

AT AUCKLAND

Appellant:	AB (Egypt)
Before:	S A Aitchison (Member)
Representative for the appellant:	The appellant represented himself
Counsel for the respondent:	No Appearance
Date of hearing:	25 July 2011
Date of decision:	15 September 2011

DECISION

INTRODUCTION

[1] This is an appeal under section 194(1)(c) of the Immigration Act 2009 (“the Act”) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant either refugee status or protection to the appellant, a citizen of Egypt.

[2] Pursuant to section 198 of the Act, the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) as a protected person under the Convention Against Torture (section 130); and/or
- (c) as a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[3] The appellant fears he will be killed as a consequence of an Al-tar blood feud between his and another family tribe. He also fears serious harm or death from members of the Muslim Brotherhood in Egypt because he is a member of the Nasserist Democratic Arab Party (Nasserist Party). The primary issue in this case is whether the appellant's claims are credible.

[4] Given that the same account is relied upon in respect of all three limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[5] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[6] The appellant, and his father, were born in Cairo, Egypt. The appellant's paternal grandfather was born in a province in Upper Egypt. He moved to Cairo when he was approximately 19 years of age to study.

[7] The appellant has three siblings. His eldest brother, a pilot, lives in Cairo. His other brother lives in the United States, and his sister in Canada.

[8] The appellant completed a university degree in accountancy in Cairo. Upon graduation, he became self-employed as an accountant, and later worked as a trader and established an airline company with his eldest brother.

[9] In 1993, the appellant joined the Nasserist Party, which promoted the beliefs of Jamal Abdul Nasser. As a party member, he was responsible for the New Egypt Council for Youth in one area in Cairo, educating the youth in the principles of the party. After a year in this position, he worked as a Zionist recognition member for a year, detecting Zionists trading on the streets and informing people not to support them. He also attended three to four demonstrations against the government. He ceased involvement in the party because it split and lost its unity, but maintained his membership.

[10] The appellant did not experience any difficulties relating to his refugee claim while living in Egypt. He travelled to New Zealand on holiday on 29 December 2006.

[11] While living in New Zealand, the appellant entered into a relationship with a New Zealand citizen. They married on 27 August 2007. On the basis of this marriage, the appellant made an application for residence in New Zealand.

[12] In the middle of 2008, the appellant received a telephone call from his eldest brother in Egypt advising him that a member of his family tribe had killed a member of another tribe in Upper Egypt, and that the appellant, as second in line in the family, was at the top of a list of persons to be killed as part of this Al-tar blood feud.

[13] There is a long-standing history of Al-tar between the two mentioned family tribes which originated in Upper Egypt over a land dispute. The appellant's grandfather may have left Upper Egypt to live in Cairo to avoid these problems. The customary practice of Al-tar is that where the first person on a list to revenge is not contactable, the second on the list will be targeted. The list is compiled having regard for the person's birth order in a family in relation to the person killed, and in terms of their education, employment, age, and level of significance in the family. The appellant's eldest brother and three male cousins were also on the list of potential targets. His brother, a pilot, was regularly out of the country, and moved address in Cairo after this matter arose. Another of the appellant's cousins left his employment and went into hiding.

[14] The eldest brother told the appellant not to return to Egypt. He did not tell the appellant who had been murdered or had committed the murder, nor did the appellant enquire further into this. His brother received this news from a named cousin who travelled frequently between Upper Egypt and Cairo, and who first called the appellant's brother, then met with him to discuss the matter. His brother did not tell the appellant any more details over the telephone because a third party might be listening, who could endanger the appellant, and even kill him in New Zealand. The appellant also received a telephone call from one of his cousins, who told him about the matter.

[15] At the time of the hearing, the appellant knew of no revenge killing having taken place as a result of this incident, although he did not rule out the possibility that an Al-tar killing may have occurred during the January 2011 riots in Egypt, under this guise.

[16] The appellant's marriage to his wife was dissolved on 18 April 2010. His application for residence was declined on 12 June 2010.

[17] The appellant lodged a claim to refugee status on 7 July 2010, which the RSB declined on 17 September 2010. On 28 September 2010 he lodged an appeal with the Refugee Status Appeals Authority, the body responsible for hearing such appeals under the 1987 Act, which was then in force. The Tribunal wrote to the appellant on 11 November 2010 advising that the Immigration Act 2009 would come into force on 29 November 2010 and that under that Act the appellant was permitted to make a protected person claim to the RSB or before the Tribunal. The Tribunal advised that in the absence of any response to its correspondence it would proceed to determine the appeal on the evidence and submissions before it. The appellant did not respond to this correspondence. The Tribunal heard the appellant's appeal for refugee status, and protected person claim, on 25 July 2011.

[18] On 4 August 2011, the Tribunal wrote to the appellant asking him to respond to several questions posed by country information. The appellant's response was received by the Tribunal on 31 August 2011.

[19] The appellant claims that he will be killed as a consequence of the blood feud. He also claims that as a member of the Nasserist Party he will be at risk of serious harm at the hands of the Muslim Brotherhood Party if that party gains power in the upcoming election in Egypt. This risk arises out of the history of hostility and bloodshed those parties share.

THE REFUGEE CONVENTION – THE ISSUES

[20] 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."

[21] In terms of *Refugee Appeal No 70074* (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?

Credibility

[22] For the reasons that follow, the Tribunal finds that the appellant's account of the Al-tar feud is not credible. It rejects as non-credible the appellant's claim to be at risk of serious harm or death as a consequence of the blood feud. The appellant's evidence in this regard was vague, mobile, inconsistent and contradictory.

When the appellant received news of the blood feud

[23] The appellant gave precise evidence to the Tribunal about the dates relevant to his immigration history, including the course of his residence application in New Zealand. In contrast, his evidence of receiving news of the blood feud was vague. When asked by the Tribunal when he received a telephone call from his brother informing that he was at risk of death as a consequence of a blood feud, the appellant stated that he had heard this in 2008. When pressed to give a more specific date he stated that he had possibly heard this in the middle of 2008. When the Tribunal suggested to the appellant that it might expect him to have a clearer memory of the time he received this news, given the critical nature of this information, he merely stated that he did not. When reminded that he had given precise details relating to his immigration history, he stated that he remembered these dates as he had thought that he would be successful in obtaining residence in New Zealand.

Who informed the appellant's brother of the blood feud

[24] The appellant gave mobile and inconsistent evidence about who informed his brother of the blood feud. When asked by the Tribunal who had informed his brother of the existence of the blood feud, the appellant stated that it could be a cousin. When questioned further on this point he stated that the customary practice in such cases was to receive a telephone call from someone declaring the fact of a blood feud, and when later relaying this fact to state that someone from a named village had called with this information. He stressed that his brother did not tell him who had made contact with him by telephone. However, when reminded that he had told the RSB that his brother had learned this news from a named cousin, he stated that he presumed that his brother had heard from this person as he was the only family member in Upper Egypt who had his brother's telephone

number. Later, he stated, with certainty, that his brother had, in fact, told him that he received the news from this named person. When asked why he had not provided this detail to the Tribunal earlier he explained that he did not want to give unclear evidence.

Means of contact

[25] The appellant's evidence before the RSB was that news of a blood feud was never conveyed by telephone. This was prohibited and such news must be delivered in person. In contrast, he told the Tribunal that he received the news by telephone. When asked to explain this fundamental discrepancy the appellant claimed that his brother had received a telephone call from his cousin in Upper Egypt, and they had arranged to meet in person, whereupon his brother learnt the news of the blood feud.

[26] That explanation is rejected. The appellant was clearly attempting to deflect attention from the inconsistent manner in which he had given evidence about a core element of his claim.

Cause of grandfather's relocation and origin of blood feud

[27] The appellant told the RSB that his grandfather had left Upper Egypt because of a blood feud. When giving evidence before the Tribunal however, the appellant stated that his grandfather had left Upper Egypt and relocated to Cairo to attend a war academy there. When asked whether there was any other reason for his leaving Upper Egypt the appellant stated that there was not. When reminded that he had stated to the RSB that his grandfather had left Egypt as a result of a blood feud the appellant responded, simply, that he had presumed this fact.

[28] The appellant's evidence of the origin of the blood feud was also vague. He believed that it originated because of a land dispute. When asked by the Tribunal whether stories of the origin of the long-standing blood feud between two family tribes had been passed down to him through the generations, he stated that it had not. When pressed that the history of families, particularly concerning tribal custom are often, of necessity, passed down, he stated that mothers are responsible for relaying the history of blood feuds and that his mother did not originate from Upper Egypt. His father never spoke of the matter and had also not been born in Upper Egypt.

Letters in support

[29] In support of his claim, the appellant presented letters from three persons, including his eldest brother, a Lieutenant General in the Ministry of Home Affairs, and a Counselor in the Supreme Court in Egypt, each dated 19 August 2010. These letters assert that the appellant had to leave Egypt as a consequence of the claimed blood feud.

[30] The letter from his brother provides:

[...]

The southern area – Upper Egypt – is still up governed by ethnic customs. He is wanted for revenge because our tribe was allegedly responsible of the murder of a member of another prominent tribe within the same area.

Therefore, my brother had to leave Egypt or else he would have been murdered by now, another victim of old habits and traditions.

[...]

[31] The letter from the Lieutenant General in the Ministry of Home Affairs provides:

[...]

Under my knowledge, he had to leave his home town to the capital Cairo due to attempted murders claiming his life, then he had to leave Egypt altogether for survival, and I believe if he returned back he will be murdered due to stupid, ancient and brutal customs.

[...]

[32] The correspondence from the Counselor in the Supreme Court in Egypt provides:

[...]

And since he belongs to one of the prominent and most prestigious tribes he is wanted for revenge because his tribe was allegedly responsible of the murder of a member of another prominent tribe within the same area.

Hence, came the necessity for him to enter Egypt altogether or else he is to be murdered brutally jut in a racial way of keeping with the traditions.

[...]

[33] These letters contradict the appellant's claim before the RSB and the Tribunal that he learnt about the blood feud after arriving in New Zealand in approximately mid-2008. When asked to respond to this contradictory evidence, the appellant stated that the letters had been written, and should be read, in the light of what would happen to him *if he were* to return to Egypt. He also stated that

if he were attempting to conceal the truth he would not have presented these letters.

[34] Contrary to these assertions, the letters are unequivocal, and consistently state that the appellant had to leave Egypt because of the blood feud. Further compounding this contradictory evidence is the appellant's evidence that his eldest brother was the very person who first informed him of the existence of the blood feud, and did so after the appellant arrived in New Zealand, in mid-2008, not prior to his leaving Egypt. This presents a fundamental discrepancy in the appellant's evidence seated at the core of his claim.

Conclusion on credibility

[35] The appellant's account in connection with the origins of the blood feud and how he came to be aware of it was vague, mobile and inconsistent in respect of key aspects. On the basis of the combined effect of these concerns the Tribunal rejects the appellant's claim to be at risk of serious harm because of a blood feud in Egypt. His evidence concerning this aspect of his claim is rejected in its entirety.

[36] The Tribunal finds however that the appellant is an Egyptian man who has lived in Cairo, Egypt most of his life. He was a member of the Nasserist Party in Egypt, and has been living in New Zealand since December 2006. It is on that basis that the Tribunal will consider his claims.

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

[37] The "being persecuted" element of the refugee definition is interpreted by the Tribunal as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection; see J C Hathaway, *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [38]. As such, the concept of persecution is a construct of two essential elements, namely, the risk of serious harm, defined by core norms of international human rights law, and a failure of state protection.

[38] When assessing the standard of state protection, the Tribunal must consider whether the protection available from the state will reduce the risk of serious harm to below the level of being well-founded – or, as interpreted in

New Zealand, to below the level of a real chance of serious harm; see *Refugee Appeal No 71427* (16 August 2000) at [66] and *Refugee Appeal No 75692* (3 March 2006).

[39] The appellant claims that in the elections to be held in late 2011 in Egypt, the Muslim Brotherhood Party will gain power and kill members of the Nasserist Party, with whom they share a history of hostility and bloodshed. As a member of the Nasserist Party he claims he will be at risk of serious harm at the hands of the Muslim Brotherhood.

[40] A revolution, which began on 25 January 2011 in Egypt, led to the resignation of the President Hosni Mubarak on 11 February 2011. The Supreme Council of the Egyptian Armed Forces (SCAF) took control of the affairs of the country, and dissolved the former ruling National Democratic Party. Since this time, an estimated two dozen political parties have formed, including the recently recognised Freedom and Justice Party (FJP), the party of the Muslim Brotherhood, who plan to contest between 45-40 percent of the parliamentary seats in the upcoming elections in September 2011; see International Crisis Group *Popular Protest in North Africa and the Middle East (I): Egypt Victorious?* Middle East/North Africa Report No 101 (24 February 2011); Congressional Research Service, J M Sharp, *Egypt in Transition* (17 June 2011). Significantly, while the Muslim Brotherhood (as a group which has advocated to establish an Islamic state in Egypt), is an illegal organisation in Egypt, it can now form political parties on other platforms; see United States Commission on International Religious Freedom *USCIRF Annual Report 2011 – Countries of Particular Concern: Egypt* (28 April 2011).

[41] It is premature to try to predict the political landscape that will emerge in Egypt in any subsequent elections. It is also premature to predict the role that the Muslim Brotherhood will play in the future.

[42] While the Muslim Brotherhood and other Islamist political groups have used violence in the past to achieve their aims, including the assassination of President Anwar al-Sadat in 1981, there is no evidence that they will attack members of the Nasserist Party as the appellant claims.

[43] On the contrary, news articles following the recent change in the presidency have reported discussions and collaboration between the Muslim Brotherhood and Nasserist Party. One article states that a coalition, including the Nasserist Party and Muslim Brotherhood, amongst others, announced its demands, including the

fall of the Prime Minister, Ahmed Shafiq's, government in a press conference; see Almasryalyoum "National Coalition demands the fall of Shafiq's government" (23 February 2011).

[44] Another article in the Al-Ahram Weekly by El-Din G E, "Reaching out to old foes" (15-21 April 2010) reported that the Muslim Brotherhood's strategy includes "ending historical enmity and mending fences with leading opposition parties such as Wafd, Tagammu and the Nasserists." The article states that on 4 April 2011, a delegation of the Muslim Brotherhood met with leaders of the leftist Nasserist Party and that Nasserists welcomed Brotherhood leaders. The Deputy Chairman of the Nasserist Party stated that their meeting focussed on exchanging views on political and constitutional reform and preparations for the upcoming parliamentary elections. While the Nasserist Party's secretary for political affairs opposed the dialogue, a spokesman for the Muslim Brotherhood stated that they shared a "common vision" with the Nasserists.

[45] In response to these country reports, the appellant submits that while the Muslim Brotherhood previously expressed the desire for "peaceful solutions" with a former president Abdul Nasir, it later attempted to assassinate him. He further submits that while all opposition groups might be united against the former regime, this does not mean that they agree on uniting with "all political forces". The appellant refers to the book, "Path Milestones" by Sheikh Hassan Albana, in which he submits the Muslim Brotherhood are depicted as declaring "All the good is in us", a saying that excludes those not belonging to the Muslim Brotherhood. Their goal, the appellant submits, along with other Islamic groups, is to convert the world into Islamic Emirates.

[46] Notwithstanding these submissions, the Tribunal finds it is entirely speculative to claim that members of the Nasserist party, including the appellant, are at risk from members of the Muslim Brotherhood. On the evidence available, the Tribunal finds there is no real chance of the appellant being persecuted in Egypt on account of being a member of the Nasserist Party or for the activities he took part in as a member.

[47] In all the circumstances of this appeal, taking into consideration the particular characteristics of the appellant, the Tribunal finds that the appellant does not have a well-founded fear of being persecuted upon return to Egypt. Having answered the first framed issue in the negative, the second issue does not fall for consideration.

Conclusion on Claim to Refugee Status

[48] For the reasons mentioned above, the Tribunal finds the appellant is not a refugee within the meaning of Article 1A(s) of the Refugee Convention.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[49] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[50] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Conclusion on claim under Convention Against Torture

[51] The appellant relies on the same evidence in support of his claim under the Torture Convention as he did to support his claim under the Refugee Convention.

[52] The Tribunal is satisfied that the appellant has not established that there are substantial grounds for believing that he would be in danger of being subjected to torture if he now returns to Egypt.

[53] The appellant is not entitled to be recognised as a protected person under section 130(1) of the Act.

THE ICCPR – THE ISSUES

[54] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing

that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

Conclusion on Claim under ICCPR

[55] Again, the appellant relies on the same evidence in support of his claim under the ICCPR as he did to support his claim under the Refugee Convention.

[56] The Tribunal reaches a similar conclusion as on the claim under the Refugee Convention. The facts as found do not establish substantial grounds for believing that the appellant would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if he returns to Egypt.

CONCLUSION

[57] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) Is not a refugee within the meaning of the Refugee Convention;
- (b) Is not a protected person within the meaning of the Convention Against Torture;
- (c) Is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[58] The appeal is dismissed.

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