

1414693 (Refugee) [2016] AATA 3235 (1 February 2016)

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1414693  
**COUNTRY OF REFERENCE:** Egypt  
**MEMBER:** Linda Symons  
**DATE:** 1 February 2016  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 01 February 2016 at 8:26am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## 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 Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Egypt, first arrived in Australia [in] March 2006 as the holder of a [temporary] visa. [In] July 2008, he was issued with another [temporary] visa which was valid until [date] October 2010. He departed Australia for the first time [in] August 2008 and returned [in] December 2008. [In] October 2010, he was issued with a further [temporary] visa. He departed Australia for the second time [in] November 2010 and returned [in] March 2011. He was issued with a further [temporary] visa [in] September 2012. He departed Australia for the third time [in] November 2012 and returned [in] March 2013. He departed Australia for the fourth time [in] February 2014 and returned [in] March 2014. He departed Australia for the fifth time [in] March 2015 and returned [in] June 2015.
3. The applicant applied to the Department of Immigration and Border Protection (the Department) for a Protection visa [in] November 2013 and the Department refused to grant the visa [in] August 2014.
4. The applicant appeared before the Tribunal on 6 July 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
5. The applicant was represented in relation to the review by his registered migration agent.
6. The issues that arise on review are whether Australia has protection obligations to the applicant under the Refugees Convention or under the complementary protection criterion.

### RELEVANT LAW

7. The criteria for a Protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a Protection visa of the same class.

#### Refugee criterion

8. Section 36(2)(a) provides that a criterion for a Protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

#### Complementary protection criterion

9. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a Protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving

country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

### **Section 499 Ministerial Direction**

10. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

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

11. The applicant's claims in his visa application are summarised as follows:
  - He claims protection on the grounds of religion and political opinion. He also claims protection under complementary protection.
  - His wife and [child] live with her parents in Dumyat, Egypt. His parents, [and siblings], residence in Al Mansoura in Egypt.
  - He undertook his compulsory military service between 2004 and 2005. He is a military reservist until he attains 35 years of age.
  - He fears returning to Egypt because of his family's profile as members of the Muslim Brotherhood (MB), the current situation in Egypt, he is devoid of the protection of the authorities and he is a military reservist.
  - His father was a long term member of the MB and joined the organization when he was working as a [occupation] in [Country 1]. After he returned to Egypt he continued to be an active member of the MB in the Mansoura district. He attained a high position within the organization reaching the position of membership of the [political body]. He was detained on several occasions and subjected to short term periods of imprisonment between 2000 and 2006.
  - He has been a member of the MB since High School. In [year], whilst studying at [name], University, he was detained for a short period because of his active political support of the MB on university campus.
  - Since the ousting of President Morsi his father has been on the run fearing being detained by military intelligence. His [sibling] has also left the family home and continues to be hunted by military intelligence. His mother and [siblings] have also been forced to flee the family home in [location].
  - His mother is a member of the MB's political wing named Hizb al Houra and Adalah (Freedom and Justice) since May 2011. She continues to be hunted down by the Egyptian intelligence.
  - His father in law fled his home in Mansoura and relocated to Dumyat as he is a long term member of the MB. His business in Mansoura was attacked and burnt by supporters of the military. His wife and [child] have been forced to relocate with her parents to Dumyat.

- Local high profile members of the MB as well as ordinary supporters in Mansoura district are being targeted by local supporters of the military and military intelligence forcing the majority to flee their homes and businesses.
  - His wife wears Islamic dress and is targeted by local supporters. She is devoid of protection by the authorities when threatened by hostile third parties. He fears that if he returns to Egypt he will be targeted by military intelligence or supporters of the military on the basis of his membership of the MB and his father's well-established political and community profile as a member of the MB.
  - The political situation in Egypt continues to deteriorate with members of the MB being subjected to monitoring, imprisonment and brutal mistreatment by the Egyptian military. Since the ousting of President Morsi, the MB has been at the receiving end of a relentless campaign to eradicate the MB from the political arena.
  - Members of the MB are targeted by supporters of the military and are devoid of the protection of the authorities. Many members of the MB have been forced to relocate or defend themselves and their property. Members of the MB who have engaged in peaceful demonstrations have fallen victim to the military response resulting in the deaths of thousands.
  - As a member of the MB he will be targeted by the military regime and subjected to serious mistreatment at the hands of the supporters of the military. He fears that if he returns to Egypt he will be detained by military intelligence.
  - His wife has relocated because of ongoing threats by the military intelligence and local supporters of the military. She participates in weekly political rallies by the MB in Dumyat. She persists in attending these rallies despite threats of arrest by the military and threats of being attacked by supporters of the military. MB supporters are subjected to brutal mistreatment and arrest by the Police during such rallies.
  - In Australia, he continues to bring the world's attention to the plight of the MB in Egypt by participating in local rallies and political condemnation of the military regime in social media. The local rallies take place outside the Egyptian Consulate in [City1]. He is well known by the Egyptian Consulate officials given his active participation in the rallies. He is a [performer] and [performs] at the rallies.
  - He is a military reservist until the age of 35 years. He has a conscientious objection to military service on the basis of his political views. If he returns to Egypt and refuses to complete military service he will have to go before a Military Tribunal and will be sentenced to detention.
  - His application for political asylum is based on the likelihood of being subjected to significant harm whilst in detention. He may be imputed with being a supporter of the MB and subjected to disproportionate mistreatment in detention. He fears being subjected to significant harm whilst in detention and the prison conditions he will be subjected to.
12. The applicant provided the Department with country information, four Special Powers of Attorney dated [in] January 2012, [in] May 2012 and [in] June 2012 together with English translations, photographs of his wife and [child], a Freedom and Justice Party Membership Card in the name of [name] together with an English translation, the bio data page of his father's passport, a letter from the Presidential Election Commission 2012 together with an English translation, eleven photographs and a travel itinerary.

13. The applicant attended an interview with the Department [in] March 2014. During that interview he re-iterated and expanded on his claims.
14. The applicant lodged a copy of the Department's Decision Record dated [in] August 2014 with the Tribunal. He also provided the Tribunal with copies of photographs, YouTube and Facebook links and printouts from the Facebook page of the Egyptian Consulate in [City 1]. He lodged with the Tribunal an undated written statement by [Mr A] and a Statutory Declaration dated [in] June 2015 from [[Mr B]. [In] June 2015, the Tribunal received written submissions from the applicant's migration agent.
15. [In] July 2015, the Tribunal received an email from the applicant's migration agent forwarding an email from the applicant.

**Does Australia have protection obligations to the applicant under the Refugees Convention?**

16. The Tribunal finds that the applicant is a citizen of Egypt based on his passport which is before the Tribunal and will assess his claims on this basis. The Tribunal finds that the applicant is outside his country of nationality. There is no evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than his country of nationality.
17. During the hearing, the Tribunal discussed with the applicant his background, his family, his reasons for leaving Egypt, his travel out of Australia since he first arrived here on a [temporary] visa, his activities in Australia and why he fears returning to Egypt. He made several new claims during the course of the hearing. There were a number of inconsistencies between his written and oral claims. The Tribunal formed the view that he was embellishing some of his claims and fabricating others. The Tribunal has serious concerns in relation to the veracity of the written claims made by the applicant in his application for a Protection visa.

*Muslim Brotherhood (MB)*

18. In his visa application, the applicant claimed that he was detained by the Egyptian Police on one occasion in 2002 because of his active political support of the MB at university. During his interview with the Department [in] March 2014, he claimed that he was detained on at least 3 separate occasions between 2002 and 2003 and was subjected to harsh interrogation and severe torture for several days. During the hearing, the applicant gave evidence that he was arrested on three occasions. When the Tribunal put this information to the applicant, pursuant to s.424AA of the Act, he responded that he has experienced detention several times but there were three occasions that were the most important and affected him the most.
19. In relation to the inconsistency between his written and oral claims, the applicant stated that his responses at the different times were not contradictory. He stated that these incidents occurred 12 to 13 years ago. He then stated that after these three occasions he attended the office of State Security every time he was summoned. He said it became routine and that is why he left Egypt. When the Tribunal noted that he had not made any claims in relation to being summoned to the office of State Security in his visa application, he responded that during his interview with the Department he was answering questions in English and the questions were not clear to him. When the Tribunal pointed out that during his interview with the Department he had the assistance of an interpreter in the Arabic and English languages, he then responded that it was his mistake. He stated that he did not give the interpreter time to explain it to him. He stated that he wanted to clarify the whole truth. He stated that after

the three incidents he was called to the office of State Security routinely during the time of President Mubarak.

20. During the hearing, the applicant gave evidence that his application for a Protection visa was prepared by his then migration agent on his instructions. He stated that his migration agent did not put all the information in his visa application and gave him bad advice that he would have plenty of time to speak about it at the interview with the Department. He stated that the information he gave his then migration agent was true and correct. He stated that he is satisfied that his visa application is accurate. When asked whether his written statement was read back to him after it was prepared, he responded that he read it, highlighted a few things that he wanted changed, told his then migration agent who said it was alright and did not make the changes. However, when the Tribunal asked him what he wanted to change in his written statement, he stated that he did not wish to change anything but just wanted to add more information.
21. The applicant stated that during his interview with the Department he was under pressure and it was not convenient for him to say everything he wished to say. When asked why he did not lodge a written statement with the Department after his interview saying everything he wished to say, he initially responded that he did not know he could do that. He subsequently stated that he told his then migration agent that he wished to send more information to the delegate and was told that there was no need to do that.
22. Following the hearing, the Tribunal received an email from the applicant in which he stated that he told his previous migration agent, [name], that he had been arrested and harassed several times by the security authorities and was advised to briefly mention that he had faced troubles with the security authorities in his statement and provide detailed information during his interview with the Department. He stated that during his interview with the Department he stated that he was harassed by security authorities several times. He stated that he did not differentiate between the different kinds of harassment because he was not aware of the legal definitions. He then stated that the delegate did not give him the opportunity to explain that he was harassed several times and not just three times.
23. The Tribunal does not accept this explanation for a number of reasons and it does not alleviate the Tribunal's concerns in relation to the applicant's credibility and the veracity of some of his claims. Firstly, the applicant filed a 9 page statement of claims with 57 paragraphs to support his visa application. Only 1 of these 57 paragraphs refers to his involvement with the MB. It states:

I have also been a member of the MB organization since high school. In the past, I have also been subjected to a short term period of detention at the hands of the Egyptian police, on the basis of my active political support of the MB on university campus. This episode occurred in 2002, whilst studying at [name]University.

24. This paragraph refers to one incident as a result of his support of the MB at university. During the hearing, he made a series of new claims including that he was arrested because of the work he did at his mosque. He stated that he taught young children to memorize the Quran at the mosque. He stated that this was his only role in addition to attending social gatherings. When asked what kind of social gatherings he attended, he stated that they would listen to lectures about Islam. When asked if he was involved in any other activities for the MB, he stated that he was responsible for arranging trips and educational seminars for MB youth under 10 years of age. He stated that at university he was in charge of [a committee] which prepared [material]. When asked what sort of [description] activities the MB organized, he stated that it organized [material] which have themes about Islam and the nation in addition to clips with educational themes.

25. When the Tribunal asked the applicant whether he had provided the Tribunal with all the details of his involvement with the MB, he stated that he was also involved in political activities. He stated that he distributed pamphlets and put posters up on the walls during the national parliamentary election campaigns in 2005 and 2010 (when he returned to Egypt from Australia). He stated that he became an active member in 2005 and prior to that he was a supporter.
26. When the Tribunal asked the applicant whether he had any problems in Egypt because of his support/membership of the MB, he responded that he had a lot of problems. He stated that he was arrested 3 times. When asked about the first arrest, he stated that his house was raided at the beginning of 2002. He stated that he was not at home at the time and his uncle took him to State Security to solve the problem. He stated that the [cleric] at the mosque lodged a complaint against him in relation to him teaching children the Quran. He stated that there were also issues about his activities at university and his role in demonstrations. When asked what demonstrations he was referring to, he stated that they were to support the Palestinian cause and to consolidate Islamic values. He stated that after the 3 arrests his name was listed with State Security and he was summoned to the office of State Security regularly.
27. The Tribunal finds it implausible that the applicant's previous migration agent would have prepared a 9 page written statement of claims to support the applicant's visa application and left out the above information particularly when several paragraphs in this document referred to the activities of various members of his family. The Tribunal also finds it implausible that, if the reason why the applicant left Egypt was because his name was listed with State Security and he was regularly summoned to the office of State Security this would not have been mentioned in his statement of claims.
28. In paragraph 28 of the statement of claims, the applicant states that he fears returning to Egypt on the basis of the following:
  - Family profile as members of the MB.
  - The current situation in Egypt.
  - Devoid of the protection of the authorities.
  - Remain a military reservist.
29. The applicant does not claim to fear returning to Egypt because of his own profile as a member of the MB. The Tribunal finds it implausible that, if he feared returning to Egypt because he was/is of adverse interest to State Security in Egypt because of his activities in Egypt or his activities in Australia and he told his former migration agent this, it would not have been included in his statement of claims.
30. The applicant's evidence to the Department that he was detained on at least 3 separate occasions between 2002 and 2003 and was subjected to harsh interrogation and severe torture for several days is inconsistent with his evidence to the Tribunal. His evidence to the Tribunal is that on the first occasion he was arrested he was detained for 4 to 5 hours, on the second occasion for 6 to 7 hours and on the third occasion for 6 to 8 hours.
31. The applicant's visa application is not consistent with his own evidence to the Tribunal that he was advised to make a generic claim in relation the problems he had in Egypt and provide the details later at the interview with the Department. The one paragraph which deals with the problems he encountered in Egypt, referred to in paragraph 22 above, is not generic. It specifically refers to one incident in 2002 and makes no reference to any other

incidents or to his ongoing problems with State Security. The Tribunal finds it implausible that, if the applicant was advised by his former migration agent to make a generic claim, a generic claim was not made in his written statement but reference was made to one specific incident.

32. Prior to the hearing the Tribunal was provided with a written submission dated [in] June 2015 and signed by the applicant. In that submission, he stated that he joined the MB in 2005. This is inconsistent with his visa application in which he claimed that he has been a member of the MB since High School. (His visa application indicates that he was at university from [years]). This is also inconsistent with his evidence in his visa application that whilst studying at university in [year] he was detained for a short period because of his active political support of the MB on campus. This is also inconsistent with his evidence to the Tribunal that he was arrested on three occasions between [years] because of his involvement with and activities in relation to the MB.
33. If the applicant was prevented from providing full details of his claims in his visa application by his former migration agent and was prevented from providing full details of his claims during his interview with the Department by the delegate as he claims, he had the opportunity to rectify this by providing the Tribunal with a statement with full details of his claims but did not do so. He employed a new firm of lawyers to represent him before the Tribunal and could therefore have instructed them to prepare a written statement for him. The Tribunal was provided with a document titled 'submission' which was dated [in] June 2015 and signed by the applicant. This document states, at paragraph 12, "the applicant claims that his previous representative, [name], did not properly set out his claims in his application for a Subclass 866 visa". The Tribunal would expect that, in these circumstances, the submission to the Tribunal would provide full details of the applicant's claims.
34. The submission dated [in] June 2015 makes no reference to the applicant being arrested and detained on three occasions, his name thereafter being listed with State Security, him being summoned by State Security on a regular basis or that this was the reason why he left Egypt. It makes no reference to any activities that the applicant was involved in with regards to the MB in Egypt and only stated that he is a supporter and member of the MB and "joined the MB in 2005 while his father was involved with the MB prior to his arrival to Egypt from [Country 1]" (sic). The omission from the submission of the numerous new claims made by the applicant during his interview with the Department and his hearing before the Tribunal raises further concerns for the Tribunal.
35. During the hearing, the applicant claimed that he was arrested and detained on three occasions between 2002 and 2003, his name was thereafter listed with State Security, he was summoned by State Security on a regular basis and that this was the reason why he left Egypt. The applicant has lodged with the Tribunal a copy of the Department's Decision Record. It indicates that the applicant first arrived in Australia [in] March 2006. His evidence to the Tribunal is that since then he has returned to Egypt on three occasions. He gave evidence that he was asked some questions at the airport. It is not clear from his evidence whether or not this was standard procedure at immigration control.
36. In any event, the applicant was not arrested or detained by the Egyptian authorities on his return to Egypt on three occasions. The Tribunal is of the view that his voluntary return to Egypt on three occasions after he left in 2006, despite his claim that he left Egypt because he was listed with State Security and was summoned by State Security on a regular basis, raises further concerns for the Tribunal.
37. Despite his claim that he left Egypt in March 2006 because he was listed with State Security and was summoned by State Security on a regular basis, the applicant did not apply for a Protection visa until [date] November 2013, over 7 ½ years after he first arrived in Australia.



He gave evidence during the hearing that the reason for his delay in applying for protection was because there were protests in Rabia Square after the military coup and he was hoping that things would change. He stated that he did not imagine that things would escalate to the point that they would kill people. The Tribunal does not accept this explanation. The country information indicates that the military coup occurred on 3 July 2013<sup>1</sup>. His explanation does not indicate why he did not apply for protection between his arrival in Australia in March 2006 and the military coup in July 2013. The applicant's delay in applying for protection raises further concerns for the Tribunal.

38. Since coming to Australia, the applicant has renewed his passport twice. He has provided the Tribunal with a copy of his passport which indicates that the Consul General at the Egyptian Consulate in [City 1] renewed his passport [in] 2012 and again [in] 2014. The applicant's willingness to attend the Consulate General of Egypt in [City 1] to renew his passport and the Consul General's willingness to renew his passport is not consistent with his claims that he is of adverse interest to the Egyptian authorities. When the Tribunal raised this as an issue, the applicant responded that the Consul General did not have orders not to renew his passport. He then stated that the only reason it was renewed was because he told him he was returning to Egypt. The Tribunal does not accept this explanation. His response does not address the Tribunal's concern in relation to his willingness to attend the Consulate General of Egypt despite his claims of being of adverse interest to the Egyptian authorities.
39. The Department's Decision Record indicates that the applicant left Australia [in] November 2012, after his passport was renewed [in] 2012, and returned to Australia [in] March 2013. The applicant gave evidence that he travelled to Egypt on that trip. If his passport was renewed only because he told the Consul General that he was returning to Egypt, as he claims, the Tribunal is of the view that the Egyptian authorities would have dealt with him when he returned to Egypt at the end of 2012 or stopped him from leaving Egypt in March 2013. There is no evidence before the Tribunal to indicate that he had any problems when he returned to Egypt in August 2008, November 2010 and November 2012.
40. The applicant claimed that his wife has relocated to Dumyat because of ongoing threats by the military intelligence and local supporters of the military. He also claimed that she participates in weekly political rallies by the MB in Dumyat and persists in attending these rallies despite threats of arrest by the military and threats of being attacked by supporters of the military. The applicant also claimed that his wife was in hiding in Dumyat. The Tribunal finds it implausible that the applicant's wife would be attending weekly political rallies organized by the MB in Dumyat if she was there in hiding.
41. If the applicant's wife was receiving threats from military intelligence as claimed, it is highly unlikely that she would have been allowed to leave and return to Egypt twice without any problems. The applicant's evidence is that his wife travelled to [country] in 2014 and 2015 and he met her there and spent time with her. When the Tribunal raised this as an issue with the applicant, he responded that his wife is not high profile. When asked why she was in hiding if she was not high profile, he responded that they are hiding the family. He stated that his wife could be kidnapped and tortured until he returns to Egypt. When the Tribunal noted that the Egyptian authorities could have detained his wife to force him to return to Egypt on the occasions when she departed and returned to Egypt in 2014 and 2015, he responded that he is not that "famous" and his wife is not wanted. He stated that they bribed an officer to make sure she was alright. The implausibility of the applicant's changing responses raise further concerns in relation to his credibility and the veracity of his written claims.
42. In his visa application the applicant claimed that since the ousting of President Morsi his father has been on the run fearing being detained by military intelligence. During the hearing,

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<sup>1</sup> DFAT Country Information Report on Egypt, 24 November 2015.

he gave evidence that his father was a [occupation] by profession but also gradually started working as a businessman and real estate developer. He stated that his father subsequently sold his [shop] and now works full time as a businessman and real estate developer. He stated that his father is supporting him financially. He stated that his father gave his [sibling] some money to invest in the building industry some time ago and his [sibling] is also a real estate developer. He stated that his [sibling] lives with his parents in Dumyat. The Tribunal finds it implausible that the applicant's father continues working as a businessman and real estate developer if he has been on the run since the ousting of President Morsi on 3 July 2013 for fear of being detained by military intelligence. The Tribunal also finds it implausible that the applicant's [sibling] continues working as a real estate developer if he has also left the family home and continues to be hunted by military intelligence as claimed by the applicant. These issues raise further concerns in relation to the applicant's credibility and the veracity of his written claims.

43. For the reasons given above, the Tribunal is of the view that the material claims in the applicant's visa application have been fabricated.
44. The Tribunal has had regard to the applicant's conduct in Australia. He gave evidence that he was involved in organizing a convention for the Freedom and Justice Party at [suburb] in 2012. He stated that the purpose of this convention was to encourage Egyptians in Australia to vote for Mr Morsi and support the Freedom and Justice Party. He stated that [in] August 2013 he took part in a large protest against the military coup in Egypt and marched with the protesters from [location] to the Egyptian Consulate. He stated that he took part in another protest [in] October 2013 against the events in Rabia Square. He stated that he participated in demonstrations [in] November 2013 and [in] April 2014 to educate the general public in Australia in relation to what is happening in Egypt. He stated that it was important to get the support of the Austrian government.
45. The applicant gave evidence that he attended another event in May 2014 during the time when Mr Sisi was appointed President. He stated that he attended another event [in] January 2015 to commemorate the anniversary of the first revolution on 25 January 2011. He stated that he was responsible for organizing most of these activities and was part of the [certain] community. He stated that he would stand in front of everyone and [perform]. He stated that there was a link on Facebook to photographs including ones of him [performing]. He stated that he is one of the organisers of the [Organisation 1] movement and is also responsible for the [certain] part of it. When asked for further details, he stated that he writes [activities].
46. The Tribunal has had regard to the supporting documentary evidence provided by the applicant to the Department including four Special Powers of Attorney dated [in] January 2012, [in] May 2012 and [in] June 2012 together with English translations, a Freedom and Justice Party Membership Card in his mother's name, the bio data page of his father's passport, a letter from the Presidential Election Commission 2012, photographs and a travel itinerary. The Tribunal has had regard to the supporting documentary evidence provided by the applicant to the Tribunal including photographs, links to YouTube and Facebook, printouts from the Facebook page of the Egyptian Consulate in [City 1], an undated written statement by [Mr A] and a Statutory Declaration dated [in] June 2015 from [Mr B].
47. The undated statement from [Mr A] states that in about 2002 the applicant asked him if he could stay with him for a few days as the State Security Service was launching a campaign of arrests in governorates for Brotherhood students and those who were known for their many activities in the university. It states that the applicant informed him that the authorities had arrested some students in Cairo and he was afraid of being on the Detainees List. It states that the applicant stayed at his home that night. It states that on the following night security vehicles with soldiers went to the applicant's home, remained there for a while and

left. It states that the applicant's father thereafter informed them that the soldiers had gone there to arrest the applicant.

48. The Statutory Declaration dated [in] June 2015 from [Mr B] states that he has known the applicant since his arrival in Australia and that the applicant has participated in activities carried out in [City 1] by the MB. It states that he knew the applicant's father a long time ago and that he was one of the leaders of the MB in his area. It states that the applicant was one of the organizers of Mr Morsi's election campaign in [City 1] during the Egyptian Presidential elections in 2012. It states that after the military coup in Egypt, the applicant became actively involved in social media groups against the coup and is a participant in all activities and protests against the military coup. It indicates that he is one of the people who are responsible for [performing] in the protests.
49. The Facebook printouts indicate that the Egyptian Consulate's Facebook account is an open forum for all Egyptians living in [City 1] and the main focus is on consular related issues. They indicate that the applicant uses the pseudonym '[name]'. One of the printouts indicates that another blogger ([name]) is complaining that it is a group forum, not the applicant's Facebook account and some people who did not block his account are trying not to. Another printout is written in Arabic by another blogger ([name]). The interpreter translated it as "[comment]" His post contains an organizational chart of the MB.
50. When asked about these printouts, the applicant responded that after the revolution on 25 February 2011 they enjoyed freedom of expression. He stated that the Egyptian government opened a forum for comments and everyone had freedom to comment. He stated that his role was to put comments in support of the MB and respond to opposing groups. He stated that the blogger was complaining about him to the Egyptian Consulate about writing lots of comments in support of the MB and the blog should not be used for the MB.
51. The Tribunal has considered the photographs provided by the applicant. He has provided photographs of himself, his parents and his wife at the "revolution of January 2011". He has provided photographs of himself at a fund raising function in 2012 to raise funds for slums in Egypt. He stated that this function was not politically motivated. He stated that it was sponsored by Islamic Relief Australia and was attended by a representative of the Egyptian Embassy in Australia, an actress and the Mufti of Australia. He has provided photographs of himself participating in protests and demonstrations in Australia [in] August 2013, [in] August 2013, September 2013, [in] October 2013, [in] November 2013, May 2014 and January 2015. He has provided photographs of himself on the [Organisation 1] website which he claims he is one of the organizers.
52. The applicant has provided photographs of himself with various friends in Egypt. He claims that some of those friends have been detained in gaol and sentenced to death. He has provided photographs of himself at a function which he claims took place in Australia in May 2012 to support Mr Morsi in the Presidential election. His evidence is that he was one of the organizers of this event.
53. The Tribunal has had regard to the written submissions from the applicant's migration agent and the country information provided by the applicant. The Tribunal has also had regard to the policy guidelines prepared by the Department and country information assessments prepared by DFAT, expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration and other country information.
54. The Tribunal discussed with the applicant country information from DFAT which indicates the following in relation to social media:<sup>2</sup>

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<sup>2</sup> DFAT Country Information Report on Egypt, 28 January 2014.

Social media has offered a platform for more diverse expressions of opinion among Egyptians. Supporters and critics of the government, including Muslim Brotherhood and Morsi supporters, frequently express their opinions in blogs, Facebook, Twitter and similar platforms. Likewise, protests and marches are openly planned online. While these media platforms are most likely monitored they are difficult for a government to unilaterally censor; DFAT understands that individuals can generally express their views without state-sanctioned interference. However, some individuals have been attacked by other social media users for their dissenting views. And, as discussed in 'Defamation of Religion', above, some users of social media have had material they have posted used against them as evidence. DFAT is not aware of bloggers being prosecuted for posting purely political commentary.

55. The applicant responded that he does not "totally agree with the report." He stated that he knows, through his friends, that people have been picked up because of their activities on Facebook. He stated that some of their remarks have affected their lives, they have been charged with inciting problems and they are now detained in prisons and detention centres. He stated that photographs on social media are enough to get you detained. He stated that there are no fair investigations and justice in Egypt. He stated that a soccer player named Mr Abou Trika has had his assets confiscated because of his blog and his opposition to the government. He stated that he is attacked by the media. He stated that there are hundreds of cases of people detained in prison and the Egyptian authorities go through their mobile telephones looking for photographs of Rabia or any comments against the government so that they can be put away.

#### *Findings*

56. Having considered the applicant's claims, the evidence and the submissions made by the applicant's migration agent, the Tribunal is of the view that the applicant fabricated most of his claims in his visa application. The Tribunal does not accept that the applicant was detained by the Egyptian Police on one occasion in 2002 because of his active political support of the MB at university. Alternatively, the Tribunal does not accept that the applicant was detained on at least 3 separate occasions between 2002 and 2003 and was subjected to harsh interrogation and severe torture for several days. Alternatively, the Tribunal does not accept that the applicant was arrested on 3 occasions. Alternatively, the Tribunal does not accept that the applicant was detained on several occasions. Alternatively, the Tribunal does not accept that the applicant was summoned by State Security on 3 occasions. Alternatively, the Tribunal does not accept that the applicant's name was listed with State Security and he was routinely summoned by State Security or that he left Egypt for this reason. The Tribunal does not accept that the applicant came to the adverse attention of the Egyptian authorities when he lived in Egypt because of his support/membership of the MB and/or because of the work he did at the mosque.
57. The Tribunal does not accept that the applicant has been a member of the MB since High School. Alternatively, the Tribunal does not accept that the applicant became a member of the MB in 2005. The Tribunal does not accept that the applicant was a supporter or member of the MB while he was at university from [years]. The Tribunal accepts that the applicant attended a pro-Palestine protest whilst he was at university in [year]. The Tribunal accepts that students who attended that protest were questioned by the Egyptian authorities. The Tribunal accepts that when the Egyptian authorities went to his home to question him the applicant was not home. The Tribunal accepts that on the following day the applicant, accompanied by his uncle, went to the Egyptian authorities and he was then questioned about the protest.
58. The Tribunal accepts that the applicant's father became a member of the MB whilst working as a [occupation] in [Country 1]. The Tribunal does not accept that the applicant participated

in the MB's election campaigns in 2005 and 2010. The Tribunal accepts that the applicant's mother became a member of the Freedom and Justice Party in 2011. The Tribunal accepts that the applicant, his parents and his wife attended a demonstration against President Mubarek in Egypt in 2011 along with thousands of other Egyptians.<sup>3</sup> The Tribunal does not accept that the applicant had an adverse political profile at the time he left Egypt in 2006 or when he returned to Egypt in 2008, 2010 or 2012.

59. The Tribunal does not accept that, since the ousting of President Morsi, the applicant's father has been on the run fearing being detained by military intelligence, that his mother is being hunted down by the Egyptian intelligence, that his mother and [siblings] have been forced to flee the family home or that his uncle has left the family home and is hunted by military intelligence. The Tribunal does not accept that the applicant's father in law fled his home because he is a long term member of the MB or that his business was attacked and burnt by supporters of the military. The Tribunal does not accept that the applicant's parents, [siblings] or his uncle are of adverse interest to the Egyptian authorities or supporters of the military. It follows that the Tribunal does not accept that the applicant will be of adverse interest to the Egyptian authorities or supporters of the military because he is a family member.
60. The Tribunal does not accept that the applicant's wife has been forced to relocate to Dumyat with her parents because of ongoing threats by the military intelligence and local supporters of the military. The Tribunal does not accept that she is targeted by local supporters of the military because she wears Islamic dress. The Tribunal does not accept that she is devoid of protection by the Egyptian authorities when threatened by hostile third parties. The Tribunal does not accept that she participates in weekly political rallies by the MB in Dumyat. It follows that the Tribunal does not accept that she persists in attending these rallies despite threats of arrest by the military and threats of being attacked by supporters of the military. The Tribunal does not accept that the applicant's wife is of adverse interest to the Egyptian authorities or supporters of the military.
61. The Tribunal accepts that some students the applicant knew at university have been arrested and detained by the Egyptian authorities. The Tribunal accepts that in Australia the applicant was involved in Mr Morsi's campaign for the Presidential elections in 2012 and that he supported the MB at that time. The Tribunal accepts that the applicant attended a fund raising function in 2012 organised by Islamic Relief Australia to raise funds for slums in Egypt. The Tribunal accepts that the applicant has made comments in support of the MB on social media. The Tribunal notes that these comments were made under the pseudonym '[name]'. The Tribunal is not satisfied that the applicant can be identified from these posts. It follows that the Tribunal is not satisfied that there is a real chance that the applicant will be at risk of persecution on the grounds of his political opinion for this reason if he returns to Egypt.
62. The Tribunal accepts that, following the incidents at Rabia Square in 2013, the applicant has participated in a number of pro-democracy and anti-military protests in Australia including in front of the Egyptian Consulate. The Tribunal accepts that the applicant is involved in [Organisation 1] and was involved in the organization of some of these protests. The Tribunal accepts that during some of these protests the applicant has [performed] in protest scenes. The Tribunal is of the view that this would have distinguished him from other participants at the protests. The Tribunal accepts that photographs of the applicant involved in some of these activities have been uploaded onto the [Organisation 1] website and videos have been uploaded onto the internet. The Tribunal has considered the provisions of

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<sup>3</sup> *Timeline: Egypt's revolution – A chronicle of the revolution that ended the three decade long presidency of Hosni Mubarak*, Aljazeera, 14 February 2011. (<http://www.aljazeera.com/news/middleeast/2011/01/201112515334871490.html>).

s.91R(3) of the Act and is satisfied that the applicant's conduct in Australia is otherwise than for the purpose of strengthening his claims to be a refugee. For the above reasons, the Tribunal is of the view that the applicant may now be of adverse interest to the Egyptian authorities.

63. Notwithstanding the fact that the Egyptian Consulate in [City 1] renewed the applicant's passport in 2012 and 2014, the Tribunal is of the view that his participation in Mr Morsi's campaign for the Presidential elections in 2012 in Australia, the prominent role he has played in pro-democracy and anti-military protests in Australia since 2013, his association with [Organisation 1] and involvement in organizing some of the protests, his exposure on the [Organisation 1] website and on other internet sites creates a real chance that the Egyptian authorities will perceive the applicant to be a member of the MB, anti-government and involved in the organization of anti-government activities in Australia. Therefore, the Tribunal is satisfied that there is a real chance that the applicant will be at risk of persecution for reason of his political opinion if he returns to Egypt now or in the reasonably foreseeable future.
64. In view of the above finding, the Tribunal does not consider it necessary to consider the applicant's other claims.
65. In view of the above, the Tribunal finds that the applicant has a well-founded fear of persecution for reason of his actual or implied political opinion if he returns to Egypt now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unable, or unwilling, because of his fear, to avail himself of the protection of his country of nationality. Therefore, the Tribunal finds that the applicant satisfies the criterion in s.36(2)(a) of the Act.

#### **CONCLUSION**

66. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations. Therefore, the applicant satisfies the criterion set out in s.36(2)(a) of the Act.

#### **DECISION**

67. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Act.

Linda Symons  
Member