

1301836 [2014] RRTA 261 (31 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1301836
COUNTRY OF REFERENCE: Egypt
TRIBUNAL MEMBER: Shahyar Roushan
DATE: 31 March 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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

Background, claims and evidence

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, a citizen of Egypt, arrived in Australia [in] December 2006 on a Student visa. His Student visa was cancelled [in] April 2011. The applicant applied to the Department of Immigration (the department) for a protection visa [in] August 2012. His claims are contained in a statement attached to his protection visa application. He provided additional evidence to the department in an interview held [in] November 2012.
3. In his evidence to the department the applicant essentially claimed that after completing his secondary studies he enrolled in the Faculty of [deleted] at [name] University. During his two years of study he was harassed and threatened by Muslim Brotherhood students because he refused to join the organisation. Fearing for his safety he decided to abandon his studies and come to Australia. He claimed that in October 2007 he met a [Christian lady, Ms A], who had recently separated from her husband. On a visit to Egypt in 2010, the applicant disclosed his intention to marry [Ms A] with one of his friends, [Mr B], who had returned to Egypt after studying in Australia. [Mr B] subsequently shared this information with members of the Muslim Brotherhood who abused the applicant's father and accused the applicant of having changed his religion. They also accused the applicant of being an infidel and issued an Islamic ruling or a fatwa against him. The applicant's father subsequently disowned him at mosque and refused to hear the applicant's explanations that he had not in fact changed his religion. The applicant fears being conscripted into the military as he 'hates' violence and does not wish to repress, arrest and kill demonstrators. He also fears the Muslim Brotherhood who are in power.
4. In support of his claims, the applicant submitted a statutory declaration, declared by [Ms A] on 27 November 2012; an undated letter from his [brother], and a copy and translation of a Warrant to Postpone Recruitment indicating that the applicant's military service was [deferred].
5. In her statutory declaration, [Ms A] stated that she has known the applicant for more than five years and they have been 'together' for the past three years. She stated that the applicant's father is angry because someone told him that the applicant changed his religion and wanted to marry [Ms A]. She stated that the situation in Egypt is 'terrible' because the Muslim Brotherhood is in control. They have threatened the applicant and his family with 'Shari'a law' if he returns to Egypt.
6. In his letter, the applicant's brother stated that [Mr B] had visited the applicant's father and had told him that the applicant is a 'failure in both study and work; that he consumes alcohol; that he knows 'lots of girls'; that he does not attend university and that he stays out all night. The applicant's father swore that he will not allow the applicant to set foot in the house again and that he will shoot him if he sees him in Egypt.

7. In a submission provided by the applicant's representative following the interview, the applicant's representative essentially reiterated the applicant's claims. He also provided country information regarding the situation in Egypt and apostasy in Islam.
8. The delegate refused to grant the visa [in] January 2013. On the basis of the inconsistencies between the applicant's evidence to the delegate at the interview and his oral statements to a departmental officer in his Community Status Resolution (CSR) interviews, the delegate was not satisfied that the applicant has been involved in a long-term relationship with [Ms A], nor that his relationship with a Christian woman is known to the Muslim Brotherhood in Egypt. He was not satisfied that the applicant faces a real chance of Convention based persecution in Egypt as a result of his claimed relationship with [Ms A], his imputed or actual religion or his imputed or actual political opinion. The delegate found that laws governing military service in Egypt are laws of general application. The delegate did not consider that these laws would apply to the applicant in a selective or discriminatory way; or that if the applicant returned to Egypt and faced imprisonment for evading conscription the punishment would be applied to him in a discriminatory manner. The delegate was not satisfied that there is a real chance that the applicant would face Convention based persecution if he were to be required to serve in the military. He was not satisfied that there are 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 the applicant will suffer significant harm.
9. The applicant was represented in relation to the review by his registered migration agent. In support of his review application, the applicant's representative provided a further submission on behalf of the applicant, reiterating the applicant's written claims and responding to the delegate's reason for refusing his application for a protection visa. The applicant also submitted a further statutory declaration from [Ms A], dated 11 September 2013, a statutory declaration by [Ms C], dated 13 September 2013, a statutory declaration by [Ms D], dated 13 September 2013 and a statutory declaration by [Mr E], dated 13 September 2013.
10. In her updated statutory declaration, [Ms A] provided a brief account of the inception and development of her relationship with the applicant. She also provided a number of explanations as to why the applicant had failed to declare his relationship with her at his CSR interviews. She stated that the applicant's family 'insists on harassing and depressing him over his personal choice in life' and that he broke out in tears every time he spoke to his family in [her] presence'.
11. In her statutory declaration [Ms C] stated that she had met the applicant at a shopping centre. He had told her he was alone in life and that he was looking for a place to move into. [Ms C] helped the applicant find a granny flat to rent. She stated that on many occasions the applicant had told her that he did not want to return to Egypt because 'he will be trapped' between the army and the Muslim Brotherhood. He is a peaceful man and does not want to get involved in any act of aggression.
12. [Ms D] stated in her statutory declaration that she is acquainted with the applicant through her brother and [Ms C]. She has heard him say on many occasions that both sides of the conflict in Egypt 'commit gruesome acts against each other and that he does not want to be involved in any of this'. The applicant has also told [Ms D] that he has 'a Christian lady friend' and that a friend of his had told his family in Egypt that [Ms A] had caused him to change his religion and convert to Christianity.

13. In his statutory declaration, [Mr E] stated that the applicant is a client of his [shop] and that he had told him that he did not want to join the army because he does not want to kill anyone regardless of their religious belief.
14. The applicant appeared before the Tribunal on 5 November 2013 to give evidence and present arguments. The Tribunal also took evidence from [Ms A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The Tribunal has referred to the applicant's oral evidence, where relevant, below
15. In response to certain information put to the applicant under s.424AA, the applicant's representative submitted further country information in relation the instability and general violence in Egypt; articles and reports in relation to apostasy and the treatment of apostates in Islam; information in relation to the targeting of soldiers and the police; and a statutory declaration from [Ms A], explaining her reasons for not having yet finalised her divorce from her husband and problems associated with the sale of a property she jointly owned with her husband.

Consideration of Claims and evidence

16. 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.
17. 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).
18. 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').
19. 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.

The Applicant's Relationship and the Muslim Brotherhood

20. On the basis of the applicant's and [Ms A's] evidence, the Tribunal is prepared to accept that they had entered into a romantic relationship in early 2008 and that they have continued to remain in a relationship until now. However, for the reasons set out below, the Tribunal does not accept the applicant's claims in relation to how the news of the relationship was received in Egypt and his consequent fear of harm
21. Throughout the process, the applicant's account of how the news of his relationship was disclosed, how this information spread, what was communicated by different individuals, who was privy to this communication and what were the consequences were replete with inconsistencies.
22. In his statement to the department the applicant wrote that one of his Egyptian friends, who was studying in Australia and had returned to Egypt, [Mr B], whom he trusted and visited during his return trips to Egypt, knew about the applicant's relationship with [Ms A]. However, [Mr B] had thought that the relationship was a 'casual' one. When the applicant disclosed to [Mr B] his intention to marry [Ms A], [Mr B] became 'thrilled and objected such marriage with a non-Moslem and you should not marry her unless she became a Moslem' (sic). When the applicant informed [Mr B] that he was thinking of entering into a civil marriage with [Ms A], he 'angrily answered that this is against Islam and it is infidelity'. The applicant thought of this as only an argument between two close friends, but he then realised that [Mr B] had contacted some of the applicant's neighbours, who are members of the Muslim Brotherhood and informed them that he has 'relation with a Christian lady'.
23. At his interview with the delegate, the applicant provided a different account of what had transpired between him and [Mr B]. He stated that when he returned to Egypt in 2010 he visited [Mr B] and they talked about his relationship with [Ms A]. The applicant stated that at that time [Mr B] did not say anything to the applicant but after the applicant left Egypt to return for Australia, [Mr B] informed the applicant's family. He stated that he found out that it was [Mr B] who had disclosed this information to his family when the Muslim Brotherhood came to power in 2011.
24. At the Tribunal hearing, the applicant provided yet a different account of his interaction with [Mr B] in Egypt and the latter's reaction following their conversation. The applicant gave evidence that when in Australia, [Mr B] knew of the applicant's relationship with [Ms A]. When the applicant visited Egypt in March 2010, he saw [Mr B] and spoke to him about the details of his relationship. He told [Mr B] that the relationship has become serious and that he intended to marry [Ms A]. When asked how [Mr B] had reacted, he stated that [Mr B] told him that if he were to marry a Christian, he is not a Muslim and that he would be considered *murtad* (an apostate). When asked whether he had informed [Mr B] that there is nothing in Islam that would prohibit a Muslim man marrying a Christian woman, he replied that [Mr B] knew this, but was concerned about how the applicant might raise his children. When it was put to him that under Islam children of interfaith marriages are to be raised as Muslims,¹ he stated that [Mr B] did not react strongly to what he was told and what occurred between him and his friend was 'just a conversation'. He explained that [Mr B] had subsequently conveyed

¹ What Does Marriage to a Muslim Involve, *Christian Broadcasting Network*, http://www.cbn.com/spirituallife/onlinediscipleship/understandingislam/What_does_marriage_to_a_Muslim_in_volve.aspx; Muslim Father, Catholic Mother: What About the Child?, *OnIslam*, <http://www.onislam.net/english/ask-about-parenting/islamic-education/180060-muslim-father-catholic-mother-what-about-the-child.html>.

the information in relation to the applicant's relationship to some people in the neighbourhood where his parents live. He stated that what he had told [Mr B] was distorted and the Muslim Brotherhood had issued a fatwa against him. [Mr B] did not mean for this to happen but others made it a 'big issue'. When pressed, he said [Mr B] was upset with him but not to the extent that he wanted to harm him. When asked when his father had found out about his relationship, he said after the fatwa was issued and they asked his father to go to the mosque and disown the applicant.

25. The inconsistencies in the applicant's evidence, including [Mr B]'s reaction to what the applicant had conveyed to him regarding his relationship with [Ms A] and who had conveyed this information to the applicant's father, was put to the applicant at the hearing under s.424AA of the Act. He responded by stating that what he had meant was that [Mr B] might have mentioned the applicant's relationship to the applicant's father, but he did not blow the story out of proportion. [Mr B] had nothing to do with the fatwa. The applicant added that he was not there and he was just hearing what he was being told by different people. The issue only became clear when his brother sent him a letter from Egypt and explained everything.
26. The Tribunal's concerns, however, are exacerbated by the contents of the applicant's brother's letter. As it was put to the applicant under s.424AA, there are significant inconsistencies between his evidence and the contents of the letter from his brother. In that letter, which appears to have been sent to the applicant in October 2012, the applicant's brother stated that [Mr B] had visited the applicant's father and had told him that the applicant is a 'failure in both study and work; that he consumes alcohol; that he knows 'lots of girls'; that he does not attend university and that he stays out all night. The applicant's father swore that he will not allow the applicant to set foot in the house again and that he will shoot him if he sees him in Egypt. As it was put to the applicant, the contents of the letter contradicted his own evidence in relation to what was conveyed to his family by [Mr B] and his father's reaction to the information disclosed to him. There was also nothing in the letter to indicate that [Mr B] had made any accusations against the applicant that he had changed his religion or that the Muslim Brotherhood had relied on information intentionally or inadvertently conveyed by [Mr B] to issue a fatwa against him. The applicant responded by stating that no one else had been privy to the conversation between him and [Mr B]. After he returned to Australia and the Muslim Brotherhood came to power, those who had studied [at the university] made it a big issue. Different versions of the story were being entrained, including accusations that he was a womaniser and that he consumed alcohol. There is 'a big confusion' and his brother's letter had conveyed what he thought [Mr B] had said. The applicant then stated that his brother had written to him to seek clarification about these matters because he was concerned about him. It was put to the applicant that the text of the letter did not suggest that his brother was asking questions, rather, it appeared that his brother had intended to inform him of events that had in fact occurred. The applicant stated that his brother was informing him of the rumours that were circulating. He stated that he later spoke to his uncle and clarified the situation because at that time his father was refusing to speak to him. He added that his brother was unable to mention the Muslim Brotherhood in his letter because he did not know if the letter might fall into the wrong hands.
27. The Tribunal finds the applicant's explanations completely unsatisfactory and is unable to reconcile the numerous accounts he has provided throughout the process in relation to what had transpired in Egypt in his absence. The applicant provided no explanation as to why in his written statement to the department he had claimed that he 'angrily answered that this is against Islam and it is infidelity'. This claim was clearly at odds with the applicant's

subsequent account of what had transpired between him and [Mr B]. After all, as suggested by the applicant at the hearing, no one else had been privy to the conversation between him and [Mr B]. Therefore, it would be reasonable to expect the applicant to provide a consistent account of what had in fact transpired between him and his friend. The Tribunal also considers it odd that the applicant had claimed in his application for a protection visa that [Mr B] had contacted some of the applicant's neighbours, who were members of the Muslim Brotherhood, to inform them of the applicant's relationship with a 'Christian lady'. As noted above, these claims were significantly modified at the departmental interview and before the Tribunal. The applicant did not provide any persuasive explanation of the shifts in his evidence.

28. Concerning the events that the applicant claims had transpired following his departure from Egypt in 2010, the Tribunal has taken into account his contention that he was not in Egypt at the time of these events and might have heard different versions of the story. However, the applicant's initial claim that his brother's letter had clarified matters for him is at odds with the inconsistent evidence he had provided at the interview and to the Tribunal in relation to what was conveyed by [Mr B] to his family and his family's reaction. The applicant's subsequent explanations that there was much confusion about the story and that his brother had merely sought clarification, do not accord with the actual text of the letter, which had explicitly conveyed to the applicant that [Mr B] had visited the applicant's house in Egypt and had conveyed certain specific information about the applicant to his father, which had resulted in the applicant's father's being outraged. There is nothing in the letter to suggest that the applicant's brother was merely informing the applicant of some rumours circulating about him. It is reasonable to assume that the applicant's brother, by virtue being in Egypt, was in a position to have more certainty about the events that had presumably taken place in Egypt. Nevertheless, the applicant's brother's account of the version of events appears to be completely at odds with what the applicant put forward to the department and the Tribunal after he had received the letter. More specifically, the applicant did not provide any persuasive explanation as to why, in view of the contents of his brother's letter, he had claimed at the hearing that that [Mr B] had subsequently conveyed the information in relation to the applicant's relationship to some people in the neighbourhood and that his father became aware of his relationship after a fatwa was issued against the applicant. The applicant stated at the hearing that after he was able to speak to members of his family, he was able to seek clarification. The fact that his evidence remains at odds with the claims he put forward to the department and the contents of his brother's letter, casts serious doubt on the credibility of his claims.
29. For the reasons set out above, the Tribunal does not find the applicant's evidence in relation his fear of harm in Egypt as a consequence of his relationship with [Ms A] reliable or credible. The Tribunal is of the view that the applicant has manufactured these claims to achieve an immigration outcome. The Tribunal, therefore, does not accept that by sharing information with [Mr B] regarding intention to marry [Ms A], [Mr B] had reacted angrily or had accused the applicant of being an apostate or an infidel. The Tribunal does not accept that [Mr B] had informed the applicant's father about the applicant's relationship and that the applicant's father had reacted angrily to the news. The Tribunal does not accept that [Mr B] had made other accusations against the applicant, including any of the accusations listed in the purported letter from the applicant's brother. The Tribunal does not accept that the applicant's father had threatened to shoot the applicant if he returned to Egypt. The Tribunal does not accept that [Mr B] had deliberately or inadvertently disclosed adverse information in relation to the applicant to the Muslim Brotherhood or other fundamentalist Islamic groups in

the applicant's neighbourhood. The Tribunal does not accept that the applicant's father was abused or threatened by any individual or group as a consequence. The Tribunal does not accept that threats were made against the applicant or that he was accused of being an infidel or an apostate. The Tribunal does not accept that a fatwa was issued against the applicant or that his father was forced to disown him at the mosque. The Tribunal does not attach any weight to the purported letter from the applicant's brother and is of the view that the document has been manufactured to strengthen the applicant's claims for protection.

30. In his written and oral submissions to the Tribunal, the applicant's representative submitted that the applicant is not claiming that his relationship with a Christian woman had 'earned him the blind fury of the [Muslim Brotherhood]'. He submitted that the Prophet Mohammad himself married a Christian woman and a Muslim man marrying a Christian woman is a cause of celebration for Muslim fundamentalist due to their belief that the woman has been brought to 'the right path of Islam'. The applicant's fears emanate from the Muslim Brotherhood's accusation that he is *murtad* or an apostate. It was submitted that as misinformation was inadvertently conveyed by the applicant's friend, the applicant would attract this accusation. The Tribunal has already rejected the applicant's claims in relation to the information purportedly miscommunicated by his friend. The Tribunal has also rejected that the Muslim Brotherhood has accused the applicant of being an apostate. On the basis of the evidence before it, the Tribunal does not accept that the applicant will be accused of or perceived to be an apostate for the reasons he has provided, his ongoing relationship with and intention to marry [Ms A]. The Tribunal is not satisfied that the applicant has been harmed by the Muslim Brotherhood in the past or that he faces a real chance of harm at the hands of Muslim Brotherhood or any other group or individual associated with the group for the reason of his relationship with and intention to marry [Ms A]. The Tribunal finds that there is no real risk that the applicant will face significant harm as a result of his relationship with and intention to marry [Ms A].
31. The Tribunal has considered the applicant's claims that he was pressured to join the Muslim Brotherhood when he was studying at university and that he was harassed by the group, which led him to leave university and come to Australia. The applicant did not claim to have suffered any other harm, let alone serious harm, by the group while he was studying at university. Nor did he claim to have suffered any harm during his visit to Egypt in 2010.
32. While the Muslim Brotherhood briefly assumed power in Egypt, as discussed with the applicant at the hearing, the country information before the Tribunal indicates that on 3 July 2013, Egyptian President Mohammed Morsi, the former Chairman of the Muslim Brotherhood's Freedom and Justice Party, was removed from office by the Egyptian military. The military's actions came after mass anti-government protests commenced on 30 June 2013, coinciding with Morsi's one year anniversary in office.² Millions of Egyptians participated in protests held across the country, calling on the president to resign. Protesters charged that Morsi monopolised power and failed to resolve Egypt's economic woes.³ Morsi has been held in an undisclosed military facility since his removal from office.⁴ In addition,

² 'Brotherhood Mursi sworn in as Egyptian president' 2012, *BBC News*, 30 June <<http://www.bbc.co.uk/news/world-middle-east-18656396>>

³ Fayed, S & Saleh, Y 2013, 'Millions flood Egypt's streets to demand Mursi quit', *Reuters*, 30 June <<http://www.reuters.com/article/2013/06/30/us-egypt-protests-idUSBRE95Q0NO20130630>>

⁴ 'Egypt freezes assets of top Islamists after ousting of president Mohamed Morsi' 2013, *Agence France Presse*, 15 July <<http://www.theaustralian.com.au/news/world/egypt-freezes-assets-of-top-islamists-after-ousting-of-president-mohamed-morsi/story-e6frg6so-1226679440140>> ; Gulhane, J & Taha, RM 2013, 'Morsi being held

hundreds of Muslim Brotherhood members and supporters have been arrested and scores of protesters have been killed by security officials in pro-Morsi demonstrations.⁵ In September 2013 the Egyptian authorities banned the Muslim Brotherhood, ‘sealing the marginalisation of the Islamist movement that was the country’s most powerful political group until as recently as the July overthrow of Mohamed Morsi’.⁶

33. On 25 December 2013, the Egyptian Interim Cabinet declared the Muslim Brotherhood a ‘terrorist organisation’ under Article 86 of the Egyptian Criminal Code. According to Article 86, membership of a designated terrorist group may incur penalties of up to five years imprisonment. On 29 December, an Interim Cabinet spokesman affirmed that all Muslim Brotherhood members were subject to Article 86; only those who renounced the organisation would be exempted. Under Article 86 of the Egyptian Criminal Code, the Interim Cabinet has said the government is able to detain anyone suspected of membership of the Muslim Brotherhood, including those who ‘support’ the group in protests.⁷
34. The Tribunal has found no information to suggest that the Muslim Brotherhood has retaliated against or has the capability to retaliate against millions of Egyptians who are opposed to it and have expressed their views publicly, loudly and clearly.
35. On the basis of the evidence before it and the findings above, the Tribunal is not satisfied that the applicant has been harmed by the Muslim Brotherhood in the past or that he faces a real chance of harm at the hands of Muslim Brotherhood or any other group or individual associated with the group for the reason of his political opinion, including opposition to the Muslim Brotherhood. The Tribunal is not satisfied that the applicant faces a real chance of persecution for his refusal to cooperate with the Muslim Brotherhood in the past. The Tribunal is not satisfied that the applicant has been harmed by the Muslim Brotherhood in the past or that he faces a real chance of harm at the hands of Muslim Brotherhood or any other group or individual because he does not adhere to strict religious practices or the rigorous religious standards as sanctioned by the Muslim Brotherhood.
36. For the reasons outlined above, the Tribunal is not satisfied that it has 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 by the Muslim Brotherhood or any other group or individual associated with the group for the reason of his opposition to the Muslim Brotherhood or his refusal to cooperate with the Muslim Brotherhood when he was at university.

Conscription

37. In his written statement to the department, the applicant claimed that he feared being conscripted into the military as he ‘hates’ violence and does not wish to repress, arrest and kill demonstrators. He clarified at the interview that while he would like to serve in the army, there are many demonstrations and he did not want to harm other Egyptians. He claimed that

for his own safety: army’, *Daily News Egypt*, 13 July <<http://www.dailynewsegypt.com/2013/07/13/morsi-being-held-for-his-own-safety-army/>>

⁵ Chulov, M & Kingsley, P 2013, ‘Egypt’s military arrest Muslim Brotherhood supreme leader’, *The Guardian*, 5 July <<http://www.guardian.co.uk/world/2013/jul/04/egypt-military-arrest-warrants-muslim-brotherhood>>

⁶ Kingsley, P 2013, ‘Muslim Brotherhood banned by Egyptian court’, *The Guardian*, 24 September <<http://www.theguardian.com/world/2013/sep/23/muslim-brotherhood-egyptian-court>>

⁷ DFAT Country Information Report, Egypt, 28 January 2014.

his brother had been imprisoned for seven months, but he did not know why exactly. He added that his brother might have refused to follow an order in relation to the demonstrators.

38. At the hearing the applicant reiterated that while he wished to serve in the military, given the present situation in Egypt, he did not want to harm the population. He did not claim that he will not perform his military service or he would evade the draft. Rather, he claimed that if he were to join the army he would have to take up arms and carry out orders to kill demonstrators. He said might have to shoot relatives who might participate in pro Muslim Brotherhood demonstrations. He said he did not mind fighting in the army or against foreign aggressors but he did not want to kill other Egyptians or anyone else. The applicant also claimed that he would be at risk of harm by the Muslim Brotherhood, because some religious leaders have issued fatwas against soldiers.
39. The applicant provided no persuasive evidence to suggest that he has a conscientious objection to undertaking compulsory military service based on religious, political, moral or ethical considerations. Indeed, as noted above, he expressly stated that he had no objections to serving in the military. On the basis of the applicant's evidence, the Tribunal is not satisfied that the applicant has a conscientious objection to undertaking military service in Egypt.
40. The Tribunal, however, appreciates that the applicant does not wish to participate in suppressing or harming demonstrators. As discussed with the applicant at the hearing, being conscripted did not necessarily mean that he will be assigned to duties involving controlling protesters. He responded by stating that combat training is only 30 days and then he would be allocated to a unit, which might be an 'anti-demonstration' unit. This would give the Muslim Brotherhood more of a reason to kill him as some sheikhs have given fatwas against any soldier.
41. According to the Australian Department of Foreign Affairs and Trade (DFAT), political demonstrations were frequent in both urban and rural areas, often resulting in violent clashes between rival protesters or with security forces. While this level of violence has subsided, protests have continued and have the potential to quickly turn into violent clashes, resulting in many fatalities.⁸ Egypt's armed forces number some 439,000 active personnel, as well as reserves of about 480,000. The police are responsible for law enforcement nationwide, while the Central Security Forces (CSF), a paramilitary force of some 325,000, including conscripts, are responsible for crowd control and provide security for infrastructure and key domestic and foreign officials.⁹ Dealing with protesters is a job primarily for the police and the CSF.¹⁰ According to Amnesty International, the CSF is a paramilitary force combining police officers and conscript soldiers who can perform some of their military service with the CSF.¹¹ Conscripts serving in the CSF come from poor, rural backgrounds and usually fail to make the cut for the army because of a lack of educational qualifications or vocational skills.¹² They are separated from their more educated compatriots and those with a trade at

⁸ *ibid.*

⁹ *ibid.*

¹⁰ See, for example, Mel Frykberg, Egypt's Brutal Security Forces Also Victims of State Brutality, *Inter Press Service*, 27 November 2012, <http://www.ipsnews.net/2012/11/egypts-brutal-security-forces-also-victims-of-state-brutality/>.

¹¹ Agents of Repression: Egypt's Police and the Case for Reform, Amnesty International, October 2012.

¹² Mohamad Adam, Brute force: Inside the Central Security Forces, *Egypt Independent*, 11 November 2012, <http://www.egyptindependent.com/news/brute-force-inside-central-security-forces>.

the beginning of their national service, with the latter joining the regular army.¹³ The applicant's circumstances and profile do not suggest that he is likely to be conscripted into the CSF. His evidence indicates that he has [many] years of education and holds a [qualification]. His family were able to send him to Australia to study and support him for the most part. On the basis of the evidence before it, the Tribunal is not satisfied that there is a real chance that the applicant will be assigned to duties that would involve crowd control, suppressing protesters or carrying out the type of activities that he objects to. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to harm or punishment by the military authorities. The Tribunal is not satisfied that there is a real risk that he would be subjected to significant harm if he were to be conscripted.

42. The applicant claimed at the hearing that the Muslim Brotherhood has issued religious decrees against the army and his representative submitted references to YouTube videos in Arabic, which purportedly show Muslim Brotherhood leadership inciting violence against the army. The applicant's representative also submitted a report sourced from the Daily Mail, dated 7 October 2013, with the head line 'Violence erupts in Egypt as Muslim Brotherhood supporters shoot dead nine security forces amid bomb and rocket attacks on troops' (see folio 136 of the Tribunal file). The report refers to gunmen killing six Egyptian soldiers and three police officers near the Suez Canal city of Ismailia. However, the report does not draw a direct link between the attack and the Muslim Brotherhood and appears to be largely focused on attacks by Sinai-based militants. Other reports refer to the Brotherhood's denial that it has links with violent militant groups and its declared commitment to peaceful activism.¹⁴ In any event, according to DFAT, the Egyptian military is engaged in a crackdown on extremist groups in the Sinai. Retaliatory militant attacks utilising firearms and improvised explosive devices have caused a number of fatalities (mostly of military personnel) in 2013 and 2013 and have claimed responsibility for several high-profile attacks, including an assassination attempt on the interior minister last year.¹⁵ These attacks, however, are sporadic and there is no evidence before the Tribunal to suggest that every soldier and conscript is at risk of harm as a result of these intermittent terrorist attacks by the militants. The Tribunal appreciates the applicant's concerns for his safety. However, the Tribunal is of the view that there is only a remote chance that the applicant would be subjected to serious harm at the hands of Muslim militants if he were to be conscripted.
43. The Tribunal is not satisfied that there is a real risk that the applicant will be arbitrarily deprived of his life or that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment, as defined, as a result of attacks by militants of the nature he has referred to if he was returned to Egypt.

General Violence

44. The country information before the Tribunal indicates that the security situation in Egypt has been fluid since the January 2011 revolution. According to DFAT, from 2011, Egypt experienced a decrease in law and order, which led to an increase in crime, including violent crime such as armed robbery, carjacking, sexual assault, burglary and kidnapping. The state

¹³ Mel Frykberg, n10, above.

¹⁴ Teenager and army officers killed during violence in Egypt, The Sydney Morning Herald, 20 March 2014, <http://www.smh.com.au/world/teenager-and-army-officers-killed-during-violence-in-egypt-20140320-hvkkd.html#ixzz2wV8yREz8>.

¹⁵ DFAT, n7, above .

of emergency and curfew imposed for three months from August 2013 provided some calm, though general law and order remains an issue throughout the country.¹⁶

45. The Tribunal accepts that Egypt is currently experiencing some instability, political violence and deterioration of law and order. However, having considered all the applicant's circumstances, the Tribunal is not satisfied that the general security situation in Egypt would expose the applicant to a real chance of persecution for a Convention reason in that country. Concerning complementary protection, under s.36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. The Tribunal is satisfied that the lack of security and instability the applicant fears are faced by the population generally and not by him personally. The Tribunal finds that there is taken not to be a real risk that the applicant will suffer significant harm in Egypt as a result of general lack of security and instability.
46. For the reasons given above, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason. The Tribunal is not satisfied that he 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).
47. 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).
48. 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

49. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Shahyar Roushan
Senior Member

¹⁶ *ibid.*