

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant:	GV (China)
Before:	A M Clayton (Presiding Member) Z N Pearson (Member)
Counsel for the Appellant:	S Lamain
Counsel for the Respondent:	No Appearance
Date of Hearing:	3 June 2022
Date of Decision:	30 August 2022

REFUGEE AND PROTECTION DECISION

[1] The appellant is a Chinese national in his early thirties. He appeals against a decision of the Refugee Status Unit (RSU) declining to recognise him as a refugee or protected person.

THE ISSUE

[2] The appellant claims that if he returns to China he faces a risk of serious harm from a local government official and his associates due to the official's false claim that the appellant continues to owe him money.

[3] The primary issue on appeal is the credibility of the appellant which, for the reasons that follow, is accepted only in part.

[4] Because the appellant's accounts of being detained and ill-treated by the local government official and police officers, and continuing to be of interest to them, are not accepted, the Tribunal finds that he does not have a well-founded fear of being persecuted in China, or of suffering other qualifying harm. He is therefore not recognised as a refugee or protected person.

THE APPELLANT'S CASE

[5] The account which follows is a summary (only) of the evidence given by the appellant by audio-visual link at the appeal hearing.

Evidence of the Appellant

[6] The appellant has lived all his life in his parents' home in a location in China. He is an only child. His mother tends the family's small farm and his father works in construction in another part of China, returning home only for special occasions.

[7] After the appellant married, his wife lived between his parents' place and her own parents' place in a nearby village. She and the appellant's daughter (now aged 9) have lived predominantly at her parents' home since the appellant has been in New Zealand. She works as a bookkeeper for a small factory.

[8] In 2016, the appellant decided to start a restaurant. The purchase price was RMB250,000 including a year's rental. Applying his savings and borrowing money from his family for the purchase, he still had a shortfall of RMB120,000. He approached a local bank but was told he could not be granted a loan. After a few days, an individual called AA telephoned and told him that he had some money which he could loan him at an interest rate of 10 per cent per month. The appellant believed that the bank must have told AA that he needed money.

[9] Although monthly payments of RMB12,000 was an extremely high rate of interest, the appellant took up the loan. He believed he could afford it from the proceeds of the restaurant business. He met AA and signed an agreement for the capital and interest but AA did not give him a copy of the agreement.

[10] The restaurant initially did well. The appellant paid the monthly interest payments in cash. Every month, a different person would come to collect the interest, saying that AA had sent them. They were mainly people without proper jobs. By this time, the appellant had learnt that AA was a government official. He believed therefore that he could trust him and that AA would not do him any harm.

[11] In May 2017, the appellant lost his good chef and another restaurant opened close by, both affecting his restaurant's profits. He sold the restaurant in August 2017 for a price similar to the purchase price. He has no documentation about the sale because his agent advised him before he left China to delete everything from his telephone.

[12] The appellant obtained employment polishing machine components and was paid RMB3,000 to RMB5,000 per month, depending on overtime. By September 2017, he had repaid AA all the money he owed him and had about RMB10,000 to RMB20,000 left over, which he used over time for living expenses. He later repaid a loan from his mother of RMB20,000.

[13] However, AA told the appellant that now he owed another RMB100,000 in interest. When the appellant disputed this, local people began coming to his house and asking him for the money. He was very frightened.

[14] Visits to the appellant's home started in October 2017. One to three people came each time, and the visits numbered between two and five times per week. Sometimes visitors were gang members or "gangster" types, other times state administration people and, about every six months, police officers not wearing uniform. One police officer was called BB and the other CC. Sometimes the appellant was at home and sometimes only his mother was there. They threatened that, if he did not repay the money, they would put him in jail or throw him into the sea.

[15] On one occasion, the appellant reported a visit by these people to the police but the police took 40 minutes to arrive, took a statement from the appellant and left. The lack of interest by the police made the appellant even more worried.

[16] After the visits started, the appellant paid some small amounts, totalling approximately RMB10,000, but he stopped when he realised that what AA was doing was illegal.

[17] In April or May 2018, AA and two other men came to the appellant's home and threatened that they would put him in jail. In June 2018, the two police officers took him away and put him in an underground room for three days, abusing him and giving him only one meal a day. He had no water or light. Feeling helpless, he eventually agreed to sign a further loan agreement for RMB100,000 at a monthly interest rate of 20 per cent. The same police officers told him that if he did not agree to sign, they would detain him longer and they would harm his family. He gave in and signed as he had no way to fight against the government. He was then released.

[18] The appellant was so stressed after this experience that he had trouble with the nerves in his face. He approached an agent to get him out of China. He provided the agent with his passport and identification but all the rest of the

information provided in support of his visa application was false, including the *hukou* provided.

[19] Following the kidnapping, the appellant continued to receive a visit every week from different people, including AA and the two police officers (who came every two weeks, sometimes AA and BB, sometimes BB and CC). They would threaten the appellant that they would kill him and said “all sorts of bad things”. They said something to his mother but they did not harm her. His wife and child were not present when these visits were made. The appellant would hide from them sometimes.

[20] In November 2018, the appellant left China and travelled to New Zealand.

[21] Since he has been in New Zealand, the appellant’s mother has received visits and, as recently as May 2022, the two policemen told her they knew that he was in New Zealand. BB and CC used threatening words and requested contact details for the appellant in New Zealand. They have not visited his wife, who now lives permanently at her parents’ place.

[22] The appellant began working in New Zealand shortly after he arrived. He has sent money back to his family. As far as he knows, this has not attracted any attention from AA or his associates. The appellant believes that this is because it was he who signed the agreement, so AA’s main purpose is to get *him* back to China.

[23] The appellant was too concerned about possible government surveillance to have his wife give evidence by audio-visual link at the hearing. While he and his wife communicate regularly through WeChat, giving evidence over the telephone or internet is a different matter. His wife has suspected in the past that her telephone or computer might be under surveillance but they have no way of confirming this. However, in May 2022, the police told his mother that they knew the appellant was in New Zealand so they must have some way of getting that information.

[24] The appellant could not live anywhere else in China because personal information is entered into a system and is checked by the police. He would have to register his *hukou* again and, as soon as he did that, they would know that he was no longer overseas.

Material and Submissions Received

[25] Counsel filed opening submissions (31 May 2022) and gave oral submissions at the close of the hearing. He also provided:

- (a) A statement by the appellant (26 May 2022);
- (b) An undated statement from his wife;
- (c) Two statements from his mother (26 July 2021, 8 May 2022);
- (d) Three translated posts from the internet; [...]

[26] The Tribunal and the appellant have received copies of the Refugee Status Unit file and decision (18 November 2021). The Tribunal made available to counsel a copy of the appellant's business visitor visa application lodged with Immigration New Zealand on 29 October 2018.

ASSESSMENT

[27] Under section 198 of the Immigration Act 2009 (the Act), on an appeal under section 194(1)(c) of the Act, the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 *Convention Relating to the Status of Refugees* ("the Refugee Convention") (section 129 of the Act); and
- (b) a protected person under the 1984 *Convention Against Torture* (section 130 of the Act); and
- (c) a protected person under the 1966 *International Covenant on Civil and Political Rights* (section 131 of the Act).

[28] In determining whether the appellant is a refugee or protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant's account.

Credibility

Delay in claim

[29] The appellant lodged his claim for refugee and protection status in April 2021. At the time, he was in custody after being discovered working illegally and had been issued with a deportation order. He had arrived in New Zealand two and a half years previously, in November 2018, and started work shortly thereafter. Asked why he had delayed making a claim for so long, the appellant said that, once he learnt about refugee status, he intended to save money for a lawyer. He said he was not aware of the availability of legal aid and, because of his limited English, he was generally distrustful about the process.

[30] While the Tribunal considers the appellant had ample time to save for the services of a lawyer, it recognises that a failure to claim refugee status shortly after arriving in a country is not determinative of its merit. The Tribunal treats the appellant's delay as a neutral factor in its consideration of his credibility.

No mention of detention in Confirmation of Claim

[31] The appellant confirmed at the hearing that he completed his Confirmation of Claim form when he was in prison with an interpreter and lawyer helping him. In it, he described his wife as a salesperson whereas at the hearing he said she was an accountant (or bookkeeper) in a relative's factory and had been in that role for a few years, starting before he came to New Zealand. Asked to explain this inconsistency, the appellant stated without further explanation that, before he came to New Zealand and before she began working for her relative, his wife worked in sales. He also described his father as a farm worker in his Confirmation of Claim. Asked why this was so, given that his father had worked in construction for many years in another part of China and only came home for special occasions, he said that his father also worked on the farm when he came home and that he had described him as a farm worker as a form of "shorthand".

[32] While these sorts of inconsistent details might normally be dismissed as unimportant, they assume more significance when considered in the context of the appellant providing completely different information about his identity (other than his name and date of birth) and family, including a false *hukou*, when he applied for a visa to enter New Zealand. The Tribunal acknowledges the appellant's claim that his agent provided that false information, but a failure to provide consistent evidence about the occupations of his wife and father, even in circumstances

where they are not crucial, does not engender confidence that the appellant was being truthful to the Tribunal and that the earlier information provided by the agent was necessarily untruthful in order to secure a visa.

[33] In any event, there are other aspects of the appellant's account in his Confirmation of Claim that cannot be disregarded as trivial.

[34] In answer to the question in his Confirmation of Claim, "What do you fear would happen to you if you returned, and why?", the appellant recorded that gangs of drug users and criminals are sent by the government to threaten or kill a person who does not pay back money owed. He referred to taking a loan out between 15 and 20 August 2016 at a rate of 20 per cent per month, stating that he was not given a copy of the loan document. He concluded his statement with:

They started threatening me in about September 2017. They would send at least 2-3 people per week at first and it was 2-3 weekly. Then the times increased to 3-4 times per week. When it was 2018 they pushed me very very hard. In 2018 before I came to NZ they threatened (*sic*) me with a knife if I did not pay back the money. I came to NZ to look but when I listened to a Chinese man at supermarket who encouraged me to stay and earn more money.

[35] To the further question in the Confirmation of Claim "Have you ever been arrested, detained, or held against your will by the police or military or any other authorities in any country, including in New Zealand?", the appellant answered "yes". Having answered yes, the form asked the appellant to "briefly explain every incident, in chronological order, providing dates if possible". The appellant's sole response was recorded as "I am currently detained", as he was in custody in a New Zealand prison at the time. This question represented a further opportunity to the appellant to include his detention in China, if indeed it had occurred.

[36] The appellant made no mention in the Confirmation of Claim of the second loan agreement, any visits by police officers, or any kidnapping or detention by them. When he was given the opportunity to comment on this at the hearing, the appellant said that he had talked about the kidnapping at "his first interview" and did not know "what went wrong" with his Confirmation of Claim. He said that he did not record in the Confirmation of Claim all the things that had happened to him as he believed it was just a supplement to "the previous document". When asked what "previous document" he was referring to, it appeared that he was talking only about subsequent documents.

[37] The appellant then told the Tribunal that the police officer BB had in fact threatened him with a knife on the first day of his detention, while the police officer CC had looked on. However, he had not told the Tribunal about being threatened

with a knife when he gave an account of his detention earlier in his evidence. This in fact was the first mention of being threatened with a knife since he had made that claim in his Confirmation of Claim.

[38] Counsel submits that the appellant's evidence to the RSU and the Tribunal was broadly consistent, particularly in regard to his interactions with AA and the two policemen, the amount of debt, the payments he made, and his kidnapping. In those circumstances, counsel submits, caution is required in regard to the Confirmation of Claim as, when the appellant dictated it, he had recently been arrested and imprisoned, could not speak English and was simply told one day that a lawyer had arrived to take his claim. For his part, the appellant told the Tribunal that he had not been given notice that a lawyer was coming to visit him, the form had only one page, and he had limited time. He said that, when he met the lawyer (and interpreter), he did not know where to start.

[39] The Tribunal recognises the challenges for the appellant, given that he was in prison at the time he dictated and signed the Confirmation of Claim. However, it remains that his failure to include in the Confirmation of Claim the second loan agreement, the involvement of police officers and, most particularly, his three-day detention are significant omissions. He had been in custody for some weeks when he signed the Confirmation of Claim. He gave a lucid account in the Confirmation of Claim of having borrowed money, recalling the exact date he entered into a loan agreement, the amount of the loan and the interest rate. He also described multiple threats by criminal elements. Those threats included being threatened with a knife which, he told the Tribunal, occurred on the first day of his detention in the underground cell. It defies belief that he would not have included where the knife threat occurred if it had in fact taken place in the context of a kidnapping and imprisonment that lasted three days and involved other ill-treatment. It also defies credibility that he would not have mentioned that it was a policeman who threatened him with a knife.

[40] The Tribunal is conscious that a Confirmation of Claim is, by its nature, intended to be only a summary of a claimant's account of their predicament. Again, it is acknowledged that the appellant gave relatively consistent accounts of his three-day detention to both the RSU and the Tribunal (other than the knife threat). However, it is simply not plausible that, if it had actually happened, the appellant would have failed to include in his Confirmation of Claim the central event in his claim, a three-day kidnapping and detention by members of the Chinese police.

Threats after kidnapping

[41] The appellant was also given the opportunity at the hearing to comment on why he thought he was able to remain living at his family home for the five months between his detention and before he left China, without any harm coming to him. The appellant said that he continued to receive visits every week from different people, including AA and the two police officers (who came every two weeks, sometimes AA and BB, sometimes BB and CC). He said that they abused him orally, that he was very stressed, and that he often “hid away”.

[42] Asked to describe the threats, the appellant said the men threatened that if he did not pay the money, they would kill him and “all sorts of bad things”. While they did threaten his mother and father, he said, the men did not do anything to them and were “more gentle” on his mother. The appellant believes that the people did not harm him because they did not think he would escape and they were giving him time to pay the money. He said it was quite possible that they would later work out a plan to kill him.

[43] Counsel submits that, while there was a five-month “lull” in harm to the appellant after he had been kidnapped and before he came to New Zealand, he was now over three years in arrears. While AA may have had reason to think in the five months after the kidnapping that he “had the appellant over a barrel”, he would now have realised that the appellant had no intention of repaying him and that he had left the country. Counsel submits that it would not be difficult, once the appellant re-registered his address in China, for a senior government official such as AA to find him and physically harm him. Counsel submits that China is not a country where one can live “off grid”. He submits that citizens are monitored and it should be accepted as credible that state authorities can locate people when they wish to.

[44] Acknowledging counsel’s submissions, the fact remains that, following his detention, the appellant did not pay anything more (whereas before the detention he had paid RMB10,000) and remained living at his family home for another five months. (Incidentally, the Tribunal does not consider it credible that, faced with threats made by local thugs and policemen that he would be killed, the appellant would stop paying simply because he realised the loan was illegal.) He says that he did not return to work and sometimes hid from the people coming to threaten him, neither of which could have increased AA’s confidence that the appellant intended to repay him.

[45] While the appellant told the RSU that after his detention he continued to receive visits from gangsters, he told the Tribunal that his weekly visitors included AA, BB and CC, who abused him orally. It is not accepted as credible that, after being detained and ill-treated by the two policemen who threatened that they would kill him and harm his family, that the appellant was able to live openly at his parents' home for a five-month period, being "orally abused" on a weekly basis and nothing more.

Evidence of the appellant's wife

[46] The appellant claimed that his wife could not give evidence at the hearing because he and his wife suspected that her telephone and computer might be monitored by government authorities. He also acknowledged that his wife sent him photographs of the three statements provided to the Tribunal (two written by his mother and one by his wife) via WeChat. Asked why he and his wife thought that it was safe enough for her to send those statements through her telephone, if she was in fact afraid that it was being monitored, the appellant said that they had no choice as he needed evidence for his case. Even if the wife had bought a brand new phone, this could be tracked. Nor could his wife post the statements because everyone knows that customs check the mail.

[47] The appellant's counsel submits that it was quite reasonable for the appellant's wife not to make herself available as a witness, given the concerns about the risk of surveillance by the Chinese authorities. He referred to *GD (China)* [2021] NZIPT 801793–794, where the Tribunal considered the extent of state surveillance both in and out of China. In that appeal, the Tribunal acknowledged widespread monitoring of text messaging and monitoring of the general populous, not just people of interest. Counsel submits that, given the objects of the appellant's fear are relatively senior civil servants, his fear of their ability to track communications outside China is a real one. It is submitted that there is a qualitative difference between the appellant talking to his wife via WeChat (which he does two or three times a week), where they can self-sensor, avoid topics and avoid advising locations, and giving evidence directly to a Tribunal in a foreign jurisdiction.

[48] The Tribunal acknowledges the findings in *GD (China)* and in *FC (China)* [2019] NZIPT 801555–557 where it was noted that the full extent of China's monitoring capabilities cannot be accurately ascertained. The Tribunal considers that, given the uncertainty of China's monitoring capabilities, the fact that the

appellant's wife chose not to give evidence is a neutral factor in the assessment of credibility.

Threats against the appellant's family

[49] The appellant told the RSU and the Tribunal that, among the threats made during his three-day detention, were threats that if he did not pay the (new) debt, he and his family members would be arrested (in his evidence to the RSU) or harmed (in his evidence to the Tribunal).

[50] However, the appellant's parents, wife and child were not arrested or harmed in the five months before he left China (nor indeed since). At the hearing, the appellant downplayed the risk to his parents saying that, post-detention, the visitors to their home were "more gentle" with his parents. When asked whether the visitors threatened his parents, he said "they did say something but did not do anything". The minimisation of the risk of harm to his parents, from being at risk of or harm on his account, to something "more gentle", is unconvincing and indicates an effort to explain away the absence of any harm to his parents despite alleged ongoing visits to his family home after his detention.

[51] Since he has been in New Zealand, the appellant has not paid any money to AA, although he has sent remittances to his family. According to his evidence at the hearing, despite the regularity of the alleged visits, his remittances have not attracted any attention by AA or his associates. To explain why no harm has come to his family, he told the Tribunal that it is him that the men want to find and harm, not his family.

[52] The Tribunal finds it implausible that, despite the threats apparently made that his family would be harmed, all that happened was that they continued to receive "gentle" visits. This implausibility suggests that the appellant's claims advanced at the hearing, of threats to his family and ongoing visits to them, are untrue.

Threats since the appellant has been in New Zealand

[53] When asked whether any threats against him had been made to his family members since he had been in New Zealand, the appellant referred the Tribunal to the statements he had provided from his wife and mother. When asked again as to what he knew of any threats against him made to his family, the appellant said that since he had been in New Zealand his wife had not been visited or

threatened. However, in her statement to the Tribunal (date not translated), the wife stated:

While my husband was in New Zealand, they have come and threatened me, saying that once they find him, they will take him back and send him in there making him dead.

[54] When this was put to the appellant, he responded that he had not read his wife's statement thoroughly before he had produced it to the Tribunal. This response, while it may be true, does not explain why the appellant was unaware that his wife had been threatened. As he told the Tribunal, he speaks to her two or three times a week and this kind of information could have been relayed to him, without using names, in the self-censoring manner with which the couple are familiar. It is implausible that he did not know that his wife had been threatened if, in fact, she had been. The wife's bare claim that threats had been made to her in regard to the appellant since he has been in New Zealand, while the appellant had no knowledge of such threats, suggests that her claim is not credible.

[55] On appeal, two statements from the appellant's mother referring to visits to her home were also produced. The first (26 July 2021) states that "some people still come to my home and ask for [the appellant's] whereabouts, and say they will catch him and bring him back to kill him if they find him". Her second statement (8 May 2022) reports that, between 2019 and 2021, "our family has been harassed by some hoodlums in the community, I cannot remember the exact dates" but, she states, these visits occur every one or two months. She says that three hoodlums came to her home and wished her happy New Year in a threatening way. She states that, on 3 March 2022, two men came to her home and said that they had found out that her son was overseas and that they would soon locate him. On 1 May 2022, they told her that they had found out he was in New Zealand and that "when the opportunity arises, they will go to New Zealand to capture him back then bring him to prison where they could kill him".

[56] In a similar vein to the appellant's wife, his mother's inability to provide oral evidence is a neutral factor in the Tribunal's assessment. However, it remains that she is not an impartial witness. Her second statement referred to two recent visits (in March 2022, when the men said they were about to find the appellant and on 1 May 2022, when they said that they now knew he was in New Zealand). These visits are conveniently timed, coming as they do just before the hearing on 3 June 2022. The claims in the mother's statements are not regarded as reliable evidence.

Conclusion on credibility

[57] Counsel points out that, at the time of the hearing, the appellant was receiving medication for stress and sleep disturbance and that his evidence showed that he could become easily confused, even in regard to questions which were not particularly significant. Counsel submits that the appellant's confusion should not be treated as an indication that he is not telling the truth. The Tribunal takes into account the stress the appellant was understandably under at the RSU and again at the Tribunal hearing, but found him to be more a vague witness than a confused one. Even being careful to take his stress into account, this does not resolve the concerns that the Tribunal retains about the appellant's evidence, in particular his significantly different account in his Confirmation of Claim which was prepared with a lawyer and interpreter present to assist him.

[58] Counsel submits that, in the absence of oral evidence from his wife, the appellant presented the best evidence he could, in the form of witness statements and research identifying the two police officers and AA. The Tribunal acknowledges the valid reason for the appellant's wife not giving oral evidence. It also acknowledges the provision of internet posts about AA and the two police officers. However, the fact that these named men might very well be local officials or police officers, whom the appellant has subsequently identified on the internet, does not sufficiently support his account which has been found to be otherwise not credible.

[59] The Tribunal also acknowledges that aspects of the appellant's account have been similar throughout, such as starting up a restaurant and borrowing money to do so, selling it and repaying the loan. In that regard, the Tribunal notes that the appellant was able to provide a duplicate copy of the business licence for a food business in his name (28 August 2016). Extending the benefit of the doubt to him, the Tribunal accepts that the appellant borrowed money to start his restaurant and repaid it when he sold it, as he said he did. It does not accept that, following that repayment, he was told he owed more or was subsequently threatened or kidnapped.

[60] Counsel submits that the appellant's account of borrowing money from AA is plausible in terms of the available country information which includes the information that, despite crackdowns on corruption, incurring debt with local officials is still common. The Tribunal acknowledges that there is country information as to illegal moneylending in China at exorbitant interest rates, including by officials, and the employment of 'thugs' to collect such debts.

However, the appellant is not assisted by such information as it has not been established, even at the low threshold of the real chance test, that an official or anyone else is seeking payment from him of any amount.

[61] In summary, taking into account the appellant's failure to refer to his detention by police in the Confirmation of Claim, the banal nature of the alleged visits for five months before he departed China, the claimed "gentle" visits to his parents despite the claimed threats against them, the inconsistency between the appellant and his wife as to whether she had been threatened, and the appellant's ability to be mobile about basic biographical information such as his family's occupations, the Tribunal is left in no doubt that the appellant's claim to be at risk from AA or any associate of his, is untrue.

Facts as found

[62] The appellant is a Chinese citizen who operated a food business for an unknown period after August 2016. When he sold it, he repaid the funds he borrowed to open it.

Assessment of the Claim to Refugee Status

[63] Section 129(1) of the Act provides that:

A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.

[64] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

[65] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

[66] For the purposes of refugee determination, “being persecuted” requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection — see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[67] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective — see *Refugee Appeal No 76044* (11 September 2008) at [57].

[68] The Tribunal’s task is to determine whether, objectively and on the facts as found, there is a real chance of the appellant being persecuted if returned to China.

Country information

[69] It is accepted that China is a country with a poor human rights record, and particularly so in recent years under the increasingly authoritarian rule of Xi Jinping. A helpful summary of the major concerns can be found in the Executive Summary of the United States Department of State *2021 Country Reports on Human Rights Practices: China* (12 April 2022) (the USDOS report), which states:

The People’s Republic of China is an authoritarian state in which the Chinese Communist Party is the paramount authority. Communist Party members hold almost all top government and security apparatus positions. Ultimate authority rests with the Communist Party Central Committee’s 25-member Political Bureau (Politburo) and its seven-member Standing Committee. Xi Jinping continued to hold the three most powerful positions as party general secretary, state president, and chairman of the Central Military Commission.

The main domestic security agencies include the Ministry of State Security, the Ministry of Public Security, and the People’s Armed Police. The People’s Armed Police continue to be under the dual authority of the Central Committee of the Communist Party and the Central Military Commission. The People’s Liberation Army is primarily responsible for external security but also has some domestic security responsibilities. Local jurisdictions also frequently use civilian municipal security forces, known as ‘urban management’ officials, to enforce administrative measures. Civilian authorities maintained effective control of the security forces. There were credible reports that members of the security forces committed serious and pervasive abuses.

...

Significant human rights issues included credible reports of: arbitrary or unlawful killings by the government; forced disappearances by the government; torture by the government; harsh and life-threatening prison and detention conditions;

arbitrary detention by the government, including the mass detention of more than one million Uyghurs and members of other predominantly Muslim minority groups in extrajudicial internment camps and an additional two million subjected to daytime-only 're-education' training; political prisoners; politically motivated reprisal against individuals outside the country; the lack of an independent judiciary and Communist Party control over the judicial and legal system; arbitrary interference with privacy including pervasive and intrusive technical surveillance and monitoring; punishment of family members for offenses allegedly committed by an individual; serious restrictions on free expression and media, including physical attacks on and criminal prosecution of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others as well as their family members; serious restrictions on internet freedom, including site blocking; substantial interference with the freedom of peaceful assembly and freedom of association, including overly restrictive laws that apply to foreign and domestic [non-governmental] organizations; severe restrictions and suppression of religious freedom; substantial restrictions on freedom of movement; refoulement of asylum seekers to North Korea, ... the inability of citizens to choose their government peacefully through free and fair elections; serious restrictions on political participation; serious acts of government corruption; forced sterilization and coerced abortions; trafficking in persons, including forced labor; violence targeting members of national, racial, and ethnic minority groups; severe restrictions on labor rights, including a ban on workers organizing or joining unions of their own choosing; and child labor.

Government officials and the security services often committed human rights abuses with impunity. Authorities often announced investigations following cases of reported killings by police but did not announce results or findings of police malfeasance or disciplinary action. Enforcement of laws on corruption was inconsistent and not transparent, and corruption was rampant.

[70] As to moneylending, a 2018 academic article refers officials who borrow money then relend it via informal loans (W Junjie "The Coexistence and Interaction of Formal and Informal Lending in China: Discussion of the Wenzhou Case" (2018) 51(1) *The Chinese Economy* 97):

During the events of 2011–2012, local media in Wenzhou [...] reported numerous cases of impropriety by cadres [public officials] and business association agents (in one specific case 80% of participants in an informal lending scandal were officials). Given their role in credit transformations officials were accused of usury, and of simply perpetuating the problems of the formal system that require an informal system to exist.

...

Cadres (*ganbu*), local non-government/business association agents, and bank agents have privileged access to credit from the formal system and so can take out loans, mediate with *yinbei*, and become a primary source of funding in *hui* in the informal sector. Cadres and business association agents, of course, also have significant networks and *guanxi* to expedite this process; bank agents, meanwhile, also have significant contact with business associations and well-connected PE [private enterprise] entrepreneurs. Significantly, none of these agents can actually state on a loan application that the purpose of credit is to transfer lending from the formal to the informal system.

[71] There are also reports of violence by gangs and “thugs” using “soft violence”, including home invasion and blackmail, in order to force debtors to pay. The Shanghai Daily (C Huizhi “Police Take Hard Line on ‘Soft Violence’” (17 May 2019)) reported:

Shanghai police are cracking down on crime gangs which use so-called ‘soft violence.’ Yesterday, police said 24 people will be prosecuted for loan sharking.

The accused, [...] allegedly used soft violence to coerce debtors to pay, such as blocking door keyholes.

A debtor [...] was threatened with soft violence when he didn’t pay.

Other soft violence includes illegal detention, home invasion, blackmail and false lawsuits.”

Application to the facts

[72] The USDOS report reflects the range and scale of the more serious human rights violations in China. As already noted, it is also accepted that there is illegal moneylending by government officials and evidence of violent means used to enforce debt repayment in China. Even so, there is nothing before the Tribunal which establishes that the appellant, a Chinese national and one-time owner of a food business who repaid a loan he took out to purchase it, has any characteristic, background or circumstance which exposes him to a real chance of serious harm arising from breaches of human rights if he returns to China, whether from the authorities or from any non-state actor. He does not have a well-founded fear of being persecuted if he returns to China.

Conclusion on claim to refugee status

[73] For the foregoing reasons, the appellant does not have a well-founded fear of being persecuted in China. He is not entitled to recognition as a refugee under the Refugee Convention or section 129(1) of the Act.

Assessment of the Claim under the *Convention Against Torture*

[74] Section 130(1) of the Act provides that:

A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.

[75] Section 130(5) of the Act provides that torture has the same meaning as in the *Convention Against Torture*, Article 1(1) of which states that torture is:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

[76] For the purposes of his claim under the *Convention Against Torture*, the appellant relies upon the same evidence as he did to support his claim under the Refugee Convention. The Tribunal has already found that the evidence does not establish that he has a well-founded fear of being persecuted in China. For the same reasons, the Tribunal finds that he has not established that there are substantial grounds for believing that he would be in danger of being subjected to torture if he were to be deported from New Zealand. He is not entitled to be recognised as a protected person under section 130(1) of the Act.

Assessment of the Claim under the *International Covenant on Civil and Political Rights*

[77] Section 131 of the Act provides that:

(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.

[78] For the purposes of his claim under the *International Convention on Civil and Political Rights*, the appellant relies upon the same evidence as he did to support his claim under the Refugee Convention. The Tribunal has already found that the evidence does not establish that he has a well-founded fear of being persecuted in China. For the same reasons, the Tribunal finds that he has not established that there are substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if he were to be deported from New Zealand. He is not entitled to be recognised as a protected person under section 131(1) of the Act.

CONCLUSION

[79] For the reasons set out above, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the *Convention Against Torture*;
- (c) is not a protected person within the meaning of the 1966 *International Covenant on Civil and Political Rights*.

[80] The appeal is dismissed.

Order as to Depersonalised Research Copy

[81] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to his identification.

For and on behalf of the panel

"A M Clayton"
A M Clayton
Presiding Member

Certified to be the Research
Copy released for publication.

A M Clayton
Member