

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76566

AT AUCKLAND

<u>Before:</u>	S A Aitchison (Member)
<u>Counsel for the Appellant:</u>	I Anand
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	30 & 31 August 2010
<u>Date of Decision:</u>	7 October 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Egypt.

INTRODUCTION

[2] The appellant claims that because of his sexual orientation he will be subject to serious harm or death at the hands of his four brothers, members of the Muslim community, and the authorities in Egypt. The principal issue to be determined in this appeal is whether his account is a credible one.

THE APPELLANT'S CASE

[3] What follows is a summary of the appellant's evidence in support of his claim. It will be assessed later in this decision.

[4] The appellant is an Egyptian man, born in Z City, and is approaching fifty years of age. He was raised a Muslim, but no longer considers himself as such, privately renouncing the Islamic faith.

[5] He is recently divorced and has two children who were born in 2004 and 2006. He has four elder brothers who divide their time between Egypt and Denmark, where the three eldest possess citizenship. The appellant does not know his brothers' occupations, only that the youngest is employed as a cook on a Greek boat. While in Z City, Egypt, his brothers reside along with their families in the same building, where they, including the appellant, own four apartments. The appellant occupied one such apartment with his parents until they became deceased in 2001, whereupon he continued living there with his wife and children.

[6] He attended school in Z City for approximately six years, and left unable to read or write, being numerically literate only. Some time after leaving school he began working as an apprentice exhaust repairer in a small shop in Z City. He remained in this position for approximately three years. In 1975, towards the end of his employment there, he initiated a sexual relationship with a fellow male worker named AA. Their relationship continued for five months until AA left the workplace unexpectedly. The appellant had no further contact with him. After AA left, the appellant approached another male colleague, hoping to initiate a sexual relationship with him, but upon being rejected, left his employment immediately without notifying his employer for fear of any repercussions.

[7] The appellant moved between districts in Z City, working in various exhaust repair workshops. In each workplace he sought to initiate sexual relationships with men. When his advances were rejected he would leave immediately. To avoid future detection he never provided his residential address to any of his employers.

[8] Aside from his sexual relationship with AA, the appellant did not succeed in conducting any further relationships with men in the workplace. By 1977, he found his interest in men had strengthened, and he embarked on his second sexual relationship with a man known as BB. Following their initial contact on the street, they arranged to meet at ABC Station. Upon meeting at the station they went to the cinema, and from there progressed to the toilet area where they conducted sexual relations. They continued to meet at the station every Sunday. They would conduct sexual encounters between four to six times a week, always meeting at or around the station. They continued in a sexual relationship up until the time the appellant left Z City in 2008.

[9] In 1981, the appellant started his own business. This business involved purchasing household goods from merchants and selling them retail. He employed one person to help him in his store, who worked with him until he closed

the business in 2008. In 2005, he expanded the business to include the sale of clothes, and began travelling to Turkey for this purpose. During one such visit, the appellant conducted a brief sexual relationship with a Russian man lasting one to two days.

[10] Upon the insistence of his mother, the appellant married a woman on 14 September 1998. During the period of their engagement, another woman sought to seduce him, taking him to her home and there trying to get him into bed with her, but he refused. The only sexual relationship he ever experienced with a woman was with his wife.

[11] During his marriage, the appellant continued his sexual relationship with BB. Towards the end of 1998, during a meeting at ABC Station, BB introduced him to another man known as CC, and the appellant began a sexual relationship with him too. The appellant continued in this sexual relationship up until the time he left Z City in 2008. A week after their meeting, CC introduced the appellant to another man known as DD at ABC Station. They commenced a sexual relationship, which continued also until 2008.

[12] Every Sunday, the appellant would meet BB, CC, and DD together at the station, go to the cinema, and proceed to have sex with each in turn in the toilet area. He knew these men only by their first names.

[13] A month after meeting DD, BB introduced the appellant to another man known as EE, and the group of men, including BB, CC, and DD, would meet together for sexual relations. EE invited them to his home where they watched sex tapes, followed by separate intercourse with one another. Along with the other men, the appellant returned to EE's home on three further occasions, and they conducted further sexual relations with one another there. The appellant continued to meet EE for sexual relations every Sunday for approximately four to five months.

[14] BB and the appellant would also call for one another at their respective homes. To avoid detection from his wife, the appellant instructed BB not to call for him at his apartment, which was located on the third floor of the building, but, rather, to call him from street level. He considered that were his wife to see BB she would characterise him as gay, but that she would be unable to do so from the sound of his voice. The appellant also advised BB not to divulge his address to other gay men, but he did. On a number of occasions BB and others, including CC, DD and EE, visited the appellant's home and being unable to elicit his

attention from street level, came knocking at his door. When his wife sighted them she grew suspicious and asked the appellant what he was doing with “abnormal” people.

[15] In 2005, the appellant’s wife commenced divorce proceedings against him on the grounds that he had conducted sexual relations with men. She submitted documentation to the court in support of these allegations, but the appellant did not see what this documentation was. He brought two witnesses in his defence to deny such allegations, whom he obtained, for a payment, from the street.

[16] Upon the advice of his lawyer, the appellant attempted to mend his relationship with his wife, and they continued to live together. Feeling that he had succeeded, he had no idea that the divorce was still proceeding. However, on 8 February 2008, his lawyer advised him to attend court the following day, and in so doing, he was issued a divorce certificate.

[17] Upon receiving her copy of the divorce certificate, the appellant’s wife immediately informed his brothers of the grounds for their divorce. Leaving the court with his own copy of the divorce certificate, the appellant went directly home and found his wife packing up her things to leave him. He returned to his store, and was approached by patrons in the café opposite, who told him that his brothers had visited looking to kill him. They told him his wife had declared their divorce to his brothers and to others on the street, on account of his conducting sexual relationships with men.

[18] The appellant fled the area, and went to stay in a hotel in Z City. He remained there for three weeks before moving to Y City. He remained in Z City just long enough to sell the goods from his store. For this purpose, he returned to his store on two occasions in the evening, the first to collect samples of his goods to exhibit to merchants, and on the second occasion with a truck and driver to collect the goods for sale. The appellant sold all his goods to one merchant in Z City, who bought them for half their value.

[19] A week after the appellant fled Z City, he returned to collect money owed to him from the merchant who bought his goods. He returned on approximately four occasions over one month period for this purpose.

[20] He also returned to Z City on five or six further occasions to apply for a visitor’s visa to New Zealand. He obtained a mobile telephone to assist this process. He started this process some three months after arriving in Y City. For

this purpose, he visited an internet shop and was assisted by two persons there. He did not know these persons previously. He did not know Y City well, and considered it easier to make his visa application in a city he knew. When he made these trips he would only stay as long as necessary and go directly to the internet shop. His visa application was sent from Z City, and all correspondence with Immigration New Zealand (“INZ”) was made through the internet shop. The visa took four months to obtain.

[21] The appellant did not see his brothers after his divorce from his wife, and since arriving in New Zealand has not had any contact with them.

[22] The appellant arrived in New Zealand on 20 September 2008. He lodged his claim for refugee status with the RSB on 24 February 2010 and was interviewed by a refugee status officer on 31 February 2010. By decision dated 24 June 2010 the RSB declined the appellant’s claim. The appellant duly appealed to this Authority.

[23] Several months after arriving in New Zealand the appellant found employment. He later left his employment when his employer, who had promised to help him obtain a work permit, asked him to pay money for this service.

[24] While in this employment, he established a friendship with a colleague. As their confidence grew, the appellant told him that he would like to meet and marry a man. His friend, accordingly, introduced him to a man known as FF, and four months after their meeting, they entered into a same-sex civil union on 24 July 2009. The appellant refers to his civil union partner as his wife.

[25] At the time of their union, the appellant was still employed, and his employer asked him how, as a Muslim, he could marry a man. After the appellant left, he heard that his employer told whoever asked about his whereabouts that he had married a man. Several Egyptians living in New Zealand also learned that he had married a man. One of them, a friend, has since avoided the appellant.

[26] Since entering into a civil union, the appellant and FF moved in together. They love one another, and share particular interests that include spending time with FF’s family, and attending church together each Sunday. The church they attend is located on the same street where they live. It holds separate services for Samoan and Cook Island people.

[27] Since arriving in New Zealand, the appellant has used up all the savings that he brought with him. An Arab friend used to help him with expenses, but when he got married this support ceased. He is now supported by FF, on FF's unemployment benefit.

[28] The appellant fears that he would not be able to return with FF to live in Egypt. Should they return together they would be persecuted. The appellant further fears returning to Egypt alone and that he would be subject to serious harm or death at the hands of his brothers and members of the Muslim community. He fears that the Egyptian authorities will imprison him and that he would subsequently die in detention. While no one in Egypt currently knows about his civil union to FF, he fears that the fact will become known in Egypt and heighten his risk of being persecuted.

The evidence of GG

[29] The appellant's friend, GG, provided a brief written statement dated 31 August 2010, and gave evidence before the Authority. He is an Egyptian man born in Z City, and lives with his family in New Zealand. He works in a hairdressing business.

[30] He has known the appellant for approximately a year. He considers him to be uneducated and to experience real difficulty remembering things. He heard the appellant lost his employment in New Zealand when his employer learnt that he had married a man.

[31] It took a long time for the appellant to share the circumstances relating to his claim with him. Once he learned this he guided the appellant to lodge an application for refugee status. He advised him to get a lawyer and arranged for someone to help him take his written statement.

[32] While he has not seen the appellant with FF on many occasions, only seeing them from time to time, he considers that their relationship is not a "pretending relationship" and that it is a "normal" one. He receives more details about their relationship from FF, whom he finds easier to communicate with.

The evidence of FF

[33] The appellant's partner, FF, gave evidence before the Authority. FF is a man, who appeared dressed as a woman before the Authority and referred to himself as the appellant's wife.

[34] FF met the appellant in April 2009 when a neighbour brought him around to her home. The two entered into a civil union on 24 July 2009. Since this time they have lived together at a shared address in Auckland.

[35] A former student, FF receives an unemployment benefit. FF is otherwise supported by the appellant, who pays the household expenses, including the electricity bills, shopping, and entertainment costs. They share a number of interests that include FF's family, and each week they attend a church together on their residential street.

Documents filed

[36] Counsel filed a bundle of documents with the Authority that included, *inter alia*, written submissions, country information, photographs of the appellant and his partner, and household records from Mercury Energy and Telecom New Zealand.

[37] At the hearing, counsel further submitted a letter from Work and Income dated 25 August 2010 stating that the appellant had been included upon FF's records, although he was not receiving any financial assistance from them.

[38] At the request of the Authority, counsel filed further information with the Authority under the cover of a letter of 13 September 2010 that included copies of the appellant's bank statements in New Zealand.

[39] On 14 September 2010, counsel submitted to the Authority a copy of a letter from the minister of the church the appellant attends.

THE ISSUES

[40] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[41] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[42] Prior to determining the identified issues, it is necessary to make an assessment of the appellant's credibility.

CREDIBILITY

[43] For the reasons that follow, the Authority does not accept that the appellant has provided a truthful account of his alleged sexual orientation nor does it accept the various experiences and difficulties that he claims have stemmed from it.

First sexual relationship

[44] The appellant gave inconsistent accounts before the RSB and the Authority concerning the conduct of his first sexual relationship with a man.

[45] At the RSB interview, the appellant claimed that he became sexually active while still attending school, commencing his first sexual relationship with a teenage boy called BB, who was approximately 13 or 14 years of age at the time. He stated that he met BB while playing football and they continued in a relationship for two to three years, meeting up to three times a week. The appellant would often escape school to meet up with him. Before the Authority, however, the appellant claimed that he commenced his first sexual relationship in 1975 when he left school and commenced working, and that this relationship was with a person known as AA. They conducted a sexual relationship in the toilet area at their workplace, which continued for approximately five months until AA left. Later in evidence before the Authority, the appellant claimed that following his relationship

with AA, he commenced a second sexual relationship with a man also known as BB, a relationship that lasted some twenty years, from 1977 until 2008.

[46] When asked by the Authority to comment upon these discrepancies in his evidence, he denied that he had told the RSB that he had a relationship with a person known as BB while he attended school, and confirmed his evidence before the Authority that his first sexual relationship was with a man known as AA.

Introduction to second sexual partner

[47] The appellant gave inconsistent evidence before the Authority concerning the timing of his second sexual relationship, and the full identity of the person involved.

[48] Initially, he told the Authority that he commenced a sexual relationship with a man known as BB in 1973, while he was working as a baker in Z City. When asked by the Authority how this could be possible when he had stated earlier in evidence that his first sexual relationship commenced in 1975, he amended his evidence to claim that he had commenced his relationship with BB in 1977. He then asserted that he had never claimed in evidence that this relationship commenced in 1973, and that the interpreter had made an error in translation.

[49] Before the Authority, the appellant introduced the full name of his second sexual partner. However, later in the hearing, when asked to recollect his surname, the appellant could not remember it, nor could he confirm it when the Authority restated the surname he had earlier given.

Subsequent sexual partners

[50] The appellant gave inconsistent and contradictory evidence concerning his introduction to subsequent sexual partners.

[51] Before the Authority, he claimed that BB introduced him to two men, known as CC and DD, who also became his sexual partners. He claimed that BB introduced them to him at ABC Station, explaining that he had brought some friends along to meet him. BB told him not to be shy and that they wanted to have sex with him. The appellant then went to the toilet area at the cinema and had sex with them.

[52] Later in the hearing, however, the appellant claimed that he had been introduced to CC and DD separately, and that while BB had introduced him to CC, a week later CC introduced him to DD.

[53] When asked to comment upon this discrepancy in his evidence, the appellant reaffirmed his later evidence, that BB had introduced him to CC, who in turn introduced him to DD. He claimed the inconsistency might be explained by the fact that BB knew both men.

[54] The appellant also gave inconsistent accounts before the RSB and the Authority as to the number of sexual relationships he entered into with men.

[55] At the RSB interview, he described a sexual relationship with a man known as EE, and mentioned that he had also conducted sexual relationships with men while visiting Turkey on business. However, when asked by the Authority whether he had additional sexual partners, he responded that he had only ever held sexual relationships with BB, CC and DD, and that these were his sole sexual partners up until the time of his divorce.

[56] Asked by the Authority why he had not mentioned EE as an additional sexual partner, the appellant stated that he had forgotten about him. When asked why he had not also mentioned conducting sexual relationships with men in Turkey, he added that he had conducted a sexual relationship with a Russian man there.

Meetings with sexual partners

[57] The appellant gave inconsistent evidence before the Authority concerning the places he met with his sexual partners. Initially, he claimed that he only ever met CC and DD at ABC Station. Later in evidence, however, he stated that he met with BB, CC and DD at EE's home to watch sex tapes and conduct sexual relations. When asked to comment upon this discrepancy in his evidence the appellant stated that he had met with his partners at the station, and only on three occasions at EE's house. He also later claimed that CC and DD would come looking for him at his home. When asked to comment upon this apparent discrepancy he simply stated that he told them not to call at his home.

[58] In addition to these inconsistencies, the Authority considers that the appellant's account of the manner of his sexual partners soliciting his attention from home to be inherently implausible. It is implausible that the appellant would

encourage his gay partners to solicit his attention on the third floor of his apartment building from street level if he were truly in fear of being detected as gay, knowing well the serious consequences that may follow detection. It is further implausible that this scheme would avoid such detection.

Relationships with women

[59] The appellant gave inconsistent evidence relating to the frequency and nature of his sexual relationships with women.

[60] At the RSB interview, the appellant claimed that when he was sixteen years of age he went to bed with a female who was then aged 18 years, and that he tried, unsuccessfully, to conduct sexual relations with her. Before the Authority, however, the appellant stated that he had never been to bed with a woman aside from his wife. When reminded that he had told the RSB that he had gone to bed with an 18 year old female prior to his marriage, he added that during his engagement to his wife another woman had invited him to her home and tried to seduce him there, but that he did not go to bed with her. He stated that he had not conducted sexual relations with any woman other than his wife. When asked to comment upon the growing discrepancies in his evidence he stated that it was a long time ago and he could not remember.

Wife's suspicions

[61] The appellant gave inconsistent accounts at the RSB interview and before the Authority concerning his wife's growing suspicions about his sexuality. At the RSB interview, he stated that his wife started to grow suspicious of his relationships with gay men some nine to ten months subsequent to their marriage on 13 September 1998. However, before the Authority, the appellant claimed that his wife first became suspicious and accused him of conducting relationships with men in 2005. When asked to comment upon this discrepancy in his evidence the appellant stated that the instance of his wife's suspicions nine to ten months subsequent to their marriage, was but one exception to his claim that the suspicions began in 2005.

Divorce proceedings

[62] The appellant gave inconsistent evidence concerning the conduct and grounds of his divorce in Egypt.

[63] At the RSB interview, he stated that when he was summonsed and appeared in court he was informed by his lawyer that his wife had accused him of sleeping with men and that she had submitted documents to the court supporting this accusation. He further stated that the judge had insisted he divorce his wife because there was proof that he had been sleeping with men.

[64] However, before the Authority, the appellant claimed that he did not know what grounds his wife presented to the court to obtain their divorce. He made this assertion repeatedly, and explained that his lawyer had advised him that “the law stands for women”. His lawyer told him that his wife “might have something,” but he didn’t know what. He did not know if she made any allegations about him in court.

[65] When asked by the Authority to comment upon these discrepancies, the appellant stated that his lawyer had, in fact, told him that evidence may have been presented to the court that he was sleeping with men. Later in evidence, he claimed, too, that the Judge had also asked him if he was sleeping with men.

[66] Further inconsistencies arose between his written statement, his account at the RSB interview and before the Authority, concerning the last time he saw his wife. In his written statement and at the RSB interview, the appellant claimed that he last saw his wife in 2005 when they appeared in court and were divorced. Later, in his account before the RSB, he amended this date to 2008, when he claimed to have received his divorce certificate. Before the Authority, he claimed that he continued living with his wife up until 2008 when he obtained their divorce certificate. When asked to comment upon the variability of this evidence he maintained the evidence he had given before the Authority.

Date fled to Y City

[67] The appellant gave inconsistent accounts before the RSB and the Authority concerning the timing of his flight from Z City to Y City. Throughout the course of the RSB interview, he presented four different timeframes within 2008 for which he claimed to have travelled from Z City to Y City, fearing for his life. These dates included, in the order of his testimony, September, mid-August, May, and finally, that on 9 February 2008 he went into hiding, spent four to six weeks selling his goods in Z City and then left for Y City. Before the Authority, he claimed to have travelled to Y City three weeks after the date he received his divorce certificate on 9 February 2008. When asked by the Authority to comment upon these

discrepancies in his evidence, the appellant stated that he had travelled to Y City three or four weeks after he received the divorce certificate and that he had trouble remembering.

Brothers looking to kill appellant

[68] The Authority considers it implausible that were the appellant's brothers seeking to kill him they would not have located him prior to his leaving Z City or during his frequent return trips from Y City.

[69] Aside from the fortuitous circumstance that, at the time the appellant's divorce was finalised, all four brothers, who spend half of their time in Denmark, were present in Egypt, and were equally all present in the shared apartment building at the time the appellant's wife received this news, enabling her to immediately notify each of the grounds for such divorce, there is the further fortuitous circumstance that allowed the appellant to return to the same apartment building that very afternoon to discuss the divorce with his wife without encountering any of his brothers. This chain of fortuitous circumstance extends also to the appellant being approached that very afternoon, upon return to his shop by patrons in the café opposite, advising him that he had narrowly missed his brothers who had just visited the same café looking for him, seeking to kill him on account of the proclaimed grounds for his divorce. Meanwhile, the appellant's employee was waiting outside the appellant's store, opposite the café, for the appellant to return, with full knowledge of the appellant's whereabouts, but he was not at any time approached and questioned by any of the appellant's brothers. When asked by the Authority how he managed to escape his brothers' attention the appellant responded that he was lucky.

[70] The Authority considers this account to be inherently implausible. Were the appellant's brothers motivated and seeking to kill him they could easily have located him under these circumstances, either at his home, workplace, or elsewhere in Z City.

[71] The appellant informed the RSB that he possessed a telephone in 2004 or 2005. It is further implausible that his brothers would not have used this if they were genuinely seeking to kill him. This point leads the Authority to a further inconsistency between the appellant's account at his RSB interview and before the Authority. Before the RSB, the appellant stated that he received a telephone in approximately 2004 or 2005. Before the Authority, however, he claimed that while

he never possessed a work telephone, he acquired a mobile telephone in 2008, to assist him to obtain his visitor's visa for New Zealand. When asked to comment upon this apparent discrepancy in his evidence, he stated that he might have claimed that he obtained a mobile telephone in 2004 or 2005, because he needed to show the Embassy that he was a business merchant, but he had not in fact possessed one until 2008. This explanation does little to explain the apparent inconsistency in his evidence. Whether the mobile telephone was obtained in 2004 or 2008, the appellant's visa application still remained to be lodged, and hence there was little to gain by giving false evidence of the date of possession. The appellant's explanation for this inconsistency is of further concern to the Authority given that it indicates a willingness to provide false evidence to INZ.

[72] This is not the first time the appellant has acknowledged providing false evidence to assist an application to INZ. Following his RSB interview, the appellant conceded to INZ, by letter of 2 June 2009, that he had provided false evidence in his visitor's visa application concerning the date of his father's death. The appellant's explanation for providing this false evidence was that he had acted upon the advice of his helper, who advised him that it would be necessary to claim such if his application was to be accepted.

[73] The appellant's account at the RSB interview and before the Authority concerning his brothers' lives and employment was characterised by vagueness and inconsistencies. At the RSB interview, the appellant spoke of his four elder brothers and listed the occupations of each. Before the Authority, however, he claimed that he had never known the employment of his brothers and that he cared only for himself. He stated that while his mother told his brothers about his own employment and business, she never told him about his brothers' circumstances. At one point in evidence before the Authority he claimed to know the employment of his youngest brother.

[74] When asked to comment upon this discrepancy in his evidence the appellant claimed that he did not know his brothers' occupations, then added that he only knew that the youngest worked as a cook upon Greek boats. He could not remember what he had told the RSB.

[75] Since the appellant's purported departure from Z City for Y City, he has repeatedly returned to collect money from a business merchant and, further, to arrange for his visa to New Zealand. During this time he has received no contact or word from any of his brothers. The Authority considers it questionable that the

appellant would return in such manner and frequency if he truly feared for his life. His explanation that he returned to Z City to complete his visa application rather than pursue the matter in Y City, because he did not know Y City well, does not portray the hallmarks of a man in fear of his life. The appellant had been living in Y City for some three months before he commenced the process of applying for a visa, time in which he could have become familiar with services available to him in Y City were he motivated to preserve his life.

[76] The above inconsistencies and implausibilities, cumulatively considered, cast significant doubts upon whether the appellant's brothers ever sought to kill him, and whether he, in fact, ever fled Z City to live in Y City.

[77] It is relevant to the consideration that the airway bill presented upon the appellant's file, that registers the sending of his visa application to INZ on 8 July 2008, records the appellant's business address in Z City at a time when the appellant purported to be living in Y City. It is unlikely that the appellant would provide contact details for a business that he had already closed down and for an area where he was no longer living. The appellant's explanation that this address was recorded for the purpose of portraying him as a businessman in his visa application, upon the weight of his evidence, is implausible.

[78] In conclusion, the Authority has found the appellant's evidence as to his sexual orientation, and the nature of relationships conducted with men in Egypt, to be mobile, inconsistent and contradictory, and as such, there is no credible evidence that upon leaving Egypt, fast approaching fifty years of age, his sexual orientation might have then been classified as gay, or that any of the claimed difficulties stemming from this, in fact, occurred.

Relationship with FF

[79] Since arriving in New Zealand, the appellant entered into a same-sex civil union with a man known as FF on 24 July 2009. This fact is undisputed. A copy of the Civil Union Certificate is maintained on file.

[80] In his confirmation of claim the appellant made no mention of his relationship with FF, and his mention of FF in his written statement is simply to claim, "I came to NZ, met someone and happily lived as a homosexual." The appellant's explanation to the Authority for the brevity of his claim, outlined in these documents, is that he expected to give a full account at his interview before the RSB.

[81] The brevity of representation of this relationship extends to other immigration applications made by the appellant who, since arriving in New Zealand, and in the year prior to applying for refugee status, made repeated applications for a work permit and an application for residence in New Zealand. Concerning his application for a work permit based upon partnership, when asked by INZ to provide a detailed statement of his relationship with FF, the appellant failed to do so. When asked by the Authority why he had not submitted the requested information the appellant claimed that he did not complete the application himself and hence did not know about this request.

[82] While the appellant and FF both claimed at the hearing before the Authority that one of their shared interests was spending time with FF's family, unfortunately, no member of FF's family were in a position to attend the hearing. Notably, there are several letters upon the INZ file from members of FF's family provided in support of the appellant's application for residence in New Zealand. However, these letters provide very little detail and exaggerate, significantly, the length of the appellant's relationship with FF. Similarly, the letters provided by family in support of the appellant's refugee claim are very brief and general indeed.

[83] While the appellant produced a witness, GG, who gave evidence at the hearing that the relationship was a "normal" one, he was unable to provide any real detail about their relationship, having only seen them together from time to time, and for the most part, communicating with them on the telephone.

[84] The most detailed account of the appellant's relationship with FF, naturally, came from FF. FF's evidence before the Authority was broadly consistent with the appellants concerning the timeline of their relationship, including their first meeting, who introduced them, the fact of their entering into a civil union on 24 July 2009, and the fact of their living together.

[85] Their evidence, however, grew widely inconsistent when questioned about the practical nature of their living together, in particular, on the fundamental point of their payment for household expenses. The appellant informed the Authority that he had spent all of his savings and was supported financially by FF, who drew an unemployment benefit. FF, however, claimed to the Authority that it was the appellant who provided this financial support, paying each week for the electricity bills, shopping, and entertainment expenses, as some examples. When the appellant was asked by the Authority to comment upon this discrepancy, he

maintained his claim that it was FF who supported him financially. When asked to comment upon the evidence of his friend, GG, who had also mentioned in evidence that the appellant refused support from anyone, and has “got money”, the appellant stated that GG did not know his true circumstances.

[86] The Authority considers that this disparity in evidence between the appellant and FF in terms of their payment for living expenses strikes at the heart of their living arrangement and significantly undermines their claims to be in a genuine relationship.

[87] Upon the INZ file there appeared a copy of an Impacs Account Inquiry for the National Bank of New Zealand, which the appellant submitted in support of a visa application. This Inquiry was dated 10 August 2009 and indicated a joint account in the name of the appellant and FF and an opening cash balance was recorded only. Subsequent to the hearing, the Authority asked the appellant to submit copies of all bank statements held in New Zealand, including an updated statement of this joint account. In response, the appellant advised that he held two accounts with the National Bank, one inoperative, and the other for which he supplied statements. These statements demonstrate small but consistent deposits and withdrawals that include grocery payments made from April to September 2010. These statements are addressed to a Post Office Box held by the appellant. The appellant also supplied a statement from the National Bank concerning his joint account, for the period of 21 June 2010 to 6 September 2010, issued by a bank teller. Unfortunately, this statement indicates that the account was rarely used, and unlike the statements provided for his separate accounts, fails to disclose the transaction type and details. As such, this account does little to portray any shared financial relationship between the appellant and FF.

[88] Furthermore, their claims to shared interests have been characterised by vagueness. As mentioned earlier, the Authority has not had the benefit of hearing from any of FF's family on the point of their sharing time together. While both the appellant and FF claim to attend a church located on their residential street each Sunday, little detail in terms of such attendance was forthcoming in evidence. Neither were able to name the church, its denomination, or the officiating minister there. Upon the insistence of the Authority, subsequent to the hearing, the appellant produced a letter from a Presbyterian minister stating that the appellant and his partner FF had been regularly attending Sunday services at his church. The street address of the church is not provided. The Authority places little weight upon this evidence. While the letter is accepted at face value, in the light of the

vague and contradictory evidence that the appellant has presented of his relationship with FF, this record of church attendance serves merely to demonstrate the determined intention of the appellant to present the semblance of a relationship for the purposes of securing refugee status.

[89] The Authority finds that the vague and contradictory evidence presented by the appellant concerning his relationship with FF in New Zealand does not exhibit a genuine, credible relationship and, as such, evidence of his sexual orientation. Viewed alongside the appellant's mobile, inconsistent and contradictory evidence concerning his sexual orientation and conduct of gay relationships in Egypt, the Authority concludes that the appellant's professed homosexuality is but a ploy on his part, to secure refugee status in this country.

Conclusions on credibility

[90] The Authority concludes that the narrative advanced by the appellant in support of his claim to refugee status is not truthful in any material respect and rejects the evidence presented. The appellant has not provided the Authority with any credible evidence upon which it can conclude that he is either homosexual, or that he conducted any relationships of a homosexual character with men in Egypt or New Zealand.

[91] In making this credibility assessment, the Authority has made every allowance for the appellant's illiteracy and the stress inherent in giving evidence in appeal proceedings of this nature.

[92] What is accepted is that the appellant is an Egyptian man, who privately renounces Islam, and who has entered into an insincere civil union with another man in New Zealand. His claim falls to be assessed on this basis.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Egypt?

[93] The "being persecuted" element of the refugee definition is interpreted by the Authority as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection; see J C Hathaway, *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp104-108, as adopted in *Refugee Appeal No. 2039/93* (12 February 1996) at [15]. As such, the concept of persecution is a construct of two essential elements, namely, the risk of serious

harm, defined by core norms of international human rights law, and a failure of state protection.

[94] In determining whether a claimant's fear is "well-founded", the Authority has consistently adopted the approach established in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that even a low risk of serious harm can be enough to afford an appellant the benefit of the protection conferred by the Refugee Convention. A well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring.

[95] Notwithstanding the appellant's lack of credibility and the Authority's rejection of his claim in its entirety, the fact remains that he has entered into a civil union with a man in New Zealand and the Authority must consider whether this places him at risk of being persecuted upon return to Egypt.

[96] Neither the appellant nor his Counsel have submitted any direct country information to the Authority upon the issue of same-sex civil union with a person exhibiting the characteristics of FF and its treatment in Egypt. However, the Authority has no difficulty in considering that any person who entered into such a union, should this fact become known to the authorities, or other members of the community who oppose this, he would be subject, in the very least, to like treatment to those who are practising homosexuals there.

[97] While there are no specific laws criminalizing homosexual behaviour in Egypt, the public morality laws have been used to prosecute such acts. These laws include Egypt's "Law on the Combating of Prostitution" (Law 10 of 1961), which punishes the "habitual" practice of *fujur* and *di'ara* with up to three years imprisonment plus fines. In practice, the Arabic term *di'ara*, translated into English as "debauchery", has been interpreted as encompassing sexual excess, and as such applied to homosexual behaviour; see Human Rights Watch *In a Time of Torture – The Assault on Justice In Egypt's Crackdown on Homosexual Conduct* (February 2004) p13.

[98] The Egyptian Penal Code has also been used to prosecute homosexual behaviour, notably, Article 98w of which proscribes "Contempt for Religion", and Article 278 proscribing "Shameless public acts"; see The International Lesbian, Gay, Bisexual, Trans and Intersex Association (IGLA), Daniel Ottosson *State-Sponsored Homophobia – A World survey of laws prohibiting same sex activity between consenting adults* (May 2010) p10; "Egypt's homosexuals find home in

cyberspace” *BBC News* (15 April 2010); “Step out of the dark ages” *Middle East* (July 2008).

[99] It is evident upon a review of country reports over the past decade that the Egyptian authorities conduct sporadic arrests of suspected homosexuals in accordance with the abovementioned laws. Many of those arrested are detained, charged and placed upon trial; El Menayawi, Hassan “Activism from the closet: gay rights strategising in Egypt” *Melbourne Journal of International Law* (May 2006). Whilst held in detention a number have been subject to serious abuse, including torture; *ibid.* In 2001, one of the largest group arrests of suspected homosexuals took place when police raided a Y City discotheque. Some 55 men were arrested, detained and placed upon trial. Convictions of three years imprisonment followed for 21 such persons, in what became known as the “Queens Boat” case; “Egypt’s homosexuals find home in cyberspace” *BBC News* (15 April 2010).

[100] In recent years, suspected HIV-positive men have become a particular target of the authorities. Several such groups of men, suspected of homosexual behaviour, were rounded up and arrested by police in 2007 and 2008, resulting in convictions and sentences of imprisonment ranging from one to three years. On 14 January 2008, for example, a Y City court sentenced four men to one year of imprisonment upon “debauchery” charges, and on 28 May 2008, a Y City appeals court upheld sentences of three years imprisonment imposed on five gay men; see Human Rights Watch *Egypt: Court Upholds HIV Sentences, Reinforces Intolerance* (28 May 2008); “In the country of boys: a new book on gay life in Egypt sends shockwaves through Egyptian society” *Menassat* (14 July 2009).

[101] The practice of arresting suspected homosexuals, and the significant social stigma faced by such individuals by Egyptian society as a whole, is reported in the most recent United States Department of State *Country Reports on Human Rights Practices – Egypt*, 11 March 2010, which states:

Although the law does not explicitly criminalize homosexual acts, in at least one case, police targeted homosexual persons and arrested them on charges of debauchery. On January 2, police arrested 10 men in Y City on charges of debauchery. Authorities forced the men to undergo HIV tests and anal examinations in detention. Following a May 27 court order, police released the men on May 30 and 31. Homosexual persons faced significant social stigma in society and in the workplace.

[102] It is not necessary, for the purposes of this decision, to exhaustively set out the available country information on this point. Upon the above material alone, the

Authority has no hesitation in concluding that those suspected of homosexual behaviour in Egypt are punished with severity, including imprisonment and serious physical abuse that constitutes a sustained and systemic breach of their core human rights.

[103] Upon consideration of the particular facts of the appellant's case, however, the Authority finds that there is no real chance of him being so persecuted upon return to Egypt. Upon his own admission, no one in Egypt is aware that he has entered into a civil union with a man in New Zealand, nor is there a real chance that anyone will. Neither his family nor friends in Egypt are aware of this fact. While two Egyptians living in New Zealand have learnt of this union, the appellant has presented no evidence that they are either motivated or in a position to make this fact known to any prospective agents of persecution in Egypt. Should the appellant return to Egypt, there is no reason why he would, himself, make this fact known. Furthermore, it is possible for the appellant to privately dissolve this union in New Zealand. Given the nature of this insincere civil union, this is not a case where, upon return to Egypt, in order to avoid persecution, the appellant would be challenged to renounce any of his fundamental human rights, which in itself would constitute persecution. The Authority finds that the appellant's fear of persecution is but remote and speculative. Accordingly, he does not hold a well-founded fear of being persecuted upon return to Egypt.

Is there a Convention reason for that persecution?

[104] The first framed issue answered in the negative, the second issue does not fall for consideration.

CONCLUSION

[105] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"S A Aitchison"

S A Aitchison
Member