

AT AUCKLAND

Appellant:

AI (Egypt)

Before:

B L Burson (Member)

Counsel for the Appellant:

S Laurent

Date of Decision:

30 May 2013

DECISION

INTRODUCTION

[1] This is a humanitarian appeal by the appellants, citizens of Egypt and the United States of America (“United States”) under section 194(5) and (6) and 195(6) and (7) of the Immigration Act 2009 (the Act) against liability for deportation. The appellant in [2013] NZIPT 501389 is the elder sister of the appellant in [2013] NZIPT 501390 and will be referred to the elder and younger sister respectively as context requires.

[2] At the core of these appeals lies the fact that, should the appellants be deported from New Zealand, they would be separated from their immediate family members who have been recognised as refugees in New Zealand. While the Tribunal accepted the appellants faced the same problems as their family, unlike them, the appellants hold dual Egyptian and United States citizenship. As the appellants could not establish a fear of being persecuted in the United States, their refugee claims failed. The primary issue is whether their separation from their family and the effects this would have amount to exceptional circumstances of a humanitarian nature.

BACKGROUND

[3] The elder sister has recently turned 19. The younger sister is 16. They each arrived with their mother, father and elder sister in New Zealand in late 2011. The family all lodged refugee and protection claims shortly thereafter based on their fear of being subjected to violence in Egypt on account of their being active members of the Coptic church in their home city in Egypt. Their claims were dismissed by the Refugee Status Branch on 3 November 2011. An appeal was lodged to the Tribunal by all of the family members.

[4] After hearing from the appellants and the other family members, the Tribunal found them to be credible as regard the specific instances of harassment and discrimination they had encountered in Egypt. See *AH (Egypt)* [2013] NZIPT 800268-272 at [175]. The Tribunal found, that each family member, the appellants included, had a well-founded fear of being persecuted in Egypt on account of their profile as active members of the Coptic church in their city.

[5] At [203], the Tribunal accepted that all of the daughters of the family had been subjected to ongoing and frequent harassment from the concierge and from the wife and three sons of a neighbouring family on account of their religion. On multiple occasions, threatening remarks had been made about the appellants being raped or kidnapped. Furthermore, the appellants and their sister had been frequently subjected to low-level inappropriate touching by the concierge.

[6] At [206], the Tribunal accepted that the psychological and emotional effects of the sustained and corrosive nature of this harassment reached a minimum level of severity necessary to constitute degrading treatment for the purposes of Article 7 of the ICCPR which amounted to their being persecuted. However as the appellants could not establish a well-founded fear of being persecuted in the United States as their other country of nationality, they could not be recognised as refugees – see [209].

[7] Similarly, in relation to the protected person appeals, the Tribunal, at [216], accepted that there were substantial grounds for believing that both appellants' degrading treatment in Egypt in the form of ongoing sexual harassment and sexual assaults was derived from their status as woman. Their particular religious beliefs put them firmly in the public eye which in the current climate elevated the risk of degrading treatment occurring to them. Nevertheless they were not entitled to be recognised as protected persons under the Act, because they could obtain protection from this harm in Egypt by travelling to the United States.

THE APPELLANTS' CASE

The elder sister

[8] The elder sister was around six or seven years of age when she returned to Egypt from the United States where she had been born. In both places she was actively involved in the local Coptic church as was the remainder of her family.

[9] The elder sister encountered discrimination on a daily basis at school. She was ignored by the teachers and called an "infidel" by Muslim pupils who made fun of her name. She came under pressure to attend a mosque during religious instruction classes by teachers who told her that if she went inside the mosque she would go to a "better place rather than go to hell". As she progressed through school the pressure to convert to Islam became greater.

[10] For the first two years of her schooling, she was never allowed to sit next to Muslim students on the school bus and the teacher in charge made her stand. She had a particular problem with the bus driver who frequently pinched her on her hand. He also touched her bottom on a number of occasions as she walked past where he was sitting. These assaults continued intermittently until she was in her early teens. She complained to her father and from that point on he began driving her and the younger sister to school.

[11] Despite these issues, she studied hard and was awarded the top marks in the national examinations at the end of middle school. Contrary to the usual practice, however, the prefecture and an honours certificate were given to a Muslim girl with lower marks than her.

[12] Additionally, both she and the younger sister encountered constant problems with the building concierge who was associated with one of the local mosques. He constantly made derogatory comments about their non-muslim attire and stated they should become Muslim. When they were older he repeatedly insinuated in an intimidating manner that they would be kidnapped and raped. The concierge also frequently slapped and touched the girls as they went past. The elder sister did not tell her father because she was afraid that this would lead to trouble. She mentioned it to her mother but did not tell her everything because her mother was already quite badly affected by the environment in the building.

[13] Their family also had particular problems with their neighbours on the same floor. The mother of this family often told them they should be careful what they spoke about and that she had overheard their discussions with priests about church affairs and activities. The sons of this family were also hostile towards the appellants and their elder sister and always intimidated them on the stairs when they encountered each other.

[14] On another occasion, the younger sister was sexually assaulted by a stranger who grabbed her breast while they were travelling in a car. Although unsure, the elder sister believes this happened about 2010.

[15] The discrimination and harassment affected her grades and her outlook. The elder sister became increasingly withdrawn and isolated, not only because of her own daily experiences, but also the experiences of others she knew. In particular, a Muslim youth set fire to the hair of a Christian friend while on a bus. When her friend screamed, the bus driver told her to be quiet, called her "infidel" and told her she deserved what was happening for having her hair uncovered. Other incidents also affected her. In late 2010, someone attempted to rape a girl who was also active in the church with the elder sister. This girl had left the church one evening and returned shortly afterwards with her clothes torn and in a distressed state. The elder sister was still at the church and saw her. On another occasion, another friend of hers was kidnapped. The priest came to the church and told the girls they had to be very careful and should not walk alone unaccompanied.

[16] Her psychological state worsened further following the attack on the Elkedeseen church on New Year's Eve 2010. She had been a regular attendee at this church and a number of her friends were killed. Things worsened after the overthrow of the Hosni Mubarak-led government in early 2011. On one occasion in the immediate aftermath of his downfall, she was in church with her mother and sisters when a man came in and brandished a sword.

The younger sister

[17] The younger sister confirmed that, like the rest of her family, she was also active in the church. She also encountered problems with the concierge who often made derogatory remarks about them not wearing Muslim dress. When she was young, the concierge slapped her on the bottom on many occasions. She did not tell her father about these incidents because she was worried that it would lead to bloodshed. She encountered trouble with the boys from the family next door who

gave her threatening looks and often made derogatory remarks about her clothing and long hair. They made threatening remarks about her not wearing head scarves. The incidents caused the family to become very fearful for their safety.

[18] Although not sure when, on another occasion a man reached into the car she was travelling in and grabbed her breast.

Submissions

[19] On 20 May 2013, the Tribunal received written submissions from Mr Laurent in support of the appeal. Attached to those submissions were:

- (a) a statement from the appellants' father dated 16 May 2013 regarding the closeness of the family unit and the concerns he has regarding their removal from the family unit by way of deportation to the United States;
- (b) letter dated 13 May 2013 from Kim Golsen, a mental health counsellor working with the appellants as regards the negative impact the prospect of separation from their family is having on their state of mental health;
- (c) letter dated 15 May 2013 from Gillian Taylor of Refugees As Survivors in regard to the negative impact the prospect of the appellants' separation from their family is having on the state of mental health of their mother; and
- (d) various documents as to the importance of maintaining family unity in the context of refugee resettlement and reintegration.

[20] In the course of the refugee appeal, Mr Laurent also submitted a letter from Father Bishoy Mekhaiel of the Coptic Church in New Zealand attended by the appellants and their family together with extracts from the teachings of the former Coptic Pope Shenouda III 1988.

STATUTORY GROUND OF APPEAL

[21] The grounds for determining a humanitarian appeal are set out in section 207 of the Act:

- (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that-
 - (a) There are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
 - (b) It would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[22] The Supreme Court stated that three ingredients had to be established in the first limb of section 47(3) of the former Act, the almost identical predecessor to section 207(1): (i) exceptional circumstances; (ii) of a humanitarian nature; (iii) that would make it unjust or unduly harsh for the person to be removed from New Zealand. The circumstances “must be well outside the normal run of circumstances” and while they do not need to be unique or very rare, they do have to be “truly an exception rather than the rule”, *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

ASSESSMENT

[23] Under section 231(1)(a) of the Act, the Tribunal is entitled to rely on any findings of credibility or fact made by it in the appeal in relation to the appellants’ refugee and protected persons claim. In that appeal, at [206], the Tribunal accepted that, taking into account the appellants’ age and gender, the psychological and emotional effects of the sustained harassment they encountered was of sufficient severity and duration to constitute degrading treatment for the purposes of Article 7 of the ICCPR. The Tribunal adopts this finding for the purposes of these appeals.

[24] There are a number of features of this case which, when taken together cause the Tribunal to be satisfied that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellants to be deported from New Zealand.

[25] First, it is far from common that family units who lodge claims for refugee and protected person status in New Zealand have varying nationalities. As

Mr Laurent succinctly observes, “scenarios in which certain members of a claimant group have differing citizenships and residence is hardly the norm”. Furthermore, the members of the family with the differing citizenship are its youngest.

[26] Although the appellants ‘enjoy’ United States citizenship, this is an enjoyment in name only. They left when they were aged six and four respectively and have not returned. They have had no connection with the United States since their departure. In his statement in support of these appeals, the appellants’ father states that, although he has a brother and other family members settled there, he has lost contact with them over the years and is unaware of their circumstances. The appellants, now aged 19 and 16, have been educated only in Egypt and New Zealand. The American way of life is foreign to them and their extended family members resident in the United States are, effectively, strangers to them.

[27] The various letters from the health professionals dealing with the family establish that each of the female members of the family suffers from Post-Traumatic Stress Disorder and depression as a result of their experiences in Egypt. Their poor state of psychological and emotional health is being exacerbated by concern that the appellants could be separated from the other family members. Further deterioration in the state of mental health of both the appellants and other family members, who have been recognised as refugees, can be expected if the appellants were to be deported from New Zealand. The letter from Gillian Taylor establishes that this deterioration is likely to be significant in the mother’s case.

[28] The appellants are financially dependent on their parents. The elder sister has commenced her studies at medical school at a New Zealand university. Her parents have provided her with substantial financial support. The younger sister is still a minor and is at high school.

[29] In his letter of support the appellant’s father stresses the closeness of the family unit, something that has been forged in their religious beliefs. That service together as family in the church is a, if not *the*, central part of the family’s individual and collective identity, is stressed by Father Mekhaïel in his supporting letter. He states that the church, regards the family unit “as an altar and church to the Lord” and stresses that family unity is fundamental to their beliefs. Father Mekhaïel states:

An unmarried lady does not live away from the family home, within our culture this is frowned upon and would make it difficult/virtually impossible to find an accepting

suitor (husband) later on. The family look at these matters and it is very important..

It is traditional with our culture and religion for daughters to live with their parents until a young man accompanied by his parents come to ask the girl's father for his daughter's hand in marriage. They then attain the church blessing of the rings (engagement). Then spend time to get to know each other... Families that break this tradition (ie: have unmarried girls live outside the family home) end up segregated from the rest of the church community. This in turn causes problems in the church and divisions within the community."

Conclusion on exceptional circumstances

[30] The Tribunal is satisfied for these reasons that these circumstances do amount to exceptional circumstances of a humanitarian nature.

[31] These appellants are only 19 and 16 years of age and have lived with their parents all their lives. They are emotionally and financially dependent on their parents who are recognised as refugees in New Zealand. They cannot go to Egypt where they face a real chance of being persecuted and cannot realistically go to the United States. It is in the best interests of the youngest appellant to remain with her family and the same can be said for the elder. If the two youngest family members were forced to leave, their parents and elder sibling would be put in the position of either returning to Egypt to keep the family together, or finding some way to obtain lawful entry into the United States. The stress and other psychological harm that would cause them, not to mention the risks to them if they were left with returning to Egypt as the only option for keeping the family intact, is significant. The facts of this case are "well outside the normal run" as contemplated by Ye.

Public Interest Factors

[32] Separation from family is one of the most keenly felt impacts of having to flee abroad to avoid being persecuted. There is a public interest in allowing refugee families to remain together to assist with resettlement and help cope with trauma. On family reunification generally, see *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* (UN doc A/CONF 2/108/rev 1 (1952) at Recommendation B; K Jastram and K Newland "Family Unity and Refugee Protection" in E Feller, V Turk and F Nicholson (eds) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, Cambridge) at p564.

[33] The elder sister has clear police certificates from New Zealand, as at May 2013. Given the age of the younger sister it is not possible to obtain one for her. The Tribunal has turned its mind as to whether it is necessary to obtain police certificates from Egypt and the United States. However they were minors at the time they lived in these countries and the Tribunal is satisfied there is no sound basis for obtaining police certificates in respect of their time spent as minors in those countries.

[34] The Tribunal finds that it would not be contrary to the public interest to allow them to remain in New Zealand.

CONCLUSION

[35] For these reasons, the Tribunal finds there are exceptional circumstances of a humanitarian nature such that it would be unjust or unduly harsh to require the appellants to leave New Zealand and it would not in all the circumstances be contrary to the public interest to allow them to remain in New Zealand.

DETERMINATION AND ORDERS

[36] Pursuant to section 210(1)(b) of the Act, the appellants are each granted a student visa for a period of 12 months.

[37] The appeals are allowed.

"B. L. Burson"
B L Burson
Member

Certified to be the Research
Copy released for publication

B L Burson
Member