

**1218534 [2013] RRTA 717 (31 October 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1218534  
**DIAC REFERENCE(S):** CLF2012/193626  
**COUNTRY OF REFERENCE:** Egypt  
**TRIBUNAL MEMBER:** David Corrigan  
**DATE:** 31 October 2013  
**PLACE OF DECISION:** Melbourne  
**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**

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 who claims to be a citizen of Egypt, applied to the Department of Immigration for the visa [in] September 2012 and the delegate refused to grant the visa [in] November 2012.
3. The applicant appeared before the Tribunal [in] October 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented by a registered migration agent.

### **RELEVANT LAW**

4. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the '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.

#### **Refugee criterion**

5. 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).
6. 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.
7. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
10. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
11. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
12. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
13. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
14. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

15. 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').

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

### **Section 499 Ministerial Direction**

18. 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.
19. The Tribunal notes the explanation of the 'risk threshold' in the Complementary Protection Guidelines, however, in considering s.36(2)(aa) it has proceeded on the basis that the 'real risk' test imposes the same standard as the 'real chance' test applicable in the context of assessment of the Refugee Convention definition following the Full Federal Court decision in *MIAC v SZQRB* [2013] FCAFC 33.

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

20. I have before me the Department's file relating to the applicant. I have also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. This material includes:
  - Application for protection visa with written submissions dated [in] September 2012 and statement of applicant;
  - Copy of final court orders re parenting orders dated [in] 2012;
  - Family report prepared by a family consultant of the Federal Magistrates Court dated [in] 2012;
  - Copy of applicant's passport;
  - Translated copy of internet article concerning Islamic custody rights;

- Interview with the delegate dated [in] October 2012;
  - Statutory declaration of applicant dated [in] July 2013;
  - Translated copy of Record of Investigation by Egyptian Ministry of Interior;
  - Translated copy of Facebook conversation between applicant and [Mr C];
  - Written submission of agent dated [in] October 2013;
  - Copies of two letters of support from [names deleted];
  - Copy of letter of support from the applicant's wife;
  - Copies of Australian citizenship certificates of applicant's children;
  - A number of internet articles indicating recent clashes between government forces and Muslim Brotherhood supporters in Cairo, the applicant's village and the nearby area of Kerdasa were submitted.
21. The applicant's claims can be summarised as follows. He is a Sunni Muslim born in Giza in [year deleted]. He attended [a school] in Cairo and worked [in a business]. He has [children] born in Australia in [years deleted]. His parents are deceased. He married his wife [in] 2007 in [Suburb 1] which is part of Giza. The area is controlled politically by fanatic Muslim groups. The applicant arrived in Australia with his wife in July 2007 as a dependent on his wife's student visa. His last student visa expired [in] October 2012
22. The applicant's family disapproved of their marriage. After the birth of their [youngest child] the applicant and his wife started to have marital problems and his wife left their house with the children. A long legal battle commenced. [In] 2011 there was an intervention order taken against him. [In] 2012, the Family Court allowed the applicant to see his children [on a weekly basis] until a final court order. [In] 2012, a final order was made allowing the applicant to see his children [each weekend] until his youngest child turns [age deleted] when both parents can share the care of the children. His wife and children have been granted permanent [residency]. He believes that his wife does not intend to return to Egypt. In Egypt his wife has the legal right and Islamic right to have physical custody of a boy until he is 12 and a girl until she is married. However in [Suburb 1] they do not use the law or courts and instead rely upon culture and tradition which is that children stay with the husband and family.
23. As a Sunni the applicant has been instructed by the Koran in relation to the custody of the children. He belongs to a strict Muslim family and in their tradition his return would mean he had not implemented what he had been instructed to do and he would be humiliated. During the legal battle, he received calls from family members who accused him of being soft and that he had to get his children back as they considered his wife to be an apostate. He fears that he will be targeted by extremists and family fanatics who would apply the death penalty on him. In particular he fears his brother and the head of his family [Mr A] for reasons of honour and his wife's family will harm him for retaliation for the accusation the applicant's family have made regarding his wife's sexual propriety. It submitted that he would be targeted for reason of religion (his non-observance of responsibilities) and membership of a particular social group "divorcees and/or divorcees who have abandoned children". It is

submitted that the applicant's family view his wife with suspicion for choosing to live alone in a Western country. It is submitted that it is not the wife's legal rights that are critical but the views of the applicant's family.

24. The applicant did not have a good relationship with [Mr A] prior to coming to Australia due to a conflict over a [property] where they live. [Mr A] cannot sell the building as the applicant owns [a share]. [Mr A] has told him to bring his wife and children back to Egypt and he believes that the applicant is a liar. [Mr A] does not understand intervention orders and airport watch lists that exist in Australia. He said that the applicant does not deserve to live and his siblings heard this. [Mr A] is personally angry because this may undermine his authority as the head of the family. The applicant fears [Mr A] will hire someone to kill him for reasons of honour and it would be in his interest because he would inherit his [share].
25. The applicant also fears his wife's family will blame him for his wife's decision to leave their marriage. Her family had previously disapproved of him because he had not finished his university studies. [In] 2009 they were very cold to the applicant when and his family returned to Egypt. [Mr C] has told him on Facebook [in] 2012 that [Mr A] had come over and said that his wife was [obscenity]. When [Mr B] found out what he had said he went to [Mr A]'s house and they had a physical fight. [Mr A] made a report to the police [in] 2012. [Mr B] has said that he did not have a problem with [Mr A] but with the applicant. He fears that [Mr B] will kill him if he returns.
26. The applicant claims he cannot relocate because villages in Egypt are small and in the cities people would report him to intelligence. His wife's [relative] has a [family member] who is a senior member of the police force and could find out where he lives. He has a very large family of [siblings and relatives] spread throughout the country. He would also be very isolated.

#### *Independent country information*

27. Egypt has a high rate of divorce. According to the government's Central Agency for Public Mobilization and Statistics (CAPMAS), the rate among Egyptians aged 18-29 is now 40%, the highest in the Arab world and that most of the separations occur among the country's 90% Muslim majority. The Center for Egyptian Women's Legal Assistance estimates that 250,000 women go to courts every year seeking a divorce.<sup>1</sup> Divorced Egyptian women are awarded custody of their children until they are 15.<sup>2</sup> The Tribunal did not locate any independent information that suggests that the rights of custody change in favour of the father if the parents are abroad.
28. Reports concerning domestic abuse and honour killings in Egypt focus on female victims. However, sources indicate that the Egyptian authorities consider matters that they perceive as relating to honour, such as domestic abuse, as private family issues that do not warrant interference.<sup>3</sup> In February 2010, Aida Nur Eddin, General Coordinator of the non-

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<sup>1</sup> Egypt's women face rollback on divorce rights , Media Line, The (TML), 12 April, 2012, , [http://themedialine.org/news/news\\_detail.asp?NewsID=34898](http://themedialine.org/news/news_detail.asp?NewsID=34898) (CX285077).

<sup>2</sup> Women look for a place in new Egypt , Inter Press Service (IPS), 2 June, 2012, <http://ipsnews.net/news.asp?idnews=108008> (CX288401); Changes in Egypt's family law: A step backwards? , Ahram Online, 2 April, 2012, , <http://english.ahram.org.eg/NewsContent/1/64/38053/Egypt/Politics-/Changes-in-the-Family-Law-A-step-backwards.aspx> (CX284422).

<sup>3</sup> Sadek, Ashraf 2010, 'Alex NGO vows to combat domestic violence', *The Egyptian Gazette*, 26 February <http://213.158.162.45/~egyptian/?action=news&id=3847> – Accessed 24 November 2011; Human Rights Watch

governmental organisation Hand in Hand to Fight Violence against Women and Children, told *The Egyptian Gazette* that “although domestic violence is punishable under Egyptian law, the police are reluctant to intervene in something that is considered a private matter”.<sup>4</sup> Additionally, a 2009 Human Rights Watch report states that ‘police are routinely unsympathetic to the concerns of battered women and girls’.<sup>5</sup> In terms of honour killings, reports state that such incidents do occur in Egypt in a variety of circumstances, although such incidents appear to be rare and there are no reliable statistics to determine any figures.<sup>6</sup>

29. Islamic practice is that the mother has the right of custody for a male child until the child is capable of taking care of his own basic bodily functions and needs, such as eating, dressing and cleaning himself. In the Hanafi branch of Islam, this is recognised at seven years of age.<sup>7</sup> In the case of female children the mother has the right of custody until she reaches puberty. This is declared to be at the age of nine in the Hanafi branch of Islam.<sup>8</sup>

30. Dr Nasir has stated:

The Islamic Sharia is acutely aware of a mother’s role in the life of her child. The Prophet said that paradise is at the feet of mother’s. Both the Sunni and Shia schools maintain that the mother has the first claim to custody of her child of either sex, whether or not she is living with her husband or divorced from him.<sup>9</sup>

31. Women in Egypt are awarded custody of their children until they are 15 years old.<sup>10</sup> Freedom House reported in 2010:

Article 20 of the Muslim personal status law was amended in 2005 to permit mothers to have custody of children until they are at least 15 years old or until they remarry, whichever comes first.<sup>11</sup>

### Country of reference

32. The applicant claims to be an Egyptian national. Based on the copy of his passport, I find that Egypt is his country of nationality for the purposes of the Convention and also his receiving country for the purposes of s.5(1) and s.36(2)(aa) of the Act.

### Assessment of claims

33. I accept that the applicant is a Sunni Muslim who is from the area of [Suburb 1], Giza. I accept that after the birth of their [youngest] child the applicant and his wife started to have

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2009, ‘UPR Submission: Egypt September 2009’, 16 February <http://www.hrw.org/news/2010/02/16/upr-submission-egypt-september-2009> – Accessed 25 November 2011.

<sup>4</sup> Sadek, Ashraf 2010, ‘Alex NGO vows to combat domestic violence’, *The Egyptian Gazette*, 26 February <http://213.158.162.45/~egyptian/?action=news&id=3847> – Accessed 24 November 2011.

<sup>5</sup> Human Rights Watch 2009, ‘UPR Submission: Egypt September 2009’, 16 February <http://www.hrw.org/news/2010/02/16/upr-submission-egypt-september-2009> – Accessed 25 November 2011.

<sup>6</sup> US Department of State (undated), ‘Forced Marriage Information Flyer – Egypt’ [http://travel.state.gov/travel/tips/safety/safety\\_5484.html](http://travel.state.gov/travel/tips/safety/safety_5484.html) – Accessed 23 November 2011; US Department of State 2011, *2010 Country Reports on Human Rights Practices – Egypt*, 8 April [www.state.gov/g/drl/rls/hrrpt/2010/nea/154460.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154460.htm) – Accessed 24 November 2011.

<sup>7</sup> CIS24448: Women’s Rights and Islamic Family Law, Abudullahi A. An-Na’im Zen Books Ltd, 2004.

<sup>8</sup> CIS24448: Women’s Rights and Islamic Family Law, Abudullahi A. An-Na’im Zen Books Ltd, 2004.

<sup>9</sup> CIS24469: The Status of Women under Islamic Law and Modern Islamic Legislation: Custody, Dr Jamal J.A. Nasir, 2009.

<sup>10</sup> Inter Press Service, Women look for a place in new Egypt, 2 June 2012 (CX288401).

<sup>11</sup> Freedom House, Women’s Rights in the Middle East and North Africa 2010: Egypt, 3 March 2010, (CX240622).

marital problems. I accept that [in] 2011 there was an intervention order taken against him. I accept that [in] 2012, the Family Court allowed the applicant to see his children [on a weekly basis] until a final court order. I accept that [in] 2012, a final order was made allowing the applicant to see his children [each weekend] until his youngest child turns [age deleted] when both parents can share the care of the children. There is substantial court documentation as well as the applicant's consistent evidence to support this. I also accept that his wife and children have been granted permanent residency [and] that his wife does not intend to return to Egypt.

34. I accept that the applicant comes from a conservative Islamic family and I accept that there may be displeasure towards him from his family concerning the breakup of his marriage and that he will be returning to Egypt without his child but I do not accept that he faces a real chance of being persecuted by them (including [Mr A]) or religious fundamentalists or anybody else in the reasonably foreseeable future. I have considered carefully the submissions of the applicant and his agents (including the country information they have submitted) but I am of this opinion for a number of reasons:

- At the Tribunal hearing, the applicant indicated that there was only one occasion when he was threatened by [Mr A]. This was [in] 2012 during one telephone call when [Mr A] stated that the applicant had brought shame to the family and threatened the applicant that he “will not have the right to live his life” if he was to return without his child. The applicant indicated that he had further Skype telephone conversation with [Mr A] 2-3 months later and [Mr A] did not mention this again or discuss the situation with the applicant's wife.
- At the Tribunal hearing, the applicant was asked whether [Mr A] had done anything violent before. The applicant stated that [Mr A] had become “rough” in treating the family after the death of his father and that he was controlling the family. He said he had to know the details of marriages within the family but did not inform the rest of the family when his own daughter was married. The applicant said that his own mother used to collect the [income from the property] but after his father passed away, [Mr A]'s mother took over this role and that they now felt there was discrimination between the families. I accept that these matters occurred but they do not in any way indicate that [Mr A] has a history of violence. I accept that [Mr A] told the applicant's sister when she divorced her husband to leave her children with the father and the new wife. I accept that [Mr A] feels that he need to maintain his position as the head of the family and that he wishes the children to live with the father in the house but given his history, his further communication with the applicant without mentioning the matter and the one off nature of the threat, I consider his threat to have been an idle threat that does not in itself constitute serious harm and that there is not a real chance of the applicant being seriously harmed by [Mr A] or anyone at his behest or other family members or anyone else now or in the reasonably foreseeable future.
- Whilst I accept that the applicant comes from a conservative family and that [Mr A] would be displeased with him for returning to Egypt without his children, country information does not support that he faces a real chance of being persecuted in the reasonably foreseeable future. The country information indicates that Egypt has a high rate of divorce. According to the government's Central Agency for Public Mobilization and Statistics (CAPMAS), the rate among Egyptians aged 18-29 is now

40%, the highest in the Arab world and that most of the separations occur among the country's 90% Muslim majority.<sup>12</sup> There is information that many divorces are instigated by females. Divorced Egyptian women are awarded custody of their children until they are 15.<sup>13</sup> Further, Islamic law set out above indicates that mothers retain custody of their child whilst they are [young] whilst Egyptian law set out above awards them custody until the children are 15 years. Whilst the applicant provided documentation (folios 96-97 and 153-156 of the Department's file) stating that custody arrangements vary when the parents travel overseas this comes from an unverified source and I have only given it limited weight. The Tribunal did not locate any information that suggests that the rights of custody change in favour of the father if the parents are abroad. At the Tribunal hearing, when the substance of this information was put to him for comment he said I was right in regards to Egyptian and Islamic law but that he and his wife married as Egyptians and children were Egyptian so that Egyptian law meant that children have to be under the husband's guidance on a daily basis which he could not do because of the distance. He said that his mother was married and had a child before marrying his father and when she did this she did not bring her [child] from the previous marriage. Similarly when his wife's mother's husband passed away she had to leave her [children] in the deceased father's house. He said that their village the elders decide things and that the area was not far away from [Suburb 2] which had a strong Islamic movement located in it. I accept that this area may have a significant amount of Muslim Brotherhood supporters and be conservative (as indicated by the submitted articles of some reports of clashes there). I accept that the applicant's family may disapprove of him returning from Australia without his children as it is more conservative and located in a village near Giza and Cairo but I consider that the existence of the favouritism towards mothers in Islamic and Egyptian law and the high prevalence of divorce in Egypt are factors that negate the chance that [Mr A] and others within his family or Muslim fundamentalists will take actions amounting to serious harm against him.

- Country information (cited by the applicant's agents; see pages 6-7 [in the] October 2013 submission) indicates that most victims of honour killings in the Middle East are female whilst the independent country information set out above indicates that honour killings are rare in Egypt. When this was put to the applicant for comment, he stated that this was a good thing but that the head of the family imposes what he thinks to be appropriate and that his village was full of fundamentalists which every single person has to obey. I have taking into account his response and accept that he comes from a conservative area but it does not overcome my concerns that indicate that his chance of being seriously harmed is remote.
- I accept that given that the applicant's wife has chosen to remain in Australia, a western country, without her husband that there would be a negative view of her honour taken towards her by the applicant's family however there is no evidence before the Tribunal to indicate that the wife is not or would not bring up her children as Muslims, that she herself has abandoned Islam or has remarried or is mentally

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<sup>12</sup> Egypt's women face rollback on divorce rights , Media Line, The (TML), 12 April, 2012, , [http://themedialine.org/news/news\\_detail.asp?NewsID=34898](http://themedialine.org/news/news_detail.asp?NewsID=34898) (CX285077).

<sup>13</sup> Women look for a place in new Egypt , Inter Press Service (IPS), 2 June, 2012, <http://ipsnews.net/news.asp?idnews=108008> (CX288401); Changes in Egypt's family law: A step backwards? , Ahrām Online, 2 April, 2012, , <http://english.ahram.org.eg/NewsContent/1/64/38053/Egypt/Politics-/Changes-in-the-Family-Law-A-step-backwards.aspx> (CX284422).

unstable which would negate her right to custody under Islamic law.<sup>14</sup> I accept that there would be a hostile attitude towards her and that she may be viewed as unfit by raising her children in Australia alone as submitted by the applicant's agents. However, the applicant is not in her situation rather he is the father and given the country information that indicates that most honour killings are perpetrated against women and the other circumstances set out in this paragraph, I find it speculative that the applicant's family (including [Mr A]) or Muslim fundamentalists will seek to seriously harm him upon return.

35. I accept that the applicant did not have a good relationship with [Mr A] before coming to Australia concerning the [property] where they live. I accept that [Mr A] did and still wishes to sell the [property] but cannot without getting the applicant's consent who owns [a share]. I accept that it may be in [Mr A]'s interest to have the applicant dead because he would inherit the [property], however, I note that the applicant was not harmed by [Mr A] when he was living in Egypt and on his own evidence at the hearing has had telephone contact with him in 2012/13 without being threatened and he did not give any examples, when asked as to whether [Mr A] had a history of violence. In all the circumstances, I find that the chance that the applicant will be seriously harmed by [Mr A] due to the dispute over the [property] to only be remote.
36. The applicant's agents have claimed that the applicant is at risk for his membership of a particular social group consisting of "divorcees" and/or who have abandoned children". I have substantial doubt whether such groups exist in Egypt but I am prepared to accept that the applicant is a member of such groups. However, considering the applicant's circumstances and the independent country information, I find that he does not face a real chance of persecution in the reasonably foreseeable future for reasons of religion, membership of particular social groups consisting of "divorcees" or "divorcees who have abandoned children" or any other reason (Convention or non-Convention) from his family, Muslim fundamentalists or anyone else. Considering the applicant's circumstances and the independent country information, I find I find that there are not 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 he will suffer significant harm.
37. The applicant has expressed a fear of harm from his wife's relatives. I accept that there was an element of disapproval of applicant's wife's family to their marriage as the applicant gave evidence that there was an expectation that she would marry [a professional] rather than the applicant who studied [a particular course] but then left his studies. The applicant gave evidence to the Tribunal that his wife's [relative] approved of their marriage and that her family members attended the wedding. I accept that when the applicant and his wife returned to Egypt in 2009 the applicant's wife's family may have acted in a "cold" way towards him and they only visited twice for a short time. I accept that there was some element of social disapproval from the wife's family but I find that this did not constitute either serious harm or significant harm.
38. I accept that [Mr C] has told the applicant on Facebook that [Mr A] had come to the wife's family's place [in] 2012 and said that she was [obscenity]. I accept that when [Mr B] heard about this he was angry and went to [Mr A]'s house where a physical fight ensued. I accept that [Mr A] reported this to police as there is a copy of a translated police record of

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<sup>14</sup> CIS24469: The Status of Women under Islamic Law and Modern Islamic Legislation: Custody, Dr Jamal J.A. Nasir, 2009.

investigation as well as a translated copy of a Facebook conversation between the applicant and [Mr C]. I note that the record contains statements by [Mr A] that there was a threat by [Mr B] to kill the applicant and one by [Mr B] that they will get his revenge on the applicant when he returns. Whilst I accept that [Mr B] may have been angry at the applicant I do not consider his statements to be any more than idle threats such that there is not a real chance that will lead to serious harm for the applicant. The statements made by [Mr B] were made shortly after being fuelled by a comment of [Mr A] that the applicant's wife was a [obscenity]. At the hearing, I directly asked the applicant whether [Mr B] had been violent in the past and he did not answer directly instead stating that I had to differentiate between the personal life and the owner and one could not imagine he would do with the owner. The applicant's answer did not indicate that [Mr B] had any past history of violence until the fight that erupted between him and [Mr B] in the immediate aftermath of [Mr A]'s offensive comments. The comments themselves were made by [Mr A] and not by the applicant. I accept that [Mr B] and the rest of the wife's family have a level of hostility towards the applicant given the breakup of their relationship but I find in the circumstances the chance that this will result in serious harm to the applicant in the reasonably foreseeable future to be remote. My findings on this are supported by the above country information that indicates that honour killings are rare in Egypt and that females are the main target and also the country information that indicates that divorce is common in Egypt and that Islamic and Egyptian law supports the custody rights of the mother. I have further taken into account that the situation has arisen as a direct result of the applicant's wife's decision to remain in Australia with the children rather than the applicant abandoning them. I find it highly speculative in all the circumstances that [Mr B] or other family members will seek to harm the applicant because if he does not return with his wife, people will think that what [Mr A] said about her was true.

39. Considering the applicant's circumstances and the independent country information, I find that he does not face a real chance of persecution in the reasonably foreseeable future for reasons of religion, membership of particular social groups consisting of "divorcees" or "divorcees who have abandoned children" or any other reason (Convention or non-Convention) from his wife's family or anyone else. Considering the applicant's circumstances and the independent country information, I find I find that there are not 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 he will suffer significant harm.

*Cumulative assessment*

40. Considering the applicant's individual circumstances and the independent country cumulatively, I find he does not face a real chance of persecution in the reasonably foreseeable future. His fear of persecution is not well-founded.
41. Considering the applicant's individual circumstances and the independent country information cumulatively I find that there are not 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 he will suffer significant harm.

*Conclusions*

42. 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).
43. 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).
44. 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).

*Referral to the Minister*

45. The applicant has requested that the Tribunal refer the case to the Department for consideration by the Minister pursuant to s.417 of the Act which gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so.
46. [The] applicant's children have acquired Australian citizenship (as evidenced by the copies of their citizenship certificates) and there exists a court orders regarding parenting that state that both parents have equal shared parental responsibility for the children and which details that the applicant spend certain amounts of time with [his children]. The applicant gave evidence at the hearing that he see the children on weekends and at other times at the request of his wife. A letter of support from his wife indicates that the applicant has significant involvement in the care of the [children]. [Information deleted]. There are also supporting letters from associates of the family ([names deleted]) that indicate that the applicant has a close and excellent relationship with the children. These circumstances may bring into consideration Australia's obligations as a party to the Convention on the Rights of the Child (CROC) concerning the best interests of the child and consideration of whether there are strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to Australian citizens or an Australian family unit.
47. The Tribunal has considered the applicant's case and the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' and will refer the matter to the Department.

**DECISION**

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

David Corrigan  
Member