

0808443 [2009] RRTA 201 (9 March 2009)

DECISION RECORD

RRT CASE NUMBER: 0808443

DIAC REFERENCE(S): CLF2008 /121634

COUNTRY OF REFERENCE: China (PRC)

TRIBUNAL MEMBER: Denis O'Brien

DATE: 9 March 2009

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration 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. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. 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

6. 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.
7. 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 Convention .
8. Further criteria are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.
10. 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.

11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Secondly, 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, if 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 unable to be controlled 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 (see *Chan* per McHugh J at 430; *Applicant A* per Brennan CJ at 233, McHugh J at 258).
14. 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.
15. Thirdly, 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.
16. Fourthly, 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 when 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.
17. 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.

18. 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

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, to the recording of the interview of the applicant conducted by the delegate and to other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Fuqing (Chinese) and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.

Application for protection visa

22. The following details of the applicant and his written claims are contained in the protection visa application and in the applicant's written statement which was later supplied to the Department.
23. The applicant is a stated age. He was born in Fuqing City, Fujian Province. He has a limited education. He worked as a farmer in a village for a number of years. Later on he became a Factory worker.
24. The applicant is divorced. He has children living in China. He claims to be a Catholic.
25. His passport contains a purported Country 1 work visa and a purported Country 1 entry permit. He said in his protection visa application that the permit was issued in a stated city in Year X. He also said in his protection visa application that he fears he will be put in jail or a mental hospital if he returns to China.
26. In the statement relating to his claims for a protection visa the applicant said that:
 - After finishing some time at school he stopped his study and helped his family with farming. At the time, he was too little to know Holy Father. After that, he worked for a Factory as a worker. Because he was too busy working and making money he ignored his wife and family. Soon the applicant and his wife divorced.
 - In Year X, Friend A, a friend of the applicant from the next village and the applicant attended a gathering worshipping Holy Father. After believing in Holy Father, the applicant learned to say thanks. He thanked Holy Father and wished for a successful career. After making some money he felt the need to do something for Holy Father. In Year Y he bought an old house in the village. The applicant renovated the house and made it the venue for secret gatherings of fellow believers. The gatherings could not be made public because the local government didn't permit persons to gather to worship

God. The applicant and his fellow believers were often monitored by the local government.

- In Year Y a number of brothers and sisters were gathered in the applicant's house. Many police persons suddenly showed up. The police said that the gathering was illegal. After registering them one by one, the police took them to the police station where they were beaten and accused of spreading feudal superstition and jeopardizing public security. They were detained under various charges. The next day they were sent to a Detention Centre. The applicant was not allowed to eat and had to sleep beside the toilet. The applicant did not feel remorse as he had not done anything wrong. The applicant prayed to Holy Father from moment to moment and believed the Lord would save him.
- At the detention centre the applicant saw some people beaten and disabled and saw others who had gone insane. On the third day a family member borrowed money from friends and gave it to the Detention Centre Chief through a friend. The applicant was released and a threat was made that if he was ever caught again he would be sentenced to life in prison. Because of this ordeal the applicant believes in the Holy Father more firmly. He and several of his brothers and sisters did not give up underground church activities. The time and place of gatherings changed often.
- At the time the applicant felt there was no freedom of religion in China. He feared that his family members might get into trouble because of him so he thought of leaving China for overseas.
- The applicant's friend, Friend B helped him obtain the Australian visa to avoid persecution.
- The applicant arrived in Australia and later met a town mate. The applicant was advised that there were Catholic Churches in Australia also, so he attended.
- If the applicant returns to China he will be persecuted. He fears going back.

Evidence given at Tribunal hearing

27. At the Tribunal hearing the Tribunal asked the applicant how the written statement of his claims had been prepared. He said that he had written his claims out in Mandarin and his agent had translated them into English. The applicant said that the statement had then been read back to him in Mandarin to confirm that it was correct.
28. The Tribunal asked the applicant about the kind of farm he worked in after leaving school. He said it was a food farm. The Tribunal asked the applicant whether the statement in his protection visa application was correct that he had worked at the farm until a stated date and then had become a worker in a factory. The applicant said this was correct. He had started as a worker in the factory but because the boss had found that the applicant knew how to do things that other workers did not, he had been promoted quickly to manager.
29. The applicant said that, when his wife had sought a divorce, his child was only a young baby. The court which granted the divorce had made provision in the divorce settlement for the applicant to visit the children and for the applicant to provide financial support.

The applicant had, however, been seeing the children on a regular basis, as a result of a private agreement which the applicant reached with his former wife.

30. The Tribunal asked the applicant about the Country 1 work visa and Country 1 entry permit in his passport. The applicant said that he did not know how these documents had been obtained. He gave the passport to his friend (the snakehead) in China and he had arranged them. The Tribunal asked the applicant why he said in his protection visa application that the authorization which enabled him to enter Australia was a visa issued in another city. The applicant responded that he just gave the passport to his friend and he organized the visa. The Tribunal asked the applicant why the stated city was specified in the application as the place of issue of the visa. The applicant said that he had been told that he would need to travel through the stated city to Australia. However, when the applicant was due to board his flight, the snakehead told him he could go directly to Australia and did not have to go through the stated city.
31. The Tribunal asked the applicant who he was referring to in his written statement when he used the words "Holy Father". The applicant replied, "Jesus". The Tribunal asked the applicant if his parents were religious. He said they were and that they were baptized Catholics. The Tribunal asked the applicant when he had been baptized. He said, "late in [year]" He said he was baptized then, together with his wife. The baptisms occurred before their divorce.
32. The Tribunal asked the applicant to describe the baptisms. The applicant said that they listened to the priest give some scripture readings. Then the priest when standing in front of the applicant dipped his hand in the water and pressed his wet hand on the applicant's forehead three times. The Tribunal asked the applicant what the priest said while doing this. The applicant replied that the priest told him not to commit sins and not to worship idols and wished him good health.
33. The Tribunal put to the applicant that it had difficulty believing this account because the words the applicant said were spoken by the priest did not accord with the words of a Christian baptism. The applicant reiterated that this is what the priest had said.
34. The Tribunal asked the applicant what preparation he had made for baptism. He said that he had been required to be well presented and to sit there. The Tribunal said that what it wanted to know was what spiritual preparation the applicant had made. The applicant replied, "Not too much thinking, only one Jesus, only one God." The Tribunal said that it was having difficulty with this answer because the Church requires a spiritual preparation for baptism. The applicant said his preparation involved how to pray and a commitment not to commit sins. The Tribunal asked him whether there were particular prayers that he learnt. He said, "Jesus says come to me and you will not be hungry and believe in me and you will not be thirsty" The Tribunal then asked whether the applicant knew the Lord's Prayer. The applicant said that he could not remember clearly and that he had not been a Christian for long. The Tribunal reminded the applicant that he had told it that he had been brought up as a Christian and that his parents were Christian. The applicant said that in his younger years he did not know Jesus, that it was only in the last couple of years that he had come to know Jesus and that he did not have a deep understanding of the Bible.

35. The applicant said he had a baptismal certificate in China which a family member was sending to him in Australia. The Tribunal asked when he expected it to arrive. The applicant said he did not know.
36. The Tribunal put to the applicant that the Catholic Church does not approve of divorce and asked the applicant how he was able to reconcile his divorce with the baptisms of his wife and himself. The applicant repeated the information he had given in his protection visa application, namely, that he had been working hard in the factory and neglecting his wife and family and this had prompted his wife to ask for a divorce.
37. The Tribunal asked the applicant to describe the church gatherings he attended in China. He said that there were a number of people there who came together to read the Bible. He said there was a priest. He further explained that the “priest” was the person who conducted the gathering on the day. If the gathering was at Friend A’s house, Friend A was the “priest”.
38. The Tribunal asked the applicant if he had ever attended a Catholic Mass in China or since coming to Australia. He said he had not. The Tribunal put to the applicant that this answer raised difficulty about his claim to be a Catholic because one of the central obligations of a Catholic was regular attendance at Mass. The applicant responded by saying that after coming to Australia he was told by church members that he would need to listen to scripture readings and read the Bible first.
39. The Tribunal asked the applicant if he could name the parts of the Bible. The applicant said he had just started reading it and mentioned “Leviticus”. The Tribunal said to the applicant that the Bible had 2 parts and asked him to name them. He said that the first part is the 4 gospels. The Tribunal asked who wrote the 4 gospels. The applicant mentioned “Mark” but said he could not remember the others. The Tribunal asked the applicant what the significance of Easter was in the Christian Church. The applicant said that it was when Jesus was born. The Tribunal asked what Christmas was. The applicant said the remembrance of Jesus.
40. The Tribunal asked the applicant to recount what happened when the police raided the gathering at the applicant’s house in Year Y. The applicant said that all church members were arrested when police in vehicles came at about 8pm. After the church members were arrested they were all taken in the police cars to a place the applicant did not know. They were locked in rooms. It was very dark, the smell was bad and there were mosquitoes. The applicant was scared. Friend A told him not to be scared because God would help. In the next room detainees were beaten and were screaming “Other members of the church were beaten, bleeding, injured, unable to walk.”
41. The Tribunal asked the applicant whether he was beaten. He said he was not. The Tribunal asked him why he had said in his application that he had been beaten. He reiterated that he had not been beaten but others had been. He said the church members were given warnings that family gatherings were not allowed and that they must change their behaviour.
42. The Tribunal asked whether anything was said to them upon their release from the Detention Centre. The applicant said they were warned not to attend secret family gatherings but to attend the government church only.

43. In response to the Tribunal's question whether he continued to practise his religion after his release, the applicant said that he and all the brothers and sisters continued to do so. They met at different homes to avoid detection and would post someone outside the gathering place who could provide a warning if strangers approached.
44. The Tribunal asked the applicant why he feared returning to China. He said that, having been arrested once and having been warned, he would be sentenced if he were arrested again.
45. The Tribunal invited the applicant to tell it about the Catholic Church he had been attending in Australia. He first said that it was called the West Australia Christian Church and later said that it was called the Chinese Catholic Church. He said it was in Australia. He said there was a 10 o'clock class on Sundays followed by 11 o'clock preaching. He said the parish priest was Father A. The applicant did not attend every Sunday but did so most Sundays.
46. The Tribunal put to the applicant that it had great difficulty accepting his claim to be a Catholic because he had not been able to give details of his baptism, had not been able to explain the significance of Easter and had demonstrated only a minimal understanding of the Bible and the New Testament. The applicant responded that he had been in Australia for a short time and had no clear understanding of the Catholic Church in Australia, which was different from the Catholic Church in China. He said he had not been a Catholic for long and had not finished reading the Bible. He asked the Tribunal why it did not believe him when he had been telling the truth. He said he could not go back to China because he was fearful of being arrested, sentenced and imprisoned.

Country of Origin Information

47. It was said in a 2005 article that, according to the Chinese Government, about 5 million Chinese Catholics belong to government approved patriotic churches that reject the Vatican's full authority. The same article said that the Vatican estimates that 8 million other Catholics in China worship in illegal underground churches that have defied the Communist Party by remaining loyal to the Pope ("Up from the Underground", *The Washington Post*, 29 April 2005). The existence of "official" and "unofficial" Catholic churches in China is further referred to in a 2007 encyclical letter of Pope Benedict XVI to the faithful in China ("Letter of the Holy Father Pope Benedict XVI to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China").
(http://www.vatican.va/holy_father/benedict_xvi/letters/2007/documents/hf_benxvi_let_20070527_china_en.html)

48. One commentator has referred to the orthodox Catholic practices followed by the underground Catholic Church as follows:

Religious organisations that either cannot or are unwilling to obtain government approval are automatically deemed illegal. Once an organisation has been classified as illegal, all its activities are automatically considered to be illegal and subversive. As Joseph Kung, an advocate of the underground Catholic community in China, stated, activities such as celebrating the mass and prayers for the dying – which are orthodox Catholic practices – immediately become illegal and unorthodox if they are undertaken by a priest who has not been permitted by the state to perform these activities. (Hornermann, Magda 2004, "Religious distortion and religious freedom",

49. The US Department of State International Religious Freedom Report 2008 reports on repression of and interference with unregistered churches in China. Parts of the report are reproduced below.

The Constitution and laws provide for freedom of religious belief and the freedom not to believe. The Constitution protects only religious activities defined as "normal." The Constitution states that religious bodies and affairs are not to be "subject to any foreign domination" and that the individual exercise of rights "may not infringe upon the interests of the state." The Constitution also recognizes the leading role of the officially atheist Chinese Communist Party. The Government sought to restrict legal religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of the activity of both registered and unregistered religious groups, including house churches. The Government tried to prevent the rise of religious groups it viewed as constituting a source of authority outside of the Government and the Chinese Communist Party (CCP). The Government strongly opposed the profession of loyalty to religious leadership outside of the country. Nonetheless, the treatment of religious groups varied significantly from region to region, and membership in many faiths continued to grow rapidly.

Government officials at various levels have the power to determine the legality of religious activities by deciding whether they are "normal." Public Security Bureau (PSB) and Religious Affairs Bureau (RAB) officials monitor unregistered facilities, check to see that religious activities do not disrupt public order, and take measures directed against groups designated as cults. Registered religious groups enjoy legal protections of their religious practices that unregistered religious groups do not receive, and unregistered groups are more vulnerable to coercive and punitive state action. The five PRAs [Patriotic Religious Associations] are the only organizations registered with the Government at the national level as religious organizations under the Regulations on Social Organizations...

Restrictions on Religious Freedom

During the period covered by this report, the Government's respect for religious freedom remained poor, and controls tightened in some areas, including in Tibetan areas, the XUAR, and Beijing. Some house churches reported that they were told by authorities not to meet during the 2008 Summer Olympic Games and Paralympic Games. One religious freedom nongovernmental organization (NGO) alleged that authorities demanded at least one house church to sign a written agreement that it would not hold services during the specified period...

The Government perceived unregulated religious gatherings or groups as a potential challenge to its authority and attempted to control and regulate religious groups to prevent the rise of sources of authority outside the control of the Government and the CCP. In some regions, government supervision of religious activity was minimal, with registered and unregistered churches existing openly and receiving similar treatment by the authorities. In other regions, local officials supervised religion strictly, and authorities placed pressure on unregistered churches. Local regulations, provincial work reports, and other government and party documents continued to exhort officials to enforce government policy regarding unregistered churches and illegal religious activities.

There were reports of repression of unregistered Protestant church networks and house churches during the reporting period. In some areas, government authorities pressured house churches to affiliate with one of the PRAs and to register with religious affairs authorities by organizing registration campaigns and by detaining and interrogating leaders who refused to register. In other parts of the country unregistered groups grew rapidly and the authorities did not pressure them to register.

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Abuses of Religious Freedom

During the period covered by this report, officials continued to scrutinize, and in some cases, harass unregistered religious and spiritual groups. In some areas government officials abused the rights of members of unregistered Protestant and Catholic groups, Uighur Muslims, Tibetan Buddhists, and members of groups that the Government determined to be "cults," especially the Falun Gong...

The Government detained, arrested, or sentenced to prison terms many religious leaders and adherents for activities related to their religious practice; however, the Government denied detaining or arresting anyone solely because of his or her religion. Local authorities often used an administrative process, through which citizens may be sentenced by a nonjudicial panel of police and local authorities to up to 3 years in reeducation-through-labor camps, to punish members of unregistered religious groups. During the reporting period, the Government reportedly held many religious adherents and members of spiritual movements in reeducation-through-labor camps because of their religious beliefs. In some areas security authorities used threats, demolition of unregistered property, extortion, interrogation, detention, physical attacks, and torture to harass leaders of unauthorized groups and their followers.

Offenses related to membership in unregistered religious groups are often classified as crimes of disturbing the social order. Religious leaders and worshippers, however, faced criminal and administrative punishment on a wide range of charges, including those related to the Government's refusal to allow members of unregistered groups to assemble, travel, and publish freely or in connection with its ban on public proselytizing. During the reporting period, the Government also used the charge of conducting illegal business operations to detain leaders of unregistered religious groups.

A number of Protestant Christians who worshipped outside of government-approved venues, including in their homes, continued to face detention and abuse, especially for attempting to meet in large groups, traveling within and outside of the country for religious meetings, and otherwise holding peaceful religious assemblies in unregistered venues. According to overseas NGOs, raids by police and other security officials on Protestant religious meetings intensified during the reporting period.

(US Department of State, 2007, *International Religious Freedom Report 2008 – China*, 19 September)

50. An earlier report mentioned an instance where adherents of the unofficial Catholic Church in Fujian had been subject to arbitrary arrest when engaged in ordinary religious activities. According to the report, Father Lin Daixian, an underground Catholic priest, a seminarian and nine parishioners were arrested on 25 July 2005 while celebrating mass in a private home in Pingtan in the Fuzhou diocese in Fujian province. Many parishioners were beaten and suffered severe injuries, the private house where

the arrests took place was totally ransacked and Father Lin, the seminarian and nine parishioners were still being detained in the Pingtan detention centre at last report. ('China: Underground priest arrested in Fujian; parishioners beaten and wounded', *Asia News*, 29 July 2005, CX129065)

51. The reference in the above report to Fujian Province may be contrasted with a report that local authorities usually tolerate the activities of unregistered Christian groups in Fujian (Immigration and Refugee Board of Canada 2005, CHN100386.E-*China: Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong* (2001-2005), 7 September).
52. Immigration and Refugee Board of Canada research from 2001 cites correspondence from the President of the Cardinal Kung Foundation stating that the format and prayer involved in Catholic baptisms in China is identical in underground and government approved churches (The Cardinal Kung Foundation 4 Oct. 2001) (Immigration and Refugee Board of Canada 2001, CHN37834.E – *China: The activities of underground Christian churches in Shanghai; how they are treated by the authorities; the position and practice of patriotic and underground churches with respect to baptism*, 12 October http://www.irb-cisr.gc.ca/cgi-bin/foliocgi.exe/refinfo_e/query=chn37834!2Ee/doc/{t2579}/hit_headings? – Accessed 18 May 2004). Similarly, the encyclical letter of Pope Benedict XVI referred to above states that the unity of the Churches in China and their communion with all the other particular Churches throughout the world have their roots “in a common baptism” (ibid). The Catechism of the Catholic Church describes the rite of non-immersion baptism as involving pouring water three times over the candidate’s head, accompanied by the minister’s words, “I baptise you in the name of the Father and the Son and the Holy Spirit” (‘How is the Sacrament of Baptism Celebrated?’ 2003, Vatican website, 4 November http://www.vatican.va/archive/ENG0015/___P3J.HTM - Accessed 6 March 2009).
53. The *Amity News Service*, which provides official news and information in English on the Protestant China Christian Council/ Three Self Patriotic Movement, states that most China Christian Council churches require new believers to attend worship for at least a year, attend a class for new believers and be questioned about their faith by a church leader before they can be baptized (Sutterlin, J. 2005, ‘Frequently asked questions about the Protestant church in China’, *Amity News Service* website, June <http://www.amitynewsservice.org/page.php?page=1150> – Accessed 18 February 2009).

FINDINGS AND REASONS

54. The applicant claims to fear persecution from the Chinese Government authorities because of his Catholic belief. He claims that he was arrested and detained and that he came to Australia to avoid being arrested again and put in jail or a mental hospital.
55. In considering the relevant facts in this matter the Tribunal has assessed the credibility of the applicant. When assessing credibility the Tribunal is mindful that it must be sensitive to the difficulties faced by refugee applicants and should give the benefit of the doubt to those applicants who are generally credible but are unable to substantiate all their claims. The Tribunal has not placed emphasis on minor inconsistencies of fact. They can occur for a variety of reasons unconnected with the credibility of the applicant.
56. However, the Tribunal is not required to accept uncritically every allegation made by an applicant (*Randhawa v Minister for Immigration Local Government and Ethnic*

Affairs (1994) 52 FCR 437 at 451) Also, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion made by an applicant has not been made out (*Selvadurai v Minister for Immigration and Ethnic Affairs & Anor* (1994) 34 ALD 347 at 348).

57. In the present case, the Tribunal does not find the applicant to be credible. The reasons for that conclusion are set out below.
58. The Tribunal accepts that the applicant is a citizen of the PRC on the basis of the evidence of his passport and on the basis of his evidence at the hearing before the Tribunal. The Tribunal does not, however, accept that he is a Catholic. He claims that he was baptized in a stated date. However, he did not give the Tribunal a coherent description of his preparation for baptism and the description he gave of his baptism ritual did not accord with, or approximate, the rite of baptism in the Christian religion. The country of origin information referred to above indicates that the rite of baptism in underground Catholic churches in China is the same as that followed in the universal Catholic Church and that a period of spiritual preparation is required before a candidate can present for baptism.
59. The applicant said that he had a certificate of his baptism. However, he did not supply it to the Tribunal.
60. The applicant also did not know the Lord's Prayer, which is a universal prayer of all Christian denominations. He said that he had not attended a Catholic Mass in China, despite the fact that regular attendance at Mass is one of the central obligations of a Catholic. The applicant furthermore displayed little understanding of the Bible and was unable to name the Old Testament and the New Testament as constituting the two parts of the Bible. He was unable to explain the significance of Easter or Christmas in the Christian Church
61. The applicant's evidence is not consistent with his claim to be a Catholic. The Tribunal finds that he is not a Catholic and that, on the basis of his lack of knowledge of tenets of Christianity, he was not brought up by Catholic parents as he claimed.
62. As to the applicant's claim to have been arrested and detained because of his participation in an underground church gathering, independent country of origin information suggests that Fujian is one of the provinces where the authorities take a liberal attitude to the activities of underground churches. That information also indicates, however, that unregistered Christian groups may from time to time be the subject of attention by the authorities.
63. The applicant claimed that he had been arrested and detained when he was attending an underground church gathering at his house. However, the Tribunal is unable to accept this claim. While, as mentioned above, the Tribunal is prepared to accept that an applicant's recollection of an event that is fundamental to his or her claim may understandably contain minor inconsistencies of fact, the Tribunal expects that an applicant will be able to give a coherent account of central elements of such an event. In the present case the applicant was unable to do that. He said in the written statement of his claim that he and his fellow brothers and sisters were beaten by the police with clubs when the police took them to the police station. At the hearing, however, the applicant was adamant that he was not beaten. This fundamental inconsistency in the

applicant's story leads the Tribunal to the conclusion that it does not accept his claim to have been arrested and detained as a result of his involvement in an underground church gathering.

64. The applicant claims that he has attended Catholic church gatherings in Australia. The applicant's evidence about this was vague. The Tribunal concludes that, if he has attended church gatherings in Australia, he has done so for the purpose only of strengthening his claim to be a refugee. Accordingly, the Tribunal is required to disregard this conduct in considering his claims (s.91R(3) of the Act)
65. Having rejected the applicant's claims to have participated in an underground Catholic church in China and to have suffered persecution at the hands of the Chinese authorities by reason of his participation and having disregarded, as the Tribunal must do, his conduct in Australia, there is nothing before the Tribunal that points to the applicant being a genuine Catholic. Consequently, the Tribunal is not satisfied that the applicant has a well founded fear of persecution, now or in the reasonably foreseeable future, because of his religion if he were to return to China.

CONCLUSIONS

66. The Tribunal is 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 s.36(2)(a) for a protection visa.

DECISION

67. 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 <i>Migration Act 1958</i>.</p>	<p>Sealing Officer's I.D. PRRT41</p>
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