

1212212 [2013] RRTA 371 (24 May 2013)

DECISION RECORD

RRT CASE NUMBER: 1212212

DIAC REFERENCE(S): CLF2012/26948

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: Mr Simon Jeans

DATE: 24 May 2013

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 1958*.

STATEMENT OF DECISION AND REASONS

INTRODUCTION

1. The applicant is a citizen of Egypt. He travelled to Australia in January 2007 to undertake studies as an overseas student. He ceased studying on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011. He applied for the protection visa [in] February 2012 and claims that will be persecuted on account of his religion as a Coptic Christian if he returns to Egypt.
2. The application was refused by a delegate of the Minister for Immigration and Citizenship [in] July 2012 and he has applied to this Tribunal for review of that decision. A summary of the relevant law is set out in Attachment A. The issues in this review are whether the applicant has a well founded fear of being persecuted in Egypt for one or more of the five reasons set out in the Refugees Convention and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Egypt, there is a real risk that he will suffer significant harm.
3. The applicant was represented in relation to the review by his [registered migration agent].

CLAIMS AND EVIDENCE

4. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Primary application

5. The applicant stated in his protection visa application that he was a citizen of Egypt. He submitted an extract of his Egyptian passport. He indicated that he was born in [Egypt] on [date deleted: s.431(2)]; he was a fluent in Arabic and English; he was an Arab; a Christian; he was married [in] 2010 in Egypt; he came to Australia in April 2007 as a student; he studied at [university]; he lived at [Suburb 1], until departure from Egypt; and he worked [in a certain profession] between September 2006 and April 2007. He indicated that his spouse, parents, [and siblings] resided in Egypt.
6. The applicant's passport was issued [in] January 2011. A stamp in the passport indicates he departed [Egypt in] January 2011.
7. The applicant claimed he was an active and practising Christian who experienced discrimination and physical harm. He has a [religious tattoo] and this has been the reason for many insults and attacks.
8. The applicant claimed that when he was at university he was part of a [social] group and forced to use the microphone to talk about Islam, which was done to belittle him. When he complained he was accused of insulting Islam. This caused a lot of arguments about religion. He was treated badly by his teachers and one of them tore up his assignment in front of the students. He missed a lot of time from the university because he was very depressed. He eventually left the [social] group because he was distressed with all the insults.

9. He claimed that in 2003 [Relative A], was detained by the authorities for almost 2 months and badly tortured. His fiancé at the time was kidnapped and raped by Muslims. Her family were threatened with death if they reported the incident. [Relative A] could not keep quiet and tried to expose the threats. The authorities accused him of stealing so he could be detained and tortured him until he was too scared to talk about his fiancé [Relative A] remains physically and emotionally scared. After this event, he and [Relative B] tried to make complaints and as a result became known as Christian troublemakers.
10. He claimed that at the same time, he was helping with cleaning, fixing and painting projects at the local church. The local Muslim youth attacked them and damage the church fence. He and the other Christians were taken to the police station and accused of doing more than they had the authority. They were hit and insulted until the priest came to rescue them. The police did this just to exercise their authority and to humiliate Christians.
11. The incident with [Relative A] became well-known in the area. He was known everywhere he went and became known he was trying to blame Muslims for the sake of their family's honour and the rumour that all the men in their family had slept with [Relative A's] fiancé The incident with [Relative A] affected the whole family. His sisters were at risk because many Muslims would try and attack them and insult them by calling them prostitutes and from a family of prostitutes. He became very sensitive to a trend of kidnapping young Christian girls, raping them and leaving them or forcing them to become Muslims. There were a number of sit-in protests at the local churches concerning these issues.
12. The applicant claimed that when he started [working] in the middle of 2006, he tried to put together a [Christian newsletter]. He was investigated by [details deleted: s.431(2)] and given a last chance before being sacked. He had to stop this. The problems were exaggerated because he and his family were well known by the authorities and the local sheikhs.
13. The applicant claimed that in July 2006 the neighbour of his wife, [Ms C], fell in love with a Muslim man, converted to Islam and married him. [Ms C] kept in contact with his wife. The family of [Ms C]'s husband tried to pressure his wife to convert to Islam. She was physically attacked by them after she strongly refused their attempts for her to convert to Islam. He was very vocal and caused a big scene with the family and with the sheikh involved. His wife [details deleted: s.431(2)] and at that time they were not married. After this incident, his wife significantly during decreased her contact with [Ms C].
14. The applicant claimed that in July 2010, [Ms C] spoke to his wife about wanting to return to Christianity because she did not want to live as a Muslim. She claimed she had been initially promised that she would not have to live as a Muslim or raise her daughter as a Muslim. [Ms C] became very close to another woman by the name of [Ms D], who was [details deleted: s.431(2)]. [Ms D] wanted to convert to Christianity and asked his wife for help. His wife told him about this when he was in Australia but she did not tell him how serious they were and did not tell him the extent of her involvement.
15. The applicant claimed when he returned to Egypt, [Ms D] was about to be baptised and she was planning to escape with [Ms C] and her daughter. His wife helped [Ms C] study Christianity and take her to a church far from their village. He and his wife were witnesses at the baptism of [Ms D].

16. The applicant claimed that on the second day after their marriage, [Ms C and Ms D] came to their house with a small travel bag each saying they wanted to escape because [Ms D]'s father strongly suspected that she was involved with Christianity after he heard her speaking to [Ms C]. He was shocked and could not believe what they had done without warning them. He and his wife were preparing to go away for their honeymoon the next day. It was a very difficult situation because they could not contact the priest who was in Friday night prayers at the church. He knew that [Ms C and Ms D]'s family will be looking for them and he could not take them anywhere until he had spoken to the priest. He hired a car and they all went to a monastery and stayed there. The next day he and his wife returned home and learned that the night before, the whole area was looking for [Ms D and Ms C]. Their family was suspicious of them because nobody knew where we were that night and phones were switched off.
17. The applicant claimed that he and his wife were questioned by the police and their house was searched. They were so scared that the police suspected that they knew something. The police returned for questioning two days later. After five days the police knew they had hired a car overnight and wanted to know why. He told them he went with his wife for a long drive and slept in the car but it was clear they did not believe them.
18. The applicant claimed that at the time he left Egypt, they had not been approached by the authorities again but his wife was hassled continuously by [Ms C and Ms D]'s family.
19. The applicant claimed that in the second week of December 2011, [Ms C] returned to her husband because she was having difficulty hiding her daughter and she was afraid she will be caught. [Ms C] was beaten and implicated him and his wife. His wife was taken to the police station and questioned intensively. His wife called him immediately after she was released and he arranged with her father to stay with relatives in [another city].
20. The applicant claimed that the authorities have since questioned both their families and have requested that they both attend at the police station.
21. The applicant claimed that [Ms D]'s family have caused their families a lot of problems including throwing rocks at his father-in-law and spitting at his [sibling]. Their families have been threatened with harm if he and his wife do not return and locate [Ms D].

Delegate's interview

22. The applicant was interviewed by a delegate of the Minister [in] July 2012. The Tribunal has listened to the recording of the interview and the following is a summary.
23. He was issued with a new passport and he went to Egypt on holidays. He has the old passport with him at home. He does not remember when his previous passport expired.
24. After the application was lodged, his wife disappeared and she was hiding in a monastery. She went to the monastery [in] January 2012. His [relatives] were harassed. A friend of his wife had a friend by the name of [Ms D] who wanted to convert to Christianity. His wife tried to keep away from her. When she felt that person was adamant, his wife tried to help, introduced her to a priest to convert her to Christianity. His wife helped [Ms D] to convert to Christianity seven months before he went to Egypt. In July 2011, three months before he went there, his wife told him that [Ms D] wanted to convert to Christianity. She introduced her to a priest. His wife was a servant in the church.

25. A woman by the name of [Ms C] converted to Islam for years prior to the conversion of [Ms D]. They both travelled and went to a monastery. One year later, in December 2011 [Ms C] came back. [Ms C] was subjected to beatings and insults from her husband and said that his wife helped her to convert to Christianity and leave Islam. The following day, the police came and his wife, father and uncle were taken to the police station where they were interrogated. They were accused of helping a person convert to Christianity. They were held there for five or six hours. They beat his wife and hit his uncle and father. After the interview, his wife was in a state of nervous breakdown and telephoned him. He spoke to his uncle and said there was no point staying there, otherwise his wife would be killed.
26. The police suspected that his wife helped [Ms C] because she was her friend and believe that his wife was behind what happened and she helped her to do what she did.
27. The police came on two occasions and did not find any evidence against him or his wife. The police closed the file.
28. His wife was subjected to kidnapping and harassment from [Ms C and Ms D]'s family. The first occasion was [in] March 2011 when his wife left school around midday. The second attempted kidnapping was [in] July 2011. She had finished school and was waiting for the taxi. She was travelling to [Suburb 1]. Normally the taxi will only leave after enough people have filled the taxi but in this case, the taxi driver drove away with only her. He drove for about 5 km. His wife was sitting in the back seat. His wife asked why he was driving without any other passengers and he told her he had something else to do after dropping her off. His wife suspected there was something wrong and after 5 km, told the taxi driver to stop and let her out because he had reached her house. He did not stop driving and she realised she had been kidnapped. The taxi driver told her that she took two people from them to convert and they will take 10 people from her family. The taxi driver threatened his wife with a knife. At some point there was a funeral procession along the road and his wife escaped from the car.
29. The second occasion was [in] July 2011. His wife wanted to go to [Suburb 1]. She was with her brother. A car came onto the pavement and someone inside the car attempted to drag her into the car. Half her body was inside the car and half outside. They could not get her into the car. They dragged her for a long time and she sustained contusions and abrasions. Another car in front of the car with the kidnappers saw what was going on and slowed down. When the car stopped, they let go of her wife and she passed out. The perpetrators drove away.
30. The problems that he experienced at university did not cause him any problems in the future. The [newsletter for Christians] was part of his life experiences but not the main reason for applying for a student visa to come to Australia.
31. He was working as [specific details deleted: s.431(2)].
32. In 2003 the Muslims kidnapped and raped [Relative A's] fiancé. [Relative A] went to [a senior official] and state security to make reports and complaints. The [senior official]'s office refused to see him and sent him to the police. The police refused to take a report because they believed he was a troublemaker. He was detained by a major general in the state security. He was detained and tortured for two months. They tortured him to stop him from making complaints about the people who kidnapped and raped his fiancé. He and [Relative B] made a complaint to help [Relative A] gets released. The family of [Relative

A]'s fiancé were threatened with death. He and [Relative B] hired a lawyer to find out the whereabouts of [Relative A]. They wrote to [a senior official]. They went to the police with their lawyer. The lawyer found out through an informal source that [Relative A] was detained without any charge. They accused them of inciting a mutiny and threatened to put them in prison.

33. His wife was pressured by the family of [Ms C] to convert to Islam in July 2006. He did not have any involvement with her family at that time. He wanted [Ms C] to convert back to Christianity and was vocal about this incident with his family and a religious leader, not a priest, in the church.
34. His wife knew a woman by the name of [Ms D], who was also known to [Ms C]. [Ms D] wanted to know about Christianity. He told his wife to stay away and talk to his uncle and told her to change his wife's school because they did not want any more problems. He thought that [Ms C and Ms D] were talking to his wife to get her to convert to Islam. [Ms C and Ms D] wanted to convert back to Christianity but he told his wife to stay away from them.
35. He was present when [Ms D] was baptised. He did not want to attend but his wife insisted. They went to the church under the guise of going to the church but they were going to a baptism.
36. He applied for the protection visa after his wife spoke to him in mid-December 2011, after the police had taken her to the police station and questioned her for five hours because they said that he and his wife facilitated the escape of [Ms C and Ms D]. He and his uncle decided to get her out of the country and moved her from one monastery to another. When they came looking for his wife, and did not find her, they took his father, uncle and [Relative B]. They were also treating his wife's brother is very badly. One of them is in the army and the commander is mistreating him a lot, for example, making him mop the floor of the toilets in the mosque.
37. The delegate asked if the violent attempts to kidnap his wife or any of the other abuses or assault she had received over the last 18 months prompted her to relocate or for him to apply for a protection visa. He stated this is what happened and prompted his attempt to apply for protection. He stated that if he returned to Egypt, he and his wife would be killed. His parents are receiving threats. No matter how long he stayed overseas, they would try to kill him. It was not easy for him to make the decision to apply for the protection visa because he wanted to live with his family but his life was in danger.
38. His parents and other family members are being insulted, for example, told that his sisters are promiscuous.
39. The applicant claimed that the authorities, sheikhs, [Ms D]'s family and local Islamist's will harm or mistreat him if he returns to Egypt. The applicant claimed they will do this because it is known that he and his wife played a role in helping [Ms D] convert to Christianity and escape.

Further documents

40. The applicant provided the delegate with a letter from [priest and church deleted: s.431(2)], dated [July] 2012, which stated that he has known the applicant since January 2007, the applicant is an active member of the community and is involved in church activities and services. He stated that the applicant is from the village of [name deleted: s.431(2)] and returned to Egypt in [2010] to get married to [name deleted: s.431(2)] at his village and he came back to Sydney three months later to complete his [course]. He stated that last December, the applicant mentioned some problems he was having in his village with one of the Muslim families and his wife regarding the conversion of their daughter to Christianity. He stated that the family threatened [the applicant's wife] and they made a report to the police against her. He stated that [the applicant's wife] had to leave their house and is hiding in a monastery. He stated that he is worried about his wife and this affected his performance in his study and work. He stated that from what the applicant has told him, it is a definite threat for him to return to Egypt in the absence of the security forces and police.

41. The applicant provided a patient assessment and plan from [doctor and date deleted: s.431(2)] July 2011, which indicated he was diagnosed with major depression and wanted to improve self-confidence, concentration and focus on work and study and to relax.

Delegate's decision

42. The delegate made a decision [in] July 2012 to refuse to grant a protection visa to the applicant. The delegate noted that the applicant was asked about any new information and said that his wife was living in a monastery since [a date in] January 2012 but the application was lodged [in] February 2012 and the written claims indicate his wife went to live with her relatives in [another city].

43. The delegate noted that the applicant had provided inconsistent evidence about the conversation between the taxi driver and his wife in the first attempted kidnapping. The delegate found the applicant's evidence was not convincing and given the seriousness of the claims, questioned why they were not included with his written claims. The delegate did not accept as plausible that the police would simply drop the matter after interviewing him and his wife on two occasions if they believed they were responsible for the disappearance of two Muslim women. The delegate found it hard to believe that given the past experiences of the applicant and his wife, they would be involved in the conversion of Muslims and attend a baptism as witnesses.

44. The delegate found the applicant was evasive when giving evidence about his delay in lodging his application, given that in the one-year period, his family was subjected to constant harassment and his wife subjected to two serious abduction attempts.

45. The delegate was not satisfied that the applicant or his wife had assisted anyone convert to Christianity or that the applicant or any member of his family was being sought by the Muslims or authorities in Egypt.

46. The delegate did not accept that [Ms C and Ms D] had come to their house with no plans to escape, whereas the written claims indicate they had a plan to escape after the religious conversion. The delegate found that the applicant was not a truthful witness. The delegate considered the medical evidence and the letter from the priest but did not give them any weight. The delegate was not satisfied that the applicant was a person in respect of whom Australia had protection obligations.

Department's electronic movement records

47. The applicant was granted a Class TU subclass 572 student visa [in] December 2006. He arrived in Australia [in] January 2007. He was granted further Class TU visas valid until [a date in] March 2011. He departed Australia [in] October 2010 and returned [in] January 2011.
48. The applicant applied for a further Class TU visa [in] April 2011. The applicant was granted the visa [in] May 2011 which was valid until [a date in] May 2013. The applicant was sent a notice of non-compliance [in] December 2011 and his visa was cancelled [in] February 2012.
49. The applicant applied for the Class XA protection visa [in] February 2012.

Department of Education, Employment and Workplace Relations electronic records

50. As the holder of a Class TU student visa, the applicant completed a [courses deleted: s.431(2)].
51. The applicant was enrolled in [another course] commencing [in] April 2011 and due for completion [in] March 2013. [In] September 2011 he notified the course provider of his cessation of studies.

Tribunal proceedings

52. The applicant made an application [in] August 2012 to review the delegate's decision. Accompanying the application was a copy of the letter of notification and the information page of the applicant's passport issued in January 2011.

First s.424A letter

53. The Tribunal wrote to the applicant [in] January 2013 under s.424A of the Act. The Tribunal referred to information in the Department's electronic movement records which indicated that the applicant arrived in Australia in January 2007, was granted further student visas which ceased [in] February 2012, departed Australia [in] October 2010, returned [in] January 2011 and he applied for the protection visa [in] February 2012. The Tribunal stated this information was relevant because he had made a number of claims that prior to his arrival in Australia, he was the victim of discrimination, humiliation, physical harm, insults, members of his family were detained and tortured, threatened with death, falsely accused and he believed Muslims in the community were hostile to the family's interests. The Tribunal stated this information was also relevant because during his return to Egypt between November 2010 and January 2011, he claimed that he undertook various religious activities, he was questioned by the police, his house was searched, and the authorities have questioned him and his wife's families and requested they attend at the police station, yet he did not apply for the protection visa until February 2012 and this may cast doubt on his claims for protection.
54. The information in the Department of Education, Employment and Workplace Relations electronic records indicated that he was enrolled in a [registered course], commencing [in] April 2011 and he notified the cessation of his studies in that course [in] September 2011. The Tribunal stated this information was relevant because despite ceasing his studies in September 2011, he remained in Australia as the holder of a Class TU student

visa and did not apply for a protection visa until after more than four months and this delay may cast doubt on whether he has a well-founded fear of persecution if he returned to Egypt.

55. The Tribunal received a response [in] February 2013, which although it appears to be a letter signed by the representative, is more accurately described as a statement from the applicant which relevantly provides:

As members of the [church] in Egypt we as a family were very well known for our service and our help to the community, I myself was [an official], and a member of the church committee who helped the poor and checked on the people who would not come to church for some reason or other. As such in 2006 I believed it to be my duty and that of my family's to try and help persuade a girl not to convert and marry a Muslim man who she state she was in love with and was happy to convert and marry the man. This was something that happened in Egypt and a lot of young Christian women were misled by these young Muslim men and some actually were forced to marry these men after being raped in a settlement where the rapist will offer to marry his victim and as such he would escape prosecution. This phenomenon was repeated many times a year and many young Christian women fell for a trap by choice and some by force. In the case of [Ms C] a neighbour and a friend of my wife's, we tried to intervene because we believed it to be our duty, yet the girl decided at the end that she wanted to convert and marry the man with all the objections from the church her family and every Christian, the problem was that by our objection we were labelled Islam haters and that is where the problems started, we were trying to convince her and her suitor convinced her that he was best for her, because of that when she decided to convert and did, things died down and all the threats and hassles and attacks on us died also with it as long as we kept quiet and not try to ask her to go back. That was the reason why at first when I came to Australia I did not apply for protection because I did not know what that meant and also because things at home have quieted down and we were not in direct danger add to that the fact that at that time there was a security apparatus in Egypt that dealt with these types of situations and the fact the all were scared of them, because of the anyone for extended periods of time and treat them very badly without trial or any help from any other authority scared everyone into submission and as such I believed that there was no threat to my life at that time and that is why I did not apply for protection when I first came to Australia, and the fact that I was going to be away further entrenched the belief that the whole episode and others that I suffered from were going to be forgotten.

For the period after my returning from Egypt in January 2011, as soon as I came back I concentrated on renewing my student visa what has happened to us in Egypt was very confusing, the problem is we were so used of being threatened and asked to convert and spat on and our land being taken by Muslims that I thought this was still that type of threat especially since the police has investigated and decided that there was nothing to hold against us so we thought stupidly that this would draw these people away from us. In March 2011 my wife informed me that someone tried to kidnap her, this was a shock to me and to be extremely honest I did not know what to do I was really shaken and stressed and could not help from this far one thing for certain I was so worried about my wife and what was going on in Egypt at the time, I went and checked with a couple of agents to see if I can bring her on my student visa and was told that because of the situation in Egypt that she would be refused right away and I had known a couple of friends of mine had tried to do the same thing and were refused visas for their spouses. Because I did not know what to do and I was caught with a couple of agents whom I met a couple of times and they promised to help me but they have cheated me and used my ignorance to their benefit

The worst news is that in July I learned that my wife was attacked and some people tried to kidnap her and this is when I knew that things have gone from bad to worse and this is when I discovered that the people I was talking to about my applications have not submitted anything to the department and when I learned that I went to seek help from [an agent] and asked her if she could help me and that was in late October and asked her to apply for me I met a couple of times and in the beginning of December she told me all was ready and I signed a contract with her and so far I still cannot understand what has happened and why I was so unlucky in meeting those people who instead of helping me has cast doubt in my story with their delays.

I applied for Protection In Australia because I was and still am convinced that I would face death and real danger in Egypt, I do say I wish it weren't true but the revolution that promised equality to all turned out to be a boon for some such as the Islamists and the extremists and to us the Copts it turned our lives into living nightmares from continuous attacks on people, homes and churches, and kidnappings and forced conversions and worst of all to being treated as less than equals as our rights are trampled on further and further. The USCRIF report indicates that in the years since the revolution the attacks against Christians have multiplied ten folds and to make matters even worse the previous attorney general of Egypt Mr. Mahmoud Abdel Meguid has stated it very openly that no one that participated in the attacks against Christians was brought to justice or even investigated. Life for Copts in Egypt in general has turned even more miserable, for me and my family it is worse because we are being accused of having committed the greatest sin against Islam which is to help convert a Muslim woman to Christianity, it does not matter that she wished so but what matters is that because of that we are now targeted and have suffered and continue to suffer greatly and there is no one to protect us as the ones who are supposed to protect us are the ones who are attacking us.

I believe it is now in your hands to grant me the protection I need and by doing so allowing me to bring my wife so that she can be protected also, I am extremely hopeful that you would grant us this protection as life in fear is not a life.

Submission from the representative

56. The Tribunal received a submission from the representative [in] March 2013, dated [in] March 2013, in which he provided the following. He blamed the previous representative for any errors or omissions in the primary application. Coptic Christians are facing persecution in Egypt.

The hearing

57. The applicant appeared before the Tribunal [in] March 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The representative attended the hearing. The applicant maintained his claims that the former representative made mistakes in preparing the application, the claimed incidents relating to the attempted abduction of his wife and involvement with Muslims who wanted to become or return to Christianity, the circumstances in which his wife went to a live with relatives in [another city] and then moved to monastery and his other claims for protection. During the hearing the Tribunal put to him that he had given inconsistent evidence in his application forms, delegate's interview and Tribunal hearing and this may cast doubt on his credibility as a witness of truth. The Tribunal put to him that if it found he was not a credible witness, this may lead to a finding that he was not a person in respect of whom Australia has protection obligations, either as a

refugee or under the complementary protection criteria. The Tribunal put to him that it also needs to consider, even if the Tribunal did not accept most of his claims for protection, whether he faced persecution on account of his religion as a Coptic Christian.

Second s.424A letter

58. The Tribunal wrote to the applicant [in] April 2013 with information that would, subject to his comment or response, form the reason, or a part of the reason, for affirming the decision under review. This information related to information given in the delegate's interview and the Tribunal's concerns that it appeared to be inconsistent with other information he had given in writing to the Department or in written and oral evidence given to the Tribunal. This information related to the claims of attempted kidnappings of his wife, interrogation of his wife which changed over the course of the proceedings from mid-December 2011 to 10 January 2012, information about his studies in Australia and claims of persecution generally as a Coptic Christian.

59. The Tribunal received a response [in] May 2013 in which the representative provided a submission, a letter from the same [parish priest] who provided an earlier letter in which he attested to the applicant's religious activities in Australia, and photographs of the applicant engaging in various religious activities in Egypt. The submission maintained that the applicant was a credible witness and although he studied various courses in Australia and had lived in Australia for many years, did not understand the English language which is why he did not detect the errors and omissions in the application forms. He stated that the applicant had been [an official] of the church from a young age, served on a church committee, gave speeches and was engaged in numerous religious activities which would place him in grave danger if he returned to Egypt.

FINDINGS AND REASONS

60. The applicant claims to be a national of Egypt. On the basis of the original Egyptian passport presented at the Tribunal's hearing and the Department's electronic movement records, the Tribunal is satisfied the applicant is a national of Egypt. There is no information before the Tribunal to suggest that the applicant has the right to enter and reside in any other country. Accordingly, his claims to refugee status will be assessed as against Egypt, as his country of nationality.

61. The Tribunal accepts that, as Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for'. However this should not lead to 'an uncritical acceptance of any and all allegations made by applicants'. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another' (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282).

62. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997)

191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.

63. If, however, the Tribunal has ‘no real doubt’ that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O’Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a ‘positive state of disbelief’ before making an adverse credibility assessment in a refugee case.
64. The Tribunal accepts that the applicant faced some discrimination as a university student, in his attempts with others to repair church property and that [Relative A] was tortured by the police in 2003 in an incident relating to [Relative A]’s fiancé. However, as these events occurred more than 10 years ago, some even longer, the Tribunal finds that they would not be the basis for finding that the applicant has a well founded fear of persecution for any Convention reason if he returned to Egypt, now or in the reasonably foreseeable future.
65. In the present case, as was put to the applicant, the Tribunal considered that there are good reasons for concluding that he is not telling the truth about the problems he claims to have encountered in Egypt. The Tribunal accepts that the applicant is a member of the Coptic Orthodox Church, is [an official] in the church, has given speeches and engaged in numerous religious activities. However, as put to the applicant, the Tribunal had difficulty in accepting that he is telling the truth about his claims concerning the claimed attempted abductions of his wife, his wife’s involvement with anyone who had previously been a Christian and had declared themselves to be a Muslim, or with a Muslim who was interested in Christianity, his wife had gone into hiding with relatives or at monastery or monasteries, that he or his wife were ever interrogated by the police or all his related claims for protection. The Tribunal found that the applicant developed his claims over the course of the application. The Tribunal found that the applicant was prepared to change his evidence if he believed it would give him an advantage. All of the inconsistent evidence leads the Tribunal to find that that the applicant has fabricated almost all his claims solely to enhance his application. The Tribunal’s view is strengthened by the delay in lodgement of his application, first, in relation to the delay between his initial arrival in Australia in January 2007 and lodgement in February 2012 and second, the delay between his return to Australia from Egypt in January 2011 and lodgement in February 2012.
66. The Tribunal accepts there are significant human rights problems facing the Coptic Christian community in Egypt evidenced in the credible human rights reports referred to in Appendix B. As was put to the applicant, the Tribunal has to consider whether there is a real chance that he will face persecution for reasons of his religion or any other Convention reason if he returned to Egypt, now or in the reasonably foreseeable future, despite the Tribunal's

concerns about his credibility in other aspects of his application. The Tribunal accepts that although past events may be indicative of the chance of future harm, it is not necessarily conclusive. Nevertheless, the Tribunal considers that if the situation in Egypt were not currently so turbulent and prone to sectarian violence, the chance of serious harm being done to the applicant for reason of his religion would be remote. However, since January 2011 not only have there been outbreaks of serious sectarian violence resulting in death and injury for Coptic Christians, but protection by the Egyptian authorities would appear, from the available country information set out in Appendix B, to be inadequate, despite some protestations to the contrary. [Specific details deleted: s.431(2)].

67. The Tribunal gives significant weight to the most recent Annual Report issued by the US Commission on International Religious Freedom (USCIRF), 30 April 2013, which provides:

[T]he Egyptian government continued to engage in and tolerate systematic, ongoing, and egregious violations of freedom of thought, conscience and religion or belief. Despite a significant decrease in the number of fatalities and injuries from sectarian violence during the reporting period, Coptic Orthodox Christians, and their property, continued to experience sustained attacks. In many cases, the government failed or was slow to protect religious minorities from violence. This violence and the failure to convict those responsible continued to foster a climate of impunity. Egyptian courts continued to prosecute, convict, and imprison Egyptian citizens charged with “contempt” or “defamation” of religion.

68. The Tribunal gives significant weight to the applicant’s role of [official] in the Coptic Orthodox Church and member of a committee which promotes various religious activities which places him in a public position in promoting his religion and assisting members of his community. The Tribunal gives significant weight to the applicant’s occupation [in a certain profession] and notes the reports that the Muslim Brotherhood has been using the blasphemy laws to bring false charges against [Coptic Christians who work in this profession]. The Tribunal also gives significant weight to the applicant’s family’s residence in El Miniya in Upper Egypt, given the number of human rights reports concerning the persecution of Coptic Christians in Upper Egypt, confirmed by the USCIRF in their most recent Annual Report in which they provide:

The ongoing violence, and the inability to prosecute successfully those responsible, continued to foster a climate of impunity, especially in Upper Egypt.

69. Given the applicant’s personal circumstances referred to above, and the generally dangerous situation for Coptic Christians in Egypt currently, the Tribunal is satisfied that there is a real chance that the applicant will face Convention-based persecution for reason of his religion as a Coptic Christian if he returns to Egypt in the reasonably foreseeable future. The Tribunal finds that the applicant’s religion is the essential and significant reason for the persecution which involves serious harm, within the meaning of s.91R(1) of the Act. Since the violence against Coptic Christians appears to widespread, and the applicant’s role as [official] committee member and his other religious activities in the church will attract adverse attention from Islamic groups or individuals who might persecute the applicant because of his religion, the Tribunal is not satisfied that it is reasonable in all the circumstances that the applicant can avoid harm by relocating within Egypt. The Tribunal is satisfied that the applicant has a well-founded fear of persecution in Egypt for reasons of his religion within the meaning of the Refugees Convention.

CONCLUSIONS

70. For the reasons given above the Tribunal accepts that the applicant has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Egypt, now or in the reasonably foreseeable future. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

DECISION

71. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the *Migration Act 1958*.

ATTACHMENT A - RELEVANT LAW

72. Under s.65(1) of the *Migration Act 1958* (the Act) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other ‘complementary protection’ grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

73. 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 Refugees Convention.

74. Australia is a State Party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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

75. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

76. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

77. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

78. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve ‘serious harm’ to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression ‘serious harm’ includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a

member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

79. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
80. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
81. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
82. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
83. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

84. 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').

85. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
86. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

ATTACHMENT B - COUNTRY INFORMATION

87. The Tribunal has considered information from various sources relating to the human rights environment in Egypt and recent political developments:
- CX259193: EGYPT: Egypt: Convicts in Al-Sadat case, other Islamists to be released, Al Hayat also Dar Al Hayat -United Kingdom, 21 February 2011, Added: 25 February 2011, BBC Monitoring Service, source: Al Hayat also Dar Al Hayat - United Kingdom (Translated from Arabic);
 - *Coptic Priest found dead in southern Egypt*, Ahram Online, <http://www.masress.com/en/ahramonline/6285>, accessed 9 April 2013;
 - Minority Rights Group International 2011, World Directory of Minorities and Indigenous Peoples – Egypt: Copts, April; Johnston, G. P. 2011, ‘Who will defend Christians in Egypt?’ *The Whig Standard*, 27 March 2011, <http://www.thewhig.com/ArticleDisplay.aspx?e=3043828> – accessed 27 June 2011;
 - CX283304: EGYPT: Three churches attacked, Egyptian military sides with radical Muslims, Assyrian International News Agency (AINA), 9 April 2011, <http://www.aina.org/news/20110408230557.htm>, accessed 20 February 2013;
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 - Londono, E, In Egypt, Islamist Salafist movement vies for political power in wake of revolution, *The Washington Post*, <http://www.washingtonpost.com/world/middle->

east/in-egypt-islamist-salafist-movement-vies-for-political-power-in-wake-of-revolution/2011/06/02/AGw9ulNH_story.html, 10 June 2011, accessed 1 March 2013;

- Asia News, *Hundreds of Salafists attack a Coptic church in Upper Egypt*, 24 June 2011, <http://www.asianews.it/news-en/Hundreds-of-Salafists-attack-a-Coptic-church-in-Upper-Egypt-21932.html#>, accessed 20 February 2013;
- BBC News, *Cairo clashes leave 24 dead after Coptic church protest*, <http://www.bbc.co.uk/news/world-middle-east-15235212>, 10 October 2011, accessed 1 March 2013;
- BBC News, *Cairo's Copts mourn their 'Egyptian Guevara'* <http://www.bbc.co.uk/news/world-middle-east-15312194>, 15 October 2011, accessed 1 March 2013;
- BBC News, *Viewpoint: Egypt's Copts must not submit to grief*, <http://www.bbc.co.uk/news/world-middle-east-15385063>, 26 October 2011, accessed 18 February 2013;
- CX286089: EGYPT: USCIRF Annual Report 2012 - Countries of Particular Concern: Egypt, United States Commission on International Religious Freedom (USCIRF), 20 March 2012, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4f71a678c&skip=0&query=uscirf>, added 30 April 2012;
- *The New York Times*, *Coptic Pope's Death Adds to Fears in Egypt's Time of Transition*, <http://www.nytimes.com/2012/03/21/world/middleeast/coptic-pope-shenouda-iiis-death-adds-to-fears-in-egypt.html?ref=egypt>, 20 March 2012, accessed 1 March 2013;
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- MRT/RRT Information Request EGY41897, DFAT Report 1490, 5 April 2013;
- CX306217: EGYPT: *Nationwide protests against Brotherhood rule*, Daily News Egypt, 7 April, 2013, <http://www.dailynewsegypt.com/2013/04/07/nationwide-protests-against-brotherhood-rule>, accessed 16 April 2013;
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