

0909075 [2010] RRTA 271 (1 April 2010)

DECISION RECORD

RRT CASE NUMBER: 0909075

DIAC REFERENCE(S): CLF2009/90814

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 1 April 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Egypt, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application for a protection Visa

Application Form

20. According to the information provided in his application for a protection visa, the applicant was born in City A, Egypt. He is Coptic Christian. He has completed 15 years of education and holds a Bachelor degree. He described his profession before coming to Australia. He worked in his field for Company B from the mid 2000s. He lived at a single address in City A from 1999 until his departure from Egypt. He departed Egypt for Australia on a passport issued to him in the mid 2000s. He arrived in Australia on a visa issued in Cairo.

Written Statement

21. In a written statement attached to his application form, the applicant made the claims outlined below.
22. The applicant was born a Coptic Christian and continues to be a committed member of his faith. In Egypt he was a parishioner at Church D in City A.
23. His parents and sisters reside in City A. He has one brother who is currently residing in Country Z.
24. From the mid 2000s he was employed at Company B.
25. In 2007, he began a relationship with a work colleague, a Sunni Muslim called Person X. They loved each other very much, but their relationship remained a secret because her parents are "fanatical Muslims" and would not have consented to the relationship.
26. Prior to entering into a relationship with Person X, the applicant took the opportunity to preach to her about Jesus Christ. Person X was very interested and despite the fact that she came from a conservative religious family, she was willing to listen to his views about religion. In Egypt it is illegal for Christians to preach the Bible to Muslims or for Muslims to convert to another religion.
27. Person X's father made her wear the "chador", but she bitterly resented this and "dreamed of one day living in a free society".

28. Person X's elder sisters were all forced to marry young. Person X's parents put a lot of pressure on her to leave work and marry too. They despised the fact that she was still not married. She would often confide in him by telling him that she hated the idea of being married to some "religious fanatic" that would want her to stay at home and breed.
29. Initially, the applicant felt that because of her resentment towards her family's attitude she was simply rebelling against them, but they fell in love with each other and planned to get married. This, however, was not possible because of their different religious beliefs. The applicant was determined that Person X should know Christ and she became more accepting of his faith as she heard and read about it. The applicant passed on to Person X Christian material and internet site addresses during work hours. She read this material privately in her own room at home or during breaks at work. She also placed Christian scripture inside the Koran so that her family would not suspect her of reading anything other than the Koran.
30. As their relationship continued to flourish, Person X's determination to convert to Christianity grew. She saw their relationship and conversion to Christianity as a path to "liberation".
31. The fact that they worked together made it easy for them to continue their relationship, but they both wanted to be married.
32. In 2008, Person X asked the applicant to take her to his priest where she could be baptised as a Christian. Initially, the priest was hesitant and tried to discourage them from continuing the relationship because of the "perils" associated with it, but the applicant demanded that the priest baptise Person X and reminded him of his duties as a "Christian Sheppard". The priest agreed after becoming convinced that Person X's intentions were genuine. He also sought a "guarantee" that she would refrain from telling anyone about the fact that baptism had taken place. The priest was fearful that the authorities may close down the church if they found out that a Muslim woman had been baptised there. The priest, however, refused to marry them and told them that this should take place outside of Egypt.
33. Eventually, a male work colleague who knew Person X's parents became suspicious that the applicant and Person X were in a relationship. He saw them together on a number of occasions and threatened to inform her parents. This person was not aware of the fact that she had been baptised but on a number of occasions overheard them talking about religious issues.
34. In 2008, Person X suddenly stopped coming to work. When he asked her younger sister why she had stopped coming to work, he was told to keep away from Person X because he had caused her a lot of grief. One week later, he received a threatening telephone call at work from a caller describing himself as Person X's father. He said that he knew about Person X's conversion and relationship with him. He went on to declare that he was going to kill both Person X and the applicant.
35. Following this telephone threat he became gravely concerned about his and Person X's safety. He applied for a Student visa later that month with the intention of travelling to Australia. It was also his intention to assist Person X more effectively in Australia by, possibly, sponsoring her.

36. In 2008, he was relieved to receive a telephone call from Person X who informed him that she had managed to escape to Lebanon where she is now staying with a Christian girlfriend. She also informed him that she was severely beaten by her father and elder brother to the point where she was hospitalised. She went on to inform him that she had managed to escape from the hospital and out of Egypt.
37. The applicant was determined to leave Egypt and travel to Australia, where he may have the opportunity to be reunited with Person X. This was their plan and he was granted a Student visa.
38. After his visa was granted he wanted to depart Egypt immediately but a number of days later, he was severely beaten by Person X's father and brother whilst leaving work. He sustained a serious back injury and numerous cuts to the head and the body. He was lucky to have escaped death because he was struck on the head by a steel pipe during the attack. He was transferred to hospital where he remained for a number of days and received treatment for his injuries.
39. Soon after his departure from Egypt, Person X's brother visited his home and assaulted his father. They also inflicted damage on the property and on his parent's vehicle which was parked outside. Following the assault they declared that they will continue the violent attacks as a means of revenging his actions.
40. The applicant's family in Egypt live in constant fear as members of Person X's family continue to threaten them and have attacked the family home on two further occasions.
41. Person X continues to reside in Lebanon but illegally and under the threat of being deported back to Egypt. She is unable to travel to Australia because she has no relatives residing in Australia who can sponsor her. He continues to correspond with Person X and they hope to be reunited as soon as possible.
42. He is unable to rely on the authorities for protection if he were to return to Egypt because of his involvement in converting a Muslim woman. He may even face arrest and physical harm. Islamic fundamentalism is on the increase in Egypt with the number of attacks on Christians increasing. He would be targeted by them not only because he is a Coptic Christian but also because of his involvement in converting Person X. Members of the popular Muslim Brotherhood target Christians who are accused of preaching to Muslims.

Supporting Evidence

43. In support of his application, the applicant submitted a Report from the City A MRI Centre, dated, stating that the applicant was suffering from a specific condition. No details were provided as to the possible cause of condition.
44. The applicant also submitted copies of 11 email messages in English sent from '[name]' to the applicant at. The messages were sent during a specific period.

The Interview

45. The applicant was interviewed by the delegate. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's oral evidence to the delegate.
46. The applicant repeated his claims that he was responsible for converting Person X. Converting Muslims to Christianity is a crime and he would be treated as criminal if he were to go back.
47. He met Person X in 2006 and their relationship began in 2007. They both worked in Company B. She liked to know more about the Bible and Jesus Christ and he tried to give her more information. She was opposed to leaving her job in order to get married to a fanatic Muslim. Her parents were worried that she was still not married.
48. The applicant was asked how he was able to meet with Person X to talk about Christianity. He said they worked together, which provided him with the opportunity to talk to her. These opportunities increased in 2007. They discussed matters during work breaks and after work they met and read the Bible. This was only a problem if someone found out, but they kept the relationship a secret because her parents are fanatic Muslims. He was asked, given Person X's parents' religious conservatism, how he was able to meet her after work. He said he followed Jesus' example in teaching Christianity even if it entailed dangers to his safety. He was asked where he had met Person X after work. He said they met at a professional club and he also took her to the church. He was again asked where he had met Person X which enabled him to talk to her about Christianity. He said during work he gave her books and they studied the Bible together "bit by bit". He gave her the Bible and asked her to read it. She placed it in between her Koran in order to hide what she was reading. He also referred her to Christian websites. He was asked if he had the opportunity to be alone with Person X. He said yes, during work breaks and after work. He was asked how they managed to be alone during work breaks. He said they had lunch together during the break and talked about Christianity. They changed the subject when someone came along.
49. The delegate put to the applicant that he found it difficult to believe that they were able to be alone together at work and talk about Christianity, particularly because she came from a strict Muslim family. He said they were in love and when he talked to her about Christianity it was the best way for her to get rid of her family's prejudices. He was asked if other Muslims worked at the company. He said yes. He added that there was a person at work called Person C who used to see them together many times and suspected of something happening between them. This person knew Person X's family well and on one occasion overheard him speaking to Person X about Christianity and threatened to inform Person X's father. He followed through with this threat and informed Person X's father.
50. The applicant took Person X to church to be baptised on a specific date. Person C informed Person X's father about the relationship. Person X's father then called the applicant at work and verbally abused him. He also threatened to kill the applicant and Person X. After that the applicant continued to work in the company but he decided to leave the country and applied for a visa to Australia. He did not leave the country straight away because leaving Egypt is not easy. The easiest and quickest way was to get a Student visa for Australia.

51. Person X was beaten by her family on a number of occasions and was admitted to hospital on the last occasion she was beaten. She used this opportunity to escape to Lebanon to join her friend in 2008. The applicant was asked why he was not able to go to Lebanon as quickly as Person X had. He said when he received the threat earlier he applied for a Student visa. He was able to go to Lebanon only as a tourist for several months. His Australian visa was valid for several years and there was a possibility that he could stay longer. Person X is staying in Lebanon illegally and could be deported back to Egypt.
52. The applicant was asked if he was living at home when Person X's father found out about the relationship. He said yes, but Person X's father did not know where he lived at that time. He was asked, if he was threatened then, why Person X's father did not carry out the threat until months later. He said first they were trying to convince Person X to return and when they found out that she had left the country they came to him.
53. The applicant stated that he was assaulted by Person X's father and brother as he was leaving work. He was stabbed and beaten by a metal pipe on his back. He was hospitalised for a number of days and then released. He left Egypt a number of days later.
54. The applicant's family were aware of his relationship with Person X and the fact that he had converted her to Christianity. He had told them that he was in love with Person X and that they wanted to get married. His father agreed with him and blessed the relationship, despite being worried for his safety.

Application for Review

The Hearing

55. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
56. The applicant was represented in relation to the review by his registered migration agent.
57. At the outset, the applicant stated that he wished to clarify a matter in relation to the frequency and the nature of his contacts with Person X in Egypt. He stated that he had met Person X twice a day inside and outside of work and that they also used to communicate over the internet every night.
58. The applicant stated that he was born in City A. He departed Egypt on a specific date and arrived in Australia two days later.
59. In Egypt, the applicant lived at a named address in City A. He lived at this address until mid 2008, when he sometimes stayed with friends or slept in a monastery in a different area because he did not want people to know where he was. He was fearful because of the threats he had received from Person X's father. However, he returned home intermittently. During this time he did not go to work regularly.
60. The applicant was asked why he had never previously mentioned that he was in hiding after mid 2008. He said either he was not asked the question or had just referred to his

formal address. The Tribunal put to him that at the interview he was asked if he was living at home when Person X's father found out about the relationship and he had replied yes, but Person X's father did not know where he lived at that time. He said what he understood through the interpreter was that the delegate was asking him where his family's address was and that he had not understood the question to mean where exactly he was living.

61. The applicant stated that after completing school he entered University. He graduated with a Bachelor degree and began working in two jobs for 14 months before joining a company until the mid 2000s. He then started working for Company B. Initially, he held the job on a casual basis, but his position became permanent. He worked for Company B until a specific month in 2008.
62. The applicant explained Company B's business and his job. The nature of his job meant that his hours were not regular. Sometimes he started late or left early. From mid 2008, as a result of threats directed towards him, he started exercising caution and made sure that no one knew what time or when he was coming and going. During this period he did not go to work regularly. Sometimes he went to work three times a week and sometimes he did not go to work 10 days in a row. He was asked why he was allowed to continue working by his employer if he did not attend work regularly. He said that the company required all staff to enter their employee codes into the system before starting and finishing shifts. His two colleagues often covered for him by entering his code into the system every morning even in his absence. He was asked why no one noticed his absences. He said there was a committee who visited his section more than once. They noted his absence and reported the matter.
63. The Tribunal put to the applicant that at the interview he had claimed to have worked until his departure from Egypt without offering any further explanation. He said the way he had understood the question was not correct or may not have expressed himself properly. He stated that he worked in the company until his departure but not regularly.
64. The Tribunal put to him that it appeared that he was introducing new claims in relation to his movements and employment history to strengthen his claims or overcome the problems in his evidence identified by the delegate. He said he was not used to speaking through an interpreter and was very nervous. He also did not know whether the interpreter at the interview was Muslim or Christian and was afraid. He is not trying to remedy any problems. He was fearful of being sent back to Egypt, was under pressure and may have experienced communication problems.
65. The applicant stated that Company B had about 40 employees. About 15 people worked in the section where he worked and 7 people worked with Person X in another section. Employees were allowed to take a 20 minute break for morning tea and half an hour for lunch. He spent his breaks at the staff cafeteria. Before mid 2008 he took regular breaks, but after that he did not.
66. The applicant was asked about his passport and visa to Australia. He said he obtained his passport in the mid 2000s, because he wanted to have a passport ready in case he wished to visit his brother in Country Z or go on a trip. His visa was issued on a specific date in 2008. He decided to come to Australia after he received a call from Person X, informing him that she had been assaulted by her father and brother after they had found out about her conversion, was hospitalised and eventually fled to

Lebanon. After this conversation, he applied for the visa. After arriving in Australia, he enrolled in college and started to enquire about how he could bring Person X here. He directed these enquiries to the priest and others in the church he attended. He was told to see a solicitor, but he did not know anyone in Australia and was fearful of disclosing his story.

67. The applicant stated that he is a Coptic Christian and did not want to return to Egypt because he is fearful of Person X's father, who holds him responsible for converting Person X to Christianity and had threatened to kill him. The authorities may also find out that he has converted a Muslim girl to Christianity, which is against the law. Finally, he fears Islamist groups who will harm him if they were to find out about his role in converting Person X.
68. The applicant was asked about his relationship with Person X. He stated that the relationship began in 2007. She started working in Company B in 2007 and their relationship began as a normal friendship. She had a good sense of humour; they got along together and had many things in common. The relationship took a romantic turn when he found himself attracted to her looks, intellect and personality. They used to talk about things over the internet and one evening in 2007 he told her that he liked her. She was surprised, but despite her shyness she reciprocated his feelings.
69. The Tribunal asked him how he had spent time with Person X. He said during work hours they sat together but did not have much of an opportunity to speak to each other as the breaks were short. After work hours, it was difficult for them to find a place to spend time together as she wore the *hijab* and everyone knew he was a Christian. That is why he chose a social club in City A where they could meet. The club was about half an hour from City A and was not frequented by people except on weekends. They visited this club about five days a week after work. He was asked how he was able to take her to this club without her family becoming concerned about her absence from home. He explained that Person X lived in Town K, which is about 1.5 hours drive or 2.5 hours train ride from City A. After visiting the club, he usually drove Person X to somewhere close to a train station in her area and she went home. He was asked why he told the delegate that he went to the club once. He said this was not correct and that is why he wanted to clarify this matter at the beginning of the hearing. He met her twice a day: once at work and once after work. They also communicated over the internet every evening. This was their usual routine.
70. The applicant stated that eventually, a work colleague named Person C became suspicious that the applicant and Person X were having a relationship. The suspicion brewed when he saw the applicant and Person X sitting together at the cafeteria and away from other work colleagues. This person was not a relative of Person X as the delegate had stated in his decision. Rather, their families knew each other. Person C knew that the applicant attended the church and could not stand to see a Muslim girl sitting next to him. He did not know exactly when he started becoming suspicious, but he felt that every time he was with Person X, Person C appeared anxious, giving him angry looks. After Person X was baptised in 2008, the applicant also became aware of Person C eavesdropping on them and may have heard them speaking about Christianity to each other.
71. The applicant was asked about the circumstances that led him to introduce Person X to Christianity. He said Person X was knowledgeable and smart and he felt that he could

talk to her about his religion. She also asked him many questions. For instance, the first question she asked him was about the nature of the Trinity or how was it that Jesus was the Son of God. He explained to her these and other matters in some detail. After the relationship developed further, Person X began to tell him about her family problems and their fundamentalist beliefs, which she did not adhere to. She told him how her family were forcing her to wear the *hijab* and exerting pressure on her to get married. They did not want her to work and thought that she was too old not to be married. She rejected these strict ideas which were being imposed upon her by her family. The applicant was asked, if Person X's family were so strict, why she was allowed to work. He said this was the reason why she was having many problems with her family. They wanted her to leave work and get married, but she convinced them to allow her to work by arguing that she had a good job which paid a good salary.

72. The applicant was asked how he persuaded Person X to convert. He said he did not pressure her. Person X liked to read a lot and asked for Christian material to study. He provided her with reading material and referred her to many internet Christian sites. It was Person X's decision to convert. She was genuinely interested in Christianity and he never wanted her to embrace Christianity for his sake.
73. The applicant was asked how Person X converted. He said in 2008 Person X asked him to take her to his priest. When he made certain that her desire was genuine he took her to the church and introduced Person X to the priest. He had previously spoken to the priest about Person X. When he told the priest that Person X wanted to convert, the priest strongly rejected the idea and warned him about the associated dangers. He told the applicant that if Islamic groups or the government became aware, he would be killed or detained. He also told him that the incident may force the church's doors shut. However, the applicant felt that it was his religious obligation to evangelise and was prepared to accept the consequences. He reminded him of his obligations as a priest and told him that Christ had sacrificed himself on the cross to evangelise the word of God. He also assured the priest that no one will know about Person X's conversion. The priest eventually agreed and Person X was baptised on a specific date in 2008.
74. Person X's parents found out about the conversion sometime in the following month. Person X later told the applicant from Lebanon that her parent had received an anonymous phone call warning them that their daughter was sitting next to a Christian man at work. The applicant suspected that this person was Person C. After receiving this phone call, Person X's father started "stalking" her by going to her bedroom, looking through her books and monitoring her. On one occasion, Person X's father entered her room as she was placing the Bible inside the Koran. He took the Koran from her and found a small Bible inside. He took it from her, beat her and verbally abused her. He then began to put a lot of pressure on her to practise Islam. She refused and declared that she had converted. She was subjected to more beatings and pressure by her family. At times, she agreed to their demands just to stop their violent behaviour towards her. The last time she was beaten, she ended up in hospital. From the hospital she called the priest who had baptised her and asked for help. The priest agreed. He told her that he would send a train ticket to the hospital to be delivered to her by a visitor. Person X, with the assistance of the visitor, escaped at night time and boarded the train. She was met by someone who assisted her in departing Egypt for Lebanon. She is currently living with a Christian family in Lebanon.

75. The applicant received a phone call from Person X's father at work. He verbally abused him and swore at Christianity. He held the applicant responsible for converting Person X and threatened to kill him. The applicant became very afraid and was concerned about Person X. He was not able to escape because he did not know anything about Person X. After this phone call, he felt he was being followed. He was fearful and very cautious.
76. The applicant received his visa and called the company to resign. He was told to come in to settle the account and submit his resignation in writing. A number of days later the applicant went to settle the accounts. This took the whole day and he returned to the company to submit his resignation. As he came out he saw two people waiting for him. He was grabbed by the neck and pushed to the floor. The second person then hit him on the head, back and legs with a metal bar. They were both holding knives and started to cut him. They also kicked him in his face. They left him, presuming that he was dead. He was unconscious but later found out that someone had discovered him lying on the ground and had called an ambulance. He remained in the hospital for a number of days, during which he received treatment for the blow to his head and the cuts to his body. He knew that if they found out that he was alive, they would want to reach him, so he decided to leave as soon as possible.
77. The applicant was asked why Person X's family had waited until then to harm him. He said Person X had told him that she had told her family that he (the applicant) had nothing to do with her conversion. She had told her family that if they harmed him, she would not return to Islam. Also, he did not go to work regularly and it is possible that Person X's father had not been able to spot him at the right time. The applicant was asked how Person X's father had found out that he would be at work on that date. He said Person C worked in human resources and would have known that he was going to submit his resignation on that date.
78. The applicant was asked why he did not go to Lebanon. He said Lebanon was not going to solve their problems. They wanted to be in a country that respects freedom of belief. The applicant was asked why he did not at least visit Person X in Lebanon. He said Person X is staying there illegally and Lebanon is a Muslim country. The political situation in unstable in Lebanon and he did not want to expose her to danger. If they are stopped and asked for her passport, her status could become known. He did not want to cause her problems and get her deported to Egypt.
79. The applicant was asked why he did not leave Egypt after the threats he had received from Person X's father. He said there were many reasons. It was not easy to leave Egypt straight away and it was very difficult for him to leave without having any information about the girl he loved.
80. The applicant was asked if anything had happened after his departure. He said after his departure Person X's father and brother went to his home. They assaulted and abused his father and spat in his face. They told him that this is result of the applicant's indiscretion. They broke the door and damaged other property.
81. The applicant stated that he is in contact with Person X on a daily basis by telephone and through the internet. Person X is living with a Christian family. He is currently supporting her by sending her money.

82. The applicant presented the Tribunal with his mobile telephone, which contained a telephone number prefixed with Lebanon's country code. He also showed the Tribunal records of earlier phone calls to this number. As the Tribunal considered the presence of Person X in Lebanon to be a key element in the applicant's case, the applicant was asked if the Tribunal could call and speak to Person X. He said she is asleep and may be startled if the Tribunal were to speak to her. He agreed, however, to call and speak to Person X first in the presence of the Tribunal. The applicant's attempt was successful and he spoke to a female who appeared to have just woken up. The applicant informed the person on the othersider of the line that the Tribunal wished to speak to her. It was clear that the person was dazed and the Tribunal did not insist on continuing with the call. The Tribunal is proficient in spoken Arabic and was able to observe the loving tone adopted by the applicant while speaking to the person at the other end of the line. It was clear that the applicant was not speaking to a mere acquaintance.
83. The applicant was asked why some of Person X's emails he had produced were in English. He said the keyboard Person X is using does not support Arabic alphabet. Person X speaks Arabic, English and French. She types fast in English and knows that if she were to write to him in English he would be able to understand her.
84. The applicant was asked why he did not apply for a protection visa earlier. He said he wanted to study and find out the best way to bring Person X here. When he met his representative, he was advised to apply for a protection visa. Before then, he spoke to two solicitors in the church who told him that he would be unable to bring Person X to Australia if she is staying in Lebanon illegally.
85. At the hearing the applicant submitted photographs of a person he claimed to be Person X. Some of these photographs depicted this person in Islamic attire and with her head covered. The applicant explained that the photographs were taken of Person X in Egypt. Other photographs consisted of screenshots of the same female with her head uncovered as she appeared on a computer screen. The applicant stated that the photographs were photographs of Person X taken off a computer screen while they were chatting.
86. The applicant also submitted a DHL delivery receipt, indicating that a parcel containing clothing, a key ring and Lebanese pastry was shipped from '[Person X]' of a certain address in Tripoli, Lebanon to the applicant in Australia.

Post-Hearing Submissions

87. Following the hearing the applicant submitted letters. In her letter, Person X explained the nature of her relationship with the applicant and recounted the circumstances which had led her to leave Egypt for Lebanon. This account is consistent with the applicant's evidence. In his letter, the applicant stated that Person X, an Egyptian national, came to him in 2008, having fled from Egypt after converting from Islam to Christianity. This was "with the recommendation of the parish priest of Church D in [City A] for the purpose of caring for her and looking after her".
88. The applicant also submitted a DHL delivery receipt, indicating that the letters were sent from an address in Tripoli, Lebanon.
89. The Tribunal wrote to the applicant requesting a copy of Person X's passport.

90. A number of days later, the applicant's representative replied, stating that Person X did not hold a current Egyptian passport as "she was assisted by the Coptic priest to escape from Egypt via Alexandria shipping port"

FINDINGS AND REASONS

91. Having sighted a copy of the applicant's passport at the hearing, the Tribunal accepts that the applicant is a national of Egypt.
92. The applicant's claims are based on the Convention ground of religion. Essentially, the applicant claims to be a devout Coptic Christian. He claims to have fallen in love and formed a relationship with a Muslim female work colleague, Person X. After a period of time, Person X converted to Christianity. Her conversion and relationship with the applicant was discovered by members of her religious family, who subjected her to repeated beatings and pressured her to return to Islam. Eventually, Person X escaped to Lebanon, where she currently resides. The applicant was also threatened and severely assaulted before departing Egypt.
93. The Tribunal's initial impression of the applicant's claims was that they appeared to be somewhat far-fetched. Nevertheless, the Tribunal was impressed by the overall internal consistency of his claims and the straightforward, detailed manner in which he presented them. The Tribunal was particularly struck by the applicant's impromptu response to the Tribunal's request at the hearing to provide mobile telephone records and call Person X in Lebanon. The Tribunal is further mindful of Justice Kirby's observation that "claims of extreme persecution may often at first seem...far-fetched" (*Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 198 ALR 59, [134] (Kirby J)).
94. The Tribunal, therefore, accepts that the applicant is a Coptic Christian. The Tribunal accepts the applicant's account of his relationship with Person X, his role in introducing her to Christianity and her subsequent conversion from Islam to Christianity. The Tribunal accepts that his relationship with Person X and the fact of her conversion were eventually discovered by Person X's family. Person X was subjected to continuous harassment and physical assault; and eventually escaped Egypt for Lebanon with the assistance of a Coptic priest. The Tribunal accepts that the applicant was initially threatened and sometime later, in 2008, he was severely assaulted by members of Person X's family. The Tribunal accepts that this incident amounts to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the applicant's religion and his role in Person X's conversion were the essential and significant reasons for the harm he suffered.
95. A variety of sources claim that Coptic Christians have been regularly attacked in recent years by what has been described as 'Muslim militants', 'Islamic extremists', 'Islamic fundamentalists' and 'radicalized Muslims' (See Khaldun Center for Development Studies 2008, *Civil Society and Democratization in the Arab World Annual Report*, p. 63 http://www.eicds.org/pdfs09/reports/Annual_Report_2008.pdf.; 'Egypt' 2009, International Coalition for Religious Freedom website, 25 November http://www.religiousfreedomcom/index.php?option=com_content&view=article&id=244&Itemid=56; United States Commission on International Religious Freedom 2009, *USCIRF Annual Report 2009 – The Commission's Watch List: Egypt*, 1 May <http://www.unhcr.org/refworld/docid/4a4f272d38.html>; 'Sectarian violence seen on the

march in Egypt' 2006, *The Washington Times*, 20 April
<http://www.washingtontimes.com/news/2006/apr/20/20060420-103148-2006r/> ;
 'EGYPT: Egyptian Muslims Mount Brazen, Large-Scale Attacks on Christians' 2010,
Compass Direct News, 8 January; 'Mourners Protest Islamic Attacks on Copts in
 Egypt' 2009, *Compass Direct News*, 23 September
<http://www.compassdirect.org/english/country/egypt/9817/>). Most recent reports of
 sectarian violence towards Copts in Egypt refer to the perpetrators being 'Muslim
 mobs' or 'Muslims from the area' as the majority of incidents related to local disputes
 over land, the construction of churches, retaliation for the death of a Muslim,
 allegations regarding sexual harassment and alleged romantic relationships between a
 local Copt and a Muslim (Carl, M. 2009, "EGYPT: Muslims kill believer over photos
 of girlfriend 'Increasingly, Egypt is not a safe country to be a Christian'", *World Net
 Daily*, 27 October; Abdelmessih, M. 2009, 'EGYPT: 'Egyptian Christian man attacked
 by mob for frequenting a Muslim brothel' *Assyrian International News Agency*, 12
 November; 'CSW calls for official investigation into Cairo church riot' 2008, *Christian
 Today*, 5 December
<http://www.christiantoday.com/article/csw.calls.for.official.investigation.into.cairo.church.riot/22071.htm>; EGYPT: Two Coptic Christians killed on the eve of Orthodox
 Pascha' 2009, *Asia News IT*, 20 April; Egyptian Initiative for Personal Rights 2009,
Freedom of Religion and Belief in Egypt Quarterly Report, July-September, pp.10-19;
 Egyptian Initiative for Personal Rights 2009, *Freedom of Religion and Belief in Egypt
 Quarterly Report*, January-March, pp.12-14; and Egyptian Initiative for Personal Rights
 2009, *Freedom of Religion and Belief in Egypt Quarterly Report*, April-June, pp.13-17)

96. A number of Christian sources claim that Muslim converts to Christianity in Egypt often live in hiding for fear of retaliation from 'Islamists' and 'extremists' ('EGYPT: Convert's religious rights case threatens Islamists' 2009, *Compass Direct News*, 12 May; 'Egypt's Christians face fresh attacks and legal battles' 2009, *Christian Today*, 10 July
<http://www.christiantoday.com/article/egypts.christians.face.fresh.attacks.and.legal.battles/23782.htm>). However, no reports were found of attacks on Muslims who had converted to Christianity or on Coptic Christians engaged in proselytisation by Islamist groups. This could be attributed to a possible lack of reporting of such incidents to local police who would not offer protection to Coptic Christians in such circumstances as outlined below.
97. On the basis of the above information, the Tribunal is satisfied that there is a real chance that he would face significant harassment, serious physical harm by members of Person X's family in Egypt. The Tribunal is satisfied that such treatment would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the harm the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal is satisfied that the applicant's religion is the essential and significant reasons for the persecution feared by him as required by paragraph 91R(1)(a) of the Act.
98. Numerous sources indicate that the Egyptian authorities do not offer effective protection to Coptic Christians who complain of harassment or attack by Muslim perpetrators. Coptic Christian complainants are often pressured by government authorities to engage in reconciliation sessions and even arrested themselves as a means

to avoid prosecuting the alleged Muslim assailants. A range of recent reports from non-government organisations and government sources claim that despite an increase in violent attacks on Christians by Muslims in recent years, the authorities failed to investigate many incidents (Human Rights Watch 2010, *World Report – Egypt* <http://www.hrw.org/en/node/87709> ; US Department of State 2009, *International Religious Freedom Report 2009 – Egypt*, September, Introduction & Section 3; The Cairo Institute for Human Rights Studies (undated), *The Situation of Freedom of Religion and Belief in Egypt* , para 9-13 <http://www.cihrs.org/Images/ArticleFiles/Original/423.pdf>; United States Commission on International Religious Freedom 2009, *USCIRF Annual Report 2009 – The Commission’s Watch List: Egypt*, 1 May <http://www.unhcr.org/refworld/docid/4a4f272d38.html>). Instead, the Egyptian government often sponsors "reconciliation sessions" which the US Department of State claims “obviated the prosecution of perpetrators of crimes against Copts and precluded their recourse to the judicial system for restitution. This practice contributed to a climate of impunity that encouraged further assaults” (US Department of State 2009, *International Religious Freedom Report 2009 – Egypt*, September, Introduction). On the basis of this information, the Tribunal is not satisfied that the applicant would be afforded protection by the state. The Tribunal is further satisfied that it would be unreasonable for an individual in the applicant’s circumstances to relocate internally.

99. For the reasons outlined above, the Tribunal is satisfied that the applicant’s fear of persecution is well-founded.
100. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, Egypt. The Tribunal finds that the applicant is not excluded from Australia’s protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

CONCLUSIONS

101. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

102. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. PRRRNM</p>
