



# Administrative Appeals Tribunal

## DECISION RECORD

**DIVISION:** Migration & Refugee Division

**APPLICANT:** Ms Ge Zhang

**CASE NUMBER:** 1806097

**DIBP REFERENCE(S):** CLF2018/23422

**MEMBER:** Michael Ison

**DATE:** 27 March 2018

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant meets the following criteria for a Subclass 050 (Bridging (General)) visa:

- cl.050.211 of Schedule 2 to the Regulations;
- cl.050.212(4)(b) of Schedule 2 to the Regulations;
- cl.050.221 of Schedule 2 to the Regulations; and
- cl.050.223 of Schedule 2 to the Regulations.

I, Member M. Ison certify that  
this is the Tribunal's statement of decision and reasons



Statement made on 27 March 2018 at 4:43pm

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Bridging E (Class WE) visa under s.73 of the *Migration Act 1958* (the Act).

#### Background

2. The applicant is Ms Ge Zhang, a 23 year old Chinese national who arrived in Australia on 10 November 2015 on a Student (subclass 573 Higher Education sector) visa to study a Bachelor of Nursing. Ms Zhang commenced her nursing studies in February 2016.
3. Ms Zhang was charged with 14 criminal offences on 26 December 2016.
4. Ms Zhang was released on an undertaking of bail by Victoria Police.
5. The criminal offences related to a series of events occurring between 6 and 9 December 2016 in response to an alleged sexual assault of Ms Zhang by a third party known to Ms Zhang.
6. Amongst other matters, Ms Zhang and her boyfriend at the time of the alleged offences are alleged to have assaulted and falsely imprisoned the third party and to have committed an aggravated burglary.
7. Ms Zhang's former boyfriend has also been charged with criminal offences.
8. Ms Zhang's criminal charges have not yet been heard and she has not entered any plea in relation to those charges.
9. The Department issued Ms Zhang with a Notice of Intention to Consider Cancellation of a visa (NOICC) on 5 January 2018.
10. Ms Zhang was represented in relation to the NOICC, and this review, by her lawyer and registered migration agent, Ms Vanessa Bleyer of Bleyer Lawyers.
11. Ms Bleyer responded to the NOICC for and on behalf of Ms Zhang on 19 January 2018.
12. The Department cancelled Ms Zhang's Student visa on 22 February 2018.
13. Ms Zhang was detained and placed in the Maribyrnong Immigration Detention Centre on 1 March 2018.
14. Ms Zhang applied for a Bridging E (Class WE) visa on 2 March 2018.
15. A delegate of the Minister refused Ms Zhang's application for a Bridging E (Class WE) visa on 6 March 2018.
16. Ms Zhang appealed that decision to the Tribunal on 6 March 2018 and provided a copy of the delegate's decision with her application for review.
17. Ms Zhang has also appealed to the Tribunal to review the decision of a delegate of the Minister to cancel her Student visa.

18. At the time Ms Zhang applied for a Bridging E (Class WE) visa, Class WE contained two subclasses: Subclasses 050 and 051. In the present case, Ms Zhang is seeking to satisfy the criteria for the grant of a Subclass 050 visa, which are set out in Part 050 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
19. Relevantly to this matter, the primary criteria include cl.050.223 which requires that at the time of decision the Tribunal must be satisfied that if an applicant is granted a bridging visa they will abide by any conditions imposed on that visa.
20. As noted above, the decision to refuse to grant Ms Zhang a Bridging E (Class WE) visa was made on 6 March 2018. The delegate of the Minister formed the view that because Ms Zhang has been charged with 14 criminal offences of a serious nature which were committed over a four day period between 6 and 9 December 2016 the delegate was not satisfied Ms Zhang would abide by discretionary condition 8564 which requires that the holder of a visa must not engage in criminal conduct.
21. On 15 March 2018, the day before the hearing, Ms Bleyer provided a detailed submission to the Tribunal on behalf of Ms Zhang. The submission included a three page outline of submissions and a two page statement of support from a friend of Ms Zhang's, both dated 15 March 2018, a copy of the submission made to the Department on 19 January 2018 and some of the attachments to that submission.
22. In the outline of submissions dated 15 March 2018 and earlier submission to the Department dated 19 January 2018, Ms Bleyer submitted on behalf of Ms Zhang, amongst other matters, that:
  - Ms Zhang had a right to a presumption of innocence until proven guilty in relation to the criminal charges;
  - Ms Zhang being charged with criminal offences should not be relied upon to decide that she will engage in criminal conduct if granted a Bridging E (Class WE) visa;
  - Some of the criminal charges are alternatives to each other such that whilst Ms Zhang has been charged with 14 offences even if she were found guilty she could not be found guilty of all charges;
  - Ms Zhang being immediately released on bail (by Victoria Police as compared to under a Court order) is relevant to the review;
  - If Ms Zhang is granted a Bridging E (Class WE) visa then it is not necessary to impose discretionary condition 8564 on that visa; and
  - If discretionary condition 8564 were imposed the Tribunal should not find that Ms Zhang will not comply with that condition.

#### The hearing

23. Ms Zhang appeared before the Tribunal on Friday 16 March 2018 to give evidence and present arguments.
24. The hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
25. Ms Zhang's representative, Ms Bleyer, attended the Tribunal hearing.

26. At the hearing, the Tribunal informed Ms Zhang:

- The Tribunal was reviewing only the decision by the delegate of the Minister to refuse Ms Zhang's application for a Bridging E (Class WE) visa;
- The Tribunal was not considering Ms Zhang's separate application to the Tribunal to review the separate decision to cancel her Student visa;
- The delegate of the Minister had accepted that Ms Zhang would comply with the discretionary conditions the delegate would apply if Ms Zhang was granted a Bridging E (Class WE) visa, other than discretionary condition 8564 not to engage in criminal conduct;
- The Tribunal was satisfied Ms Zhang had made a valid application for a Bridging E (Class WE) visa as Ms Zhang had made an application for a merits review of a decision to cancel a visa (being her Student visa) in accordance with cl.050.212(4)(b) of Schedule 2 to the Regulations and therefore meets the requirements of cl.050.212;
- The question of Ms Zhang's innocence or guilt in relation to the criminal charges was not an issue before the Tribunal and is a matter for a criminal court;
- The Tribunal did not accept Ms Bleyer's submission that Ms Zhang being charged with criminal offences was, in effect, not relevant to whether Ms Zhang will comply with condition 8564;
- The Tribunal accepted Ms Bleyer's submission that some of the criminal charges were alternative charges to other charges;
- The Tribunal did not accept Ms Bleyer's submission that condition 8564 should not be imposed on any Bridging E (Class WE) visa granted to Ms Zhang because the Tribunal is of the view that in the circumstances where the applicant has been charged with serious criminal offences it is reasonable to impose condition 8564;
- The Tribunal accepted Ms Bleyer's submission that Ms Zhang being released on bail was relevant to the review, as it may or may not go to establish that there is already effective oversight of Ms Zhang's presence in the community through the Victorian criminal justice system, should Ms Zhang be granted a Bridging E (Class WE) visa. The Tribunal did note though, that the mere granting of bail does not prevent the Tribunal from finding that Ms Zhang would not comply with condition 8564;
- That the Tribunal was aware that as Ms Zhang has been charged with criminal offences that have not been determined, Ms Zhang has a privilege against self-incrimination such that she could refuse to answer any question asked by the Tribunal during the hearing if the answer would, or would tend to, incriminate Ms Zhang in those separate criminal proceedings;
- The Tribunal offered Ms Bleyer the opportunity to make further submissions in relation to the Tribunal's response to Ms Bleyer's submissions made on behalf of Ms Zhang. Ms Bleyer declined to make further submissions; and
- The only issue before the Tribunal therefore, was whether Ms Zhang would comply with any conditions the Tribunal considers reasonable to impose if Ms Zhang were granted a Bridging E (Class WE) visa.

27. During the hearing Ms Bleyer handed to the Tribunal, on behalf of Ms Zhang, a copy of a 15 page report dated 18 April 2017 from Mr Wang, a registered counsellor and psychotherapist, about Ms Zhang. The Tribunal took a short adjournment to read Mr Wang's report and consider if it needed to ask Ms Zhang any questions in relation to the report.
28. During the hearing the Tribunal informed Ms Zhang that it would treat the written statements from Ms Zhang's counsellor, Ms Kathryn Moran from CASA House, and from Ms Zhang's criminal lawyer, Ms Marita Altman, as submissions and not as evidence as Ms Moran and Ms Altman were not available to give evidence and have their opinions tested by the Tribunal. The Tribunal referred in particular to the expression of opinion by Ms Moran that Ms Zhang is not a risk to any person and by Ms Altman that Ms Zhang presents no risk of reoffending in any way. The Tribunal pointed out to Ms Zhang that it could attribute only very limited weight to these submissions as neither Ms Moran nor Ms Altman had explained the basis of their opinions about Ms Zhang in their written submissions. The Tribunal invited Ms Zhang to provide updated information from Ms Moran and Ms Altman in the form of sworn statements and gave Ms Zhang a reasonable period of time to provide this information. Ms Bleyer agreed the time allowed by the Tribunal for this purpose was reasonable.

#### After the hearing

29. In response to the request made by the Tribunal during the hearing, Ms Zhang provided the Tribunal with an updated written submission of three pages from Ms Moran on 21 March 2018. The submission was in the form of a signed letter rather than a sworn statement.
30. Also on 21 March 2018, in response to a specific request from the Tribunal dated 20 March 2018, Ms Zhang provided additional information to the Tribunal relevant to this review.
31. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

#### **CONSIDERATION OF CLAIMS AND EVIDENCE**

32. An applicant for a Bridging E (Class WE) visa must, at the time of application, satisfy cl.050.211 and cl.050.212. The Tribunal has already stated it is satisfied that Ms Zhang satisfies the requirements of cl.050.212.
33. The Tribunal is also satisfied that Ms Zhang satisfies the requirements of cl.050.211 because at the time of application Ms Zhang:
  - was an unlawful non-citizen as required by cl.050.211(1)(a); and
  - was not an eligible non-citizen of the kind set out in sub regulation r.2.20(7), (8), (9), (10), (11) or (17) as required by cl.050.211(2).
34. Clause 050.221 requires that an applicant for a Bridging E (Class WE) visa must continue to satisfy the criteria set out in cl.050.211 and cl.050.212 at the time of the Tribunal's decision.
35. The Tribunal is satisfied Ms Zhang continues to satisfy the requirements of both clauses at the time of this decision as Ms Zhang remains an unlawful non-citizen who is detained by the Department, she is not an eligible non-citizen in the relevant sense and her application for a merits review of the decision to cancel her Student visa remains on foot.
36. The issue in this case is whether Ms Zhang will abide by any conditions the Tribunal finds reasonable to impose if Ms Zhang is granted a Bridging E (Class WE) visa.

### **Whether the applicant will abide by conditions - cl.050.223**

37. Clause 050.223 requires that the Tribunal is satisfied at the time of decision, that if a bridging visa is granted to Ms Zhang, she will abide by any conditions imposed on the visa.
38. Conditions that may be imposed on a Subclass 050 visa are provided for in Division 050.6 and set out in Schedule 8 to the Regulations. Division 050.6 also sets out conditions to which the visa is subject.
39. When considering cl.050.223, the Tribunal must consider which conditions, if any, should be imposed and whether it is satisfied that the applicant would abide by those conditions.
40. In deciding the question of whether the applicant would abide by conditions imposed, the Tribunal is to consider the likely conduct of the applicant. In that context, relevant considerations may include the applicant's past immigration history, in particular any previous breaches of immigration laws, the significance of the immigration laws that were breached, the wilfulness with which those laws had been breached, whether there were any mitigating circumstances justifying their breach and whether the applicant had shown any contrition for their unlawful conduct: *Applicant VAAN of 2001 v MIMA (VAAN)* (2002) 70 ALD 289 at [15]-[16].
41. If the Tribunal is satisfied that the applicant will abide by the conditions if security of a particular amount is required, the applicant meets cl.050.223. However, if not satisfied that the applicant will comply with the conditions, regardless of any security that may be imposed, cl.050.223 is not met.
42. In this case, cl.050.617 applies because Ms Zhang does not meet the requirements of clauses 050.611 to 050.616A inclusive. Clause 050.617 prescribes that certain discretionary conditions may be imposed on the grant of a Bridging E (Class WE) visa.
43. Clause 050.617 provides that the decision maker can impose any one or more of the following conditions on a visa granted to a non-citizen under clause 050 of the Regulations:
  - 8101 - no work;
  - 8104 - no more than 40 hours work a fortnight;
  - 8116 – work limitation;
  - 8201 – study limitation;
  - 8207 – no study or training in Australia;
  - 8401 – report at time and place specified by the Minister;
  - 8402 – report within 5 working days of grant to Immigration and every week thereafter;
  - 8505 – live at address the applicant specified before the grant of the visa;
  - 8506 – notify Immigration of change in address;
  - 8507 – pay costs of the visa holder's detention;
  - 8508 – make valid application for a visa that can be granted in Australia;

- 8510 – show Immigration the visa holder’s passport or obtain a passport;
  - 8511 – ticket for overseas travel;
  - 8512 – leave Australia by the date specified by the Minister; and
  - 8548 – not engage in any study or training in Australia for more than 4 months.
44. Clause 050.618 provides that in addition to any other condition imposed, condition 8564 (not engage in criminal conduct) may also be imposed.
45. The Tribunal considered the application of each of these visa conditions in the applicant’s circumstances.
46. The Tribunal considers that the following conditions should be imposed on any Bridging E (Class WE) visa granted to Ms Zhang in the circumstances of this case:
- **8101** The holder must not engage in work in Australia;
  - **8506** The holder must notify Immigration at least 2 working days in advance of any change to the holder’s address; and
  - **8564** The holder must not engage in criminal conduct.
47. The Tribunal also considered in particular imposing reporting requirements through condition 8401 but came to the view that Ms Zhang’s undertaking of bail satisfactorily addressed this issue as it includes a condition that Ms Zhang must report to Victoria Police weekly. The evidence before the Tribunal is that Ms Zhang has complied with this condition. The Tribunal is of the view that it would not be reasonable in the circumstances to impose dual reporting obligations – to Victoria Police and to the Department – on Ms Zhang.
48. The Tribunal asked Ms Zhang at the hearing whether she had read the decision of the delegate of the Minister and whether she understood that decision. Ms Zhang was able to clearly articulate the main rationale for, and effect of, the delegate’s decision.

The likely conduct of the applicant

49. The Tribunal noted the following in the delegate’s decision dated 6 March 2018:
- I note that the alleged offences occurred over a period of time, specifically from 6 December 2016 until 9 December 2016. I further note that Ms Zhang is contesting the charges and is due to appear for Committal Hearing on 18 July 2018. I also note that Ms Zhang has claimed that she was the victim of sexual assault (rape) which is what provoked the incidents between 6 and 9 December 2016; however this allegation is not being pursued by Victoria Police. While the criminal matters remain ongoing, the fact that the Victoria Police have charged Ms Zhang with these multiple offences does not weigh in Ms Zhang’s favour. I cannot ignore the outstanding charges which are of a serious and violent nature, and the fact that they were allegedly committed over a period of time. For these reasons are not satisfied that Ms Zhang will abide by condition 8564.<sup>1</sup>
50. The circumstances of the criminal charges against Ms Zhang were described in the following terms in submissions from Ms Bleyer:

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<sup>1</sup> Tribunal file, folio 3.

The assault and false imprisonment of [the complainant] in his home on 6 December 2016. It is alleged our client's then boyfriend (the co-accused) entered the home, assaulted the complainant, caused him to lock himself in his bathroom, and made demands of and threats to the complainant. It is alleged our client was party to an agreement for this criminal conduct to occur although she did not herself assault the complainant. An email address was retrieved from the complainant's computer in order to contact his girlfriend. The complainant's phone was allegedly taken from him.<sup>2</sup>

51. This description of the circumstances of the criminal charges against Ms Zhang is consistent with the more detailed description in the Victoria Police summary in the Tribunal's copy of the Department's file in relation to Ms Zhang's bridging visa application.

52. At the hearing Ms Zhang gave evidence that:

- She has completed two years of her Bachelor of Nursing studies, with a 100% class attendance record and having passed all subjects to date, although she did have to repeat one subject from her first semester of study. Ms Zhang did not provide documentation to support these claims;
- Other than the matters currently before the Tribunal, Ms Zhang has not breached her Student visa or otherwise adversely come to the attention of the Department;
- She has been supported financially in Australia by her family and has not worked and does not intend to work while she is in Australia. Ms Zhang provided the Department with documentation to support these claims;<sup>3</sup>
- Immediately after the alleged sexual assault she felt ashamed to be a victim of sexual assault and became depressed experiencing suicidal thoughts and self-harming behaviour;
- She told her ex-boyfriend about the alleged sexual assault (which is alleged to have occurred in the early hours of 3 December 2016) during their trip to South Australia between 3 and 5 December 2016. Ms Zhang felt her ex-boyfriend blamed her for the alleged sexual assault which led to an argument culminating in Ms Zhang attempting to commit suicide. South Australian police and ambulance services attended and Ms Zhang was taken to hospital, where she remained for one day. Ms Zhang did not provide any documents to support these claims but they are consistent with the Victorian Police summary of circumstances in the Department's file;<sup>4</sup>
- She has been hospitalised twice since her return to Victoria in December 2016 due to suicidal ideation, once for just a few hours and the other time overnight. Ms Zhang did not provide any documentation to support these claims;
- She saw a psychotherapist, Mr Wang, more than two times in 2017 but has seen a counsellor, Ms Moran, from CASA House many times since the alleged sexual assault, including two days before the hearing in the immigration detention centre.
- As noted above, Ms Zhang provided a submission from Mr Wang,<sup>5</sup> the psychotherapist and two submissions from Ms Moran,<sup>6</sup> the CASA House counsellor.

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<sup>2</sup> Tribunal file, folio 44.

<sup>3</sup> Department file, folios 100 to 143.

<sup>4</sup> Department file, folios 21 to 30 at folio 22.

<sup>5</sup> Tribunal file, folios 60 to 67.

<sup>6</sup> Tribunal file, folios 45 and 72 to 75.

- Ms Moran's 21 March 2018 submission notes Ms Zhang saw Mr Wang on three occasions but formed a stronger therapeutic relationship with Ms Moran and that Mr Wang was comfortable with Ms Moran assuming care and treatment of Ms Zhang. The Tribunal accepts these submissions;
- Ms Zhang feels the ongoing counselling has been helpful to the point where prior to being detained she did not need medication and did not think about the alleged sexual assault unless there were direct reminders of it;
- Ms Zhang ceased her relationship with her ex-boyfriend in March 2017 and they were last in contact in November 2017 when Ms Zhang needed a copy of her passport and thought her ex-boyfriend may have taken the copies she had previously made;
- Her thoughts of suicide and self-harm returned when her visa was cancelled and have returned quite strongly since she has been detained. Ms Zhang has been placed on antidepressant and anti-anxiety medication whilst in immigration detention but does not feel the medication is helping her at all;
- She had not, prior to the alleged sexual assault, had thoughts of suicide or self-harm and had not had any dealings with mental health authorities, either in Australia or China;
- She will not breach condition 8564 because she and her whole family are practising Buddhists and her religion requires her not to harm anyone, she has not done so and will not do so now. Ms Zhang provided evidence about her and her family's practise of Buddhism and her personal commitment to the beliefs of Buddhism;
- She will not breach condition 8564 because she was in the community on an undertaking of bail for 15 months before being placed in immigration detention and during that time complied with her undertaking of bail;
- She initially felt hatred or strong anger toward the third party who is alleged to have sexually assaulted Ms Zhang but now does not feel anything toward him. Ms Zhang explained that due to her religious beliefs she feels the alleged sexual assault may have occurred because something from her past lives meant that she owed the third party in some way;
- She feels the police not charging the third party over the alleged sexual assault is unfair but she accepts there is nothing she can do about that as the police have stopped their investigation, so she just has to accept that but she still hurts inside so needs ongoing counselling;
- She feels it unlikely she will inadvertently come into contact with the third party as he is also an international student (and Chinese national), but they attend different campuses and she is not sure whether he is still in Australia;
- Her conditions of bail prevent her from contacting the third party or arranging for anyone to contact him on her behalf. A copy of Ms Zhang's undertaking of bail is on the Tribunal file.<sup>7</sup>

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<sup>7</sup> Undertaking of bail dated 26 December 2016, Tribunal file, folio 43 (back).

53. Ms Zhang provided written submissions that submitted:

- She and her ex-boyfriend reported the alleged sexual assault to Victoria Police on 9 December 2016, which is corroborated by the Victoria Police summary of circumstances on the Department file;<sup>8</sup>
- Prior to being placed in immigration detention, Ms Zhang was due to finish her studies on 9 November 2018 and the cost of her course is AU\$28,800 per annum at a total cost of AU\$86,400;<sup>9</sup>
- Her criminal lawyer, Ms Altman, believes Ms Zhang "... is no risk of re-offending in any way."<sup>10</sup>
- Her counsellor, Ms Moran, stated "... Ms Zhang is not a risk to any person. Ms Zhang has no intent to harm or be a risk to [third person]"<sup>11</sup>. In her recent submission, Ms Moran stated:

In my experience, it is common for victims of sexual assault to feel violent towards the perpetrator. The majority of victims and survivors I've worked with will, at some point, talk about feeling or wanting to seek retribution against their offender.

Ms Zhang is different from that trend. She is not concerned to be violent and she is not out for revenge. She simply does not want to see the offender ever again.

Ms Zhang is a gentle conscientious young woman who is very committed to her studies and has never spoken about, nor shown any signs of, perpetrating violence toward any other person.

For the reasons set out above, I believe Ms Zhang will not engage in criminal conduct including against the perpetrator of the sexual assault.<sup>12</sup>

- She is of good character through the two page submission of her friend dated 15 March 2018<sup>13</sup> and through Ms Bleyer's submission dated 15 March 2018.<sup>14</sup>

54. The Tribunal gives little weight to the submissions of Ms Moran and Ms Altman in relation to their assessment of the risk of Ms Zhang offending if granted a Bridging E (Class WE) visa. This is not a reflection on their professional standing but is for the reasons referred to earlier.
55. The submission from Ms Moran to the Tribunal dated 21 March 2018 was helpful in terms of the Tribunal understanding the nature of Ms Moran's counselling relationship with Ms Zhang, the frequency and progress of counselling, and whether counselling would continue should Ms Zhang be granted a bridging visa. Ms Zhang gave evidence that she would continue to seek counselling support.
56. The Tribunal finds that Ms Zhang will comply with condition 8564. As the Tribunal has already found Ms Zhang will comply with conditions 8101 and 8506 this means Ms Zhang should be granted a Bridging E (Class WE) visa.

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<sup>8</sup> Tribunal file, folio 48 and Department file, folio 25.

<sup>9</sup> Department file, folio 66.

<sup>10</sup> Tribunal file, folio 43.

<sup>11</sup> Tribunal file, folio 45.

<sup>12</sup> Tribunal file, folio 75 (back).

<sup>13</sup> Tribunal file, folio 41 and 42 (back).

<sup>14</sup> Tribunal file, folio 49 to 50 at 50 (back).

57. In the Tribunal's view, the time when it was most likely that Ms Zhang may commit criminal offences, if at all, was after the events of 6 and 9 December 2016 and prior to being charged and released on an undertaking of bail on 26 December 2016. The Tribunal notes that there are no allegations against Ms Zhang from either Victoria Police or the Department before the Tribunal relating to this period.
58. Since that time and up until she was detained and placed in immigration detention on 1 March 2018 the information before the Tribunal is that Ms Zhang had complied with her undertaking of bail. The Tribunal accepts that Ms Zhang regards complying with the conditions of her undertaking of bail seriously and intends to comply with those conditions, and in fact did so successfully prior to being detained. There is no information before the Tribunal that Ms Zhang did not comply with the conditions of her undertaking of bail.
59. The offences Ms Zhang has been charged with relate to actions directed to the alleged perpetrator of an alleged sexual assault against Ms Zhang and to that person's girlfriend at the time. The Tribunal expects both the alleged perpetrator and his girlfriend at the time will be witnesses for the prosecution in any eventual prosecution of the charges. The Tribunal accepts the conditions of Ms Zhang's undertaking of bail prohibit her from contacting any witness for the prosecution (other than the informant). Based on Ms Zhang's evidence at hearing and there being no information before the Tribunal that Ms Zhang has breached her bail conditions in the past, the Tribunal is of the view that if Ms Zhang is granted a Bridging E (Class WE) visa she will continue to comply with her undertaking of bail.
60. The Tribunal accepts the submissions of Ms Bleyer, after considering the evidence of Ms Zhang and the written material on both the Tribunal and Departmental files, that Ms Zhang is not alleged to have directly physically assaulted the third party but has been charged because she was present when this assault occurred. This view is consistent with Victoria Police's summary of circumstances.<sup>15</sup>
61. Ms Zhang gave evidence and the Tribunal accepts that she does not know whether the third party (alleged perpetrator of the alleged sexual assault against her) is still in Australia or not and that separately she has not had any contact with her ex-boyfriend since November 2017.
62. Ms Zhang also gave evidence and the Tribunal accepts that she is receiving ongoing counselling to help her cope with the consequences for her of the alleged sexual assault.
63. In these circumstances the Tribunal finds that Ms Zhang will comply with conditions 8101, 8506 and 8564 because, in summary:
- Ms Zhang continues to have the financial support of her family to ensure that she can live comfortably in the community and does not need to work while she is in Australia;
  - Ms Zhang has resided in the same place for over two years;
  - The evidence before the Tribunal is that Ms Zhang has complied with a condition in her undertaking of bail that requires her to inform Victoria Police within 24 hours of any change of address;
  - Aside from the matters she has been charged with, there is no information before the Tribunal that Ms Zhang has breached any immigration laws in Australia or elsewhere either before or since being charged with those offences;

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<sup>15</sup> Department file at folios 23 and 24.

- Aside from the matters she has been charged with and the incident in South Australia, there is no information before the Tribunal that Ms Zhang has come to the attention of police or breached any criminal laws in Australia or elsewhere either before or since being charged with those offences;
  - It has been over 15 months since the alleged offences occurred and there is no information before the Tribunal to indicate Ms Zhang has committed criminal offences in that time;
  - Ms Zhang has complied with her undertaking of bail which has been in place since 26 December 2016. The undertaking of bail has proven to provide effective oversight of Ms Zhang's presence in the community;
  - The information available to the Tribunal from Victoria Police in relation to the criminal charges filed against Ms Zhang indicates there are no allegations that she directly perpetrated violence against any person;
  - Ms Zhang has a well-established and ongoing therapeutic relationship with a counsellor, Ms Moran, who is professionally qualified and very experienced in counselling alleged victims of sexual assaults and who has shown a professional ability to support Ms Zhang in the community; and
64. On the evidence before it, the Tribunal is satisfied that Ms Zhang will abide by the conditions imposed on the Bridging E (Class WE) visa if granted. Therefore, Ms Zhang meets the requirements of cl.050.223 of Schedule 2 to the Regulations.
65. The delegate of the Minister found that they were not satisfied Ms Zhang would abide by condition 8564 regardless of any security that may be imposed.
66. Similarly, the Tribunal finds that the imposition of security on Ms Zhang's Bridging E (Class WE) visa would not contribute to ensuring that Ms Zhang complies with the conditions of her visa because the Tribunal is satisfied she will comply with those conditions without the imposition of any security.

#### Conclusion

67. Given the findings the Tribunal has made above, the appropriate course is to remit the visa application to the Minister to consider the remaining criteria for the visa.

#### **DECISION**

68. The Tribunal remits the matter for reconsideration with the direction that the applicant meets the following criteria for a Subclass 050 (Bridging (General)) visa:
- cl.050.211 of Schedule 2 to the Regulations;
  - cl.050.212(4)(b) of Schedule 2 to the Regulations;
  - cl.050.221 of Schedule 2 to the Regulations; and
  - cl.050.223 of Schedule 2 to the Regulations.

Michael Ison  
Senior Member