

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76219

AT CHRISTCHURCH

Before: A N Molloy (Member)

Counsel for the Appellant: K Morrison

Appearing for the Department of Labour: No Appearance

Date of Hearing: 25 November 2008

Date of Decision: 29 June 2009

DECISION

[1] The appellant is a national of Egypt. He seeks refugee status. He claims that he is at risk of being persecuted in Egypt because he is a Coptic Christian.

[2] 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 appellant's application for refugee status. Because this is the second time that the appellant has appealed to this Authority, it is necessary to decide, as a preliminary issue, whether the Authority has jurisdiction to determine the appellant's second claim.

[3] The reasons why that issue arises are set out below, together with the reasons why the Authority finds that it does have jurisdiction to consider the appellant's second claim.

[4] This appeal turns upon whether his claim is well-founded. This is also assessed below, following the summary of the appellant's claim.

PROCEDURAL HISTORY OF THE APPELLANT'S CLAIMS

[5] The appellant sought refugee status for the first time shortly after arriving in New Zealand in 2001. The Refugee Status Branch declined his application in a decision issued in May 2002. A different panel of the Authority (the first Authority panel) dismissed the appeal in respect of the appellant's first refugee claim on 9 August 2004.

[6] The appellant's second application for refugee status was lodged with the RSB on 7 August 2007. The RSB issued a decision declining his second application dated 30 April 2008.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[7] The Immigration Act 1987 ("the Act") imposes jurisdictional limitations on second or subsequent refugee claims. Section 129O(1) of the Act outlines the limits within which appeals to the Authority may be considered. It provides that:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[8] To address this issue, the Authority will compare the appellant's original claim and his second claim. Unless the appellant's second claim is based upon significantly different grounds, the Authority will not have jurisdiction to consider the second appeal: see *Refugee Appeal No 75139* (18 November 2004).

[9] Where jurisdiction to hear and determine the subsequent claim is established, the Authority will consider the merits of the subsequent claim in order to determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. That is because s129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

THE APPELLANT'S FIRST REFUGEE CLAIM

[10] The appellant was born in Egypt and raised in Cairo as a Coptic Christian. He did not experience any particular difficulties until the mid-1980s when he and his sister, who owned jewellery shops in Cairo, were targeted by three Muslim men. The proprietors of other similar shops also faced such difficulties around the same period. In 1986, the sister's store was attacked and burned down. She was later forced to convert to Islam. Her marriage ended and she eventually emigrated to Australia to escape the pressure exerted upon her.

[11] The appellant's difficulties began about a year later in 1987 when three Muslim men began visiting his store. The appellant was harassed by these men for more than a decade. They targeted him because he was a Christian. He was subjected to demands for money, to which he succumbed, and pressured to become a Muslim.

[12] He was subjected to several attacks. The first serious incident occurred in the late 1980s when the three men abducted the appellant at gunpoint. The appellant was taken to a building where he was forced to convert to Islam in front of a government official. He adopted a Muslim name and was given a certificate which confirmed his religious conversion. He submitted to the process because the three men threatened to kill him if he did not. During the early 1990s, the same men forced him to enter into a marriage with a Muslim woman.

[13] While the appellant remained in business throughout this time, the ongoing harassment was debilitating. The appellant eventually began to attend his Christian church again in secret. When this came to the attention of the three men, they threatened the appellant again. His business was subjected to a further attack in 1996 and his car was destroyed in a fire bomb attack.

[14] In 1997, the three men forced the appellant to divorce his wife because of his continued attendance at the Christian church. The appellant was forced to remarry her within a few months, then forced to divorce her again the following year for the same reason - because of his continued attendance at church. Despite the fact that the appellant had been forced into the marriage, he had grown fond of his wife. The distress caused by the end of his relationship was compounded because he was compelled to sign an acknowledgement that his ex-wife would retain custody of their son.

[15] Throughout this time, the three men continued to steal money from the

appellant. His shop premises were again razed by fire in late 2000. At that point the appellant left his business. Within approximately six months, he had left Egypt to come to New Zealand where he applied for refugee status for the first time. The appellant claimed to have a well-founded fear of being persecuted for reason of his Christianity. He stated that the three men were members of an extremist Islamic organisation, and said that his life would be at risk if he were to return to Egypt.

THE FIRST AUTHORITY PANEL DECISION: *REFUGEE APPEAL NO 73919 (9 AUGUST 2004)*

[16] The first Authority panel found the appellant to be a credible witness. The Authority found that his testimony was spontaneous, consistent and corroborated in large part by documentary evidence.

[17] His core claim was accepted, with the exception of one aspect of his account. That related to his claim that the three men who targeted him were affiliated with an Islamic organisation. According to country information, that organisation was effectively moribund. Therefore, while the Authority accepted that the three men had subjected the appellant to ongoing harassment, it found that they were simply affiliated with a local mosque and were not tied to the Islamic organisation.

[18] In deciding that the appellant's first claim was not well-founded, the first Authority panel accepted that there were isolated instances of serious harm perpetrated by Muslims on individual Christians in Egypt. However, it found that there was no reliable country information that Muslims who convert to Christianity were at risk of serious harm on any more than a random or speculative basis. It found that at worst those who converted to Christianity were at risk of harassment. It found that the three Muslim men who had targeted the appellant would have no ongoing interest in him but, in any event, there was no reason why he could not live safely elsewhere in Cairo or Egypt.

THE APPELLANT'S SECOND REFUGEE CLAIM

[19] The appellant relies on two particular changes in circumstances in Egypt. The first concerns the manner in which Egyptian identity cards are now issued. This is relevant because he lost his identity card, which identified him as a Muslim. He would therefore be forced to apply for a replacement card upon returning to Egypt.

[20] The criteria for issuing an identity card to a former Muslim have now changed significantly because of a court ruling in Egypt in early 2008. That decision concerned 13 Christian-born converts to Islam. They had converted back to Christianity and wished to obtain identity documents reflecting that they were Christian. The court ordered that they be issued with identity cards noting "Christianity" in the field provided for religion. However, it also ordered that the new cards must indicate that the holder "previously embraced Islam".

[21] This means that when the appellant obtains a replacement identity card, it will record that he is a Christian who has converted from Islam. He says that this greatly increases the chance that he will be subjected to mistreatment in Egypt.

[22] The second significant change relied upon by the appellant relates to the level of activity against Christian converts in Egypt, which he claims has increased significantly since the final determination of his first appeal in August 2004.

CONCLUSION ON JURISDICTION

[23] When comparing the appellant's first claim with the appellant's second claim, the Authority is satisfied that there are circumstances in Egypt that have changed to such an extent that the appellant's second claim is based on significantly different grounds. While the appellant's claim is still based upon the fact that he is a Christian convert, the manner in which any risk arises is significantly different. He is not relying upon the actions of three individuals, but upon the specific exposure to risk which arises out of his identification as an apostate because of the change in the law relating to identity cards.

[24] In the circumstances, the Authority finds that the appellant's second claim for refugee status is based upon a change in circumstances amounting to significantly different grounds. The Authority therefore finds that it has jurisdiction to determine the merits of the appellant's second claim.

EVIDENCE IN SUPPORT OF THE APPELLANT

[25] The appellant called several supporting witnesses who gave evidence about his Christianity, about life in Egypt today and about the risks he would face if he returned.

EVIDENCE OF THE APPELLANT

[26] For his second claim, the appellant relies upon changes in country conditions that have occurred in Egypt while he has been in New Zealand. To that extent, there is a limit to the relevant additional evidence which he is able to give. However, he confirmed that he is still a practising Christian and that he will continue to practise if he returned to Egypt.

[27] He also confirmed that his most recently issued Egyptian identity card described him as a Muslim. He lost it shortly after his arrival in New Zealand in 2003 and would therefore have to apply for a new card if he returned to Egypt now.

[28] The appellant said that he would want his new card to reflect the fact that he is Christian. This is partly for ethical reasons, because he would not want to hide his faith. However, it is also a matter of practical necessity because he may be prevented from attending a Christian church as a Muslim. This is because the church would not take the risk of allowing Muslims to attend, given that there is a level of observation carried out by the authorities. Even if the local clergy did allow him to attend, he says the police would prevent him entering a church if his card described him as Muslim.

[29] The appellant also says that he would face different problems if his new identity card describes him as a Christian, but refers to him as a former Muslim. That will make it apparent to anyone looking at the card that the appellant is an apostate.

[30] The appellant said that according to his brother, PP, his family experienced problems when the appellant converted to Islam, and more now he has converted back to Christianity. According to PP, the appellant would be targeted by Islamists if he were to return to Egypt as a Christian. However, the appellant said that no-one in particular is looking for him at present.

[31] The appellant is still in love with his wife. They continue to talk by telephone and he hopes that one day she will convert to Christianity. The appellant finds it too painful to talk to her about his son, because they have been separated for so long.

EVIDENCE OF NEVIN TAIT

[32] Mr Tait is a New Zealand citizen. He has been a teacher for some 25 years

and has a degree in general history. He spent approximately one year teaching in two different Middle Eastern countries in 2005 and 2006 and spent a short time as a tourist in Egypt. He has conducted private study of Islam for some time. Most of his research is conducted via the internet. Mr Tait believes that Egyptian secret police may have illegally accessed his computer in the past.

[33] Mr Tait asserted that, under Islamic law, a Muslim male who becomes an apostate must be put to death. He asserts that the appellant will be in this category. He read extracts from a book entitled "Islam and Terrorism" written by Dr Mark Gabriel, an Egyptian now living in the United States. He also referred to a book "Defying Death" written by Zachariah Botross, a Coptic priest who left Egypt 15 years ago. Both books were published before the publication of the decision of the first Authority panel.

[34] Mr Tait also addressed the issue of the development with respect to the issue of an identity card in Egypt. He asserts that a lot of clergy in Egypt are reluctant to allow Muslims or former Muslims to enter their churches.

EVIDENCE OF REVEREND JAMES PATRICK CHRISP

[35] Reverend Chrisp is an Anglican pastor living in Christchurch. He met the appellant early in 2008 in the context of Christian inter-denominational activities. He attested to the sincerity of the appellant's Christian faith.

EVIDENCE OF GX

[36] GX is a Coptic Christian born in Egypt. He has lived in New Zealand for more than a decade and has returned to Egypt on several occasions - most recently for approximately one year in 2005 and for one month in 2008.

[37] GX did not experience any particular difficulties as a Christian in Egypt in 2005 or 2008. However, he said that the reality of life in Egypt is worse than might appear in official documents and said that there are "hundreds of cases" relating to Christians who have been attacked and possibly killed by extremist Muslims.

[38] GX believes that the recent commencement of transmission of Christian evangelical television programmes into Egypt has increased friction between the Muslim and Christian communities. It has led to some Muslims seeking to convert to Christianity and, as a counter-reaction to that, has increased anti-Christian sentiment among grassroots Islamists.

[39] In GX's opinion, it would be very difficult for the appellant to remain incognito if he wished to return to Egypt and practise his faith in private. He explained the distinction between local culture in New Zealand, where people's privacy is respected, and that in Egypt, where natural curiosity means that any unfamiliar faces are noticed and eventually identified.

[40] GX said that an identity card is an essential item for any Egyptian citizen. By way of example, he outlined his own experience on seeking to attend a Coptic Christian church in Cairo during one of his recent trips back to Egypt. GX said that the first time he attended the church he was approached by a man who identified himself as a member of the Egyptian secret police. The officer spoke to GX politely, but asked for his identity card, searched his bag, and asked why he was attending the church. The officer indicated that GX had been approached because he was identified as a new-comer by colleagues whose task it was to observe people attending the church. GX was not harassed because his identity card identifies him as a Christian.

[41] By way of further example, GX referred to a trip he and his wife had taken by bus in Egypt. It was stopped three times by different members of the Egyptian police. On each occasion, all passengers were required to present their identity cards. Particular individuals were removed from the bus for questioning and did not reboard the bus.

[42] He believes it would be dangerous to be in possession of an identity card which classified one as an "ex-Muslim".

[43] GX met the appellant's brother, PP, when he visited the appellant in New Zealand several years ago. He has spoken to PP on various occasions since then and they met again when PP returned to New Zealand in 2008. PP informed GX that his own situation is sensitive and that his problems are magnified because his brother is an ex-Muslim. GX also recalled a brief conversation with PP when he was in Egypt in 2005. PP then spoke of the harassment he and his family members had experienced because of the appellant.

EVIDENCE OF AZ

[44] AZ is Egyptian by birth. He too is Christian. He worked in Egypt as a journalist for a foreign newspaper covering various Egyptian governmental affairs for a decade until he came to New Zealand in around 2003. AZ has not returned to Egypt since, mainly because he has a family and it is too expensive for him to

do so.

[45] AZ met the appellant in New Zealand about three years ago. He confirmed that the appellant continues to manifest his Christian faith in New Zealand.

[46] He gave evidence about general anti-Christian sentiment within Egypt. In that context, he described the impact of Christian television broadcasts into Egypt. According to AZ, local media have begun to focus on Christianity in a negative way to counter the effects of these programmes. He said that this is highly influential on many of the people watching.

[47] AZ corroborated the evidence given by GX, by emphasising the significance and importance of the Egyptian identity card. In AZ's opinion, it would be highly inflammatory to hold an identity card which records that its holder had converted to Christianity from Islam - "like holding a bomb in his hand".

[48] AZ also met the appellant's brother, PP, when he visited New Zealand in 2008. PP told him that earlier this year, that "Islamic groups are trying to find [the appellant] everywhere".

MATERIAL RECEIVED

[49] The Authority received information from counsel under cover of letters dated 19 and 24 November 2008, together with additional information and country material submitted during the appeal hearing.

[50] Further material has been provided following the conclusion of the hearing. This includes material forwarded under cover of letters from Mr Botros Morgan dated 27 November 2008, and letters from counsel dated 15 December 2008 and 8 June 2009.

THE ISSUES

[51] 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."

[52] 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

CREDIBILITY

[53] Before addressing the principal issues identified, it is necessary to decide what facts are to inform the Authority's assessment. This means that it is necessary to decide whether the appellant is a credible witness. Like the first Authority panel, the Authority finds that he is credible. He resisted any temptation to embellish his evidence and was a plausible and understated witness.

[54] With respect to the appellant's witnesses, the Authority accepts that all four were sincere. It finds, however, that the weight that can be given to their testimony varies. For example, Reverend Chrisp confirmed that the appellant is a practising Christian, however he acknowledged that he had no other insight into the appellant's predicament.

[55] Many of Mr Tait's observations were broad generalisations. His evidence with respect to Islamic practice generally or the predicament of Christians in Cairo is not based on any specific expert knowledge, learning or personal experience. Neither his personal interest in Islam, the nature of his personal study, or the fact that he worked in two Middle Eastern countries and spent two weeks travelling in Egypt as a tourist, bring Mr Tait within the category of an expert witness. The Authority therefore finds that while sincere, Mr Tait's evidence is not marked with a level of insight or expertise such that it can be afforded any particular weight.

[56] AZ's suggestion that PP claimed there were Islamists actively looking for the appellant is regarded as an embellishment. If that was information truly known to PP, it is inevitable that the appellant would be aware of it. He made no such claim. With that exception, the Authority finds the evidence of GX and AZ to be credible.

SUMMARY OF CREDIBILITY FINDINGS

[57] With the exception of one aspect of his account, the first Authority panel found the appellant's core claim to be credible. The Authority adopts the findings of the first Authority panel as it is entitled to do under s129P(9) of the Act. The Authority therefore finds that the appellant is an Egyptian national who was born and raised as a Christian. Three men targeted him from the late 1980s until he left Egypt in 2001. The men harassed him, subjected him to various acts of violence and subjected his business to acts of vandalism. They forced the appellant to convert to Islam in the late 1980s and to marry a Muslim woman with whom he has a son he has not seen for some years. The same men later forced the appellant to divorce. The Authority finds that the appellant remains in contact with his former wife in Egypt. It finds that he would maintain contact with her if he were to return there, and that he would inevitably seek to resume contact with his son, from whom he has been estranged through force of circumstance.

[58] The Authority finds that the appellant has resumed the practice of his Christianity and is satisfied that he would continue to manifest his Christian faith and beliefs if he were to be returned to Egypt. It accepts that the appellant has lost his Egyptian identity card and that he would be required to apply for a new identity card if he were to return to Egypt.

[59] It is on that basis, and in the context of the country information outlined below, that the appellant's claim will be assessed.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO EGYPT?

[60] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[61] The threshold is not whether an appellant *will* be persecuted, but whether there is a *real chance* of the appellant being persecuted if he is returned to Egypt. In that context, the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that 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. The standard is entirely objective.

[62] For the reasons set out below, the Authority finds that there is a real chance that the appellant would be subjected to serious harm tantamount to being persecuted if he were to return to Egypt.

GENERAL COUNTRY INFORMATION

[63] Egypt has a population of approximately 80 million people. It is estimated that the number of Christians is between six and 10 million, most of whom are Coptic Christians: United States Department of State *Country Reports on Human Rights Practice for 2008: Egypt* (February 25 2009) (the 2008 DOS Report). The number of Christian converts is difficult to discern but is, by comparison, very small. According to the Human Rights Watch report *Prohibited identities state interference with religious freedom* (November 2007) (the HRW report) it is likely to amount to about “a score” per annum, and to amount cumulatively to “hundreds if not thousands” (p19).

[64] According to the United States Department of State *International Religious Freedom Report 2008* (the IRF Report), Islam is the official state religion, and Shari'a (Islamic law) is the primary source of legislation. It states that while the Egyptian Constitution provides for freedom of belief and religious practice, the Government restricts these rights in practice (p1).

[65] The IRF Report identifies a level of government discrimination against non-Muslims in areas such as public sector employment, admission to publicly financed universities and in obtaining permission to build or renovate church structures (see p 6). It also states:

“Although there were some positive steps in support of religious freedom, the status of respect for religious freedom by the Government declined overall during the period covered by this report.”[p1]

[66] The first Authority panel accepted that there were instances of serious harm perpetrated by Muslims on Christians. However, it found that such acts were “isolated”. It placed little weight upon material sourced from the internet - in particular that produced by Christian groups which made extravagant claims of attacks and killings which were not substantiated by the more authoritative reports of government agencies or respected human rights groups (*Refugee Appeal No 73919* (9 August 2004) [60]).

Christian converts

[67] However, the assessment of the risk to this appellant must take account not only of the fact that he is a Christian, but that he will be perceived as and labelled a Christian convert.

[68] In this context, it must be borne in mind that the appellant has lost his Egyptian identity card, which he says is fundamental to the ability of a citizen to go about his or her everyday existence in Egypt. The importance of the identity card is referred to in the HRW report, which notes that it records a person's religious identity. It also states:

"All Egyptians upon reaching 16 years of age must by law obtain a national identification document that includes a national identification number assigned at birth. A national ID is essential to obtain access to post-secondary school, get a job, vote, travel abroad or within Egypt, and conduct the most basic financial and administrative transactions." (page 1).

[69] This was confirmed by GX and AZ, who gave plausible evidence about how one might be required to show the identity card in a number of benign and potentially less benign situations. It is required for various daily transactions and for events of a more significant nature such as getting married, obtaining employment, opening bank accounts and passing through police checkpoints.

[70] If the appellant returns to Egypt, he will have to replace his identity card. To try to exist without it would mean forfeiting the ability to conduct even the simplest monetary transaction at banks or other financial institutions and other basic daily activities, such as engaging in property transactions, obtaining a driver's licence, obtaining a pension cheque or obtaining employment.

[71] His replacement card will need to disclose his religion. The appellant's previous identity card records that he is Muslim. The Authority has accepted that he is no longer a Muslim (if he ever truly was) and accepts that if he returns to Egypt he will continue to practise the faith into which he was born, namely Christianity. It also accepts that he would not be prepared to apply for a new card as a Muslim. He will apply for the card to reflect that he is Christian.

[72] Until recently it may not have been realistic for him to try. The HRW report cites the experience of one Egyptian lawyer who stated that Muslims were unable to officially convert to Christianity because they were unable to change their religious affiliation on identification documents or get court rulings recognising their conversion (at 55).

[73] The HRW report then refers to a series of decisions between 2004 and 2006 in which re-converts succeeded in their attempts to have the courts recognise their conversion back to Christianity. However, all of those decisions were obtained in front of one judge, Judge Abd al Qader, who has now retired (p71). In addition, obtaining bureaucratic compliance with the court decisions was invariably difficult. Individuals who attempted to do so were subjected to further harassment and pressure, albeit that new identity cards were eventually supplied (pp72 - 73)

[74] Any apparent gains made in this respect were undermined in April 2007, when the Court of Administrative Justice had a new president and panel. It reversed all of its previous decisions, upholding the decisions of the Interior Ministry to deny new documents identifying plaintiffs as Christians (the HRW report, p74).

[75] However, circumstances have taken another turn. The IRF Report refers to a decision of the Cairo Administrative Court in early 2008 which concerned attempts by several Christian-born converts to Islam to obtain identity documents reflecting that they were Christian. The applications were successful, but the victory is in a sense pyrrhic, because

“...the court included requirements effectively identifying the Christian converts ... as apostates, potentially exposing them, if implemented, to risk of significant discrimination by both governmental and societal agents” (the IRF report p1).

[76] The difficulty arises because the court ruled that the 13 “reconverts” be issued identity cards noting “Christianity” in the field provided for religion, however, they must also indicate that the holder “previously embraced Islam” (the IRF report, p7).

Identification of the appellant as an apostate

[77] The effect of such a decision is significant for the appellant. From the time of his initial interaction with the government department responsible for issuing a replacement card, he will identify himself as an apostate.

[78] However, his difficulty is not confined to that initial interaction with officials. The new identity card will not only disclose that he is Christian. It will disclose that he is a “former Muslim”. It will not record that he has converted back to the faith of his birth, and nor is that fact likely to matter to anyone reading the card. His identity card will have a direct impact upon every interaction he has with any public

official. It will also affect contact he has with private officials, be they landlords, employers or bank managers. From the moment his card is issued, all such contact carries the likelihood that the appellant will be characterised as an apostate. It is therefore in this context that the Authority must consider the appellant's claim for refugee status.

Risk factors specific to the appellant

[79] The appellant would return to Cairo, where he lived previously and where his siblings live. He has a history of difficulties with Muslims in Cairo which was accepted by the first Authority panel and which the Authority also accepts for the purposes of his second appeal.

[80] There is credible evidence that the appellant's brother has experienced difficulties over the years because of the appellant's predicament. This was initially caused by antagonism within the Christian community when the appellant was forced to convert to Islam. It continued when elements in the Muslim community took exception to the appellant's recommencement of his attendance at a Christian church.

[81] While nothing endured by the brother has amounted to serious harm, the fact that he has experienced such problems emphasises the nature of the environment into which the appellant would return. It is clear that there is a general awareness of the appellant's past within that community. It is inevitable that his return would soon become known to the Muslim community in the home community of which he was previously a part. That likelihood is increased by the fact that his identity card will draw attention to the appellant. The Authority cannot rule out the possibility that this will include the men whose actions caused such difficulty for the appellant in the past and who coerced him into converting to Islam.

[82] Another important aspect of the appellant's predicament concerns his ex-wife, with whom the appellant says he is still in love. From the context in which he made that disclosure, the Authority accepts his evidence without reservation. The Authority is in no doubt that the appellant will seek to maintain contact with his former wife if he returns to Egypt. It is not that he does not understand the possibility that he may be unwelcome among the community within which his wife and son now live; however, their son will provide a common bond that will continue to bring them into contact.

[83] These relationships expose the appellant to ongoing contact with another

part of the Muslim community to whom he is already known, namely the friends and family of his former wife.

[84] Present societal attitudes to conversion in Egypt are described as “highly negative and hostile” by the HRW report (p54). It states that sectarian tensions have increased in Egypt in recent years, and this manifests around the politicisation of conversion (pp54-55). This is relevant to the appellant because, in short, he will not be able to live incognito. There are large parts of the wider Muslim community that will soon become aware of his return. This creates a more specific personal risk for the appellant that he will come to the attention of elements within the Muslim community who will regard his apostasy as an outrage.

[85] It is also possible that the appellant may create additional difficulties for himself. He told the Authority that during his telephone contact he has tried to convince his wife to convert to Christianity. The Authority accepts his evidence and also accepts his claim that he maintains the hope that one day this will be possible. The appellant acknowledges that speaking about such matters in Egypt would be markedly different from doing so during a telephone call from New Zealand. However, the Authority does not rule out the possibility that this particular appellant may raise the possibility of his wife converting in a context in which he places himself at risk.

[86] Recent country information refers to the risk to Christian converts. The IRF report refers to Muhammad Higazy who received death threats and went into hiding with his wife after his conversion to Christianity received wide attention in the Arabic language media (p1).

[87] With respect to the wider Islamic community, there are reports of problems caused by even rumours of relations between Christian men and Muslim women. The IRF report refers to incidents in upper Egypt after reports surfaced of a love affair between a Muslim woman and a Coptic Christian man. Security forces deployed in the town closed shops under a security decree and detained eight Muslims and one Copt. In 2007, rumours of a love affair between a Muslim woman and a Coptic Christian man sparked sectarian clashes in Alexandria (IRF report p16).

[88] Such attitudes are unsurprising in a society governed by various laws that affect the personal status of converts from Islam in a negative way. The CSW report states that precedents in Sharia law regarding the marriage of non-Muslims to Muslims mean that a man registered in Egypt as a Christian cannot marry a

Muslim woman (the CSW report pp7-8).

[89] In all of the circumstances, there is a real chance that the appellant could be subjected to serious harm at the hands of members of the Muslim community who take exception to his status as an apostate. For reasons elaborated upon below, the Authority finds that he would be unable to access meaningful state protection from such harm.

Lack of state protection

[90] Recent country information indicates that the Egyptian government reportedly maintains regular and “sometimes hostile” surveillance of Muslim-born citizens who were suspected of having converted to Christianity; the 2008 DOS report (p17).

[91] There are also reports that police persecute converts from Islam to Christianity. The HRW report refers to interviews with Egyptians held in custody following their conversion to Christianity. The report refers to detention, physical mistreatment and psychological abuse (pp58 *et seq*).

[92] The IRF report refers specifically to the case of one convert who was detained by state security authorities for more than two years between 2005 and 2007. The authorities ignored a court order for his release from detention in 2006, and instead transferred him to the “notorious” Wadi el-Natroun Prison, where he was kept in solitary confinement. He was eventually released in April 2007, without explanation or guarantee that he would not suffer the same ordeal again; see the IRF report (p13) and Christian Solidarity Worldwide *Religious Freedom Profile: Egypt* (July 2008) (pp8-10) (the CSW report).

[93] Another report refers to the arrest in late 2007 of Siham al-Sharqawi, a convert who had been in hiding since 2003. She was detained and interrogated for several days, and her whereabouts since are unknown (United States Commission on International Religious Freedom *Annual Report 2008*, (p 225).

[94] The CSW report states that international pressure can lead to the release of detainees, and attributes to one human rights lawyer the assertion that more than 20 apostates were released from detention by this method during the year prior to the report (pp8-10). The corollary to that is that at least that many apostates must have been in custody during that period. While that number may seem trivial, it has to be viewed in its proper context. If the estimate in the HRW report is

accurate (see [63] above), that is roughly equivalent to the number of new converts from Islam each year.

[95] As to the treatment likely to be experienced by anyone who is detained by the Egyptian police, there is evidence that conditions in Egyptian prisons are poor. According to the 2008 DOS report:

“The government's respect for human rights remained poor... Security forces used unwarranted lethal force and tortured and abused prisoners and detainees, in most cases with impunity. Prison and detention center conditions were poor. Security forces arbitrarily arrested and detained individuals, in some cases for political purposes, and kept them in prolonged pretrial detention.” (p1)

[96] During their detention, individuals can be subjected to a wide range of human rights abuses, including physical torture, solitary confinement and sexual and psychological abuse; the latter in the form of threats of harm to the detainee's family (the CSW report pp8-10; the 2008 DOS report, pp2-3). The DOS report described the use of such methods as “routine” (p2).

SUMMARY

[97] Whether any particular convert faces a real chance of being persecuted in Egypt will depend on the facts of their particular case.

[98] Presently, country information indicates that the number of Christian converts in Egypt is extremely low. They face societal discrimination and harassment by the public and by state authorities. It is routine for citizens to be required to produce their identity card to members of the state security forces or police in Egypt. Every time the appellant does so, it will be apparent that he is an apostate and he will be vulnerable to such harassment.

[99] The appellant and his family members have experienced ongoing aggravation from members of the Muslim community in Cairo who are aware of the appellant's reconversion to Christianity. It is likely that the appellant's return will become apparent to those elements within a short time. There is a risk that he will be subjected to further targeting because of his conversion back to Christianity, particularly in light of his desire to maintain contact with his former wife and his son.

[100] There is country information which indicates that a convert such as the appellant cannot be confident of protection by a state the authorities of which are complicit in the arbitrary detention and mistreatment of Christian converts. The

risk posed by state agents means that the appellant cannot realistically avoid the possibility of serious harm by relocating elsewhere in Egypt.

[101] As already stated, the Authority's task is not to determine whether an appellant *will* be persecuted (an impossible prediction to make in most circumstances), but whether there is a *real chance* of the appellant being persecuted if he is returned to Egypt. Taking all of the appellant's circumstances into account, the Authority is satisfied that the risk faced by the appellant is not so low as to be remote or fanciful. There is a real chance that he will face serious harm at the hands of either state or non-state agents in Egypt.

[102] The appellant's predicament arises because he will be perceived to be an apostate. It is for reason of his religion.

CONCLUSION

[103] Turning to the issues framed for consideration, the Authority finds that objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to Egypt. The persecution he faces is on account of his religion and is therefore for a Convention reason.

[104] For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A N Molloy"
A N Molloy
Member