

Country Advice

China

China – CHN38484 – Census 2010 – Out-of-plan children (black children) – unmarried mothers – children born overseas – students

27 April 2011

1. If the children of Chinese nationals are born overseas, do the children automatically have Chinese nationality, or is it necessary for them to be registered in order to obtain nationality?

Article 5 of the *Nationality Law of the People's Republic of China*¹ provides:

Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.²

It should be noted that DFAT advice provided in February 2010 to the Australian Department of Immigration and Citizenship states:

Non-resident Chinese nationals have full citizenship rights when they return to China. For those Chinese nationals who have obtained permanent residence abroad, they are generally required to register for temporary return or apply for permanent resettlement in China with local public security bureau [sic]. However, we note that different regions have different procedures in place... Also, while the citizenship of returning non-resident Chinese nationals is not in question, their household registration (hukou) is more complicated and is likely to be an issue... A returning non-resident Chinese, while he or she might be a Chinese national, is unlikely to be authorised a particular hukou locality of his or her choice.³

Post also notes that although "entitlements under Chinese law are not necessarily guaranteed in practice", the *Nationality Law of the People's Republic of China* remains the "relevant legislation governing the citizenship [sic] in China."⁴

¹ Chinese Government 1980, *Nationality Law of the People's Republic of China*, (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No. 8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980), 10 September <http://www.novexcn.com/nationality.html> - Accessed 7 June 2005 - Attachment

² Chinese Government 2011, 'Nationality Law of the People's Republic of China' Promulgated 10 September 1980, 11 February, http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21898800.htm - Accessed 20 April 2011, Attachment

³ Department of Foreign Affairs and Trade Australia 2010, 'Rights of non-resident Chinese nationals and the residence application process' 22 March, Country Information Report No. 10/14, CX241271.

⁴ Department of Foreign Affairs and Trade Australia 2010, 'Rights of non-resident Chinese nationals and the residence application process' 22 March, Country Information Report No. 10/14, CX241271.

2. CX252081 indicates that there is currently an amnesty on household registration for children born out of wedlock. What treatment would such children now face if they returned to China?

The article to which the question refers is, 'China to register all children', originally published on the news site *Radio Free Asia* in June 2010. The article states:

[a]uthorities in the Chinese capital have said that children born outside strict family planning quotas or out of wedlock will have an amnesty on household registrations ahead of a nationwide census in November. The census, the sixth nationwide population count under the ruling Communist Party, will run from November 2010 to June 2012, official media reported.

The deputy director of the Beijing Statistics Bureau, Gu Yanzhou, states in the same article, that "people who violated family planning policies can apply for household registration by taking the opportunities of the census."⁵

However, it would appear that the opportunity to declare out-of-plan children during the census is only available during the collection phases. According to articles in the Chinese government controlled news outlet *The China Daily*, the census was conducted in two phases. The primary phase occurred between 1st and 10th November 2010 where 6 million census takers visited more than 400 million households, "recording family information and finishing the first stage of the census"; and a secondary phase occurred between 11th and 30th November 2010 when "another round of census taking [was] launched, though on a smaller scale of 1/10,000 of the population."⁶ Therefore, the window for families to register out-of-plan children and take advantage of the amnesty would have been the period 1st-31st November 2010, depending on whether they were part of the primary or secondary collection phase.

In an article in the *China Daily* Wang Jingqiong explains the form of the census:

About 90 per cent of the people will be asked to fill in an 18-item form, covering their name, sex, ethnic group, household registration, and education; the other 10 per cent, chosen randomly, will be asked to fill in a longer 45 question form... one in 10,000 household will be visited again from November 11 to 30 with the NBS [National Bureau of Statistics] sorting and filing the data through December.⁷

The process undertaken between the end of the collection phase in December 2010 and the end of the census in June 2012 is not clear, although it is possible that the results will be released in June 2012. A report in the Chinese Government owned *People's Daily online* states:

China's sixth nationwide census will start on Nov. 1 and finish in June 2012, Guangzhou Daily reported on Tuesday.

⁵ 'China to register all children', United Nations High Commission for Refugees (UNHCR), 1 October, 2010, http://www.unhcr.org/refworld/country...CHN_4c2b5e2926.0.html - Accessed 21 April 2011, CX252081.

⁶ See for instance, 'China starts world's biggest census' 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> - Accessed 19 April 2011, Attachment

⁷ Wang J. 2010, 'Census: Everyone counts' 2010, *China Daily*, 1 November, http://www.chinadaily.com.cn/china/2010-11/01/content_11481906.htm - Accessed 27 April 2011, Attachment

The census-takers will go into every household to collect data from Nov. 1 to Nov. 10. They will ask for private information, such as nationality, education, occupation, marital status, births, social security, death and housing.⁸

Chinese government statements encouraged parents of out-of-plan children to list these children in the census, and promised to waive or lower the substantial penalty fees associated with registration of these children under normal circumstances. A November 2010 article in the UK newspaper, *The Telegraph* reported, "the [Chinese] government has said it would lower or waive the hefty penalty fees required for those children to obtain identity cards, though so far it appears there hasn't been much response to the limited amnesty."⁹ In spite of this amnesty, the take up was not high, Chinese media explained that a sense of mistrust of the government was responsible for the low take up of this offer. The Chinese government owned newspaper, *China Daily* reported in August 2010 that census officials helping residents to register for the census found Chinese to be uncooperative. One census official interviewed by the *China Daily* reported that "many Chinese...slam the door in my face or refuse to open it."¹⁰ The article goes on to note findings from an online survey which indicated that almost half of those surveyed "did not have much knowledge about the census and nearly a third admitted they feel unsafe letting census takers into their homes."¹¹

Many Chinese believe that information they provide the census collectors will not be protected; particularly information to do with the birth of out-of-plan children, and the details of private wealth and private enterprise.¹² Attempting to allay these fears, the deputy director of Beijing's population census "promised privacy will be protected. All the information gathered will be for research only and will be destroyed after the population statistics are compiled and released."¹³

No information was located which indicated that unregistered out-of-plan children and their parents would experience different treatment after the census than before. Parents who had children 'out-of-plan' and did not register these children as part of the census process will continue to be liable for social compensation fees as discussed in September 2010 DFAT advice.¹⁴

⁸ 'China's 6th national census to start on Nov. 1', 2010, *People Daily (English)*, 10 August <http://english.peopledaily.com.cn/90001/90776/90882/7099612.html> - Accessed 27 April 2011, Attachment

⁹ 'China starts world's biggest census' 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> - Accessed 19 April 2011, Attachment

¹⁰ Chang, L. 2010, 'Fears over privacy confront census takers', *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm - Accessed 19 April 2011, Attachment

¹¹ Chang, L. 2010, 'Fears over privacy confront census takers', *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm - Accessed 19 April 2011, Attachment

¹² Chang, L. 2010, 'Fears over privacy confront census takers', *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm - Accessed 19 April 2011, Attachment

¹³ Chang, L. 2010, 'Fears over privacy confront census takers', *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm - Accessed 19 April 2011, Attachment

¹⁴ *Country Advice* 2010, CHN37198, 14 September, Country Advice and Information Section.

The survey was administered by over 6 million census takers¹⁵, who visited residents in their homes. In order to attempt to address the significant undercount in previous census results, the data collection methodology of this census has been modified from previous years – and has counted people where they live, rather than where their hukou is registered.¹⁶

3. Would a second child also born in Australia be exempt from the family planning laws if both parents were students?

While a couple may have been exempted from family planning laws because they were returning from studying overseas, the fact that they had not married before the birth of their children would nullify this exemption.

DFAT advised in September 2010 that there are “a few circumstances” where couples may be exempt from family planning fines for the unauthorised birth of a second child:

for example if both the mother and father of this child are overseas Chinese students; and they have stayed in the country in which their second child was born for more than one year. This policy may be applied to most areas in China, though specific advice should be sought on a case by case basis.¹⁷ ...

Most provincial and municipal governments have stated that a family planning fee would be imposed for children born out of wedlock. The State Family Planning Commission authorises local governments to establish their own criteria when imposing family planning fees in each jurisdiction.

According to a regulation published by the Fujian Government in September 2002, 60 to 100 per cent of the average local income should be imposed for those who give birth to their first child out of wedlock. If the parental annual income is higher than the average level, their actual annual income will be adopted, meaning wealthier parents are charged a higher penalty. Rates have been known to be negotiable in some remote regions.¹⁸

In February 2010, DFAT provided information on the exemption from social compensation fees with regard to Chinese couples studying overseas¹⁹:

[A]ccording to an article published on the website of the State Family Planning Commission in June 2008, if the couple (both mother and father) are overseas students and have stayed in another country for more than one year, an unauthorised second child will not be charged the social compensation fee when they return to China.

It is important to note, however, that DFAT (February 2010) additionally advises these exemptions do not apply where the couple are unmarried.²⁰ This DFAT advice also provides

¹⁵ ‘China starts world’s biggest census’ 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> – Accessed 19 April 2011, Attachment

¹⁶ ‘China starts world’s biggest census’ 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> – Accessed 19 April 2011, Attachment

¹⁷ DFAT 2010, *Report 1196*, 13 September, Attachment

¹⁸ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1196 – China: RRT Information Request: CHN37198*, 13 September – Attachment

¹⁹ DFAT 2010, *REPORT: 1104*, 12 February, Attachment

information on registration procedures undertaken for children born overseas when their parents return to China; and the treatment of unauthorised children after their successful hukou registration by Chinese authorities.

4. In the case where a mother is under marriageable age when her out-of-plan child is born, what fines could she incur upon return to China?

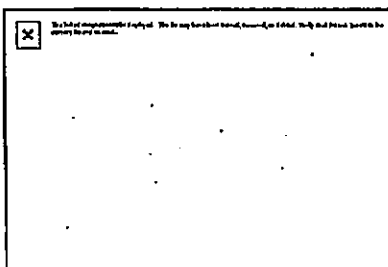
Country Advice 37751 (November 2010) provides extensive information regarding the marriageable age of men and women in China (20 yrs for women; and 22 years for men); and the legal and social consequences faced by women giving birth outside marriage, and being below the marriageable age. This Response also details the Fujian authorities' record of enforcement of financial penalties for out-of-plan births.

A table of the family planning fines applicable in Fujian is located on the China Portal website and provides current and historical fine structures for multiple out-of-plan births.

In addition, DFAT advice provided to the Tribunals in November 2010²¹ provides some information on Child Registration procedures in Fujian, the situation of single mothers and unwed and underage parents, as well as the possibilities of paying social compensation fees through instalments.

²⁰ DFAT 2010, *REPORT: 1104*, 12 February, Attachment

²¹ *Country Advice* 2010, CHN37505, 12 November, Country Advice Section.



Country Advice

China

China – CHN38886 – Forced
sterilisation/contraception – Guangdong
Province – Childbearing age

29 June 2011

1. Is there any information about the frequency of forced sterilisation and contraception in Guangdong Province?

Information on the current frequency of forced sterilisation and contraception across Guangdong Province was not located. In April 2009, the Department of Foreign Affairs and Trade (DFAT) advised in relation to forced sterilisation that “there is little, if any, media reporting on this issue”.¹ There are, however, a number of reports available which make reference to a major coercive sterilisation program that was carried out by family planning authorities in Puning City, Guangdong Province, during April 2010.²

On 7 April 2010, family planning authorities in Puning launched a 20 day campaign, which aimed to complete 9,559 sterilisations.³ In an apparent attempt to pressure targeted persons to submit to sterilisation, Puning authorities detained relatives of these persons, including parents.⁴ Multiple reports refer to 1,377 persons being detained.⁵ The US Department of

¹ DIAC Country Information Service 2009, *Country Information Report No. 09/39 – CIS Request No. CHN9645: China: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 24 April 2009), 28 April – Attachment 1.

² Haworth, A. 2010, ‘Breaking China’s One-Child Law’, *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2; Jingjing, H. 2010, ‘City cracks down on couples’, *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4.

³ Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27 June 2011 – Attachment 5; Jingjing, H. 2010, ‘City cracks down on couples’, *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3; Macartney, J. 2010, ‘China tries to sterilise 10,000 parents over one-child rule’, *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6.

⁴ Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27 June 2011 – Attachment 5; ‘China targets 10,000 in sterilisation drive’ 2010, *ABC News*, 16 April, <http://www.abc.net.au/news/stories/2010/04/16/2875417.htm> – Accessed 15 June 2010 – Attachment 7; Jingjing, H. 2010, ‘City cracks down on couples’, *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3; Macartney, J. 2010, ‘China tries to sterilise 10,000 parents over one-child rule’, *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

⁵ Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27 June 2011 – Attachment 5; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4; Jingjing, H. 2010, ‘City cracks down on couples’, *Global Times*, 16 April

State, in its 2010 Country Report on Human Rights Practices for China, also makes reference to authorities confiscating the property of non-compliant couples.⁶ The United States' Congressional-Executive Commission on China (CECC), in a report published on 10 October 2010, stated that Puning authorities employed measures such as "nullification of household registration (*hukou*) for unsterilized women, refusal to grant household registration to their children, and punitive actions taken against their relatives such as cancellation of state benefits and permits" in order to force compliance with the sterilisation program.⁷

There is information available which indicates that thousands of sterilisations were successfully completed in Puning as a result of this campaign.⁸ The CECC stated that 5,601 sterilisations were completed during the initial two week sweep.⁹ The US Department of State, referred to 8,916 sterilisation procedures being eventually completed.¹⁰ *Marie Claire*, in a report published on 15 November 2010, made reference to officials who claimed they had successfully undertaken "more than 9,000" sterilisation by mid-June 2010, and stated that they "planned to continue until their goal was reached".¹¹

There is conflicting information in the available reports regarding the specific group that was targeted by this campaign.¹² For example, Amnesty International, in a report published on 22 April 2010, stated that the campaign had been commenced to "sterilize people who already have at least one child".¹³ However, other reports of the Puning sterilisation campaign indicate that it was aimed at persons who had had more than one child.¹⁴ An explanation for this conflict in the various sources might be found in the information provided in a report by

<http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3; Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2; Bland, A. 2010, 'Chinese state holds parents hostage in sterilisation drive', *The Independent*, 17 April <http://www.independent.co.uk/news/world/asia/chinese-state-holds-parents-hostage-in-sterilisation-drive-1947236.html> – Accessed 27 June 2011 – Attachment 9.

⁶ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

⁷ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4.

⁸ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4;

US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 –

Attachment 8; Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2.

⁹ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 120 – Attachment 4.

¹⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

¹¹ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November

<http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2.

¹² Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April

<http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27

June 2011 – Attachment 5; Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November

<http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment

2; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 –

Attachment 8; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 119 – Attachment 4.

¹³ Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April

<http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27 June 2011 – Attachment 5.

¹⁴ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November

<http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment

2; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 –

Attachment 8; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 119 – Attachment 4.

the *Global Times*, dated 16 April 2010. This article states that the persons targeted were those "not allowed to have a second or third child". The report goes on to provide the further explanation that, under the rules in Puning, "farmers are allowed to have a second child if the first child was a girl".¹⁵ In a report published on 17 April 2010, *The Independent* similarly stated that the campaign targeted persons "who are suspected of planning to have a second or third child".¹⁶ This indicates that the persons targeted may either have had at least one child or two children previously, depending on their individual circumstances.

There is also some conflict in the available reports regarding whether women were the sole targets of this campaign, or whether the Puning authorities sought to sterilise both men and women.¹⁷ The aforementioned *Marie Claire* article states that the campaign was aimed at women.¹⁸ As noted earlier, the CECC provides information indicating that it was aimed at sterilising women with two children.¹⁹ However, the *Global Times* report cited above stated that the program was aimed at "women or their husbands". This report also makes reference to an episode where a village official contacted a man named Huang Ruifeng and asked that either he or his wife submit to the sterilisation procedure.²⁰ This same example is referred to in reports from *ABC News*, *The Independent* and *The Times Online*.²¹ *The Times Online* provides the further example of Zhang Lizhao, a man who submitted to sterilisation after his brother was detained.²²

Information has been located which indicates that the nature and scale of this sterilisation program undertaken in Puning was highly unusual.²³ There is also information indicating that the campaign was initiated in response to the particular conditions of Puning, where the enforcement of family planning policies had grown lax.²⁴ The *Marie Claire* report states that

¹⁵ Jingjing, H. 2010, 'City cracks down on couples', *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3.

¹⁶ Bland, A. 2010, 'Chinese state holds parents hostage in sterilisation drive', *The Independent*, 17 April <http://www.independent.co.uk/news/world/asia/chinese-state-holds-parents-hostage-in-sterilisation-drive-1947236.html> – Accessed 27 June 2011 – Attachment 9.

¹⁷ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 119 – Attachment 4; Jingjing, H. 2010, 'City cracks down on couples', *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3.

¹⁸ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2.

¹⁹ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 119 – Attachment 4.

²⁰ Jingjing, H. 2010, 'City cracks down on couples', *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011 – Attachment 3.

²¹ 'China targets 10,000 in sterilisation drive' 2010, *ABC News*, 16 April, <http://www.abc.net.au/news/stories/2010/04/16/2875417.htm> – Accessed 15 June 2010 – Attachment 7; Bland, A. 2010, 'Chinese state holds parents hostage in sterilisation drive', *The Independent*, 17 April <http://www.independent.co.uk/news/world/asia/chinese-state-holds-parents-hostage-in-sterilisation-drive-1947236.html> – Accessed 27 June 2011 – Attachment 9; Macartney, J. 2010, 'China tries to sterilise 10,000 parents over one-child rule', *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6.

²² Macartney, J. 2010, 'China tries to sterilise 10,000 parents over one-child rule', *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6.

²³ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2.

²⁴ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2; Macartney, J. 2010, 'China tries to sterilise 10,000 parents over one-child rule', *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6.

the Puning sterilisation campaign "was unprecedented in recent Chinese history" and that, while forced sterilisation was an abuse associated with the one-child policy since its introduction in 1978, "this was a crackdown on an unusually large and draconian scale". The same report also states that this campaign was launched because family planning in the Puning region had become lax due to strong economic development in the region, with Guangdong Province having a per capita income almost twice the national average.²⁵ *The Times Online* also makes reference to the county of Puning as having been under criticism from Guangdong authorities who had wanted to slow a population growth that was "reflecting badly on the entire province". It was also stated that Puning had a large population due to families in the "mainly rural region" having "up to three or four children".²⁶ Information provided in Question 2 of *RRT Research Response CHN34258*, completed on 14 January 2009, makes references to two 2008 reports from the *China Daily* which refer to concerns over the large population of Guangdong Province. One of these reports referred to a statement by the director of the Guangdong population and family planning committee, in which he said that lighter sentences in that province – fines rather than detentions – had fuelled a spike in the number of births there.²⁷

The US Department of State states that, "according to the Puning government", a further campaign of sterilisation of couples that already had two children was conducted in September 2010. It was reported that more than 3,000 sterilisation procedures were carried out at that time.²⁸ However, no additional reports which refer to this second campaign in Puning have been located.

According to a Google translation, and unofficial advice from a Chinese-speaking Tribunal officer, Article 24 of the *Guangdong Provincial Population and Family Planning Regulations* makes provision for contraception to be used as the primary component of family planning in Guangdong Province. It also states that intrauterine devices (IUDs) are to be used as the first choice of contraception for a woman of childbearing age who has given birth to one child. Where there are already two or more children, the first choice of contraception is a ligation for either the husband or the wife. Article 25 of these Regulations also makes reference to "remedial measures" that are to be taken against couples who do not observe the family planning requirements, but does not define the nature of these measures.²⁹ The CECC states that the phrase "remedial measures" (*bujia cuoshi*) is often used in government reports to refer to mandatory abortion.³⁰

No recent information was located which refers to incidences of forced contraception that have occurred in Guangdong Province. A report from the *Deutsche Presse-Agentur*, published on 5 September 2001, makes reference to officials in Huaiji country, Guangdong

²⁵ Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011 – Attachment 2.

²⁶ Macartney, J. 2010, 'China tries to sterilise 10,000 parents over one-child rule', *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011 – Attachment 6.

²⁷ RRT Research & Information 2009, *Research Response CHN34258*, 14 January – Attachment 10.

²⁸ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

²⁹ *Guangdong Provincial Population and Family Planning Regulations* (2009) (Amended 28 November 2008, Effective 1 January 2009) (in Chinese), Population and Family Planning Commission of Gansu website http://www.gsjsw.gov.cn/html/wsrkfg/10_56_57_835.html – <http://translate.google.com/translate?sourceid=navclient&hl=en&u=http%3a%2f%2fwww%2fegsjsw%2fegov%2fecn%2fhtml%2fwsrkfg%2f10%5f56%5f57%5f835%2ehtml> – Accessed 27 June 2011 – Attachment 11. Please note: Google translations can often be poor and can contain errors – as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.

³⁰ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 116 – Attachment 4.

Province, who were criticised by the State Family Planning Commission after they were accused of "coercing local women into accepting sterilization or intra-uterine contraception".³¹

There is information available which indicates that the use of contraception by women is widespread across China, although this information does not distinguish between forced and voluntary contraception.³² According to the US Department of State, in May 2010 a representative of the National Population and Family Planning Commission reported that 85% of women of childbearing age in China used some form of contraception. Of those, 70% used a reversible method.³³ A report from *The New York Times*, published on 13 May 2007, refers to a statement by family planning officials that "more than 80 percent of married women with a child are using long-term contraception like IUDs, or have been sterilized to comply with the one-child policy".³⁴

Information has been located which makes specific reference to recent examples of forced sterilisation and contraception occurring in areas of China outside Guangdong Province.³⁵ There are also a number of government and NGO reports which indicate that acts of forced sterilisation and contraception occur on an ongoing basis in China.³⁶ A report from the Immigration and Refugee Board of Canada (IRB), dated 9 July 2010, states that forced abortions and sterilisations still occur in China. These acts are banned under Chinese law, but sources report that officials are rarely prosecuted or punished for these types of abuses.³⁷ The CECC stated in October 2010 that violators of family planning policies "are routinely punished with fines, and in some cases, subjected to forced sterilization, forced abortion, arbitrary detention, and torture."³⁸ The same commission also stated in October 2009 that "the use of coercive measures in the enforcement of population planning policies remains commonplace despite provisions for the punishment of official abuse outlined in the PRC Population and Family Planning Law."³⁹ The US Department of State's 2010 Country Report

³¹ 'China's family planners set for broader, 'hands off' role' 2001, *JCS Information Service*, source: *Deutsche Presse-Agentur*, 5 September – Attachment 12.

³² US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8; Yardley, J. 2007, 'Today's face of abortion in China is a young, unmarried woman', *China Infodoc Service*, source: *The New York Times*, 13 May – Attachment 13.

³³ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

³⁴ Yardley, J. 2007, 'Today's face of abortion in China is a young, unmarried woman', *China Infodoc Service*, source: *The New York Times*, 13 May – Attachment 13.

³⁵ US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, pp. 155-6 – Attachment 14; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, pp. 117 and 119 – Attachment 4.

³⁶ Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*; 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 15; US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 116 – Attachment 4; US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 153 – Attachment 14; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 1.f Attachment 8; Freedom House 2010, *Freedom in the World – China (2010)*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7801> – Accessed 10 September 2010 – Attachment 16.

³⁷ Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010 – Attachment 15.

³⁸ US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October, p. 116 – Attachment 4.

³⁹ US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October, p. 153 – Attachment 14.

on Human Rights Practices for China also provides the following information which indicates that, while Chinese law prohibits the use of coercion to compel persons to submit to sterilisation, there are still instances of this being used by local family planning officials. These practices included the use of mandatory birth control. The report also states that, in the case of families that already have two children, "one parent was often pressured to undergo sterilization".⁴⁰ Freedom House, in a report published in June 2011, states that "although compulsory abortion and sterilization by local officials are less common than in the past, they still occur fairly frequently."⁴¹

2. Is there any information about what age would be considered in Guangdong to be of childbearing age and therefore subject to forced sterilisation and/or contraception?

No information was located which provides an indication of what Guangdong family planning authorities consider to be "childbearing age". A 2003 report from the Guangdong news website *Southcn.com* suggests that "childbearing age" was considered at that time to include persons from the ages of 15 to 49.⁴² A 2004 statement from the National Population and Family Planning Commission of China (NPFPC) also suggests that, at that time, national family planning authorities considered "childbearing age" to include persons from the ages of 15 to 49.⁴³

The *Guangdong Provincial Population and Family Planning Regulations* make several references to "childbearing age", but provide no specific definition of the age group this designation covers.⁴⁴ Relevant information regarding what is considered to be "childbearing age" in Guangdong has been located in a report on the population of Guangdong from the *Southcn.com* website. This report, published on 20 March 2003, stated that the population of Guangdong comprised a "large proportion of women at childbearing age (15-49)".⁴⁵ It should be noted that the *Southcn.com* is a news website with a specific focus on Guangdong Province, "jointly established by the major media, publishers, and other organizations in the cultural and social science fields in Guangdong Province".⁴⁶

A statement on the website of the NPFPC, published 5 April 2004, also provides an indication of what is considered to be childbearing age by the Chinese authorities. This statement is attributed on the website to Dr. Baige Zhao, Vice-Minister of the NPFPC. In this statement,

⁴⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 - China*, 8 April, Section 1.f - Attachment 8.

⁴¹ Freedom House 2011, *Freedom in the World - China (2011)*, June
<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8016> - Accessed 28 June 2011 - Attachment 16.

⁴² Huikang, J. 2003, 'Population of Guangdong', *Guangdong News Online*, source: *Southcn.com*, 20 March
<http://www.newsgd.com/english/brief/introduction/200303201140.htm> - Accessed 27 June 2011 - Attachment 17

⁴³ Zhao, B. 2004, 'Integrate Resources to Combat HIV/AIDS', National Population and Family Planning Commission of China website, 5 April <http://www.npfpc.gov.cn/en/detail.aspx?articleid=090505133855593229> - Accessed 27 June 2011 - Attachment 18.

⁴⁴ *Guangdong Provincial Population and Family Planning Regulations* (2009) (Amended 28 November 2008, Effective 1 January 2009) (in Chinese), Population and Family Planning Commission of Gansu website
http://www.gsjsw.gov.cn/html/wsrkfg/10_56_57_835.html -
<http://translate.google.com/translate?sourceid=navclient&hl=en&u=http%3a%2f%2fwww%2egsjsw%2egov%2ecn%2fhtml%2fwsrkfg%2f10%5f56%5f57%5f835%2ehtml> - Accessed 27 June 2011 - Attachment 11. Please note: Google translations can often be poor and can contain errors - as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.

⁴⁵ Huikang, J. 2003, 'Population of Guangdong', *Guangdong News Online*, source: *Southcn.com*, 20 March
<http://www.newsgd.com/english/brief/introduction/200303201140.htm> - Accessed 27 June 2011 - Attachment 17.

⁴⁶ 'About Southcn.com' (undated), *Southcn.com*, <http://www.southcn.com/ad/about.htm> - Accessed 27 June 2011 - Attachment 19.

reference is made to "the childbearing-age group (15-49)".⁴⁷ This statement ties in with available information regarding the minimum age of consent permitted under Chinese law. Article 236 of the *Criminal Law of the People's Republic of China* stipulates the following: "Whoever has sexual relations with a girl under the age of 14 is to be deemed to have committed rape and is to be given a heavier punishment"⁴⁸ In its 2011 Country Report on Human Rights Practices for China, the US Department of State also states that "according to the law, the minimum age of consensual sex is 14".⁴⁹

No reports were located which make reference to recent instances of Chinese women in their forties, or older, being forced to undergo sterilisation or contraception. A report from *Radio Free Asia*, published on 12 July 2008, makes reference to a woman in Chengguan No. 3 Village, Shandong Province, being forced to undergo a sterilization procedure by local officials in 1992. This woman was in her forties at that time – the report states that she died the following year, aged 44.⁵⁰

Attachments

1. DIAC Country Information Service 2009, *Country Information Report No. 09/39 – CIS Request No. CHN9645: China: Overseas born children of Chinese nationals*, (sourced from DFAT advice of 24 April 2009), 28 April. (CISNET China CX225344)
2. Haworth, A. 2010, 'Breaking China's One-Child Law', *Marie Claire*, 15 November <http://www.marieclaire.com/world-reports/news/latest/chinas-one-child-law> – Accessed 27 June 2011.
3. Jingjing, H. 2010, 'City cracks down on couples', *Global Times*, 16 April <http://china.globaltimes.cn/society/2010-04/522789.html> – Accessed 27 June 2011.
4. US Congressional-Executive Commission on China 2010, *Annual Report 2010*, 10 October.
5. Amnesty International 2010, *Thousands at risk of forced sterilization in China*, 22 April <http://www.amnesty.org/en/news-and-updates/thousands-risk-forced-sterilization-china-2010-04-22> – Accessed 27 June 2011.
6. Macartney, J. 2010, 'China tries to sterilise 10,000 parents over one-child rule', *The Times Online*, 17 April <http://www.timesonline.co.uk/tol/news/world/asia/article7099417.ece> – Accessed 27 June 2011.
7. 'China targets 10,000 in sterilisation drive' 2010, *ABC News*, 16 April <http://www.abc.net.au/news/stories/2010/04/16/2875417.htm> – Accessed 15 June 2010..
8. US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April..
9. Bland, A. 2010, 'Chinese state holds parents hostage in sterilisation drive', *The Independent*, 17 April <http://www.independent.co.uk/news/world/asia/chinese-state-holds-parents-hostage-in-sterilisation-drive-1947236.html> – Accessed 27 June 2011.
10. RRT Research & Information 2009, *Research Response CHN34258*, 14 January..

⁴⁷ Zhao, B. 2004, 'Integrate Resources to Combat HIV/AIDS', National Population and Family Planning Commission of China website, 5 April <http://www.npfpc.gov.cn/en/detail.aspx?articleid=090505133855593229> – Accessed 27 June 2011 – Attachment 18.

⁴⁸ *Criminal Law of the People's Republic of China* (Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/prclaw60.htm> – Accessed 20 May 1999 – Attachment 20.

⁴⁹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – China*, 8 April, Section 6 – Attachment 8.

⁵⁰ Mudie, L. 2008, 'Abuses' under population policies', *Radio Free Asia*, 12 July – Attachment 21.

11. *Guangdong Provincial Population and Family Planning Regulations* (2009) (Amended 28 November 2008, Effective 1 January 2009) (in Chinese), Population and Family Planning Commission of Gansu website http://www.gsjsw.gov.cn/html/wsrkfg/10_56_57_835.html – <http://translate.google.com/translate?sourceid=navclient&hl=en&u=http%3a%2f%2fwww%2egsjsw%2egov%2ecn%2fhtml%2fwsrkfg%2f10%5f56%5f57%5f835%2html> – Accessed 27 June 2011.. Please note: Google translations can often be poor and can contain errors – as such they give only a rough indication of the contents of a document. For any further reliance on this information, a professional translation should be obtained.
12. 'China's family planners set for broader, "hands off" role' 2001, *JCS Information Service*, source: *Deutsche Presse-Agentur*, 5 September. (CISNET China CX57220)
13. Yardley, J. 2007, 'Today's face of abortion in China is a young, unmarried woman', *China Infodoc Service*, source: *The New York Times*, 13 May. (CISNET China CX177624)
14. US Congressional-Executive Commission on China 2009, *Annual Report 2009*, 10 October.
15. Immigration and Refugee Board of Canada 2010, *CHN103502.E – China: Family planning laws, enforcement and exceptions; reports of forced abortions or sterilization of men and women particularly in the provinces of Guangdong and Fujian (2007 – May 2010)*, 9 July http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453047&l=e – Accessed 16 August 2010.
16. Freedom House 2011, *Freedom in the World – China (2011)*, June . <http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8016> – Accessed 28 June 2011.
17. Huikang, J. 2003, 'Population of Guangdong', *Guangdong News Online*, source: *Southcn.com*, 20 March <http://www.newsgd.com/english/brief/introduction/200303201140.htm> – Accessed 27 June 2011.
18. Zhao, B. 2004, 'Integrate Resources to Combat HIV/AIDS', National Population and Family Planning Commission of China website, 5 April <http://www.npfpc.gov.cn/en/detail.aspx?articleid=090505133855593229> – Accessed 27 June 2011.
19. 'About Southcn.com' (undated), *Southcn.com*, <http://www.southcn.com/ad/about.htm> – Accessed 27 June 2011.
20. *Criminal Law of the People's Republic of China* (Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997), Chinalaw website <http://www.qis.net/chinalaw/prclaw60.htm> – Accessed 20 May 1999.
21. Mudie, L. 2008, 'Abuses' under population policies', *Radio Free Asia*, 12 July. (CISNET China CX205341)

Precis summary – China

China**1305188****22 August 2013, Sydney****Ms A Cranston, Member**

CHINA – PARTICULAR SOCIAL GROUP – FAMILY – RELIGION – FALUN GONG – The applicant was the child of parents who arrived in Australia in 2010. The applicant's mother had applied unsuccessfully for a protection visa on the basis of her association with Falun Gong in China. The previous tribunal was not satisfied that the applicant's mother was a Falun Gong practitioner in China, nor that she was targeted by the PRC authorities. Further, it did not accept that she was a genuine Falun Gong practitioner in Australia. The applicant's mother submitted a protection visa application on behalf of her child who had been born in Australia, claiming that the child would not be able to return to China because she was stateless, that the child would face persecution as the child of a Falun Gong practitioner, and that the child would be unregistered as the second child of the applicant's parents.

Held: Decision under review remitted.

The tribunal found that the applicant would not be stateless as the nationality law in China stated that a child of a Chinese national born abroad could acquire Chinese nationality at birth. The tribunal also concluded from the mother's inconsistent evidence before the previous tribunal that she was not a Falun Gong practitioner in China as claimed. However, it noted that a number of years had passed since her arrival in Australia, and that she had continued to actively engage in Falun Gong practice and activities after her unsuccessful tribunal application. The tribunal further noted supporting evidence from a witness who was a reputable Falun Gong practitioner who had previously appeared before the tribunal, and it was therefore prepared to accept that the applicant's mother was now a genuine Falun Gong practitioner. The tribunal found that the applicant's membership of a family with a Falun Gong practitioner would likely result in harm upon her return to China if her parents were denied a residence, as the child could possibly become parentless or homeless. Hence, the tribunal deemed that the applicant was owed protection under the Refugees Convention.

China**1216131****25 July 2013, Sydney****Ms R Cheetham, Member**

CHINA – RELIGION – IMPUTED FALUN GONG PRACTITIONER – The applicant claimed that she was encouraged by her mother-in-law, a Falun Gong practitioner, to practise Falun Gong exercises after an injury. The applicant claimed that she saw no harm in these physical exercises and decided to do them. A few months later, she claimed that her mother-in-law came to her house with four other Falun Gong practitioners to do exercises with her. At that moment two police and community officers came to her house and arrested them, sentencing her mother-in-law to one year's re-education through labour while two of the others were sentenced to two years. The applicant was released after fifteen days' detention and had to report to the police once a fortnight; however, she was fearful of being sentenced to re-education through labour and 'pulled strings' for someone to arrange her student guardian visa and her daughter's student visa to come to Australia.

Held: Decision under review affirmed.

The tribunal had doubts about the applicant's claims as she had only applied for the protection visa one month before her student guardian visa was due to expire. The tribunal referred to the contradiction that, in her student guardian visa application, the applicant had submitted a police clearance document indicating that she had no criminal charges, yet she claimed to have received a 'detention certificate' from her encounter with the police over Falun Gong charges, which the tribunal noted she made no attempt to procure to substantiate her claims. Further, the tribunal noted that the applicant had had no qualms in allowing her daughter to return to China in 2011 and stay for two months with her husband who, the applicant claimed, was divorcing her as a result of police harassment, and her mother-in-law, who had allegedly been detained on three occasions. The tribunal subsequently found that the applicant had fabricated her claims in order to prolong her stay in Australia and therefore did not meet the refugee and complementary protection criteria.

China

1204744

4 June 2013, Brisbane

Mr F Syme, Member

CHINA – RELIGION – CHRISTIAN – UNDERGROUND CHURCH – PARTICULAR

SOCIAL GROUP – BLACK CHILDREN – The applicant claimed that his family had been persecuted by the Chinese authorities as they were active members of an underground Christian church in Fujian. He claimed that in September 2009, 10 church members were arrested and his parents had since been in hiding. He feared that if he returned to China, he too would be targeted for harm because of his involvement in an underground church and because his parents were currently wanted by the authorities. The applicant claimed that he began attending an underground Christian church in 2006, which comprised around 60 to 70 members. He claimed that he joined the youth group, was baptised, and participated in preparing and distributing church materials as well as spreading the gospel. He detailed Public Security Bureau raids on his father's business and the arrests of many church members, claiming to also fear arrest upon return to China. Further, the applicant feared that his child born out of wedlock in Australia would be persecuted because the applicant was unable to pay the high social compensation fee imposed to obtain the child's household registration.

Held: Decision under review affirmed. 10

The tribunal found that the applicant had fabricated his claims regarding his religion, noting inconsistencies in his written claims and his oral evidence. The tribunal considered it implausible that in a small church, half of the 10 people arrested were the friends the applicant claimed to have recently introduced to the church who were now all considered leaders. The tribunal found the applicant had given inconsistent evidence about the times of various meetings of his current Chinese church in Australia, which was also inconsistent with the details on the church's own website, and that he did not adequately explain his delay in seeking protection in Australia. The tribunal noted independent information which indicated that payment of the social compensation fee regarding children born out of wedlock was a law of general application in China, and that the ability to pay the fee in instalments would not cause undue hardship. The tribunal found the applicant and his family had not previously faced harm due to their religion, and that he did not face a well-founded fear of persecution due to his child being a 'black child', or for any other Convention reason. The tribunal also found the applicant did not meet the complementary protection criterion.

1217265

15 May 2013, Sydney

Ms R Irish, Member

CHINA – RELIGION – MORMON – The applicant claimed to be a Mormon and to have been detained in China for attending an underground Christian gathering. She claimed to have sent information back to China about the Jasmine Revolution, which came to the attention of the authorities. She also claimed to fear harm for having breached Fujian's family planning laws, having conceived her child before she was married and when her husband was under marriageable age. The applicant claimed that she had attended church in Australia, and that she had discussed the subject of Chinese Christians joining the Jasmine Revolution with other Chinese Christians online, which resulted in one of her friends being arrested by the police.

Held: Decision under review affirmed.

The tribunal accepted that the applicant had attended a Mormon church in Australia, noting the baptism and confirmation certificate which had been submitted; however, it was not satisfied that she held genuine Mormon beliefs given the inconsistencies in her evidence. The tribunal found the applicant's evidence about her detention, the claimed materials sent to China, and her attendance at church in Australia to be inconsistent and unpersuasive. The tribunal considered the applicant's claim that she had been detained during a gathering at her home, and it noted that she had earlier claimed that she was detained during a gathering at the family's tea house. The tribunal noted the applicant's varying accounts of her attendance at church in Australia. Furthermore, the tribunal did not accept that the applicant's claim that she had discussed the subject of Chinese Christians joining the Jasmine Revolution with other Chinese Christians online which resulted in one of her friends being taken by the police, noting that she later changed this account to suggest that she sent material on the Jasmine Revolution to her sister, who then forwarded this to her friends. The tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Convention, nor was it satisfied that she met the complementary protection provisions.

China

1219589

7 May 2013, Sydney

Ms P Leehy, Member

CHINA – RELIGION – CHRISTIAN – POLITICAL OPINION – ANTI-GOVERNMENT – CONTRAVENTION OF FAMILY PLANNING LAWS – The applicants, who were from Fujian province, 11

came to Australia separately on student visas and formed a relationship while studying in Australia. The applicants claimed that they would be persecuted in China due to their Christian faith. The male applicant stated that he began attending a government church in China with his parents from the age of six, and that after arriving in Australia he began attending church services and was baptised in 2011. He claimed that he would be prevented from expressing any dissident views against the communist government if he returned to China. The female applicant further claimed that they would be persecuted as a result of their contravention of family planning laws by having a child out of wedlock. She claimed that she was very worried about her child's unregistered status, that the child would be deprived of rights such as education, and she was also worried that she and her partner would be penalised by the authorities because they were unmarried.

Held: Decision under review affirmed.

The tribunal accepted that the male applicant was a Protestant Christian but did not find the female applicant to be a committed Christian. The tribunal considered independent information which indicated that Fujian province had a reasonably tolerant attitude towards Protestant Christians, and it was therefore not satisfied that the applicants had a well-founded fear of persecution in China because of their religion. Furthermore, the tribunal was not satisfied that the male applicant had engaged in anti-regime activity in the past or that he would do so in the future. Consequently, it found that the male applicant did not have a well-founded fear of persecution in China as a result of his political opinions. Regarding the applicants' claim of persecution due to their contravention of family planning laws, the tribunal accepted that the applicants were likely to be subjected to fines, but that this was a law of general application and the difficulties they would face for being unable to pay the fines did not amount to Convention-based persecution. Accordingly, the tribunal found that Australia did not have protection obligations towards the applicants under the Refugees Convention or complementary protection criterion.

1216897

30 April 2013, Sydney

Ms F Simmons, Member

CHINA – COMPLEMENTARY PROTECTION – FORCED MARRIAGE – The applicant arrived in Australia as a student and was married at the time to a Chinese national whom she subsequently divorced. Shortly after her divorce the applicant claimed that she commenced a relationship with a married Australian man who was now seeking a divorce. She claimed that her parents disapproved of their relationship and stated that if she were to return to China, they would prevent her from keeping in touch with her boyfriend which amounted to psychological persecution. She further claimed that as her parents had now discovered that he also has children, they would introduce her to other men and compel her to marry a Chinese man.

Held: Decision under review affirmed.

The tribunal did not accept that the applicant had a genuine fear of being harmed by her parents or that they would force her to marry another man, noting that this was a claim which was raised after her initial application. The tribunal found that the applicant had not been forced into her first marriage and that she had been living independently from her parents since that time. It noted that she had been in regular contact with them and that she had previously advised the delegate that her parents would accept her boyfriend once they were married. While the tribunal accepted that the applicant was distressed at the prospect of being separated from her boyfriend, based on the evidence before it the tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason and that the reason she applied for a protection visa was in order to stay in Australia with her boyfriend. Furthermore, the tribunal found that the applicant did not meet the complementary protection criterion.

China

1212633

27 February 2013, Adelaide

Ms S Raymond, Senior Member

CHINA – RELIGION – CATHOLIC – The applicant claimed to be Catholic who regularly attended an underground house church in Fujian. She claimed that underground churches were persecuted by the government and police. According to the applicant, on four different occasions between 2002 and 2008, police came and detained the applicant's husband and on one occasion she herself was detained. She left China and feared for the safety of her husband and child, but could not return because her husband could not support her. She claimed to have attended church since arriving in Australia.

Held: Decision under review affirmed.

The tribunal was satisfied that the applicant was a Catholic who practised that faith when she was in China. The tribunal was satisfied that she attended a Catholic church in New South Wales and that her attendance was consistent with her following her Catholic faith and was not undertaken to strengthen her claim for protection in Australia. The tribunal accepted that parishioners in China may have been detained in the past but concluded that there was no country information which indicated detention or adverse attention from the Chinese authorities of someone who was an ordinary member of an underground church in Fujian but who does not hold a leadership position. There was no evidence to suggest that the applicant held any leadership role in the church. There were inconsistencies with evidence regarding the four incidents such that the tribunal was not satisfied that it could rely on the accounts as accurate. The applicant gave no evidence to suggest that she had been mistreated by the police and the tribunal was not satisfied that the applicant's husband had been detained or mistreated as described. Nevertheless, the tribunal considered whether there were multiple reasons for her not wanting to return to China and whether any fear had arisen since her departure from China. The tribunal formed the view that she did not fear persecution and her fear was only raised after initially making reference to economic circumstances. The tribunal was not satisfied that the applicant held a well-founded fear of persecution for Convention reasons if she returned to China. The tribunal was also not satisfied that the applicant was a person in respect of whom Australia had complementary protection obligations.

1214443

15 February 2013, Sydney

Ms R Cheetham, Member

CHINA – RELIGION – FALUN GONG – The applicant claimed that she had been learning and practising Falun Gong for more than 10 years. She claimed she was detained and mistreated for 23 days, then taken to a jail and detained for a year and a half, physically mistreated and forced to perform unpaid labour. The applicant also claimed she was harassed after her release by the police checking to see if she was practising Falun Gong. The applicant also claimed that she had to move house frequently, sometimes up to two or three times a month, and had no fixed abode. She claimed her marriage and family broke apart under the pressure and that she fled China with a friend who was also a Falun Gong practitioner.

Held: Decision under review affirmed.

The tribunal found that the applicant was not a truthful witness and that she had fabricated her claims for protection. The tribunal noted that the applicant's evidence about her period of detention was vague and 11

had the appearance of having been memorised rather than being a lived experience. The tribunal also noted that her claims were uncorroborated, some were inconsistent over time or with information available from independent sources, some were inherently illogical, and significant claims were raised only after the delegate rejected her claims as not credible. The tribunal was not satisfied that the applicant's claims were true. The tribunal did not accept either that the applicant was a Falun Gong practitioner in China, or that she was detained for this reason. The tribunal was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason if she returned to China now or in the reasonably foreseeable future. The tribunal was also not satisfied that the applicant would face harm on complementary protection grounds if she returned to China.

29 January 2013, Melbourne

Ms M Holmes, Member

CHINA – RELIGION – FALUN GONG – The applicant claimed that her whole family practised Falun Gong, that they encouraged her to do likewise and to practise it secretly at home, and that they were persecuted 11

in China. She claimed that her father, who was a driver, had been imprisoned indefinitely. She also claimed that after he was arrested the authorities came to her home, ransacked it and stole practically everything. She claimed that she was isolated and ostracised at school on account of her parents' involvement with Falun Gong and had to change schools. She claimed that her mother raised the funds to send her to Australia, and her sister to another country, so that they could practise Falun Gong freely. She claimed that in Australia she practised Falun Gong several times a day at home, at a bookshop and at public gatherings with other practitioners. She also claimed she attended Falun Gong classes. The applicant claimed that she has been told that upon her return to China she would face the same treatment as her father and that her mother was still being harassed by the local authorities. The applicant claimed to be an active Falun Gong practitioner and that it was unimaginable for her to renounce it.

Held: Decision under review affirmed.

The tribunal put to the applicant that in her previous student visa application she listed her father at the family address, and that there was also a letter signed by both her parents about the money available to fund her studies, along with a certificate from the applicant's father's employer about his income. The applicant responded that an agent had been engaged to prepare the documents for the application and she had never before seen them. The tribunal found that the applicant's parents were not Falun Gong practitioners and that the applicant had no involvement with Falun Gong in China. The tribunal did not accept that the applicant was now a regular Falun Gong practitioner. The tribunal considered that the applicant's Falun Gong activities in Australia were for the sole purpose of strengthening her claims to be a refugee. The tribunal found that the applicant did not meet the refugee criterion for the grant of a protection visa. The tribunal also found that the applicant did not meet the complementary protection criterion.

1203370

15 January 2013, Sydney

Ms P Summers, Member

CHINA – RELIGION – LOCAL CHURCH – The applicant claimed to fear persecution for reasons of religion. He claimed that he was introduced to Christianity by his aunt, and that his parents and older brother did not approve. He claimed he was baptised and attended local church gatherings with his aunt at nearby church members' homes. In 2006, a gathering at which he was present was interrupted by police who detained all those present. The applicant claimed he was deprived of sleep while detained and was released from detention after a period of days when his father used a connection and paid for his release. He claimed he signed an undertaking that he would not attend house church meetings in the future and he was threatened with arrest again if he attended further house church gatherings. On weekends he continued to attend house church gatherings but less frequently and more secretly. He claimed that since his arrival in Australia, his family told him that the village committee harassed them when they were asked the applicant's whereabouts. The applicant claimed to have attended local church worship in Australia since being introduced to the church by a friend.

Held: Decision under review affirmed.

The tribunal did not accept the applicant's claims to be a Christian, finding that the applicant demonstrated only a very superficial understanding of Christianity. The tribunal found the applicant's descriptions of church gatherings in China were vague and imprecise, and that he gave inconsistent evidence about his claimed detention in China. The tribunal found that the applicant was unable to give evidence that his parents were harassed in China following his departure. The tribunal did not accept that he was detained in 2006 for attending a religious gathering or threatened with future arrest by authorities if he attended religious gatherings. The tribunal accepted that the applicant attended the local church in Sydney on a small number of occasions, but did not accept that there was a real risk the applicant would suffer significant harm as a result of that attendance on return to China. Therefore, the tribunal was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason. The tribunal also found that the applicant did not meet the complementary protection criterion.

China**1210729****10 December 2012, Sydney****Ms A Cranston, Member****CHINA – COMPLEMENTARY PROTECTION – VIOLENCE AND DETENTION BY LOCAL GOVERNMENT AND POLICE**

The applicant claimed that his mother's chicken farm was forcibly dismantled by the local government without adequate compensation. The applicant further claimed that they had petitioned for adequate compensation many times and were persecuted by the government for this. The applicant claimed that thugs threatened them, the farm was sabotaged and chickens were poisoned. The applicant claimed that he and his mother were beaten by police and they accused him of assaulting the police. The applicant claimed that he was detained at the police station for seven days by force, accused of disobeying the law. The applicant claimed that he was released after a friend paid 5,000 yuan. The applicant also claimed that when they were appealing to the government, the police came one night and took him and his mother to the police station. The applicant claimed that they were interrogated and detained for 15 days on the charge of overstepping petition and disrupting social order. The applicant claimed that they were required not to petition again after release, otherwise they would face longer jail time.

The applicant arrived in Australia in 2006 on a student visa and claimed that he returned secretly to China in 2008 because he was worried about his mother. The applicant also claimed that, in 2011, his sister informed him that his mother had been arrested by the police once again. The applicant claimed that she was sentenced for three months on the charge of slander without public trial. The applicant claimed that the police had learnt that he had gone to Australia and asked his family to tell him that he should come back to plead guilty to the charge as he was involved in the petition. The applicant claimed that he could not go back to China because the government was still pursuing him.

Held: Decision under review affirmed.

The tribunal considered discrepancies between the applicant's evidence, the fact that he did not know much about chickens, that it was unclear where his mother had got the money from to send him away, and that it took him several years to apply for a protection visa. The tribunal found the applicant's overall telling of events unconvincing. The tribunal was not satisfied that the claimed events did in fact occur. The tribunal was not satisfied that the authorities were interested in the applicant or that they would seek him out upon his return to China. Neither was the tribunal satisfied that his mother had been re-arrested. The tribunal found that if the applicant returned to China now or in the reasonably foreseeable future, there was no real chance that he would be persecuted for the reasons of his political opinion, membership of a particular social group or for any other Convention reason. Neither was the tribunal satisfied that the applicant met the complementary protection criteria.

1213772**11 December 2012, Sydney****Dr I O'Connell, Senior Member****CHINA – COMPLEMENTARY PROTECTION – PROTEST AGAINST CONFISCATION OF PROPERTY**

The applicant claimed that while he had been in Australia, his parents' shop had been confiscated by the local authorities and that when his father attempted to resist he was arrested by local authorities, detained for two weeks and fined. He claimed his father sustained injuries and required hospitalisation when he clashed with the police. The applicant claimed his father unsuccessfully petitioned the authorities, as he 12

believed the businessman who acquired the family property had connections with the local government. His parents took up farming after the incident, but the applicant claimed that they continued to be harassed because they appealed some six or seven times. The applicant claimed that he applied for protection because he wished to bring his parents to Australia so they could avoid any future harassment. He claimed that after the incident his sister could not continue to study and that she moved to Shanxi Province where she worked in a restaurant, and had done so for more than two years. The applicant claimed that if he returned to China he would need to go and live with his family, and that he would be questioned and persecuted by the local government.

Held: Decision under review affirmed.

The tribunal found the applicant's evidence about his parents' experiences was unpersuasive and lacking in detail, such that it had not accepted that the applicant's parents had difficulties with the local authorities as claimed. The tribunal had also not accepted that the applicant faced harm on return by reason of any experiences of his parents, given that his sister was still resided in China and had not received any threats of harm by reason of their parents' claimed experiences. The tribunal found that the applicant was unable to provide any insights as to why he would face harm on return by reason of any experiences of his parents and the applicant had not made any other claims for protection. As such, the tribunal had not accepted that the applicant had a well-founded fear of persecution for a Convention reason or that he was at a real risk of suffering significant harm on his return to China now or in the reasonably foreseeable future. The tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under the Refugees Convention. Neither was the tribunal satisfied that the applicant met the complementary protection criteria.

China

1201599

9 November 2012, Perth

Mr T Caravella, Member

CHINA –RELIGION –CHRISTIAN –HOUSE CHURCH ORGANISER –The applicant claimed to be an organiser of a Protestant house church in Hebei province. The applicant had initially lodged a protection visa application in 2009 that was found to be invalid as the application contained no claims, and he subsequently lodged a further protection visa application in 2011. The applicant claimed at hearing that he hosted a house church service every Thursday night, where participants gathered to share food and their experiences, play music and sing to God. He also claimed to attend a secret house church in Tianjin on Sundays. The applicant claimed that his grandfather believed in God and their whole family was involved in religion. He claimed that the authorities would visit his house church regularly, where they would search it and rip up the Bibles. The applicant claimed that he had been held by the authorities for one or two hours and that on another occasion he was detained at the police station for two weeks. The applicant claimed that during his detention the police had abused him and not given him food for a whole day. He claimed that upon release he was forced to sign an undertaking that he would not host future house church meetings.

The applicant claimed that after his arrival in Australia, a friend had taken him along to a church in Perth. He claimed that he was subsequently baptised and that he attended the church every week. The applicant submitted various documentation to the Tribunal, including a letter from the pastor of her church in Australia which stated that he had known the applicant since he joined the church in February 2009, that he attended the church every Sunday unless he was working, and that "He seems sincere in his desire to follow the Christian faith."

Held: Decision under review set aside.

The Tribunal found some aspects of the applicant's evidence were given in a somewhat evasive manner, and that he was not able to provide evidence in the level of detail expected, given his claim to be an organiser of house church services. Overall, however, the Tribunal found the applicant to be a credible witness. The Tribunal accepted independent information which indicated that the government in China restricted the right of its citizens to practice

religion outside of the registered churches endorsed by the government, and that house church leaders and ordinary house church followers in China might be targeted by authorities for particular attention, including detention for periods if caught practising or proselytising their religion. Whilst the Tribunal did not accept that the applicant was necessarily a leading organiser, it was satisfied that the applicant was a genuine practising Christian who had attended and participated in house churches for a substantial period of time in China. The Tribunal accepted that the applicant might have experienced past incidents where the authorities disrupted the house church services which he was attending; however, it was not satisfied that what he experienced during these house raids amounted to 'serious harm'. The Tribunal accepted that the applicant was detained by local police who entered his home, and that what followed by virtue of his detention for two weeks, and the deprivation of liberty and mistreatment during that time, did amount to past 'serious harm' for the purposes of the Act. The Tribunal considered the applicant's circumstances in that he was able to freely leave and re-enter China without being questioned or detained by the authorities, and it found that he was not a person of interest as a leader of an underground or unregistered church group in China. However, it found that the independent information indicated that there was still a real chance that the applicant might face persecution as an ordinary member of such a church. The Tribunal accepted that the applicant's practice in an underground Christian house church on his return to China would continue, and that he faced a real chance of being arrested, detained and mistreated in a manner which might amount to 'serious harm' and persecution because of his religion if he returned to China. The Tribunal concluded that the applicant had a well-founded fear of persecution in China for reasons of his religion, and that he was a person in respect of whom 15

Australia owed protection obligations.

1203936

14 December 2012, Melbourne

Mr C Powles, Member

CHINA – RELIGION – FALUN GONG – The applicant claimed that he had been persecuted due to his practice of Falun Gong in China. The applicant claimed that he began to practice Falun Gong in 2000 on the recommendation of a friend of his father in order to help cure the problems he was having with his lungs as a result of pollution. He claimed that he knew it was forbidden, so his father's friend advised him to practice at home to make sure he would not be caught. He claimed that after six months he had stopped experiencing health problems, and his father's friend then gave the applicant the book "Zhuan Falun". The applicant claimed that in April 2004 he met a more senior Falun Gong practitioner, Mr A, and he joined a small group of four practitioners who took turns to host meetings. He claimed that in September 2006, they were caught by police at the applicant's house, and Mr A was taken to the detention centre, with the applicant and another man being sent to a mental hospital where he was forced to take medicine and injections against his will for one month. The applicant claimed that the police went to search his father's home, and that he was detained for three days and only released after paying a fine of 5,000 Yuan. He claimed that the police had also gone to search the house of his brother, who subsequently escaped to the USA. In 2010, the applicant claimed that he travelled to South Korea on a tour in order to escape; however he could not do so as the tour guide was watching him. He claimed that a friend later assisted him in getting a visa to come to Australia.

The applicant also claimed to fear harm as he had worked in the military in the communications area, and he thought that the Chinese government would suspect him of releasing confidential information overseas. He claimed that he was allowed to leave China as the Chinese economy was so strong that many people were going on overseas tours. The applicant claimed that he had not attended any meetings of Falun Gong organisations in Australia because he was busy working, although he had practiced Falun Gong in the park and had spoken to people in Chinatown.

Held: Decision under review affirmed.

The Tribunal had significant concerns about the credibility of the applicant's claims, and it found his explanations for them largely unconvincing. The Tribunal noted inconsistencies in the names of the men with whom the applicant claimed to have practised Falun Gong in China, although it was willing to give him the benefit of the doubt that there might have been errors in transcription. However, the Tribunal found that the inconsistencies in the applicant's evidence to the Department and the Tribunal about where they met to be more serious. The Tribunal noted that the applicant had claimed to the Department that they had only met at his house, whereas he told the Tribunal that they met at the houses of other members of the group, and it found that this raised serious doubts about the applicant's credibility. The Tribunal further noted that the applicant had travelled outside China on a number of occasions before coming to Australia, and that he had been willing to return to China on each occasion, which it found was inconsistent with his claim to have been persecuted prior to these travels because he was a Falun Gong practitioner.

The Tribunal noted the significant delay in the applicant applying for protection, and it found that if the applicant genuinely feared harm in China, that he would have at the very least sought immigration assistance in relation to lodging a protection visa application before his visa expired. Furthermore, the Tribunal found that if the applicant was a genuine Falun Gong practitioner, he would have contacted Falun Gong associations in Australia and participated in meetings and practice with members of those associations. Therefore, the Tribunal did not accept that the applicant's father was imprisoned; that the applicant had suffered lung problems; that the applicant was ever a member of the Chinese military; that the applicant had ever engaged in Falun Gong practice or met with any practitioners in China; that the applicant had been arrested, detained or beaten in 2006 because he was practicing Falun Gong; that the applicant was being monitored by the Chinese government or security forces; that his brother had fled to the USA because of problems arising from the applicant's Falun Gong practice; nor that the applicant's father had been detained and required to pay a fine to be released. Although the Tribunal found that the applicant had some knowledge of Falun

Gong practice and beliefs, it found that he had obtained this knowledge solely for the purpose of strengthening his refugee claim. The Tribunal found that there was not a real chance that the applicant would face arrest, detention, beating or death or any other form of serious harm at the hands of 16

the Chinese government or security forces if he were to return to China, and accordingly, it was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under the Refugees Convention.

China

1210350

17 October 2012, Sydney

Mr R McNicol, Member

CHINA – RELIGION – CATHOLIC – IMPUTED POLITICAL OPINION – PROTESTS AGAINST THE EFFECTS OF POLLUTION

The applicant claimed that her husband had bought an investment property in Fujian, and that in February 2011 her husband's mother had become ill. She claimed that he had noticed that the river next to the property was polluted, which was adversely affecting the health of the local people as the river was used to irrigate food crops. The applicant claimed that her husband was of the view that the main polluter of the river was a particular company, and that he had written a letter to all of the households in the village asking them to object to the pollution. She claimed that the community had then sent a letter of complaint to the local government authority, as well as to the company concerned, but there had been no change in the company's practices. The applicant claimed that her husband also complained to the Environmental Protection Agency (EPA), as the local government was also allowing the river to be used as a sewage ditch, and this was affecting the value of the property and the health of residents adjacent to it. She claimed that the stench from the river became unbearable during summer, which led her husband and other villagers to attend the EPA office, where they were forcibly removed and beaten by the police. The applicant claimed that her husband was currently in hiding because the government authorities were looking for him. She claimed that if she were forced to return to China she would be forced to join the protesters to defend her personal interests, and that she would be persecuted by the government and the company.

The applicant further claimed that people from the government had searched her house and found documents relating to printing material for the Catholic Church. She claimed that she was baptised as a Catholic in an underground church in the 1980's, and that all of her family were Catholic. The applicant claimed that in 2003, the police had raided a three-day retreat which she had attended, arresting all of the participants. The applicant claimed that she was questioned for three days, and that she was threatened and forced to undergo training from the Three-Self Patriotic Movement committee. She claimed that in 2009 her husband had been involved in a church building program, and that when the government discovered the building they damaged it, before detaining and questioning her husband. The applicant claimed that her husband had arranged for printing for the church to be undertaken at the printing business of an acquaintance, and that she was the contact point between the church and the printing company. She claimed that in 2011, the police had found printing dockets and receipts with her name on them at her house. The applicant claimed that a relative with links to the local government had told her husband that the 15

police wanted to use his religious activities as leverage to stop him campaigning about the polluted river issue, but as they now had evidence of illegal printing, the matter was much more serious. She claimed that the authorities were searching for her and that as a result, she could not return to China because she would be arrested for her involvement in the printing activity, tortured during her interrogation, and sent to jail.

Held: Decision under review affirmed.

The Tribunal accepted that the residential property was owned by the applicant and her husband, and that while there was no evidence other than the applicant's testimony that the adjacent river was polluted, it accepted the applicant's claims. However, the Tribunal was not satisfied that the essential and significant reason for any pollution related harm, such as health, environmental and social concerns, was a Convention reason. The Tribunal found the applicant's evidence in relation to the activities of her husband, and the claimed activities of the Chinese authorities, to be general, vague and incapable of providing a sound basis for any finding that the applicant's husband had been, or would be, persecuted for any activity he had undertaken in relation to the residential property or the polluted river.

The Tribunal found that there was no evidence that the applicant would be seriously harmed because of any involvement she may have had with the underground Catholic Church. The Tribunal accepted that the applicant had been detained by the Chinese authorities for three days in 2003 for attendance at a retreat; however, it noted her evidence that she was not mistreated, and it found on the basis of relevant independent information regarding the tolerant attitude of the authorities in Fujian, that she would not be mistreated if she were to be questioned again about her activities. The Tribunal accepted that the police had found documents in her home that she alleged related to the printing of material for the Catholic Church; however, it noted that the only incriminating evidence on the relevant documents seemed to be the applicant's signature for accepting delivery of the goods, and that as a result, the Tribunal found that there was insufficient evidence to link the applicant to any underground church, as no such church was named. The Tribunal noted the applicant's claim that she had practised her Catholic faith in an underground church from the 1980's until her departure from China in 2008, and that she was not subject to any serious harm during that time. The Tribunal was therefore not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

1208597

24 October 2012, Brisbane

Ms A Christou, Member

CHINA – RELIGION – FALUN GONG – The applicant claimed to fear returning to China because he believed he would face serious harm as a result of being a Falun Gong practitioner. He claimed that he started practicing Falun Gong with his parents when he was aged in his teens and that, when Falun Gong was banned in 1999, the family ceased practice in the open but maintained their observance at home. He claimed his parents were arrested at their home in 1999, and he was told by the police that his parents were in an „evil cult“ and was denied access to them. The applicant claimed he then went to live with his grandparents, where he was able to continue his Falun Gong practice. During this period, he claimed his teachers and classmates discriminated against him because of his parents being Falun Gong practitioners. The applicant claimed that his parents were held in detention for three years and that after their release the family continued to live in difficult conditions. He claimed his parents' health suffered as a direct result of the torture and deprivations experienced in the prison camp, they had insufficient income, they were discriminated against by many people, and their home was targeted by the police. He claimed his parents sold personal goods to raise money to give to the police in order to protect themselves. He and his parents continued to practise Falun Gong, however, and in 2004 the applicant claimed he was reported for practicing Falun Gong, arrested and held for more than six months in detention. Following his release, he claimed it was hard for him to find a job and the police continued to harass his family and ask for money. The applicant gave detailed evidence regarding his Falun Gong practice, including the main groups of exercises, and noted also that he followed Master Li's philosophy in his life and provided examples. He claimed it was his belief that Falun Gong could teach one to be a better person and that he

felt obliged to tell others about this. He claimed that whilst he was aware of the potential dangers in doing so, his choice to talk with others was tied directly to his beliefs. The applicant claimed that in 2006 he began a business, and although he had applied for all the licenses and security certifications, he was not able to open the business until he gave the police money. The applicant 16

claimed that, in China, police often gang up with government officials to oppress practitioners of Falun Gong and, despite doing everything correctly, he was continually scrutinised by authorities over bureaucratic details. He claimed that attempts were being made to cause great difficulty to himself and his business, and he realised that he had to leave or he would continue to suffer at the hands of authorities. The applicant claimed that he had difficulties obtaining a travel document and he bribed a government officer when applying for a passport. The passport was granted in 2010 and, after saving more money, he paid a travel agency to help him apply for an Australian tourist visa. The applicant claimed that he felt that he must be on a list of Falun Gong practitioners and would be sought after by the government, if he returned to China, and that it was highly probable he would eventually be arrested again and put in detention. He claimed his father still practised and people knocked on the door of the family home from time to time; these troubles were ongoing.

Held: Decision under review set aside.

The Tribunal found the applicant to be a witness of truth on all material matters on the basis of credible and consistent evidence submitted by the applicant and the concurrence of independent information relevant to his claims. The Tribunal particularly noted the applicant's detailed, credible and internally coherent responses to key questions such as those relating to his Falun Gong practice and his family's enduring problems in this regard with Chinese authorities. The Tribunal accepted that the applicant was a Falun Gong practitioner and that he had directly suffered serious harm in the past as a result of this practice. The Tribunal also found, on the basis of the applicant's detailed and plausible account of his long term personal commitment to Falun Gong, that he would continue to practice Falun Gong should he return to China at any time in the reasonably foreseeable future. The Tribunal considered the repercussions of this in consideration of the relevant country information and found there was sufficient objective data available to conclude that Chinese nationals who are Falun Gong practitioners have a real chance of facing one or more of the consequences of arbitrary arrest, detention and/or torture on the basis of their religious practice in China. The Tribunal accepted that the applicant's personal beliefs and connection with Falun Gong would continue to animate his adherence to and practice of Falun Gong, drawing him to the inevitable adverse attention of Chinese authorities. Furthermore, the Tribunal found that such harm will arise no matter what location the applicant might choose as his residence in China, due to the documented arbitrary nature of official responses to unauthorised religious observance across China. The Tribunal noted that a portion of the applicant's religious observance had occurred whilst he was in Australia but found s.91R(3) was not enlivened, in that the applicant engaged in this conduct otherwise than for the purpose of strengthening his claim to be a refugee within the meaning of the Convention. The Tribunal found there was a real chance that the applicant would be subjected to serious harm as specified by s.91R(1)(b) of the Migration Act and was satisfied that the applicant was a person in respect of whom Australia had protection obligations.

China

1211729

9 October 2012, Sydney

Ms G Towney, Member

CHINA – RELIGION – MORMON – The applicant claimed that he had been a follower of the Mormon Church since 2005 and that he had been persecuted in China, that he was involved with an underground church which was under the influence of Mormon missionaries and that one of his cousins was the organiser and priest of the church. He claimed that one of the venues where the church would gather was the clothing store which he operated. The applicant claimed that people from the joint security office had visited his home in 2005 and questioned him about his involvement, but due to a lack of evidence he received a warning and was told not to gather without government permission. The applicant claimed that in February 2007, he was at his business looking at Mormon Church paraphernalia when a businessman came in to sell samples. He claimed that the businessman identified himself as a believer and stated that he wished to join the church. The applicant claimed that the man sold him defective products, and that he later saw the man and chased him, before calling security and having the man taken away by police. The applicant claimed that two

undercover policemen subsequently came to his store, and that his wife took them to the church venue, where he was with his „brothers and sisters“. He claimed that he was taken to the police station and held for two days, where he was beaten and subjected to sleep deprivation and electric shocks. The applicant claimed that after his release he tried to move the church material that was hidden in his shop; however, when he was transporting the Mormon material on his motorbike, he had an accident and again came to attention of the police. He claimed that his family became implicated and that his children were discriminated against at school.

The applicant claimed that he was deprived of his freedom in China and that there were immense dangers due to his involvement in the church. He claimed that he paid a person who had connections to the PSP 70,000RMB to 80,000 RMD in order to leave China legally. The applicant claimed that he joined a few local churches when he came to Australia in September 2007, but that he did not find a Chinese Mormon Church until July 2011. He claimed that he had been baptised in Australia, that he had decided to become a Mormon missionary, and that he would preach the Gospel to everyone if he returned to China. The applicant claimed that one of the church members in China had since been arrested in December 2011.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant had been involved with the Mormon Church in Australia since 2011, noting the submission of a baptism certificate and a letter of introduction. The Tribunal found the applicant's evidence in relation to his involvement in China contradicted independent information regarding the behaviour and teachings of the church, which taught that its members should not evangelise, noting the 17

applicant's claim that he held religious information that was to be passed to other people and that he would work as a missionary and save Chinese people if he were to return. The Tribunal further found that the applicant's description of his having received a warning in 2005 and being detained in 2007 due to his involvement with the Mormon Church contradicted independent information regarding the treatment of Mormon Church followers by the Chinese authorities. The Tribunal therefore found that any participation that the applicant had with the Mormon Church in Australia was for the sole purpose of furthering his refugee claim, further noting the delay between the applicant entering Australia in 2007 and his first contact with the Mormon Church in 2011. The Tribunal did not accept the applicant's claimed reason for the delay, given his claim to be a committed Mormon with connections to the Mormon Church in China, finding that he would have been able to locate a Mormon Church in Sydney relatively easily. The Tribunal found that the applicant was not a member of the Mormon Church in China, and that he had participated with the Mormon Church in Sydney for the sole purpose of furthering his refugee claim. The Tribunal therefore found that the applicant did not have a well-founded fear of persecution due to his previous, current or foreseeable future involvement with the Mormon Church in China.

1205075

19 September 2012, Sydney

Ms S Pinto, Member

CHINA – RELIGION – FALUN GONG – COMPLEMENTARY PROTECTION – PERCEIVED PRACTITIONER DUE TO INVOLVEMENT IN AUSTRALIA

The applicant claimed that she was a Falun Gong practitioner who began practising in 1996. She claimed that she had been unwell as a child, and that her mother was given a copy of Zhuan Falun by a friend. The applicant claimed that after reading the book, she instantly felt that her mind was clearer and her life changed. The applicant claimed that in 1999, she travelled to Beijing to appeal the banning of Falun Gong with her mother and sister who were also Falun Gong practitioners. She claimed that they were arrested by police officers and detained, during which time they were separated and interrogated. The applicant claimed that there were many people in her family who practiced Falun Gong; her mother was later imprisoned in a forced labour camp for one year before being sentenced to three years imprisonment, and her sister was sentenced to five years imprisonment. The applicant claimed that within her employment she did everything according to the requirements of Dafa, which led to her colleagues identifying with Falun Gong. The applicant claimed that after her sister's imprisonment ended, they set up a "truth clarification material production site" and used the proceeds to produce materials. She claimed that they printed booklets, flyers and posters, and that they distributed truth clarification material in residential areas, universities and parks. The applicant claimed that a friend with whom she shared a flat was detained by the Public Security Bureau (PSB) for participating in the pro-democracy movement, and that under pressure she had revealed the applicant's activities. The applicant claimed that staff from the 610 office would go to the family home to harass them, and that her father had eventually been forced to leave as he could no longer deal with the pressure. She claimed that her family wished for her to escape from the "terrifying system", and in April 2011 she arrived in Australia.

The applicant claimed that on her arrival she immediately sought out fellow practitioners. She claimed that she met a Falun Gong practitioner from her home town the day after she arrived, and that she moved in with this person shortly afterwards. She claimed that she took part in Falun Gong exercise groups and began distributing literature, and that she later commenced volunteer work with the Epoch Times. She claimed that she was interviewed and an article was subsequently published on the English website of Clearwisdom, although the article did not refer to her by name. The applicant claimed that she would be persecuted in China, not only as a result of her previous involvement in Falun Gong and her family's adverse profile as Falun Gong practitioners, but also because of her extensive involvement in Falun Gong activities whilst in Australia.

Held: Decision under review set aside.

The Tribunal did not accept that the applicant was a truthful witness, and it was strongly of the view that the application had been contrived for the purposes of the applicant obtaining protection in Australia, and to assist other family members who had also made protection visa

applications to obtain protection. The Tribunal considered that the applicant's evidence in relation to her mother's detention was unpersuasive, noting that she was only able to provide limited detail and had altered her evidence in relation to the length of her detention. The Tribunal also considered the evidence that the applicant was only detained on one occasion, despite claiming to have been associated with a family of well-known Falun Gong practitioners who 18

had been detained on numerous occasions for lengthy periods, was not credible. The Tribunal noted independent information which indicated that Falun Gong practitioners and their families were subject to considerable monitoring, and it did not accept that the applicant would have avoided the scrutiny of the authorities over a 12 year period, given her claimed extensive involvement in promoting Falun Gong and producing materials whilst living with her sister, whom she claimed had recently been released from prison. The Tribunal also did not accept that the applicant would have actively promoted Falun Gong at her workplace given the dangers of doing so, particularly given her claims to be from a family of well-known practitioners, nor did it accept that she would have avoided questioning and detention if her flatmate had informed the PSB that she was involved with Falun Gong. The Tribunal considered it "beyond coincidence" that on the day after her arrival in Australia, the applicant would meet someone from her home town and would begin living with her after a week, and it found that this had been planned prior to the applicant's arrival, noting that her flatmate had indicated at hearing that she had supported a number of other Falun Gong practitioners to obtain protection. The Tribunal found that the entirety of her claims were manufactured in an attempt to provide a basis for protection in Australia. The Tribunal noted that the applicant had provided numerous documents attesting to her commitment to Falun Gong in Australia, and that various Falun Gong practitioners genuinely believed that she was a committed Falun Gong practitioner. The Tribunal considered that it would generally accept this evidence as persuasive; however, given its findings that the application was contrived and planned prior to her arrival in Australia, it was of the view that the applicant's involvement in Australia was a continuation of her attempts to manufacture and contrive evidence to support her application. The Tribunal was satisfied, therefore, that the applicant was motivated to become involved in Falun Gong activities in Australia solely to strengthen her claims to be a refugee, and it disregarded the applicant's involvement in all Falun Gong activities in Australia in determining whether she had a well-founded fear of persecution. The Tribunal then considered the Complementary Protection provisions, and it noted that under these provisions it could not disregard the applicant's conduct in Australia in relation to her involvement in Falun Gong, despite its findings as to the contrived nature of such conduct. The Tribunal accepted that the applicant's involvement in Falun Gong activities in Australia had been extensive. The Tribunal accepted that the applicant's work at the Epoch Times might well be known to Chinese authorities in Australia, and that this information might have been passed onto the authorities in China. The Tribunal further accepted that the applicant had been actively involved in distributing pamphlets and other promotional material; that she had regularly handed out the Epoch Times; that she had attended various major events; been photographed performing Falun Gong exercises; been actively involved in various Falun Dafa workshops and other events, and had attended the Chinese Consulate to participate in demonstrations. The Tribunal therefore accepted that there was a real risk that the applicant's conduct would be known by the Chinese authorities, noting independent information which indicated that there was monitoring of Chinese people residing in Australia on temporary visas, and that Chinese students had been pressed by consular officials to monitor the political behaviour of fellow students. It further noted reports which suggested that the surveillance of Chinese Australians had at times been widespread, that the "five poisonous groups" which the authorities monitored included the Falun Gong movement, and the Tribunal found that it was likely that Falun Gong activists in Australia would be monitored and questioned upon their return to China. Although the Tribunal found that the applicant's claims were contrived and that she would not practise Falun Gong upon her return to China, it accepted that there were substantial grounds for believing that she would have been identified as a Falun Gong practitioner and would be perceived to be a practitioner by the Chinese authorities. The Tribunal accepted that Falun Gong practitioners were at considerable risk of serious mistreatment, including arrest, detention, harassment and physical harm, and it was satisfied that such mistreatment amounted to significant harm, as it might include torture, cruel or inhuman treatment or degrading treatment or punishment. Accordingly, the Tribunal found that the applicant met the Complementary Protection provisions.

1208940

6 September 2012, Melbourne

Mr A Ho, Member

CHINA – RELIGION – CHRISTIAN – The applicant claimed that she came from a family of Christians and that she attended Youth Church and distributed leaflets at school. The applicant claimed that on one occasion she was at a bible study gathering at the home of a Christian 'brother' when police started banging at the door. She claimed that ten police entered the house with sticks and asked the gathered people to stop their activities. The applicant claimed that she was hit twice by a policeman and that the group were taken to the police station where they were told to stop having gatherings and were verbally abused, and that she was assaulted by police when she refused to divulge information about the church. The applicant claimed that she was forced to sign a document which committed her not to participate in home church activities

14

again, and that she was released after her parents paid money to the police. She claimed that the police then informed her school about the incident which lead to her being publicly criticised by the principal and experiencing social isolation within the school community; however, this did not stop her from continuing to distribute flyers.

The applicant claimed that she came to Australia as a student and to flee persecution in China. She claimed that a friend took her to a local church in Melbourne and that she had "gone to tell others about God" in the city on three occasions, although she no longer did this as she was not good at speaking. The applicant claimed that she would continue to participate in home church activities if she returned to China and that she would never give up her belief in God. She claimed that she had returned to China for one month in 2011 as she wanted to see her mother, and that whilst there she went to church twice a week without experiencing any problems.

Held: Decision under review affirmed.

The Tribunal considered that whilst the applicant's knowledge of the bible was not as detailed as one who had been a Christian and who had studied the bible for a long a period as she claimed, it found that she was able to relate major events in the Christian narrative with some nuance, and it therefore accepted that the applicant considered herself to be Christian and had attended home church gatherings in China. The Tribunal further accepted that she had attended church in Australia, and it did not consider that Christian conduct engaged in by the applicant in Australia was for the purpose of strengthening her claim to be a refugee. The Tribunal had concerns regarding the credibility of the applicant's account of when she was arrested, noting that in her written application she claimed that she was arrested at the end of 2007 and was detained for two weeks, whereas at hearing she claimed that she was detained for three days in 2003

or 2004. The Tribunal found that the claims of past harm did not actually occur and that they had been

inserted to strengthen her refugee claim, given her difficulty in replicating those claims in her oral testimony.

The Tribunal found that the applicant was never arrested or abused by police, and that she had no record

with the police for any other reason. Hence, the Tribunal found that the applicant's school had never

discovered any claimed arrest or detention of the applicant or subjected her to any form of public or private

'criticism' or other exposure, and that she did not suffer social isolation or discrimination at school. The

Tribunal noted the applicant's evidence that she was hesitant about evangelising in Australia and that she

had stopped accompanying church members even as a passive companion, and it therefore did not accept

that she would place herself at risk by distributing Christian materials in a school where she claimed she was

ostracised and publicly criticised. The Tribunal further found that the applicant's return to China, her

attendance at church without consequences, and her family's attendance at church without consequences

since 2008 all lead to the conclusion that she had no or negligible subjective fear of practicing her religion in

China. After considering all of the evidence, the Tribunal was not satisfied that the applicant was a person to

whom Australia had protection obligations under the Refugees Convention.