

1612905 (Refugee) [2016] AATA 4500 (3 October 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1612905
<b>COUNTRY OF REFERENCE:</b>	Egypt
<b>MEMBER:</b>	S Baker
<b>DATE:</b>	3 October 2016
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a protection visa.

Statement made on 03 October 2016 at 12:45pm

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

### INTRODUCTION

1. [The applicant] is an Egyptian national, of Arab ethnicity and is a Sunni Muslim. He was born in Cairo. He claims to have disagreed with the removal of Morsi by the Military Council and to have participated in a protest march on 12 July 2013 and to have been beaten and detained and taken to a military prison where he was subjected to torture and beatings. After [number] months he was released. He was approached by men at his local mosque, including a Sheikh [named], who tried to convince him to go to [Country 1] to fight there in jihad. He refused and eventually went to Alexandria and then [Town 1], but he then returned to Cairo. He then departed Egypt for [Country 2]. On the way to the airport he called the Sheikh and told him he was leaving to [Country 2]. The sheikh became very angry and threatened the applicant with death.
2. [The applicant's] application for a protection visa was refused by a delegate of the Minister for Immigration and he has applied to this Tribunal for review of that decision. A summary of the relevant law is set out in the Attachment. I have taken the policy guidelines prepared by the Department of Immigration and the country information assessments prepared by the Department of Foreign Affairs and Trade into account to the extent that they are relevant. The issues in this review are whether [the applicant] has a well-founded fear of being persecuted for one or more of the five reasons set out in s.5J in Egypt and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Egypt, there is a real risk that he will suffer significant harm.
3. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

### Identity and nationality

4. The applicant provided his Egyptian passport to the Department. On the basis of this evidence and without any evidence to the contrary I find that the applicant is who he claims to be and is a national of Egypt, which is also his receiving country.
5. The applicant travelled to a number of countries prior to arriving in Australia. There is no evidence before me to suggest that the applicant has a right to enter and reside in a third country and I so find.

### CONSIDERATION OF CLAIMS AND EVIDENCE

6. To the Department the applicant provided a shorter, less detailed statement of claims which was translated by a colleague. He also provided a more detailed statement which was prepared with the assistance of an accredited interpreter of the Arabic language. The applicant provided Amnesty and HRW reports about the situation in Egypt. He also provided a number of documents in relation to his identity, study, and work in Egypt, and visa and work documents for [Country 2] and [Country 3]. His representative provided submissions at the interview and also provided a post-interview submission dated 24 May 2016.
7. The delegate refused the application on the basis that the delegate did not find the claim that the Sheikh and others had tried to recruit him for jihad and had threatened to harm him when he demurred was credible. The delegate gave the applicant the benefit of the doubt that he had attended the protest and was detained, but that he had not experienced any further problems with the authorities, his previous political activity was minimal, and that he would not be of any interest to the authorities on return and therefore would not be harmed.

8. The applicant applied for review and provided a copy of the delegate's decision.

### **Credibility**

9. Over the course of the hearing I developed significant concerns with the evidence of the applicant. His evidence was at times contradictory, and often undetailed and vague. For the reasons below, I developed concerns with the applicant's credibility which lead me to doubt his general truthfulness and credibility as a witness. In particular his changing and inconsistent evidence about the claimed recruitment, his contact with the recruiters despite his claims to fear them, and his evidence about the protest lead me to have doubts about all of his claims and his claim to fear harm on return to Egypt.

### **Consideration and findings on the claims of the applicant**

#### *Visa and legal advice*

10. The applicant was very concerned with the legal advice he had been provided with during the processing of his visa at the primary stage. He said that the lawyer had pushed him to apply for a SHEV and he was also very upset that he had been considered and refused a temporary protection visa where he believed that he was owed a permanent protection visa. He then said that he had told his lawyer he wanted to get out of detention any way he could, that they kept him under pressure. He said his lawyer had told him to think about the SHEV and this failed to print at the same time as his application.
11. I noted to him that he had not explained the relevance of this to the review. He said that he could not get legal advice and he was a victim to false information. I noted that he had had legal advice, which he may not have agreed with, but he did receive legal advice. I explained that because he had not been immigration cleared my understanding was that he was only able to apply for the temporary protection visa.

#### *Interpretation*

12. In the second half of the hearing, after I had expressed a number of concerns with his claims and evidence to him, the applicant indicated that he was unhappy with the interpreter, saying that an Egyptian interpreter would understand the context of his evidence. I asked the applicant if he had any specific concerns and he did not indicate any and said that the problem was not with the interpreter. I noted to him that the function of the interpreter was to interpret what he said, not to provide context. I noted that he had not indicated at the beginning of the hearing that he had any concerns with the interpreter. I decided that I would not take steps to get another interpreter because a large part of the hearing had been completed, it appeared to me that the concerns of the applicant were not about the interpretation itself, but about the context, which the applicant needed to explain, and informed the applicant of this. He did not raise any further concerns.

#### *The protest and detention*

13. The applicant claims that he sympathised with the Muslim Brotherhood but knew that they were going to fall. They had fallen on 30 June 2013 he claims, he did not realise at the time that the Military Council was going to be the authority which was going to rule the country and he was against this also. After the fall of Morsi and the Muslim Brotherhood the army were restricting people's freedom of speech and assembly. On 12 July 2013 the applicant attended a demonstration in protest of the Military Council being the only dictatorship authority in the country.



14. At hearing I asked him about his motivations for attending the protest. He said that he thought of the military authority as a tyrant and persecutor. He said that Morsi was stupid, then said that the Morsi regime, rather than Morsi himself, was politically stupid, and they could not get support from the biggest force at that time which was the military forces. He said that in his view Morsi was a failure as he could not deal with conditions at his time, but that did not give the military council the right to go against him. He said the military council controlled the media and made the Morsi regime look bad. He said when the Muslim Brotherhood had taken control of the country they didn't get support from the media or military authority, so everything was against them.
15. He said he just witnessed the protests but he expected that that would lead to very horrible things, he said it was horrible about Rabaa.<sup>1</sup> He said when he had participated in a protest he was taken. I asked if he had participated in any other protests apart from the one described in his statement. He said that in 2011, when the Mubarak regime fell, he went to a few protests, but he did not do an effective participation, in that he just went when he had a break from work and he just went to see what was going on and be a witness to what was happening. He said he was sympathetic to the Brotherhood but disagreed with their methods. I asked if he had been harmed at any of these protests and he said he had not. I asked if he had just gone to these anti-Mubarak protests and then the one in July 2013 and he said yes.
16. I asked when the rally had been in 2013 that he had attended and he said on 12 July 2013. I asked what day of the week that had been. He said he could not remember, and then he said maybe a Tuesday but he was not sure. I asked if he remembered it being Ramadan and he said no, Ramadan had already finished.
17. I asked what detail he could tell me about being in this protest. He said he could tell me where they marched – from Nasr city to the Presidential palace. He said that sometimes you don't plan to go in a protest but you find yourself participating in it, being motivated by the feeling of injustice you feel at that specific moment in time. I asked if this was what had happened to him on 12 July and he said no no, he didn't mean that, what he meant was that sometimes you are moved emotionally more than at that time. He said what happened to him at that time was that he did not mean to participate, but he found himself there, he just went out to see what was going on but when he saw this he could express himself and started shouting out, The area of the protest was close to his workplace and when he saw the protest close to him he decided to participate in this protest. He said that the authorities tried to finish the protest by shooting into the air and wore special jumpers to show they were the special forces, and they used water and tear gas. He said people were pushing each other, they tried to withdraw, some tried to go into side streets, there was tear gas at that time, he had difficulty breathing as he has a problem in his nose, and he found some persons pushing him and hitting him on the head and he was shouting 'I can't breathe' and the person kept hitting him on his head and holding his arm.
18. I asked if he had passed out when he was being hit and could not breathe and he said he had not, he just could not see at that time and could not breathe and his eyes were burning. I asked what had happened then and he said that the man held him for 5 minutes and when a vehicle came they put him in the vehicle.
19. I asked what happened then. He said that they took him to detention in [Prison 1]. He said they received him with insults and torture, hitting him and then throwing him in a small cell,

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<sup>1</sup> On 14 August 2013, Egyptian security forces used excessive force to break up two protest camps of followers of Morsi who had conducted sit-ins in the month following his removal. BBC News, 'Egypt protests: Bloodshed as Pro-Morsi camps cleared,' 14 August 2013, BBC Middle East, at <http://www.bbc.com/news/world-middle-east-23691571>

then they consequently beat him one by one. He said the same night they beat them severely, it was a very bad night. He said that the next day they woke them up by kicking them and beating them and took him to interrogation. I asked what they had asked him and he said that they had asked his name and date of birth and address and asked who the applicant supported. I asked what he had said to this and he said he had told him he wasn't with the protest, they had taken him wrongly. I asked if they had believed him and he said he didn't think so.

20. I asked if, at this time, he was a member of any political group. He said no he wasn't part of any political group but he was a supporter of the Muslim Brothers as the injustice happened to them. He then clarified that by supporter he meant he was just sympathetic, not participating in any of their activities, he said he was not a supporter as it was very different when you just look into their scene from above and just feel sympathetic to them.
21. I asked if he had been interrogated about anything else at the prison. He said nothing, he was just insisting he was taken wrongly as his work was just near the protest. He said it was an informal interrogation and there was no result or charge as the person did not want any result, he just wanted to spread fear. I asked how long the interrogation had lasted for and he said it did not last for a long time, about 30 minutes, and then they returned him to the same place and took another person. I asked if he had been interrogated again and he said he had. I asked when and he said it was about 3 days later and it was the same procedure, hitting, insulting, the same thing happened and the same questions. He said when he was released he started thinking that this was persecution and tyranny and they had the same severe brutality and same violence dealing with people.
22. I asked if he had been interrogated any other times while being detained. He said it happened twice after that, the last one was two months before he got out, and he kept asking how long until he got out and was counting the days until the end of the detention. He said that they hung him from his hands twice and got electric shocks but he could not remember when that happened.
23. He reiterated his comments at the interview with the delegate where he said that the claim in his earlier statement that he had been sexually assaulted was incorrect and was the product of his colleague translating his statement from Arabic. He confirmed he had been physically assaulted but not sexually.
24. I asked how he was released. He said it was [in] January 2014 and they walked him in the morning and then two persons started hitting him and telling him he was being released and in order not to forget them they hit him and started nonsense speech. He said they took him to a taxi and then they took him somewhere and released him. He then showed an article in Arabic from the week before the hearing which he said showed that there was forced hitting in [Country 1] and Egypt, and the article was on how they hid political activists and tortured them in Egypt and [Country 1], and incidences of forced hiding in Egypt and [Country 1].
25. He said you could not imagine such a thing when you were hidden in a location and nobody knows where you are and how long it will take to release you. I asked if they had said anything when they released him or the terms on which he was released. He said they had not said anything. I asked why they would have released him and he said because they had not found him throwing a Molotov cocktail or with something on his head so they could not hold him. I noted that there were a lot of arrests and detentions made of Muslim Brotherhood members and supporters at that time and asked why he thought they did not charge him during his detention, and that this seemed odd especially because they had detained him for [number] months, a significant period of time. He said that the article he referred to before said the same; they hit you for [number] months and stay without any accusation or

anything. He said that it was because of his bad luck that he could not get physical evidence that he was detained at this period of time.

26. I noted that in his statement he had said that his family made inquiries to [two] Security Directorates. He said that that was correct. I asked if they had raised concerns with his detention with any of the NGO human rights organisations in Cairo and he said they had not. I noted to him that I understood there were a number of NGOs that monitored people detained, arrested or charged in this period,<sup>2</sup> and that it seemed strange that his family would not have gone to one of those organisations given he had been detained. He responded that this was for people who are human rights activists, and his family considered him to be a missing person at that time. I noted that in his statement he had said that his family had suspected that he must have been detained, so I wonder why they had not gone to el-Hak or EOHR or some other organisation and lodged a complaint. He said that his family are simple people, his siblings were asking about him and his friends and relatives tried to settle his father down, saying he might have been detained in the protest and get out.
27. I asked if his brothers had been involved with or sympathetic of the Brotherhood. He said they had. He said they had participated in protests at that time but that was all.
28. I asked if he had had any further interactions or problems with the authorities after being released from [Prison 1] and he said he had not. He said he had nothing with the authorities anymore.
29. I note there are a large number of articles which do refer to a large protest with as many as tens of thousands of protestors held on 12 July 2013 to protest against what was perceived by many to be the military coup against Morsi a week earlier, with many supporters being bussed in from outside Cairo, where the Brotherhood had strongholds.<sup>3</sup>
30. I noted to the applicant that all of the articles noted that the protest was held on a Friday, and many referred to the fact that it was held during Ramadan, noting that there would be a communal meal after sundown to break the fast.<sup>4</sup> I asked the applicant, given that he had described himself as 'religious' why he had not been able to recall that the protest was held on a Friday in Ramadan.<sup>5</sup> He said he could not remember that. I asked, given that this seemed to me a significant detail, that it was mentioned in all of the news reports that it was a Friday, the most important day for prayer for Muslims, and during Ramadan, why he could not remember and he said that he had not been able to remember this. I noted that this may lead me to doubt that he had been at this protest at all, which might then lead me to doubt that he had been taken and detained at [Prison 1]. I asked if he wished to say anything else or make a comment and he said that he just wanted to get out of detention.
31. I have had regard to the country information provided by the applicant, and that cited in the submission from his representative – the Human Rights Watch report mentions the Rab'a massacre referred to by the applicant which occurred in August, but does not mention any

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<sup>2</sup> For example el Hak, <http://en.elhak.org/>; the Egyptian Organization for Human Rights, <http://en.eohr.org/>; the Egyptian Initiative for Personal Rights, <http://www.eipr.org/en/>; and

<sup>3</sup> BBC, 'Egypt crisis: Morsi supporters hold Cairo protest', 12 July 2013, BBC Middle East, <http://www.bbc.com/news/world-middle-east-23282946>; ENCA, 'Morsi supporters protest after bloody week in Egypt', Friday 12 July 2013, ENCA Africa; IkhwanWeb (the Muslim Brotherhood Official site), 'Egypt Provinces Mass in Cairo in 'ProDemocracy, AntiCoup' Friday Peaceful Protests' 11 July 2013, <http://www.ikhwanweb.com/article.php?id=31127>; Al Akhbar English, 'Thousands in Egypt protest Mursi's detention', Friday, July 12, 2013, <http://english.al-akhbar.com/node/16406>.

<sup>4</sup> Al Akhbar English, 'Thousands in Egypt protest Mursi's detention', Friday, July 12, 2013, <http://english.al-akhbar.com/node/16406>.

<sup>5</sup> In 2013 Ramadan started on Tuesday 9 July and finished on Wednesday 7 August - [www.when-is.com/ramadan-2013.asp](http://www.when-is.com/ramadan-2013.asp)



killings or violence associated with the 12 July protest,<sup>6</sup> nor do any of the news reports referred to. Of the other reports, they mention, in general, detentions and arrests between July 2013 and May 2014. I have had regard to the submission of the applicant's representative, the articles cited, and the articles the applicant provided to the Department, as well as the article he referred to at the hearing, and I accept that in this period the Egyptian government arrested, detained, charged and sentenced, and mistreated and tortured, thousands of people, actual or claimed Muslim Brotherhood members or supporters. My concerns however, are with the applicant's specific claims to have been at the protest, and to have been subjected to this treatment.

32. The applicant's description of the protest was detailed in some respects, but the applicant was adamant that it occurred after Ramadan had finished, and he did not recall that it occurred on a Friday, the most significant day for worship for Sunni Muslims, especially during the month of Ramadan.<sup>7</sup> The applicant described himself as religious, and has also used the timing of Ramadan in his statement of claims to describe when events occurred, but was unable to link the protest that he claims to have attended to Ramadan, nor remember that the protest was on a Friday. This, coupled with his vague description of his detention and treatment at [Prison 1], his inability to explain why his family would not have sought his release from human rights organisations which dealt with disappearances at that time, causes me to doubt that the applicant did attend this protest as claimed, and was beaten and detained and taken to a prison/detention where he was tortured and beaten. When I consider these doubts with my concerns with his subsequent claims and evidence below, I have reached a state of disbelief in his claims and evidence. I find on the evidence before me and my findings that the applicant did not attend a protest on 12 July 2013, was not beaten and detained by a member of the security forces at that protest, was not taken to [Prison 1], was not tortured and beaten and interrogated there, and was not released from detention. I note also that the applicant has consistently claimed that after release he has had no interactions with the authorities and they have displayed no interest in him. Given that those considered to be associated with the Muslim Brotherhood or other political opponents of the current regime are assessed as 'likely' to come under surveillance and monitoring by the authorities according to sources such as DFAT,<sup>8</sup> this causes me to further doubt that the applicant was detained for a period of [number] months and released as he claims, because I also consider it likely that this would lead to ongoing surveillance and monitoring of the applicant by the authorities.
33. For these reasons I find the applicant faces no real chance of serious harm or a real risk of significant harm on return to Egypt for any reason connected with his claim to have attended a protest on 12 July 2013, been detained and assaulted, imprisoned at [Prison 1] where he claims he was interrogated, tortured and beaten and then released. I find that the applicant does not have a well-founded fear of persecution for any reason connected to these claims. Further, considering the evidence, I do not consider that the applicant has a real risk of significant harm for any reason connected to these claims.

#### *Recruitment to fight*

34. The applicant claims that before he attended the protest and was then detained in [Prison 1], he met a group of men in a mosque, around the time of Ramadan, in May or June 2013.

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<sup>6</sup> <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protectors-egypt>

<sup>7</sup> *Tarawih*, or Friday prayer during Ramadan:  
<http://www.islambasics.com/view.php?bkID=20&chapter=15>

<sup>8</sup> DFAT Country Information Report: Egypt, 24 November 2015: 3.45, 3.54.

35. The applicant said they would pray together, read the Quran or eat meals together, and would speak generally about struggling with yourself about fasting and religious speech in general.
36. He said that then when he was released from [Prison 1] he started attending the mosque again and they sympathised with him about the treatment he had received, they said that now Egypt was controlled by the military authority it has become more harsh than before and horrible things such as the Rab'a massacre had happened and so many people had been killed and this grew hatred of the regime. He said that he agreed with them about these things. He said they would say the Egyptian government is bad but that Muslims had a priority to do something about the situation in [Country 1] first and also there were so many means to start jihad and then they started talking about Islamic rules with which the applicant had some awareness. I noted that these men had told him he was very religious and he said he had not known what was the meaning of that, in Ramadan the person who usually goes to pray spends more time in the mosque, so perhaps it was that, but he did not have a long beard or white robes to conform to the stereotype of very religious. I asked if he would describe himself as religious, and he said yes he was religious but not in the same way as stereotypically.
37. He said then they started talking to him about moving to [Country 4] to take a break, started talking about what he could do and what work he could do in [Country 4], that he will be rewarded on earth and heaven if he did that. He said they were following procedures of fearing and rewarding with him, and that they were saying from [Country 4] he could get into [Country 1] for jihad.
38. He said that his fear of them came from when he talked to the Sheikh just before his departure from Egypt, and this was his mistake and when the Sheikh told the applicant that his blood is halal earlier, this was something they were used to hearing in Arabic environments, it was said sometimes joking and sometimes serious. And so when the Sheikh said such a thing it was normal. He said the delegate should not have expected that the applicant just flee and not talk to the Sheikh again or expect him to stop going to the mosque and throw away his mobile phone and not appear in the area, this was not like this.
39. I asked him to be clear about when he had said that he did not wish to go to [Country 1] to fight and wished to remain in Egypt. He said that this was in April, two months before he departed Egypt. I noted that in his statement he had said that then after he had said no, he knew he had to get away. He said that this had happened two months before he departed, when he resigned from his work at the [workplace], [in] April 2014. He said then he had travelled to Alexandria. I noted that in his statement he said that the men continued to contact him by phone, and asked why he had not changed his phone number to avoid them speaking with him. He said because he was not forced to stop contacting them, not because he wanted something from them but just to protect himself and his family and to know what to do. He then said that he wanted to show he was not afraid of them and to have a time to think about what to do.
40. I put to him that if he had quit his job and gone to Alexandria for the purpose of getting away from these people I didn't understand why he would not change his number and would continue to take their calls. He then said that it was a recognisable number that his mother knew easily and also that he had a dual SIM phone with another chip. I noted that I was not sure these explanations made sense to me. He then said that those people would look for him in his area and were trying to find him and that is not a solution. He said he did not change his phone number as he did not think that this was a solution, the solution was to exit from the guys system.



41. He then returned to the concerns of the delegate and mentioned again that she had not understood why he had called the Sheikh on the way to the airport when departing from Egypt. I noted this did not seem to make sense to me either and asked why he did this. He said he had wanted to inform the Sheikh that it is over and he wanted to get out peacefully and that the Sheikh will not get hurt. He said he had also said this to the delegate. I noted that I still did not understand why, having claimed in his statement he was afraid of these men, and knew he had to leave the country, that he would call on the way to the airport. He said that the danger stuff he felt at that time was not people saying things, that did not seem to him serious but when the Sheikh threatened he would kill the applicant even in [Country 2] without any legal trail, he was afraid. The applicant said he had called the Sheikh as he was demanding from the Sheikh, he was an old man, like a father to the applicant and he used to respect old people and he was focusing and demanding this spirit and demanding this of the Sheikh. He just wanted to inform the Sheikh that he was not the person who was right for this. When he contacted the Sheikh at the time he wanted to know what he was saying to the applicant and what his intent was. The applicant said that he thought that if he suddenly hid himself, if the Sheikh did not know where he was, he might meet one of the applicant's brothers and there might be a dangerous situation. He then said that he was not saying the Sheikh was looking for his family, but he wanted to see if the Sheikh was looking for him or his family, and if the Sheikh was a hostile person that means he might take revenge from the applicant's family.
42. I noted that in his statement he had said when he went to Alexandria he had kept a low profile and told his family not to tell anyone where he had gone and his colleagues at work if approached by anyone not to say where he had gone, which seemed inconsistent with his behaviour on leaving for [Country 2] and informing the Sheikh that he was going somewhere. He said it was normal that he would inform the Sheikh if he is in Alexandria and he is come back to Cairo, why he was scared to tell him he was in Alexandria, he will come to Alexandria to kill the applicant. He said when he told his family not to tell anyone where he was going to Alexandria it was just to protect his family so that if a person from a strange area comes, his family will say no no no we don't know him. I asked if after speaking to the Sheikh on the way to the airport he had had any contact with these people and he said he had not. I asked if his family had had any contact. He said his family don't know them.
43. He then asked why the delegate had not mentioned that he had told his family to look for another apartment. So I asked if his family had remained in the same family home. Initially he said they had moved house. He then said that they could not get another apartment, the second apartment he referred to, his brother had requested to get married in this apartment. I asked if he was telling me his family were in the same apartment and he said yes. I asked, could the Sheikh not have discovered where his family were and harmed them in revenge, given how close the mosque was to his family home and the applicant said that the Sheikh's revenge was not with his family.
44. I have a number of significant concerns with the evidence of the applicant about his claimed interaction with a group of men who tried to convince him to fight for jihad in [Country 1]. The applicant's explanations became increasingly elaborate and contorted, and he became increasingly agitated when I raised concerns with his claims with him. Having considered my concerns and his responses, I do not accept as credible or plausible his explanations for having kept his telephone number when he moved to Alexandria. As I noted to him, in his statement, he claims that after the discussion in the mosque he 'knew he had to get away', and he really started to fear the men. He then quit his job, moved to Alexandria and kept a low profile and told his family and colleagues not to give any information. When considered with these statements, his claims about keeping his phone number and receiving calls from the men are incompatible with these statements – if he has taken such steps as to quit his job, travel to another city and tell his family and colleagues not to tell people where he has gone, then why would he keep his phone number and continue to be contacted by the men?

– To not change it because it was a memorable number for his mother or anyone else seems inconsistent with taking these other, involved, steps to conceal his departure for a different location, whether it was dual sim or not, and even if they had been looking for him in his area this does not seem to answer the question of why he kept his number so they could contact him. He later claimed that he had told his family not to tell anyone where he was only to protect his family – this does not make sense – it is not self-evident that his family telling or not telling anyone where he was would lead to them being placed in danger, the applicant was silent in his explanation on whether this was also the reason he told his colleagues not to tell anyone, and it does not seem consistent with him continuing to have telephone contact with the men. His further claim that he called the Sheikh on his way to the airport when he was departing Egypt is also problematic. The applicant has given a variety of response as to why he did this and I do not find that any of these explanations are plausible. In the context where the applicant claimed to have quit his job, told his family and friends not to tell anyone where he was going, gone to Alexandria to ‘get away’, and then decided that he had to leave the country, I do not accept as plausible that he would call the Sheikh to tell him of this either because he thought if he just disappeared they would start to search for him and find his family and cause problems for them, that he just wanted to get out peacefully, on good terms, and tell the Sheikh it was over, or that he wanted the Sheikh to know that the applicant would not cause trouble or hurt or inform on the Sheikh. I do not accept that any of these reasons explain why the applicant, apparently leaving the country because of the pressure these people were placing him under, and having previously quit his job and travelled to other parts of Egypt to avoid them, would then call and tell the Sheikh exactly where he was going. Even when I tried to explore his explanations for this apparently implausible action, his answers again became elaborate and convoluted, saying that the Sheikh and others had not contacted his family, that his family had not moved apartments as he appears to have claimed at various points, and then saying that the Sheikh’s revenge was not with his family. I do not accept his explanations for why he claims to have called the Sheikh on the way to the airport and then been threatened with death by the Sheikh. I find that the applicant has fabricated this claim.

45. In addition to these concerns, I also raised with the applicant my concerns that this claim appeared implausible when considered with available country information. The country information indicates that there are a significant number of Egyptian nationals fighting in [Country 1]. One report indicates there may be as many as [number], mostly Salafists.<sup>9</sup> I noted that these recruits appeared to have travelled to [Country 1] willingly and enthusiastically,<sup>10</sup> so why would a recruiting cell spend so much effort on someone who appeared on a number of occasions to have expressed his unwillingness to go and fight. I noted that the articles I had read indicated that they targeted people who were willing to go to [Country 1] for Jihad, rather than those who were unwilling to do this as the applicant has claimed he had told the men on a number of occasions prior to and after going to Alexandria, and that it would appear from this information that these men could have recruited salafis or Muslim Brotherhood members to fight in [Country 1].
46. The applicant said, first of all, [this number of] Salafis, where did this information come from, and he said we could speak about this in detail but then he moved to another point which was the authority cracking down on recruiting of *Daesh* (ISIS) in Egypt, he said this did not have any indications, they were targeting ISIS individuals in Sinai and Libya, this did not stop ISIS recruitment. Recruitment would not be from far away populations where it is very limited, and that not all recruiters were recruiting for ISIS. I noted that this did not appear to address my concerns, noted that according to his claims he had expressed reservations about going to [Country 4] and [Country 1] to the men a number of times, and asked why they would continue to try and recruit him when it appeared there may have been other,

<sup>9</sup> [Information deleted].

<sup>10</sup> [Information deleted].



Salafi or Muslim Brotherhood people who would be more willing. In response he said that because he was known to them he was easier to recruit than someone unknown to them, they saw him in the mosque worshipping and that was different to seeing someone on the street, and he had been detained, and was hostile to the Government, and he had been sympathetic to the men. He said that all of these things made them insist on him. He said when you try to convince a person with jihad it is not like talking to a person who already knows these rules. The applicant said that his brothers had studied in [a named university], so he had knowledge of religious rules, and these men did not recruit only Salafi and only from mosques. When they find a person who has hatred and revenge they can make use of this and grow this. And, he said, the Muslim Brotherhood were already put in detention.

47. I do not find the responses of the applicant convincing at all. The news articles and reports that I have read indicate that potential *jihadis* are generally seeking a path to jihad, which is when they make contact with recruiters. I accept that in this period Muslim Brotherhood members and supporters were being arrested and detained but as the articles the applicant himself provided, this was a process that continued until at least May 2014. As I explained to the applicant, the scenario he has described seems deeply implausible – that recruiters would pursue a potential recruit who has expressed only a theoretical interest and when suggested that he travel to [Country 4] and then [Country 1] directly responds that he does not wish to do so on a number of occasions and then travels to other parts of Egypt to avoid the recruiters. The explanations offered by the applicant do not make this more plausible – even if I accepted the other key elements of his story including his attending the protest and detention, which I do not, there would, at that time, have been many Egyptian young men, religious to some extent, who had been detained and mistreated and released and who resented the government, but who may have been more amenable to fighting as foreign fighters in [Country 1].
48. At hearing the applicant attempted to suggest, without clearly elaborating, that the recruiters and the Sheikh in particular, were concerned that the applicant might inform on them to the authorities, which he also indicated in his claims. I do not accept this as a plausible reason for the claimed threats of the Sheikh, their actions in pursuing the applicant when he had clearly indicated on a number of occasions that he was unwilling to fight in [Country 1], or any of their other behaviour – the applicant had, he claims, implicated himself as an enemy of the regime, he claims he had been previously detained by the regime, and I do not accept that the Sheikh or the other men would have been concerned that the applicant would have gone to the Egyptian authorities.
49. I have had regard to the submission from the applicant's representative and the country information cited therein but I do not find this compelling – as I have not accepted the reasons for why the Sheikh and other men would continue to target the applicant once he expressed his disinterest in fighting in [Country 1], I do not accept that his claims are plausible as his representative submitted, nor that his claimed fears are plausible.
50. On the basis of my findings above, I find that the applicant was not approached by a group of men and the Sheikh who tried to recruit him to fight in [Country 1], that he was not pressured and then threatened by this group, that he did not quit his job, ask his family and colleagues not to tell anyone where he had gone, go to Alexandria and then to [Town 1] to get away from these men, nor that he decided to leave Egypt to get away from these men, nor that the Sheikh threatened the applicant at any stage.
51. For these reasons I find the applicant faces no real chance of serious harm or a real risk of significant harm on return to Egypt for any reason connected with his claim to have been the subject of an attempt to recruit him to fight in jihad, either from these men including the Sheikh, or from the authorities. I find that the applicant does not have a well-founded fear of persecution for any reason connected to these claims. Further, considering the evidence, I



do not consider that the applicant has a real risk of significant harm for any reason connected to these claims.

52. I further find that the applicant has been untruthful about the above, his core claims, and that, as I explained to him at hearing, this has led me to have doubts about his general credibility. On the basis of my findings above I find that the applicant is not credible or a witness of truth.

*Political opinion*

53. I am willing to accept that the applicant holds the political views he expressed at the hearing. However, given my findings above, I do not accept that he has expressed these views as he has claimed, either in attending protests sporadically in 2011, nor going to the protest on 12 July 2013, nor by expressing his views on the Sisi regime to the men in the mosque. I accept that the applicant may have sympathised with the Muslim Brotherhood and the Morsi government, but he was at pains to indicate that he was not a member or supporter, but a sympathiser who was outside looking at what was happening to the Brotherhood.
54. I note also that the applicant did not claim to have been harmed or threatened or to have had any interaction with the authorities prior to his claimed attendance at the 12 July 2013 protest march and detention at [Prison 1], and not to have had any interaction, harm or threat from the authorities after his release. Given that I have found above that he did not attend these protests, was not detained, I find that he has had no interaction with the authorities in the past, and I find that he did not modify or alter his behaviour and not express his opinion because of his detention, which I find did not happen. Given I have rejected his claim to have been recruited by the men, I also do not accept that he would be seen as pro-jihad or anti-government by the authorities for any reason connected to this claim.
55. The applicant claims to have posted anti-government posts on [social media], and that if he talks about his opinion of the government in Egypt he will be accused of being a Brotherhood supporter and detained or prosecuted. I asked what he had written on [social media] that was anti-government and he said he just made videos and made jokes against the government. Even if I accept this, I do not accept that this will lead to the applicant being harmed in any manner. The country information does show that political activists or others who have come to the attention of the government may be accused, detained or prosecuted, and that *public* dissent has been stifled,<sup>11</sup> but I do not accept that the applicant has come to the attention of the authorities for any reason, given my findings above. I also do not believe the applicant will express his views about the regime publicly, by attending a protest, as I find he has not done so, or attended any protests, in the past, nor that he has any genuine desire to do so on my credibility findings above. This means that the fact, which I accept, that there is little space for the public expression of anti-government views in Egypt is not relevant to the situation of the applicant as I find that he has not in the past, and does not have a genuine desire to do so now, express his views in public, other than posts on [social media], I find him not to be credible in making his claims, and I therefore find the chance that he will be harmed in the future for his actual or imputed anti-Government political opinion or his [social media] post, to be remote and far-fetched.
56. For these reasons I find the applicant faces no real chance of serious harm or a real risk of significant harm on return to Egypt on the basis of his actual or imputed political opinion. I find that the applicant does not have a well-founded fear of persecution for any reason connected to his claimed, actual or imputed political opinion. Further, considering the evidence as discussed, I do not consider that the applicant has a real risk of significant harm for any reason connected to this.

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<sup>11</sup> DFAT Country Information Report: Egypt, 24 November 2015: 3.50 – 3.54.

*Failed asylum seeker*

57. Whilst it was not claimed by the applicant, it arises on the material that the applicant would return to Egypt as a Failed Asylum Seeker. I have had regard to the assessment of DFAT that:
- ... people who return to Egypt after several years' absence will not face any adverse attention on their return on account of their absence. Likewise, DFAT assesses that failed asylum seekers will not face adverse attention on account of their failed application for asylum when they return to Egypt.<sup>12</sup>
58. I accept that the applicant would return to Egypt having been away for a considerable number of years. I accept that, returning from detention, the applicant may be suspected to be returning as a failed asylum seeker, but as above I do not accept that this will lead to any adverse attention on his return, nor do I accept that the substance of his claims will be known to the Egyptian authorities or anyone else. The applicant did not indicate that he had any concerns with returning to Egypt as a failed asylum seeker, indicating instead that he feared the men who had tried to recruit him and were chasing him.
59. I note that the applicant expressed on a number of occasions that he did not wish to return to Egypt but to [Country 3] where he had stayed for a period of time prior to his travel to Australia, and had requested to be returned to [Country 3] after being refused immigration clearance in Australia and prior to his lodging a protection application. Given my findings in this decision, the applicant would be free to travel to [Country 3] as he wishes, but this does not have any impact on my assessment against Egypt.
60. For these reasons I find the applicant faces no real chance of serious harm or a real risk of significant harm as a returning failed asylum seeker to Egypt. I find that the applicant does not have a well-founded fear of persecution for any reason connected to this. Further, considering the evidence as discussed, I do not consider that the applicant has a real risk of significant harm for this reason.
61. The applicant did not present any other claims or fears on any other bases when asked. I find that there is no basis to find that the applicant fears, or will be harmed, for any other reason on return.
62. Having regard to all the circumstances and findings above, both individually and cumulatively, I find that the applicant does not have a real chance of serious harm in Egypt arising from attending a protest and being detained at [Prison 1], being the subject of an attempted recruitment to fight jihad, his actual or imputed political opinion, his status as a failed asylum seeker or any other reason. I find there is no real chance he will be harmed by the Egyptian authorities, the men who tried to recruit him including the Sheikh, or anyone else on return to Egypt. Having regard to all the circumstances and findings above, both individually and cumulatively, I find that there are not substantial grounds for believing that there is a real risk that the applicant will suffer significant harm upon being removed from Australia to Egypt.

**Conclusions**

63. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a).
64. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied

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<sup>12</sup> DFAT Country Information Report: Egypt, 24 November 2015: 5.31.

that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

65. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

**DECISION**

66. The Tribunal affirms the decision not to grant the applicant a protection visa.

S Baker  
Member



**ATTACHMENT**

67. 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, he or she 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.
68. 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 because the person is a refugee.
69. A person is a refugee if, in the case of a person who has a nationality, they are outside the country of their nationality and, owing to a well-founded fear of persecution, are unable or unwilling to avail themselves of the protection of that country: s.5H(1)(a). In the case of a person without a nationality, they are a refugee if they are outside the country of their former habitual residence and, owing to a well-founded fear of persecution, are unable or unwilling to return to that country: s.5H(1)(b).
70. Under s.5J(1), a person has a well-founded fear of persecution if they fear being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, there is a real chance they would be persecuted for one or more of those reasons, and the real chance of persecution relates to all areas of the relevant country. Additional requirements relating to a 'well-founded fear of persecution' and circumstances in which a person will be taken not to have such a fear are set out in ss.5J(2)-(6) and ss.5K-LA, which are extracted in the attachment to this decision.
71. 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 the 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 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'). The meaning of significant harm, and the circumstances in which a person will be taken not to face a real risk of significant harm, are set out in ss.36(2A) and (2B), which are extracted in the attachment to this decision.
72. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken 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 relevant country information assessments prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
73. 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 suppliants'. 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)

74. 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.'

75. 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.

#### Extract from *Migration Act 1958*

##### 5 (1) Interpretation

...

**cruel or inhuman treatment or punishment** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**degrading treatment or punishment** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**torture** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**receiving country**, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

#### **5J Meaning of well-founded fear of persecution**

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.  
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.  
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in them practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of serious harm for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a well-founded fear of persecution for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

#### **5K Membership of a particular social group consisting of family**

For the purposes of the application of this Act and the regulations to a particular person (the first person), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:



- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or
  - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

..

#### **36 Protection visas – criteria provided for by this Act**

...

- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.
- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
  - (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...