

1000209 [2010] RRTA 172 (19 March 2010)

DECISION RECORD

RRT CASE NUMBER:	1000209
DIAC REFERENCE(S):	CLF2008/114479 CLF2009/121743
COUNTRY OF REFERENCE:	China (PRC)
TRIBUNAL MEMBER:	Glen Cranwell
DATE:	19 March 2010
PLACE OF DECISION:	Brisbane
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 [in] August 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] December 2009 and notified the applicant of the decision and her review rights by letter [on the same date]
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 Refugees Convention.
4. The applicant applied to the Tribunal [in] January 2010 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa 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. 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.
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. 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.
16. 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.
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, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] March 2010 to give evidence and present arguments. The Tribunal also received oral evidence from [Person A] and [Person B]. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
21. The applicant was represented in relation to the review by her registered migration agent.

Background

22. The Department's movement records indicate that the applicant first arrived in Australia [in] December 2006. She departed Australia [in] July 2008 and returned [in] August 2008. The applicant was in Australia unlawfully from [a date in] November 2008 to [a date in] September 2009.
23. The applicant lodged her protection visa application [in] September 2009. She submitted a copy of the identification page of her Chinese passport with her application. This page indicates that she was born on [date deleted: s.431(2)] in Liaoning, China.

The protection visa application

24. The applicant's protection visa application indicates that the applicant resided at a single address in China between December 1996 and her departure in December 2006. In Australia, she lived at [Town A] from December 2006 until June 2007, when she moved to Queensland, staying at [Town B] since that time.
25. The applicant's claims were set out in a statement accompanying her protection visa application:

My name is [name], born on [date] in Shenyang city, Liaoning Province. I came to Australia on [date] December, 2006. Because of practicing Falun Gong, I'm feared of persecution after returning to China. I am applying to Australia government for Refugee Protection Visa.

I worked as a nurse in China from 2001. In 2004, I met a Falun Gong practitioner, [Person C], while I was preparing IELTS exam. We had a lot in common, and then became good friends. She told me her sufferings. The police refused to issue passport to her because of arrest for practising Falun Gong. She told me that practicing Falun Gong could cure disease and strength body. She also gave me some Falun Gong materials and a DVD. I did not tell this to my family and secretly practiced Falun Gong for a month. My back pain was unexpectedly eased. Later on, after finding that

I had practiced Falun Gong, my father stopped me from practicing it and forced me to destroy Falun Gong related materials. Under the pressure of my father, I had to have all Falun Gong practising materials destroyed in front of him.

My father was not in good condition and suffered high blood pressure, cervical spondylosis and other diseases. I went back China to see him in July, 2008 and advised him to practise Falun Gong. I showed him the Falun Gong materials printed out from my laptop. I told him my experience in practising Falun Gong. He accepted my suggestion at the end. Afterwards, he was happy to tell me that he got better after practising Falun Gong.

It was reported to the head of community that my father was practicing Falun Gong and then such information was transferred to the police. On [date] October, 2008, the police searched my father's home and found Falun Gong materials which I gave him. My father was taken to police station for interrogation. My father was forced to confess the source of those materials and beaten when refusing to say. My father was more than 50 years old. How could he stand such cruel torture? He had to confess that it was I who took them from Australia. My father was sentenced to reeducation-through labor for 6 months and sent to [a re-education through labour office] My father suffered lots of torture there. He had to do heavy labor work in daytime and was brainwashed in the evening, forced to study defamatory materials about Falun Gong. My family asked to see him several times, but was declined. At the end, my father was released in April 2009. After returning to home, he was ill in bed all day long and not able to look after himself.

The police threatened my father not to practice Falun Gong anymore and report my whereabouts in time. Feared to get me involved, my father broke a connection with me and even changed phone number. I have been unable to contact him until today. I worried about my father very much and wanted to go back right away. However, my family told me that I should not come back because I could not escape from punishment.

One day, I cried sadly when thinking of my father's sufferings. At that time, my good friend, a Falun Jung practitioner, came over to comfort me and imparted the essence of Falun Dafa. I realized that all I experienced was for cleansing my karma and testing my Xinxing. If I could bear such kind of hardship, my karma would be converted to virtue.

I have been in Australia neatly 3 years and become used to the way of living and studying here. I deeply love this free and democratic country. Besides, Australian people are very hospitable. When I walk on the road in the morning, people usually say "hi" to me, which makes me, a foreigner, feel warm. I was too shy to talk to them. Gradually, I got used to say hello to strangers and hope that more and more people feel my enthusiasm. I have insisted on studying English. Wherever I go, I try to find opportunities to communicate with local people, which is helpful to improve my English.

After arrived in Australia, I put all my effort on the application of Visa 457. I still did not know whether I was eligible for lodging refugee application after my father was in trouble. After hearing some people have successfully been granted protection visa, I came to an immigration agency to consult this issue, the agent told me that the people who were persecuted by government like me is eligible for applying for refugee protection. Because of practicing Falun Gong, I am feared to be persecuted by Chinese Communist Party after returning to China. I hope that Australia government can carefully consider my application and let me stay here legally.

26. The applicant was interviewed by the delegate in relation to her claims for protection [in] December 2009. A recording of the interview is held on the Department file. The Tribunal has listened to this audio recording.
27. [The day following the interview in] December 2009, the Department received a letter from the applicant's representative enclosing a "Education though Labor Notification" from the [a Labor Camp] dated [in] October 2008. This indicates that [Person D] was sentenced to 6 months of education through labor for illegal practice of Falun Gong.

The Tribunal hearing

28. The Tribunal asked how the protection visa form came to be prepared. The applicant stated that the form was filled in with the assistance of her registered migration agent. She confirmed that the statement, reproduced above, was read to her before she signed the form and that the statement was correct.
29. The Tribunal asked whether the applicant wanted to change or add anything. The applicant stated that she was working for a [company details deleted: s.431(2)]. She explained later in the hearing that the station had a website and that programs were uploaded and broadcast all over the world.
30. The applicant stated that her parents were divorced around 1999 or 2000. The applicant had lived with her mother prior to coming to Australia. The applicant's father also lived in Shenyang City, but in a different suburb.
31. The Tribunal asked the applicant what she feared would happen to her if she returned to China and why. The applicant stated that she practised Falun Gong. She said that the Chinese authorities have cracked down on Falun Gong practitioners, and that she would suffer persecution.
32. The applicant stated that she commenced practising Falun Gong in January 2004. She was given materials and a CD, which she practised at home almost every day. She was hoping to heal her back pain by practising Falun Gong. The applicant only practised Falun Gong for one month, when her father forbade her from continuing to practice and made her destroy all of her Falun Gong materials. Her father expressed a concern that the applicant would be sent to jail if the authorities found out about her practice. She did not practice Falun Gong again until after she came to Australia.
33. The applicant confirmed that she arrived in Australia [in] December 2006. The applicant stated that she started practising Falun Gong in May 2008. She did so by downloading a book and other materials from the internet.
34. The Tribunal put to the applicant that her lengthy delay in commencing her practise of Falun Gong after her arrival in Australia may cause it to doubt that she had previously been a practitioner in China. The applicant stated that she had lived in [Town A] until June 2007, and that there was no internet in [Town A]. She then lived for a few months in Adelaide, before coming to Brisbane in November 2007.
35. The Tribunal indicated that it would be surprised if there was no internet in [Town A], and noted that there definitely was internet available in Adelaide and Brisbane. The applicant stated that she lived in a backward part of [Town A], was only in Adelaide for a few months

and that the internet was not connected to her Brisbane residence until January 2008. The Tribunal noted that there was still a period of 4-5 months where she had the internet connected in Brisbane, but did not pursue her Falun Gong practice. The applicant stated that she was busy studying for her IELTS test during this period. The Tribunal indicated that it might have difficulty accepting that the applicant's IELTS test preparation would have prevented her from downloading Falun Gong material if she had wished to.

36. The applicant confirmed that she visited China from [a date in] July 2008 to [a date in] August 2008. She stated that she stayed mainly with her mother during this visit, but visited her father on a number of occasions. Her father had difficulties with his back and blood pressure, and the applicant recommended Falun Gong practice to him. The applicant provided him with written materials and a CD.
37. The Tribunal asked the applicant how she had obtained the written materials that she gave to her father. The applicant stated that she had taken the materials into China on her laptop, and printed them out for her father and burned a CD. The Tribunal indicated that it might have some difficulty accepting that the applicant would take Falun Gong materials into China with her, given that she knew it was banned and had previously destroyed her materials in China. The applicant stated that she had hidden the files on her laptop. The Tribunal asked her to explain how she had hidden these files. The applicant stated that there was a function on Windows but provided no further detail.
38. The Tribunal further indicated that it might have some difficulty accepting that her father became a Falun Gong practitioner given that he had previously forbade her from practising and made her destroy her materials. The applicant stated that she convinced him over a number of visits, and that he was receptive as he had not responded to conventional treatment for his illness.
39. The applicant stated that her father was arrested [in] October 2008. She found out about this [in] November 2008 from her uncle. She had called her uncle when she was unable to contact her father. She is not sure how her uncle became aware that her father was arrested. The applicant stated that she had obtained the "Education through Labor Notification" from her uncle, but not until her father had been released after 6 months of detention.
40. The applicant stated that she had talked to her father 2 or 3 times in May 2008, after his release. She has not talked to him since as he has changed his mobile telephone number. Her father did not give her many details during these calls. He did not say the authorities were looking for her, but told her to be careful.
41. The Tribunal put to the applicant information from the Department of Foreign Affairs and Trade (DFAT) concerning the high incidence of document fraud in China, noting that it was impossible to authenticate a document without verifying it with the issuing agency. The Tribunal then went on to detail the independent country information set out below indicating that it would be expected that a "Education through Labor Notification" would be signed or at least have provision for signature by the person or his/her family. The Tribunal noted that the certificate provided by the applicant did not have such provision. The Tribunal indicated that in the absence of being able to verify the certificate with the issuing authority, the Tribunal might have doubts as to the authenticity of the certificate given the evidence of the high incidence of document fraud and the absence of provision for the signature of her father.

42. The applicant stated that she obtained the certificate from her uncle. She does not know the details, her father refused to tell her and she thinks her family are trying to hide things from her.
43. The applicant stated that she has been practising Falun Gong in groups in Brisbane since August or September 2008.
44. The Tribunal put to the applicant, using the procedure in s.424AA of the Act, information from the Department's records which indicated that she was unlawfully in Australia for the [period] November 2008 until she lodged her protection visa application [in] September 2009. The Tribunal indicated that the applicant's delay in lodging a protection visa application in these circumstances could lead it to doubt that the applicant had a fear of persecution in China. In turn, this may cause the Tribunal to doubt the claims made by the applicant as to her father's detention or that the applicant had been a Falun Gong practitioner in China as claimed. The Tribunal invited the applicant's comments and advised that she was entitled to request further time to comment if she wished.
45. The applicant stated that she did not apply for a protection visa earlier as she was not aware that she was eligible to apply.
46. The Tribunal put to the applicant, using the procedure in s.424AA of the Act, information from the Department's records which indicated that she had previously applied for a business skills visa, which was refused [in] October 2007. She sought review of this decision, which was affirmed by the Migration Review Tribunal [in] October 2008. The applicant had also applied for a student visa, which was refused [in] October 2008. The Tribunal indicated that her experience with various visa applications and seeking review might lead it to have difficulty accepting that she was unaware of her rights to apply for a protection visa. The Tribunal invited the applicant's comments and advised that she was entitled to request further time to comment if she wished.
47. The applicant stated that the Migration Review Tribunal appeal was her employer's idea. She also stated that her agent did not tell her that she would not be able to study without a student visa.
48. The Tribunal stated that the above information also indicated that on one view the applicant had only applied for a protection visa after she had exhausted her other avenues for staying in Australia. This could lead it to doubt that the applicant had a fear of persecution in China. In turn, this may cause the Tribunal to doubt the claims made by the applicant as to her father's detention or that the applicant had been a Falun Gong practitioner in China as claimed. The Tribunal invited the applicant's comments and advised that she was entitled to request further time to comment if she wished.
49. The applicant stated that she had many other options for staying in Australia, and noted that she was still single.
50. The Tribunal explained to the applicant that if it came to doubt her credibility about being a Falun Gong practitioner in China, it may conclude that the conduct she has engaged in while in Australia was for the purpose of strengthening her claim to be a refugee. If the Tribunal did accept that the applicant had engaged in Falun Gong conduct in Australia, it may have to disregard that conduct if it was not satisfied that she had engaged in the conduct otherwise than for the purpose of strengthening her claim to be a refugee.

51. The applicant stated that she was a genuine Falun Gong practitioner, and one of the requirements of this is that she tell the truth. The applicant also stated that Australia is a country of freedom and that her protection visa claim is an expression of her faith.
52. [Person A] and [Person B] both gave evidence that they have known the applicant since around March 2009, and had seen her involved in various Falun Gong activities. [Person B] also gave evidence that the Chinese authorities have spies in Brisbane, and that they have most likely reported back to China on the applicant's activities.

Independent information

53. Falun Gong (also known as *Wheel of the Law* and *Falun Dafa*) was founded in 1992 in China by Li Hongzhi, who is known to his followers as Master Li. Falun Gong is based on the traditional Chinese exercise, posture, and breathing and meditation system known as qigong, with elements of Taoist and Buddhist philosophy.
54. Falun Gong first came to the attention of the Chinese authorities in April 1999 when several thousand Falun Gong adherents staged a sit-in in Tianjin, outside the publishers of the Tianjin University journal which had published an article criticising the movement. Official attention was heightened when more than 10,000 practitioners coordinated a peaceful demonstration outside Beijing's leadership compound, the Zhongnanhai, on 25 April 1999.
55. By late July 1999, a number of government departments had implemented restrictive measures against the movement which was branded a "threat to social and political stability." An arrest order was issued for Li Hongzhi. The government launched a massive propaganda campaign to denounce the practice of Falun Gong and the motivation of its leader, Li Hongzhi. The movement was declared an evil cult and banned in October 1999 (Sources: Human Rights Watch 2002, *Dangerous Meditation: China's Campaign against Falungong*, February; Penny, Dr Benjamin 2003, *Falun Gong: What was it? and what is it now? A talk for the Refugee Review Tribunal National Members' Conference*, 29 August; Chang, Maria Hsia 2004, *Falun Gong: The End of Days*, New Haven, Conn., Yale University Press).
56. Information provided by DFAT indicates that there is a high incidence of fraudulent documentation in China. Any comment on the authenticity of a document cannot be made without verifying it with the relevant issuing agency (Department of Foreign Affairs and Trade 2007, *DFAT Report 644 – RRT Information Request: CHN31695*, 17 May, Question A).
57. Information available to the Tribunal indicates Re-education through Labour Notices contain provision for the signature of the person or his/her family:
 - Human Rights in China noted a case in which the Re-education through Labour Notice had the person's signature and fingerprints (Human Rights in China 2008, 'Press Release: Family Visits Still Denied to Sichuan School Teacher Punished after Quake-Zone Visit', 29 July).
 - Zou Keyuan, in a 2001 *China Quarterly* article, also stated that the person to whom the notice is issued should sign the notice (Keyuan, Zou 2001, 'The "Re-education through Labour" System in China's Legal Reform', *Criminal Law Forum*, December, Vol. 12, No. 4, p.466).

- Sarah Biddulph, in her 2007 book *Legal Reform and Administrative Detention Powers in China*, wrote that a person cannot be detained unless the Re-education through Labour Notification is “properly prepared and signed” (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.213, footnote 160).

FINDINGS AND REASONS

58. The applicant has provided a copy of a Chinese passport in her name issued [in] October 2005. The Tribunal accepts that the applicant is a national of China and has assessed her claims against China as her country of nationality.
59. The Tribunal has carefully considered the applicant’s claims. For the reasons explained below, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention related reason. The Tribunal notes the following particular issues of concern in regard to the applicant’s evidence.
60. The applicant claims that she was informed of her father’s arrest [in] November 2008 but did not apply for a protection visa until [a date in] September 2009. The applicant also did not hold any visa and so was unlawful for the period [from] November 2008 [to] September 2009. The Tribunal considers that this long delay in applying for a protection visa indicates that she is not in fear of being persecuted as she claimed. The applicant explained this in terms of her not being aware of her eligibility to apply for a protection visa application. However, the Tribunal notes that the applicant had previously applied for a business skills visa and a student visa, and had appealed the rejection of the former to the Migration Review Tribunal. The Tribunal therefore considers that the applicant was well informed of the various visa options available to her, and does not accept that she was unaware of her eligibility to lodge a protection visa application. The Tribunal does not consider that the applicant’s explanation that the appeal to the Migration Review Tribunal was her employer’s idea, or that she applied for a student visa as she was unable to study without such a visa, detracts from this position. The Tribunal considers that this evidence indicates that she is not in fear of being persecuted and reflects adversely on her credibility generally.
61. The applicant claims that she took Falun Gong materials with her on her laptop when she returned to China in July and August 2008. The Tribunal does not accept this as credible. On the applicant’s own evidence, she was aware that Falun Gong had been banned in China, and that her father had previously forced her to destroy her Falun Gong materials in China in order to avoid being sent to jail. In those circumstances, the Tribunal is of the view that she would not have taken Falun Gong materials with her to China. The Tribunal does not accept the applicant’s explanation that she had hidden this material on her laptop, noting that she was unable to explain in detail how to do this. It follows that the Tribunal also does not accept that she provided Falun Gong materials to her father while in China, or that he became a Falun Gong practitioner as a result.
62. The Tribunal finds that the “Education through Labor Notification” certificate provided by the applicant is not genuine having regard to the following matters. The Tribunal notes the independent information outlined above as to the high incidence of document fraud in China. Further, the Tribunal notes that the certificate provided by the applicant does not have provision for the offender’s signature nor for the signature of a family member. The independent information indicates that such certificates should be signed by the offender. It follows that the Tribunal does not accept that the applicant’s father was arrested or detained

as a Falun Gong practitioner, or that he named the applicant as the source of his Falun Gong materials.

63. Based on the above-noted evidentiary concerns, the Tribunal finds that the applicant is not a credible witness and that she has fabricated claims in making her application for a protection visa. In particular, based on this finding, the Tribunal does not accept that the applicant practised Falun Gong in China for one month from January 2004.
64. The applicant claims to have engaged in Falun Gong conduct in Australia. The Tribunal accepts that this may be the case, noting that her claims in this regard were supported by the evidence of [Person A] and [Person B]. However, after considering all the evidence and the Tribunal's adverse finding regarding his credibility, the Tribunal is not satisfied that she has engaged in the conduct otherwise than for the purpose of strengthening her claim to be a refugee. Pursuant to s.91R(3) of the Act, the Tribunal disregards this conduct in Australia.
65. As the Tribunal does not accept that the applicant or her father have ever been practitioners of Falun Gong in China, it does not accept that she will be involved in practising Falun Gong in China on her return, or that she will be imputed as a Falun Gong practitioner on her return. The Tribunal therefore does not accept that there is a real chance that she will be persecuted for reasons of practise of or involvement in Falun Gong if she returns to China now or in the reasonably foreseeable future. As a result, the Tribunal is not satisfied that the applicant holds any well-founded fear of any harm for a Convention reason should she 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: prrt44</p>
