

1500095 (Refugee) [2016] AATA 4306 (23 August 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1500095
COUNTRY OF REFERENCE:	Egypt
MEMBER:	Mara Moustafine
DATE:	23 August 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 23 August 2016 at 1:17pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, [name], is a citizen of Egypt, born in Qalyubia province in [year] and a Muslim by religion. Before coming to Australia, he was a student at [a] University in Qalyubia. According to the primary decision, a copy of which the applicant provided to the Tribunal, he first arrived in Australia [in] July 2008 as the holder of a [temporary] visa valid until [December 2015].
3. The applicant claims to fear that on return to Egypt he will be forced to practice Sunni Islam and may be harmed or killed by his family, neighbours, the authorities and extremists in Egypt because he believes only in the Quran and no longer believes or practices Sunni Islam and so is considered an infidel.
4. The applicant applied for a Protection visa [in] March 2014. He attended an interview with the Department [in] August 2014, a summary of which is contained in the decision record. A delegate of the Minister for Immigration refused to grant the visa [in] November 2014 because he was not satisfied that the applicant was a person to whom Australia had protection obligations.
5. The applicant applied to the Tribunal for a review of that decision. As noted above, the applicant provided a copy of the decision to the Tribunal for the purposes of the review and is taken to be on notice of the delegate's findings and reasons.
6. The applicant appeared before the Tribunal on 16 August 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent, who did not attend the hearing.
7. The issues that arise on review are whether Australia has protection obligations to the applicant under the Refugees Convention or under the complementary protection criterion.
8. The key issues in this case are whether the applicant has a well-founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention 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.

RELEVANT LAW

9. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
10. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as

amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

11. Australia is a 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.
12. 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').
13. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CLAIMS AND EVIDENCE

Applicant's claims

14. Based on his Protection visa application, the applicant's claims can be summarised as follows:
 - a. He is from a moderately Sunni Muslim family and was expected to conform to all aspects of Sunni Islam. While in college he was reported to the Principal on several occasions for doubting Islam and accused of being a *kafir* (infidel) but remained a moderate Sunni Muslim.
 - b. When he returned to Egypt in 2012, he noticed a significant difference in the religious attitudes of people and was shocked that his [family member] was wearing a *niqab*.
 - c. On his return to Australia he started to give religion more thought, read the Quran more closely and started to talk to people at the mosque. By mid 2013 he started to become convinced that he could not believe in or practice Sunni Islam and met people who shared his ideas and told him there was only one type of Islam and the Quran was the only book.
 - d. When he returned to Egypt at the end of 2013 to marry his fiancé, she and her family refused him after he discussed his religious beliefs with them. In his last 2-3 weeks in Egypt he 'became vocal and unable to accept Sunni traditions' and many arguments developed between him and his family, friends and neighbours especially when he refused to pray. The local sheikh tried to correct his thinking but he refused and his parents tried to seek medical help for him.

- e. He now considers himself a true Muslim who follows only the Quran.
 - f. He fears that if he returns to Egypt he will be forced to practice Sunni Islam or be harmed or killed by his family, the community and the authorities because he does not believe or practice Sunni Islam so is considered a *kafir* (infidel).
 - g. He does not think the authorities in the country will protect him as only Sunni Islam is accepted in Egypt.
15. [In] August 2016, the applicant's adviser provided letters in support of his claims from two of the applicant's friends, which stated that they knew from discussions with the applicant that he only believed in the Koran and only God.
16. Key relevant points from the applicant's hearing were as follows:
- a. Before coming to Australia he studied [at] University and deferred his course. He had not undertaken compulsory national service as he was a student and thereby exempt until the age of 29.
 - b. While living in Egypt he attended the nearby mosque regularly, sometimes three times a day but at least every Friday, as was the practice of all Sunni Muslims. However, after living in Australia, there was a big difference between his lifestyle here and in Egypt, as well as his mentality now and that of the people there.
 - c. If he returns to Egypt now he will not be able to practice Islam as he did before and will not attend the mosque because he can no longer just accept whatever the sheikh says and the religious laws derived from the Hadith and Sunnah. Also, he owes it to the Quran to tell people the right way to practice religion and about 'true Islam'. He fears this will cause problems between himself and the community and with his family, who will tell him he is crazy.
 - d. He said that most people in Egypt followed the religious laws and Islamic tradition as set out in the Hadith and Sunnah and had left the Quran aside. But these were just stories that had been passed down. Some of the Hadiths, like that of Bukhari, which was considered second to the Quran, contradicted the Quran and there were contradictions between other Hadiths. He realised this after he 'went deep into studying the Quran' in Australia in 2013. Asked how he pursued this deep religious study, the applicant said he read some of the Hadiths on the internet, read the Quran and saw the contradictions.
 - e. Asked why this became so important to him and whether any particular scholars influenced him in his views, the applicant said the Quran was not just for scholars, but for all people. He did not follow the sheikhs because what they said was not credible. He wanted a direct relationship with God without intermediaries. While nothing was stopping him from having this in Australia, if he returned to Egypt, many things would be imposed on him, including being forced to go to the mosque on Fridays by his parents and the community.
 - f. Asked whether he went around talking about 'true Islam' to Muslims in Australia, the applicant said he explained it to friends at his home, on the train and at work – everywhere he went. As for whether this was in conversation or at meetings as a preacher of the Quran, he said he had discussions with friends at his home, including about the 'true Quran', though they did not have to be about religion.

- g. He did not do this in Egypt because, after he spoke to his parents and fiancé about it, they told him he was crazy and had to leave. He also feared that if he talked too much there, it would expose his life to danger.
- h. Asked if there were people in Egypt who shared his views about the Quran, the applicant said variously that there were, but he did not know their whereabouts; that many people used to agree with his point of view; and that the problem in Egypt was that if you talked to anyone, they called you an infidel or crazy. He said most people in the area where he lived told him this. Asked why he did not seek out people in Egypt with similar views, the applicant said he had some friends at university with similar opinion but had lost touch with them.
- i. Asked if he considered himself a Quranist, a movement which shared similar beliefs to those he had described about the primacy of the Quran, the applicant said he was a Muslim, not a Quranist as the Quran did not tell him to follow anyone. He had heard of the Quranists but had not had any contact with them, though he did talk to people who shared his opinions about the Quran.
- j. The applicant did not respond directly when asked several times how a [age] man could be forced to go to the mosque against his will and what would happen to him if he did not go. In the first instance, he changed the subject, saying that now he had to tell the people about the 'true religion' and not have to go on Fridays to listen to the sheikh. In the second instance, he said that normally people in his neighbourhood went to the mosque together as one group, calling out to each other along the street. Finally, he said that Friday prayers were 'a must', even at 50 years old – he had to go, but he would not go. As a result he would be in a lot of trouble, made to go to the sheikh again, be told he was crazy and sent to a doctor. While he could make excuses for the first couple of weeks, he would then be considered an infidel.
- k. Asked what would happen then, the applicant said 'nothing will happen' but that it was not just about Friday prayers – he also had to tell people what 'true Islam' was all about. The result of that would be conflict all the time. Asked how he proposed to tell people about 'true Islam', the applicant said he was not intending to stand on a soapbox and say he was bringing true religion but would start with friends, neighbours and his family.
- l. He feared that, as a result his parents would say their son went crazy and might take him to a mental hospital; the neighbours would not accept him among them and might report him to the government; and someone like the strict radical Muslims might assault him. Asked if this had happened in the past, he responded 'no', as he did not stay there long enough.
- m. He confirmed that he feared he might be harmed by his family, the neighbours, the government and extremists, who would call him an infidel, for the reasons outlined. He said he did not fear harm for any other reason, including being conscripted for compulsory national service.
- n. Asked whether the change of government in Egypt – with the removal of the Muslim Brotherhood-aligned Morsi government in July 2013 and the election of president al-Sisi in May 2014 – may have had an impact on religion in Egypt, the applicant responded that religion in Egypt had 'nothing to do with government' but with the clerics at al-Azhar, although the Muslim Brotherhood had an impact on the mentality of people when they were in power; and that Egypt had a law against defamation of religion under which a person who said anything wrong against the Hadith could be prosecuted. His [family member] was still wearing the *niqab* as a woman who put it on could never take it off.

CONSIDERATION OF CLAIMS AND EVIDENCE

17. On the basis of the applicant's passport presented at hearing and, in the absence of evidence to the contrary, the Tribunal is satisfied the applicant is an Egyptian national and assesses the applicant's claims against Egypt as his country of nationality and receiving country.
18. The Tribunal has had regard to the applicant's written and oral evidence to the Department and the Tribunal. At the start of the hearing before the Tribunal the applicant affirmed that his evidence to date was true and correct and that he did not wish to change or add anything.
19. In assessing the applicant's claims, the Tribunal has carefully considered and weighed a range of independent material, including the latest information prepared by the Australian Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes in relation to Egypt and that referred to in the delegate's decision¹.

Does the applicant have a well-founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention in Egypt?

20. The Tribunal accepts that, after living in Australia for eight years, the applicant has adopted a different lifestyle and mentality to that which he had in Egypt. It accepts that he has questioned and no longer strictly adheres to the beliefs and practices of his Sunni Muslim faith and only believes in the Koran; and that this may have resulted in arguments with his family, friends and neighbours; and even the breakdown of his relationship with his fiancé, as claimed.
21. However, for the reasons set out below the Tribunal is not satisfied that the applicant's claims that he will be forced to practice Sunni Islam and may be harmed or killed by his family, neighbours, the authorities and extremists in Egypt because he believes only in the Quran and no longer believes or practices Sunni Islam are well-founded.
22. The Tribunal found the applicant's evidence regarding his claims vague, speculative, implausible and unsupported by country information from independent sources.
23. By his own evidence, the applicant did not suffer any harm in Egypt from his family, friends and neighbours during his last visit there in 2013, when he refused to go to pray and 'became vocal and unable to accept Sunni traditions' (paragraph 14.d). The Tribunal considers speculative his suggestion that this was because he did not stay in Egypt long enough (paragraph 16.l) and questions how 'vocal' he actually became, given his statement to the Tribunal that he did not go around talking about the 'true Quran' in Egypt because he feared that if he talked too much there, it would expose his life to danger (paragraph 16.g).
24. The Tribunal notes that the applicant avoided responding and changed the subject several times when asked how he would be forced to go to the mosque against his will and what would happen to him if he did not go (paragraph 16.j). He finally conceded that 'nothing would happen' to him (paragraph 16.k), but said he also had to tell people what 'true Islam' was all about. However, he immediately clarified that he did not intend to do this publicly, but to start with friends, neighbours and his family. Based on his past behaviour in this regard during his last visit to Egypt (paragraph 16.g), the Tribunal considers that the applicant would be unlikely to act in such a way as to expose his life to danger and is not satisfied that this would result in serious harm to the applicant.

¹ DFAT, Country Report Egypt, 28 January 2014 and DFAT Country Information Report Egypt, 24 November 2015.

25. The Tribunal accepts that the applicant considers himself a Muslim and not a Quranist and has not had any contact with this movement (paragraph 16.i). Nevertheless, given that the applicant shares with the Quranists a belief in the Quran alone, the Tribunal considers relevant DFAT advice regarding the treatment of Quranists in Egypt in its 2014 report, as elaborated in the delegate's decision. Of particular note is DFAT's assessment that Quranists are not persecuted in Egypt, even though in earlier years they were regarded as apostates, who could be killed in punishment for their apostasy and that there was no knowledge of Quranists having been killed in Egypt².
26. Further, as discussed with the applicant at hearing, since the removal of the Morsi government and designation of the Muslim Brotherhood as a terrorist organisation, President el-Sisi's government had cracked down on militant Islamic extremists and was making a deliberate effort to promote a more moderate and less politicised version of Islam. Notably, the clerics at Al-Azhar have been engaged in this, including purging Morsi-era teachers and simplifying Al-Azhar's curriculum to make it more compatible with the modern age³. In contrast to the applicant's disingenuous claim at paragraph 16.n, Cairo University had already banned the wearing of the *niqab* by professors and academics in various faculties and recent media reports indicated that the parliament was drafting legislation to ban it in public areas and government offices⁴.
27. In the Tribunal's view, this suggests far greater tolerance of more moderate Islamic practice and belief than existed under the sway of the Muslim Brotherhood when the applicant was last in Egypt. While the applicant speculated at paragraph 16.l that neighbours might report him to the government and the strict radical Muslims might consider him an infidel and assault him for his beliefs, the Tribunal is not satisfied that this is plausible in the new environment. Moreover, in view of his confirmation that he was not planning to defame Islam and the caution he has shown in Egypt as discussed at paragraph 22 above, the Tribunal does not believe that the applicant would publicly say anything wrong against the Hadith that might lead to a prosecution.
28. In view of the multiple concerns addressed above, the Tribunal is not satisfied that should he return to Egypt in the reasonably foreseeable future, the applicant would be forced to practice Sunni Islam and go to the mosque against his will; nor that he will be harmed or killed by his family, neighbours, extremists and the authorities in Egypt because he believes only in the Quran and no longer believes or practices Sunni Islam so is considered a *kafir* (infidel), as claimed.
29. Having considered all of the applicant's claims, singularly and cumulatively, the Tribunal finds that there is no real chance that he would be at risk of persecution on the grounds of religion or any other Convention reason if he returns to Egypt now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason. Therefore, the Tribunal finds that the applicant does not satisfy the criterion in s.36(2)(a).

Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, that there is a real risk that she will suffer significant harm?

² DFAT, Country Report Egypt, 28 January 2014.

³ 'Special Report: Egypt deploys scholars to teach moderate Islam, but scepticism abounds', *Reuters*, 31 May 2015, <http://www.reuters.com/article/us-egypt-islam-azhar-special-report-idUSKBN0OG07T20150531>

⁴ Sudarsan Raghavan, 'Egyptian lawmakers want to ban Islamic veils in public', *Washington Post*, 11 March 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/03/11/egyptian-lawmakers-want-to-ban-islamic-veils-in-public/>

30. The applicant did not make any claims under the complementary protection criterion. Having regard to its findings of fact above that, it does not accept that there is a real risk the applicant will face serious harm for the reasons claimed, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.

CONCLUSIONS

31. 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 the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
32. 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 that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
33. 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

34. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Mara Moustafine
Member