

0803916 [2008] RRTA 332 (8 August 2008)

DECISION RECORD

RRT CASE NUMBER: 0803916

DIAC REFERENCE(S): CLF2007/177965

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: C Packer

DATE DECISION SIGNED: 8 August 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

1. 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).
2. The applicant, who claims to be a citizen of China (PRC) arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa.
3. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. 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

5. 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.
6. 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).
7. 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'

8. 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.
9. 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.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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

Primary application

18. The Department received the application. The application forms contained various details.
19. In Part B the applicant indicated:
- He was the only applicant.
 - He indicated at question 6 that he had never been convicted of a crime or offence, or been charged with an offence that was awaiting action.
 - He was married to his wife who was in China.
 - He had children in China.
 - A friend assisted him with the form.
20. In Part C the applicant indicated:
- He was male, born in China and had Chinese citizenship.
 - He was in his forties at the time of application.
 - He required a Chinese interpreter. He could speak, read and write Mandarin.
 - His ethnic group was 'Han'.
 - He indicated no religion ('no').
 - He was married in China.
 - His occupation before he left China was '[position]'.
 - He travelled to Australia as a visitor.
 - He travelled on a passport issued in China.
 - He indicated he previously travelled to Country A and Australia.
 - His gave no details about his last Australian visa.
 - He indicated that he had lived at his home city for many years.
 - He received a number of years of schooling in China.
 - His stated his past employment.
 - He left China on a particular date.
 - He left legally.
 - He did not have any difficulties obtaining a travel document.
 - He had not applied for refugee status in any other country.
 - At Part C, Schedule A he indicated no convictions, charges or investigations.

21. In his application the applicant's claims appear as a 3 page statement typed in English. A copy of his claims follow:

My name is [name]. I am a male Chinese citizen born on [date] in [applicant's home city]. I left China on [date] and arrived in Australia on [date]. I am a Falun Gong practitioner. I suffered persecution from the Chinese government in China The authority was hunting me down due to my distribution of the booklet "Nine Commentaries on Communist Party", an anti-CCP booklet. I have the fear of returning to Chian and of being detained.

1. I started my Falun Gong practice through the introduction of my colleagues in [date]. During these days, people from all walks of life joined Falun Gong practice in public. Under their guidance, I joined the Falun-Dafa-learning group to learn Dafa and to share our practice experience. We all held the view that Falun Gong brought tremendous benefit to the Chinese people for life, work and study and to the stability of society as well.

2. On 20 July 1999, the Chinese government started its nation-wide campaign to crackdown Falun Gong. The police started hunting down Falun Gong practitioners and arrested them. The local street committee, neighbourhood committee, the workplace and units and the social organisation were relaying the messages in the circulars prepared by central committee of CCP. Falun Gong was declared as evil cult and the Falun Gong practice was banned. The book "Falun Dafa" was declared as the banned book. At that time, my Falun Gong practitioners had to give up their practice in public to avoid the risk. Some Falun Gong practitioners even truly gave up their practice for fear of police custody.

3. I could not understand why such a good practice would be banned. Neither could I understand why CCP would suppress Falun Gong. To many people, Falun Gong practice has become the integrated part of their life. My colleagues and I all benefited from Falun Gong practice. However after 20 July 1999, we stopped practicing Falun Gong in public due to its risk. We also hid away our Falun Gong books and documents.

4. Chinese people are well aware of consequence of offending CCP. Since then we did our Falun Gong practice in private instead of in public. We did not talk about Falun Gong to strangers so to protect ourselves. It was under such circumstance that we would be able to continue our practice for several years. We tried to do decent things and to be good person in accordance with the instructions from our Master.

5. In [date], one of my colleagues went through the divorce ordeal. He suffered low spirit, insomnia and loss of appetite. I taught him to practice Falun Gong. After he practiced Falun Gong for one month, he made the total recovery. He was very grateful to the benefit of Falun Gong practice for his health. He then privately introduced Falun Gong to his friends and relatives for its benefit to physical health. While doing so, he inadvertently let the authority become aware of such activities.

6. In the afternoon of [date], he was detained by the police from [local] Police Station. He eventually disclosed my name under police torture. At 11:00 PM in the evening, [number] police took me away from my home to the [local] Police Station. The police treated me roughly and brutally. The police smashed my head against the wall and brought my friend in front of me. He had suffered brutal beating and there were bruises all over him. In order to make his "crime" less punishable, I acknowledged that I introduced him to Falun Gong and I also told the police how I taught him to practice Falun Gong. The immediate result of my confession was that the police lost no time to search my home. My Falun Gong books were seized

7. I was detained for [duration]. While in police custody, the police tortured me each day. The police often incited the other detainees to assault me. I was forced to disclose who my fellow practitioners were and to study the CCP document that was edited to justify its crackdown on Falun Gong. I was also ordered to write the letter of remorse and the letter of guarantee.

8. In order to ease the fear experienced by my family members, I finally wrote the letter of guarantee against my will to promise that "I would not practice Falun Gong any more." On [date], my wife paid [a sum of money] for the infringement fine of "Breaching Public and Social Order". I was then released.

9. After my release, the police still imposed restriction on my freedom. I was ordered to report myself to the local police station each week. I also must ask the police for permission if I wanted to go to other place. I must not start my trip until I was given such permission, otherwise the heavy penalty would be imposed. This situation lasted for [duration] The restriction of [reporting] to police station was not lifted until after [date].

10. My first visit to Australia was from [date] to [date]. During my stay in Australia, I came to know the truth about how CCP is persecuting Falun Gong. I was shocked at the atrocities of live organ harvest from Falun Gong practitioner committed by CCP. I also had the opportunity to access the booklet "Nine Commentaries on Communist Party" in Australia. I am a Falun Gong practitioner and I cannot tolerate the atrocities committed by CCP.

11. After my return to China, I spoke to my fellow practitioners [names] about what I witnessed in Australia. I also gave them the booklet "Nine Commentaries on Communist Party" and other Falun Gong leaflets that I brought back with me from Australia. My fellow practitioners expressed that they would do what they could so that innocent people who have been brainwashed by CCP would understand the truth about Falun Gong persecution. At dawn of [date] when he was distributing Falun Gong leaflets, [name] was caught by the "[Team]" He is still in detention centre now.

12. I have grave concern that they might disclose me as the brutality and mercilessness of the torture employed by CCP police is notorious to all. The police would use whatever means to get to the bottom of the source of those leaflets and whereabouts of their fellow practitioners.

13. After my second trip to Australia, (I arrived in Australia on [date]), I made phone contact with my family and learned that the police had already come to my home to question my whereabouts. My wife was taken to police station for questioning and she was kept there for [several] hours. Now I even have the fear to talk to my family on the phone.

14. The persecution of Falun Gong by CCP authority is well known to the world communities. Under current situation if I return to my own country, I would face the risk of imprisonment. I have great fear of returning to my country.

I am pleading with Australian government to process my application in accordance with the Australian law and protect those who had suffered persecution under the totalitarian government.

22. The applicant produced his passport to the Department and a copy on the Department's file shows:

[Information contains in the applicant's passport deleted in accordance with s.431 as it may identify the applicant]

Other information

23. Other information was provided:

- Letter of support.
- Photos of the applicant participating in various activities in Australia.
- Trade certificates from China.
- Medical certificates and employment certificate concerning his wife.

24. A Departmental note indicated the overseas post phoned the Australian business connection:

...who has confirmed he has met applicant and is inviting them out again to discuss business. Have noted that applicant has applied for [duration] entry and asked [name] signatory how long he expects this business trip to last. [Name] has stated that he expects business discussions to continue for about 3 days, 5 days maximum no more.
D30

Departmental Interview

25. The applicant was interviewed by the Department. A concise summary of the interview follows.

The applicant discussed how he was introduced to Falun Gong by a colleague in the mid 1990s. He had been involved in a traffic accident; he discussed his medical condition; and Falun Gong was beneficial to his health. He participated in mass practices. He worked at a factory. Later in the hearing he spoke about how his medical conditions were cured after several weeks.

He spoke of the time after July 1999 when they dared not practice publicly; only at home in hiding.

Several years later he introduced a work colleague (supervisor) to Falun Gong- after 1 month the colleague regained his health. Before that he had introduced 2 peoples.

Several months after he introduced his work colleague to Falun Gong he was arrested by several PSB officers, and taken to local PSB. He had been the one who introduced his colleague to Falun Gong, who had told others, and the others had informed the police. The applicant was beaten. He was confronted by the colleague who was in bad shape- had been beaten by the police. The applicant admitted he had introduced the person to Falun Gong. The police raided his home and took his Falun Gong books and leaflets.

After the raid he was interrogated every day. He was forced to read anti-Falun Gong material; he wrote a repentant letter; asked inmates to hit him.

He spoke of being detained for several weeks. For sake of children he signed the statement not to engage in Falun Gong. His wife paid a sum of money and he was convicted of infringing anti-social behaviour. He was released. He was then required to report regularly. If he left the area he had to get a permit. This lasted for a period of time.

He remained loyal to the movement. After arriving in Australia he got involved in all facets. They have to spread the truth. He spoke of the principle of Truth, Kindness and Forebearance. He explained forbearance.

The applicant discussed his time in Australia. He spoke of his activities and exercising in a local park. He had a teacher.

He had no difficulties getting a passport. The first time, he had a trip to Country A and Australia.

The second trip, on arrival in Australia he contacted his family straightaway. He did not contact them again as the police were watching. He calls them on the cellphone and not the home phone. Sometimes he calls the wife's relative's phone.

His wife is a Buddhist.

He discussed how he regained his freedom of movement after detention and he no longer needed to report to the police station. The police supervision recommenced after he arrived in Australia the last time, and this was because one of his fellow practitioners was arrested. His wife was questioned by the police for several hours. Perhaps this practitioner disclosed his identity. Now he knows another practitioner was also detained. He spoke of how they distributed leaflets in China and speculated that one of them must have distributed some on his own and was then arrested. The leaflets were taken by him back to China.

He named the 5 exercises and discussed some of them.

The delegate's decision

26. The delegate refused the application.

The review application

27. The review application contained no further information. The Tribunal wrote to the applicant advising that it had considered all the material before it relating to his application but that it was unable to make a favourable decision on this information alone. The Tribunal invited the applicant to give oral evidence and present arguments at a hearing.

The hearing

28. At the hearing the applicant gave evidence. An interpreter assisted. A concise summary of the evidence follows.

He stated he came to Australia. He phoned home and learnt his co Falun Gong practitioners had been arrested by the PSB. The PSB had gone to his home and questioned his wife for several hours. Thereafter the family was under surveillance.

The first trip to Australia he got leaflets and the Nine Commentaries, and distributed them on returning to China. He is afraid he has been exposed and afraid of arrest.

The Tribunal discussed when he became interested in Falun Gong. He spoke of being introduced in the mid 1990s and the health issues he had then. He practiced in parks in his home city. After 20 July 1999 he practised at home alone. His wife was a Buddhist and had her own beliefs.

He described how he introduced a practitioner to Falun Gong and this led to the applicant's arrest. He confessed to the local police and was detained for several weeks. He was beaten. He

promised he would not study Falun Gong in future. His employer pulled some strings for his release. His wife paid a fine. He reported thereafter. Another practitioner was released too and returned to work. The applicant got his passport but did not seek to leave China.

The Tribunal indicated it was odd that he did not seek to flee China. He stated he was paid well; his children were young; his wife's health was not good; he could not leave his wife and children. His wife was weak after the mid 1990s, on medication, and then her condition deteriorated. The Tribunal indicated he had not previously mentioned her poor health. He stated he had not been asked and the interpreter before had been poor.

The Tribunal discussed his first trip to Australia and why he had not sought protection. He stated he was happy in China. When he was in Australia he was with his boss. He described having a meal at China town and coming across people handing out pamphlets about Falun Gong. He took a selection back to China. He took 4 types and there were small pamphlets of which he took 3 kinds. This was the first time he had seen the Nine Commentaries. In China he told two of his fellow practitioners. The Tribunal indicated it had concerns that he would have taken anti-CCP material with him. He described how he hid it throughout his work material. He stated now the customs is very strict but at that time they were not.

In China the 3 of them photocopied the Falun Gong materials and every night they distributed the leaflets by letterboxing. He realised it was dangerous but it was about his beliefs.

He returned to Australia for business and he produced the invitation letters. The Tribunal indicated the fact he returned to Australia only on business suggested he had no fear of persecution in China. He confirmed the trips were for business only but the second trip was when he found one of his fellow practitioners had been arrested. This was later confirmed through relatives.

In Australia he spoke of his activities. In his local area he had learned Fa once a week. He practiced on Sunday mornings or when he had a day off. The Director can testify. The Tribunal indicated no witnesses had appeared today to give evidence. He stated he did not think it necessary as whether he is a Falun Gong practitioner cannot be testified by witnesses.

The Tribunal noted that the photos were all taken at the time he applied, and another one at the time the Department sought to interview him. He stated recently he moved to another suburb due to work. He currently practises at home alone. He moved several weeks before to the new address. He gave his mobile number.

He stated the name of the Director - she organises study every week and also events. They study in her garage.

The Tribunal tested his knowledge of Falun Gong. He stated the books were: Falun Dafa, Zhuan Falun, and also Jing Jin Yao Zhi, Big Consummation Fa, (Da Yuan Man Fa), Hong Yin. The Tribunal pointed out that Falun Dafa is not the name of the book. He argued it was. He knew Zhuan Falun was published in January 1995 and by Chinese Broadcasting and Television publisher.

He did not know about the first lesson which spoke of the destruction of civilisation 81 times already.

He spoke of the falun being the universe, rotates, is a high energy object. The Tribunal pointed out it was the Wheel of Law. He stated it represents the universe and practises the Fa of the universe. He knew it was in the abdomen and placed there by Master Li and how it got there. He spoke of what the falun did.

He does all the exercises. He named the third. The Tribunal asked him to perform it and he performed it, with sayings, as shown by diagrams from the Falun Dafa website.

The Tribunal asked why he had no statement from the Director. He stated the Director had told him she could not give evidence as she was prevented from doing so by the Fa Study Association. He pointed her and her family out in a photo. Later he said he did not have her address but described how to get there.

If he returned to China he would seek to continue to practise Falun Gong.

The Tribunal indicated it had concerns with aspects of his story. They were: the first time he did not seek to stay in Australia; his wife had poor health but did not adopt Falun Gong; the claim he discovered his friend had been arrested and his wife questioned the very day he arrives in Australia the second time.

The applicant spoke of how he smuggled material back to China. His wife believes in Buddhism and there is a Buddha in their home. His wife did not listen to him and he could not force her to practise. He dared not return as his fellow practitioner had been arrested.

The Tribunal indicated he came from his home city. He spoke of his home city and discussed some events in some detail. He spoke of the April event in Beijing.

He stated the other day he saw a Falun Gong practitioner in another suburb and intends to practise there in future.

[Information about the applicant's trip to Australia deleted]. As it happened he did not after he discovered his fellow practitioner's arrest after he arrived.

29. The applicant produced other information at the hearing:

- His passport.
- Statements by 3 fellow Falun Gong practitioners
- Photos of himself on 5 occasions doing Falun Gong activities.
- Copy of the 5 photos he provided to the Department.
- Invitation letters.

Independent information

30. Independent information shows:

The main text is 'Zhuan Falun' first published in 1995 and the other important text is 'Falun Gong' first published in 1993 [Falun Dafa website: www.falundafa.org].

An independent expert on Falun Gong indicated in July 2006 that: "Similarly, I would expect all practitioners to know of the main scripture of Falun Gong, *Zhuan Falun*" (Dr Benjamin Penny, Seminar to the RRT on 26 July 2006)].

The 'falun' is the wheel of law [Falun Dafa website: www.falundafa.org]. Li Hongzhi teaches that the falun is located in one's lower abdomen and when one performed the 5 exercises one manipulated the falun [Falun Dafa website: Chapter IV Falun Gong Practice System, www.falundafa.org]. The falun is placed there by Mr Li. It spins constantly, absorbing and releasing energy and expelling bad forces. [Falun Dafa website: www.falundafa.org].

The Falun Dafa website [www.falundafa.org] describes the events in 1999:

The Events

On April 25, 1999, more than 10,000 Falun Dafa practitioners held a legal, peaceful gathering in Beijing outside the Chinese leadership compound, Zhongnanhai. The assembly was prompted by reports of violence and harassment previously inflicted upon Falun Dafa practitioners by Chinese police in the city of Tianjin, as well as an unjustified ban on publishing Falun Dafa materials. The assembly was peaceful and orderly, and after participants presented their case before Mr. Zhu Rongji, Premier of the Chinese State Council, they quietly returned to their homes.

The event clearly shook the Chinese leadership because they hadn't anticipated that so many people could have gathered so quickly in the heart of the capital. Not since the Tiananmen Incident in 1989 involving many Beijing students had so many people gathered together to make an appeal to the government, and the government's reaction to that particular incident was, of course, swift and brutal.

On the night of July 19th, 1999, police raided the homes of hundreds of practitioners and dragged them off to prison.

The next day, Falun Dafa was officially declared illegal in China. From that moment forward, a massive government campaign was formed to suppress and destroy Falun Dafa. The state-controlled media worked overtime to spread false information to the public, and they also sent out their propaganda through the Chinese embassies stationed around the world. The purpose was to mislead the public and cover up their severe human rights abuses against Falun Dafa practitioners as thousands were rounded up and held in detention for interrogation, torture, and so-called "reeducation."

Falun Gong sources claim that Falun Gong practitioners have been and are subject to arrest, imprisonment and torture all over China. They provide reports on many such individuals in the applicant's home city and all over China. Other sources provide fewer detailed reports, particularly in recent years, but tend to support the assertion that active Falun Gong practitioners in China are subject to arrest and detention.

Although non-Falun Gong human rights sources, such as Amnesty International and Human Rights Watch, issued extensive reports on Falun Gong arrests in the period 1999-2002, they have produced few detailed reports on Falun Gong arrests since that time and have documented only a few cases of actions against Falun Gong practitioners since 2001. As Amnesty International noted in 2005, speaking of Falun Gong claims: "Amnesty International has been unable to verify these statistics but remains concerned about the widespread use of arbitrary detention and torture or ill-treatment against *Falun Gong* practitioners." (Amnesty International 2005, *People's Republic of China: Abolishing "Re-education through Labour": Appeal cases*, AI Index: ASA 17/014/2005, 28 June, p.8).

[Country information about the applicant's home city deleted]

FINDINGS AND REASONS

Country of nationality

31. On the basis of his protection visa application, his passport, his evidence at the hearing and in the absence of any contrary indications, the Tribunal accepts for the purpose of this decision that the applicant has Chinese nationality, and assesses his claims against that country.

Claims

32. Essentially, the applicant claims to fear persecution in China because he is a Falun Gong practitioner. The applicant's claims are based on the Convention ground of religion. In sum, he claims:
- He became interested in Falun Gong in the mid 1990s.
 - After July 1999 he practised Falun Gong in private at home.
 - He was arrested after being dobbed in to the PSB.
 - He was beaten and detained for several weeks, before being released with a fine. He had to report to the police station for a period of time.
 - He continued to practise Falun Gong at home.
 - He came to Australia previously via Country A. In Australia he picked up information concerning Falun Gong and took samples back to China.
 - In China he and 2 fellow Falun Gong practitioners copied the information and letterboxed it at night.
 - He returned for a second trip in Australia and on arrival phoned his home, only to discover his wife had been taken by the authorities for questioning. He later found out his fellow practitioner had been arrested and detained.
 - He fears that he has been implicated in distributing Falun Gong pamphlets and will be arrested, detained and possibly tortured if he returns to China.

Protection obligations

33. The Tribunal must be satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.
34. The Tribunal had concerns with the applicant's story:
- Despite his arrest and detention, he was nonetheless able to obtain a passport without difficulty.
 - He described his wife as having been ill for many years and she has recently been treated for a medical condition. However, his evidence is that she has no interest in Falun Gong, even in light of his claim that the exercises greatly assist his health.
 - He did not seek to flee China, even after he had been issued his passport.

- He returned to China after his first overseas trip to Country A and Australia, *even after* he had found in Australia, and read, Falun Gong literature describing persecution of Falun Gong practitioners in China.
- He then travelled to Australia again *only* with the intention of business, and not to flee because of a fear of persecution.
- On *the very day* he arrived in Australia he phoned home and discovered his wife had been taken for questioning by the authorities, and then that his good friend had been arrested.

35. The Tribunal's concerns were outweighed by the following:

- The applicant's story, contained in his application and given at the Department's interview and the Tribunal hearing, was consistent. The Tribunal found no inconsistencies in his claims. In sum, the Tribunal considers his narrative held together when tested.
- The Tribunal cannot discount that the applicant may have been issued a passport without difficulty some years after his arrest and detention. His evidence was that he reported to the police for a period of time and thereafter had not come to the attention of the authorities.
- The Tribunal cannot discount that the applicant's wife is a Buddhist and does not wish to become a Falun Gong practitioner. The applicant stated it is a question of faith and his wife prays to Buddha.
- The applicant showed a credible knowledge of Falun Gong. He spoke of the tenets of the religion and showed some understanding of the principles behind the exercises. He had knowledge of the main Falun Gong texts. He had a good knowledge of Falun Gong history, albeit at times his evidence suggested he was parroting facts and dates. The applicant's knowledge of the religion was consistent with that of a Falun Gong adherent who had more interest in the religion than a person who did no more than perform the exercises.
- At the hearing the applicant was able to name the exercise nominated by the Tribunal and was then able to perform it (as is shown by diagrams on the Falun Dafa website). Of itself, the mere learning of Falun Gong exercises does not mean a person is an adherent of that religion. However, the applicant performed the exercise confidently and his demonstration showed that at the very least he had learnt the Falun Gong exercises and had practised them sufficient times to be confident when performing one in a difficult environment.
- The timing of the lodgement of his Protection visa application, shortly after he arrived, is consistent with his story.
- The photos provided by the applicant show that he has participated in Falun Gong events shortly after he arrived in Australia. His participation in these events, duly photographed, is consistent with his claims to be a Falun Gong adherent.

- No witnesses appeared at the hearing to support the applicant. He provided statements from claimed Falun Gong practitioners to show that he was a practising Falun Gong practitioner. He spoke of the Director of the study group who is well known: this suggests that he had more than a passing involvement with the Falun Gong movement.

36. In sum, the Tribunal cannot discount that the applicant is a practising Falun Gong practitioner. It follows the Tribunal cannot discount that he may seek to continue to practise his religion in China if he returned. On balance, the Tribunal cannot discount that his story about distributing pamphlets he took back to China from his first visit, is true. It follows that his involvement in the pamphlet distribution may have come to light and that he is of interest to the Chinese authorities.
37. Independent information shows that the situation for Falun Gong practitioners in China is poor. Falun Gong sources claim that Falun Gong practitioners have been and are subject to arrest, imprisonment and torture all over China. They provide reports on many such individuals in the applicant's home city and all over China. Other sources provide fewer detailed reports, particularly in recent years, but tend to support the assertion that active Falun Gong practitioners in China are subject to arrest and detention. In light of the independent information and the applicant's particular circumstances, the Tribunal is satisfied that the applicant would suffer adverse and continued attention by the authorities in his home city, China. The Tribunal is also satisfied that it is not reasonable for the applicant to relocate to any other area in China.

Conclusion

38. The Tribunal concludes that the persecution which the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to his life or liberty and significant physical harassment or ill-treatment. The applicant's religion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a). The persecution which he fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.
39. The Tribunal finds that the applicant is outside his country of nationality, China, and has a well-founded fear of being persecuted for reasons of his religion if he returns to that country now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Chinese Government. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality. The applicant is not excluded from Australia's protection by subsection 36(3) of the Act.
40. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.

DECISION

41. 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.

<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.</p> <p>Sealing Officer's I.D. PRRRNP</p>
--