said that after a while the police had appeared and then until the next day. I asked the applicant what he meant and the applicant repeated that a number of farmers had gathered before the city government and after a while the police had come. He then said 'let me think' He repeated again that a number of farmers had gathered around the city government asking for a fair explanation about the land and that the government had not shown up. He said that on the next day the armed police or paramilitary police had come and had dispersed the farmers.
52. I referred to the applicant's evidence that after this he had been put under 24 hour surveillance or watch. The applicant confirmed that this was correct. I noted that he said that despite this he had been able to lead a number of farmers to the city government several days later. I asked the applicant how he had been able to do this if he had been under 24 hour watch. The applicant said that he had been under surveillance. He said that after a few days he had taken the opportunity to go to the city government again with a number of farmers. I put to the applicant that if he had been under surveillance this would have been the sort of thing I would have expected that the authorities would not have missed, given that he claimed that a number of farmers had been involved. The applicant said that the 24 hour watch had been not to allow them to go into the government building. He said that after the armed police had come they had left and then several days later they had gone there again.
53. I put to the applicant that in his statement he had said that, after what had happened at the local government building, the government had sent hundreds of police, public servants and leaders to carry out 24 hour supervision of himself, Mr Z and other 'delegates' who were fighting for the farmers. The applicant said that they had only been watched for 24 hours, then the armed police had come. I noted that according to his statement this had been after the armed police had come and they had had to leave. The applicant said that this had been between a particular period of time. He said that 'when we saw that they were not monitoring us, we took the chance to go again' I put to the applicant that it appeared that he was not very comfortable telling me this story. I noted that he could repeat what was in the statement but he could not explain to me what was in the statement and this might lead me to believe that the statement had been drafted by someone else and that it bore no relationship to the truth. The applicant said that he had written the statement himself but he did not know how to say it according to the law.
54. I referred to the applicant's evidence that he had been arrested and detained for several days and I asked him if he had been charged with any offence. The applicant said that he had been

charged. He said that he had had to appear in court but after I asked him when he had appeared in court he said that as he recalled it had been after a month that they had received the decision from the Provincial Government refusing to consider their appeal. I asked him if he was saying that he had had to appear in court in connection with this appeal. The applicant said that he could not remember which year this had been. He repeated that this had happened a long time ago, that now he was quite satisfied with his work and that he did not think much about what had happened before. I note that earlier he had told me that when he had been detained he had been charged with an offence and that he had had to appear in court. I asked the applicant if he had been convicted of the offence. The applicant said that he had not been convicted, he had been detained, his friend had spent money and then he had been released.

55. I asked the applicant if he was saying that his friend had spent money to obtain his release. The applicant said that his friend had helped with money so he had been released. I noted that at the previous hearing when he had been asked why he had been released he had said that he had told them his story about his land and he had been released. The applicant conceded that he had not mentioned that he claimed that his friend had paid money to obtain his release. He said that he thought that this was because of his education, he had forgotten to say it. He said that this had happened a long time ago, from early 1990s, he was not well-educated and he was not able to express himself well, to tell everything exactly the same in details each time. I put to the applicant that the event we were talking about had taken place a few years ago, if it had taken place at all, so it was not a long time ago. I put to him that I did not accept that his level of education had anything to do with whether he could tell the truth about that event or not. The applicant said that a few years ago might seem a short time to me but for him it was different because he was here now, he had a stable job, he thought about his job most of the time so he could not remember clearly what had happened previously.
56. I asked the applicant why he said he feared he would be arrested if he returned to China now. The applicant said that his relatives in China were still appealing to the government. He said that the previous month he had telephoned his wife and she had told him that the police were still looking for him. He said that his child had also told him that the police were asking about him.
57. I put to the applicant that the Australian Department of Foreign Affairs and Trade (DFAT) had advised in January 2003 that a person who had come to the adverse attention of the Chinese Government would experience difficulty in obtaining a legal passport. It had said that checks with the Public Security Bureau in the applicant's place of registered residence would reveal any adverse records held by public security organs on the applicant (DFAT Country Information Report No. 12/03, dated 15 January 2003, CX72393). I noted that the applicant had obtained a passport in what he claimed was his true identity. I put to the applicant that this cast doubt on his claims that he had been arrested and detained for his involvement in a protest by farmers in relation to confiscated land. I put to the applicant, with regard to the documents he had produced in support of this claim, that the Australian Department of Foreign Affairs and Trade had also advised that any official document could be either bought or forged in China. It had therefore suggested that little evidentiary weight could be placed on any official Chinese document (DFAT Country Information Report No. 301/00, dated 5 June 2000, CX42649). I put to the applicant that this might make it difficult for me to believe that he had been arrested and detained as he claimed, or indeed that the

Chinese Government had any interest in him or that, as he said, the authorities were coming to his home looking for him to arrest him if he returned to China.

58. The applicant said that his friend had helped him to get his passport. He said that in China money talked. I asked the applicant if he was saying that he had paid money to obtain his passport. The applicant confirmed that he was claiming this and he added that he had used his wife's *hukou* (household registration) as his address. He said that he did not know how his friend had done this but his friend had helped him with many things in getting out of China. I put to the applicant that the Australian Department of Foreign Affairs and Trade had said that illegally obtaining a passport in the applicant's own name through bribery would be possible, but highly risky and expensive, and that it would be easier to obtain a passport using someone else's identity (DFAT Country Information Report No. 12/03, dated 15 January 2003, CX72393). The applicant said that he did not understand.
59. I repeated that the Australian Department of Foreign Affairs and Trade had said that before someone was issued with a passport the authorities would check with the PSB in the applicant's place of registered residence, which in his case had been his wife's home in Address 1. I put to him again that this made it difficult to believe that he would have been issued with a passport if he were telling the truth about his arrest and detention and the continuing interest in him even now. The applicant said that the Chinese officials were very corrupt. I put to the applicant that the Department had taken account of this and had said that it would be possible to obtain a passport in one's own name through bribery but that it would be highly risky and expensive and that it would be easier to obtain a passport using someone else's name (DFAT Country Information Report No. 12/03, dated 15 January 2003, CX72393). The applicant said that his friend had been capable of helping him. He said that his friend had told him that he could use his own ID to apply for his own passport.
60. I noted that the applicant's representative had submitted that the applicant feared persecution as a member of a particular social group which she had defined as 'dispossessed farmers'. I put to the applicant that, to the extent that the persecution feared was dispossession, the suggested particular social group used the feared persecution to define the group, which was not permissible (see *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225; *Applicant S v Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387). I put to the applicant that I did not accept on the evidence before me that 'farmers' as a group were persecuted for reasons of their membership of that group in China. I noted that the applicant's representative had submitted that farmers were treated differently from other people in relation to the confiscation of land but that the material she had submitted suggested that they were treated in the same way as everybody else: urban residents were equally affected by these problems. The applicant said that he understood this to some extent but the policy in China was different to the policy in Australia. He said that land was very important to farmers. He said that he was still facing harm and he repeated that his wife had told him that they were still looking for him.
61. The applicant produced the originals of the 'Notice of Detention' and the 'Certificate of Release from Detention'. I noted that we had already discussed these documents and that I had explained why I might not give them great weight. I repeated that the Australian Department of Foreign Affairs and Trade had advised that any official document could be bought or forged in China and that it therefore suggested that little evidentiary weight could be placed on any official Chinese document (DFAT Country Information Report No. 301/00, dated 5 June 2000, CX42649). The applicant said that he was providing me with the real or true documents. He said that other people might have purchased false documents but he had

not done this. He said that some documents were true and some documents were false just as some people were good and some people were bad. He said that he was one of the truthful people. He said that because he did not know the law and he was not well-educated maybe he could not express himself well and he did not know how to say things in accordance with the law. He asked me to consider the fact that he was a farmer, that he was not well-educated and that he could not express himself well. He said with regard to any inconsistency between his evidence at the previous hearing and what he had said at the hearing before me that this was attributable to the fact that he now had a job, and every day he did different things.

FINDINGS AND REASONS

62. I accept that, as Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, ‘in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for’. However this should not lead to ‘an uncritical acceptance of any and all allegations made by suppliants’. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

‘Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another’ (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)

63. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

‘in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.’

64. If, however, the Tribunal has ‘no real doubt’ that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O’Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a ‘positive state of disbelief’ before making an adverse credibility assessment in a refugee case.

65. In the present case, as I indicated to the applicant in the course of the hearing before me, I consider that there are good reasons for concluding that the claims which were made in the statement accompanying the applicant’s original application for a protection visa are not true. In forming a view as to the applicant’s credibility I have taken into account that, as he said at the hearing before me, he is not well-educated, that he does not know how to say some things in Mandarin and that, because he does not know the law, he does not know how to say things in accordance with the law. However, as I put to him, I do not accept that his lack of

education explains his claimed inability to remember the events in which he claims to have been involved in China. The applicant's level of education may explain the fact that at both the hearing before the second Tribunal and the hearing before me he was very vague with regard to dates, for example with regard to when he had moved to live with his wife's family in Address 1, but it was conspicuous that the applicant claimed to be able to remember the specific dates mentioned in the statement accompanying his original application. As I put to the applicant, I formed the view in the course of the hearing before me that, while he was able to repeat what was in that statement, he was not able to explain it or to go beyond that account.

66. By way of example, at the second hearing the applicant repeated the claim made in the statement accompanying his original application that in early 1990s the City Government had acquired 10,000 square kilometres of land. At the hearing before me, when I put to him that the document his representative had produced suggested that the City Government had a developed area of only 10 square kilometres, the applicant initially said that maybe this was a mistake made by his friend who had helped him to prepare his application. When I noted that the applicant himself had repeated this figure at the second hearing the applicant confirmed that he claimed that 10,000 square kilometres had been acquired by the City Government and he suggested that maybe the reference to 10 square kilometres in the document produced by his representative was a mistake. As I noted, the applicant clearly had some conception of the measurement of area since he was able to say that he had owned a number of square metres of land and he acknowledged that 10,000 square kilometres was a very big area. I prefer the evidence contained in the document produced by the applicant's representative to the effect that the City Government has a developed area of only 10 square kilometres. I consider that in claiming that 10,000 square kilometres were acquired the applicant was simply repeating what had been said in the statement accompanying his original application without regard for the truth.
67. The applicant claimed in the statement accompanying his original application that, following the protest in which he claimed to have been involved, the government had sent hundreds of police, public servants and leaders to carry out 24 hour supervision of himself and others but he was similarly unable at the hearing before me to explain to me how, if that had been the case, he had then been able to lead a number of farmers to the city government several days later, as he claimed to have done. Likewise, when I asked the applicant about the appeals to the city government, the provincial government and even the central government in Beijing in which he claimed to have been involved, he proved unable to give me any details at all with regard to his involvement. As I put to the applicant, I consider that these would have been significant events in his life if he were telling the truth and that he would be able to remember something about them. I do not accept that the fact that, as the applicant said, he has now been in Australia for some years, he has a job and he does not think much about what happened in China explains his inability to tell me anything about these events in which he claims to have been involved beyond repeating what was said in the statement accompanying his original application. As I put to the applicant, I consider that someone else drafted this statement for him and that it bears no relationship to the truth.
68. The applicant also changed his evidence in significant respects in the course of the hearing before me. The applicant said at the second hearing that he had been working on the land he had owned in Address 1 until he had left China, that he had owned a number of square metres of land and that the address he had given, Address 1, was also where the land was located. Asked roughly what his income from the land had been when he had left China the applicant

said that it had been 30,000 to 40,000 yuan. At the hearing before me, however, the applicant initially said that this had been what he had earned before expenses and that after paying for fertiliser and for salaries he had not had much left. He subsequently said that before his land had been acquired by the government he had been able to make 30,000 to 40,000 yuan but that after the seizure by the government he had not been able to make a living. As I put to the applicant, what he was asked at the hearing before the second Tribunal was what he had earned from his land in the year before he had left China to come to Australia and it was in this context that he said that his annual income had been 30,000 to 40,000 yuan. Moreover the applicant also sought to change his evidence with regard to the area of the land he had owned, saying that the figure he had given related to what he had had before his land had been acquired by the government. As I put to the applicant in the course of the hearing before me I consider that these changes in his evidence are relevant to his credibility. I do not accept that the claims which were made in the statement accompanying the applicant's original application for a protection visa are true.

69. Under cover of her submission the applicant's representative produced copies of what purport to be a 'Notice of Detention' issued by the Public Security Bureau (PSB) stating that the applicant had been detained 'at the 11th hour on [date] for disturbing official affairs through public gathering' and a 'Certificate of Release from Detention' issued by the Public Security Detention Centre stating that the applicant had been detained for several days. The applicant produced the originals of these documents at the hearing before me. However, as I put to the applicant, the Australian Department of Foreign Affairs and Trade has advised that any official document can be bought or forged in China and that it therefore suggests that little evidentiary weight can be placed on any official Chinese document (DFAT Country Information Report No. 301/00, dated 5 June 2000, CX42649). The applicant said that the documents he had produced were real or true documents and that he was one of the truthful people. Unfortunately for the reasons given above I do not accept that the applicant is one of the truthful people. Having regard to the advice of the Australian Department of Foreign Affairs and Trade I do not give the documents which the applicant produced great weight and I do not consider that they outweigh the problems I have with the applicant's own evidence.
70. I accept that the applicant was a farmer in China. I do not accept, however, that he moved from Address 2 to Address 1 because his ancestral home in Address 2 was confiscated and demolished or because any land which he owned in either Address 2 or Address 1 was compulsorily acquired, whether for the City Government or for any other purpose. I find that the applicant moved from Address 2 to Address 1 because his wife's parents did not have a son and his wife's father passed on the land in Address 1 to him to farm. Having regard to the applicant's evidence at the hearing before me I do not accept that he or his relatives were involved in any appeals to the city, provincial or central government in relation to the compulsory acquisition of land nor do I accept that the applicant was a member of any group or organisation formed by farmers to protect their rights. I do not accept that the applicant was involved in leading farmers to protest to the city government, nor that as a result the government sent hundreds of police, public servants and leaders to carry out 24 supervision of him, nor that the applicant was arrested and detained for several days and tortured, beaten or mistreated. As I put to him in the course of the hearing before me, the applicant also altered his evidence in relation to the manner in which he claimed to have obtained his release from detention: at the hearing before the second Tribunal when he was asked why he had been released he said that he had told them the story about his land but at the hearing before me he claimed that his friend had spent money in order to obtain his release.

71. Moreover, as I put to the applicant, I consider that the fact that he obtained a passport in what he claims is his true identity (see the copy of the passport which he produced to the Tribunal at the second hearing) casts doubt on his claim that he was arrested and detained for his involvement in a protest by farmers in relation to confiscated land. As I put to the applicant, the Australian Department of Foreign Affairs and Trade advised in January 2003 that a person who had come to the adverse attention of the Chinese Government would experience difficulty in obtaining a legal passport. It said that checks with the Public Security Bureau in the applicant's place of registered residence would reveal any adverse records held by public security organs on the applicant (DFAT Country Information Report No. 12/03, dated 15 January 2003, CX72393).
72. The applicant said that he had used his wife's *hukou* as his address when he had obtained his passport but he told me earlier in the hearing that he had entered into his wife's household registry long before he claimed to have been arrested and detained so I do not accept that any adverse records would not have been apparent to the PSB in his place of registered residence, namely his wife's home in Address 1. The applicant claimed that he had paid money to obtain his passport but, as I put to him, the Australian Department of Foreign Affairs and Trade said that, while it would be possible to obtain a passport in one's own name through bribery, it would be highly risky and expensive and it would be easier to obtain a passport using someone else's name (DFAT Country Information Report No. 12/03, dated 15 January 2003, CX72393). The applicant said that his friend who he claimed had helped him to obtain his passport had told him that he could use his own ID to apply for his passport. However, having regard to the advice of the Australian Department of Foreign Affairs and Trade I remain of the view that the fact that the applicant obtained a passport in his own name casts doubt on his claim that he was arrested and detained for his involvement in a protest by farmers in relation to confiscated land. Having regard to the advice of the Australian Department of Foreign Affairs and Trade referred to above I do not give great weight to the documents which the applicant produced in support of this claim and I do not consider that those documents outweigh the problems I have with the applicant's own evidence.
73. Having regard to the view I have formed of the applicant's credibility I do not accept that the applicant was in fact arrested and detained as he claims. I do not accept that the applicant had come to the adverse attention of the Chinese Government before he was issued with a passport and I do not accept that, as he claims, the police are still looking for him now. I do not accept that the applicant was ever involved in farmers' protests in relation to land issues or in any other anti-government protests or appeals in China nor that there is a real chance that he will be involved in any such activities if he returns to China now. I do not accept that the applicant's relatives have been involved in such protest or appeals, as the applicant claims, nor that there is a real chance that the applicant will be imputed with an anti-government political opinion as a result of the involvement of his relatives in such activities. I do not accept that there is a real chance that the applicant will be arrested, detained, tortured or otherwise persecuted for reasons of his real or imputed political opinion if he returns to China now or in the reasonably foreseeable future.
74. As referred to above, in the statement accompanying his original application the applicant said that he had been persecuted in China by the City Government for reasons of his membership of a particular social group which he defined as 'farmers of deprived land fighting for Living Right'. In her submission the applicant's representative said that the applicant claimed that he feared persecution in China on the Convention ground of membership of a particular social group which she defined as 'dispossessed farmers' As I

put to the applicant in the course of the hearing before me, to the extent that the persecution feared by the farmers is being dispossessed or deprived of their land, I consider that the suggested particular social group uses the feared persecution to define the group in a way which is not permissible in accordance with *Applicant A* and *Applicant S*, referred to above. For the reasons given above I do not accept that the applicant was involved in fighting for the living rights of farmers, nor that there is a real chance that he will be involved in such activities if he returns to China now.

75. As I put to the applicant, I do not accept on the evidence before me that ‘farmers’ as a particular social group are persecuted for reasons of their membership of that group in China. In her submission the applicant’s representative submitted that the legal system in China denied farmers basic rights which were available to others in China, but, as I put to the applicant in the course of the hearing before me, I do not accept on the basis of the material which the applicant’s representative herself submitted that this is true. I consider that the material which the applicant’s representative submitted suggests that farmers are treated in the same way as everybody else in China and that urban residents are equally affected by the problems caused by the requisition of land for roads, factories, housing and office developments in China.

CONCLUSIONS

76. I have considered the applicant’s claims in their totality but for the reasons given above I do not regard the applicant as a credible witness and I do not accept his claims. Having regard to my findings above, I do not accept that the applicant has a well-founded fear of being persecuted for a Convention reason if he returns to China now or in the reasonably foreseeable future. I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Act for a protection visa.

DECISION

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

<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 Migration Act 1958. Sealing Officer’s I.D. PRRRNP</p>
