

071601913 [2007] RRTA 255 (16 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071601913

DIAC REFERENCE(S): CLF2007/70933

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: R Mathlin

DATE DECISION SIGNED: 16 October 2007

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**

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).

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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:

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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

In considering this application the Tribunal had before it the Department’s file CLF2007/70933 relating to the applicant, and the Tribunal file. The Tribunal also has had regard to the material referred to below from a range of sources.

According to information provided in his protection visa application, the applicant is a single male in his mid twenties. He was born in Egypt and was educated there. After graduating he managed the family business which his relative had established in the late 1990’s.

The applicant stated that he is a deacon in his local church, working with youth experiencing difficulties, including converts from Islam, and Christians who are under pressure from Gamaa Islamia to convert to Islam.

The applicant claimed that he left Egypt because he was persecuted by Egyptian security police and local Islamic extremist groups. He claimed that this persecution took place because of his religion, nationality and membership of a particular social group, "to serve my church".

The applicant stated that he was informed by a priest of his church that a teenage Christian girl had been missing for a few days and was believed to have been kidnapped by Islamic groups. The applicant and the priest contacted her family and the applicant accompanied them to the police station to report the incident to the authorities. A few days later Person A, the police officer, called the applicant to attend the police station, and told him that the girl had converted to Islam. The applicant did not believe this and told the church's lawyer to investigate the matter. The applicant and the girl's family went to the police station and asked to see her, but they were told that she was being protected by a Muslim family. They sent complaints to the various government bodies.

Soon after they were invited to the police station to see the girl. She appeared to be in bad shape but the police refused to send her to hospital.

The applicant reported the case as a kidnapping. They wrote to the head of the Church seeking legal action against the local police.

The applicant went to the priest, Father Z, and informed him of events; on the same day he told those present at a youth religious meeting what had happened, and asked them all to write an official complaint to the Egyptian authorities, and to international Coptic organisations in the United States and Canada.

That night the applicant was arrested by an officer from the local station. He was threatened with criminal charges if he did not drop the matter.

Subsequently the applicant received threatening telephone calls saying that his business would be destroyed and he would be killed if he did not stop his religious activities.

The following month he was attacked by a number of Islamic persons while sleeping at home. The applicant was injured. They said that if he went back to church they would kill him. They left him unconscious. The applicant's family member's took him to hospital and called the police, who refused to take any action.

Later the applicant was arrested at midnight by a number of police officers. He was detained for a few days and nights. He was accused of committing adultery with a Muslim girl, beaten and tortured. The applicant was told either to convert to Islam or he would be charged by the police and attacked by the Islamic groups.

The application was refused by the delegate, who had doubts about the credibility of some of the applicant's claims. In any event, she found that the mistreatment feared by the applicant was directed towards him because of his actions and not for any Convention reason, and then proceeded to consider whether, if false charges were laid against him, he would not receive a fair trial for reason of his religion. She concluded, on the basis of independent material, that this was not the case.

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 (Standard) and English languages. The applicant was represented in relation to the review by his registered migration agent.

I asked the applicant to tell me about the circumstances in which he left Egypt. He said that he was persecuted because of his service in the church. This service involved assisting people in need, and he also taught Sunday school. In late 2006 he was informed by the priest (Father Z) that a girl whom he taught had been kidnapped a couple of days before. The priest informed other church members at the same time, but the applicant said that the priest himself did not want to get involved straight away.

The applicant said that there were many priests involved in this matter, not just Father Z. However, he said that Father Z had sent documents about his situation to Father Y in Sydney. Father Y is the applicant's local parish priest in Sydney.

The applicant then went with the father of the girl and two other people from the church (Person R and Person S) to the police station. They made a statement and left their contact numbers.

The applicant was then telephoned and asked to meet with a police officer. He said that he was well known at the police station because a relative was formerly an army officer. The applicant was told that the girl had converted to Islam. The applicant did not believe this, because she was from a very religious family; however, he went to talk to her family. The applicant became quite distressed as he gave his evidence about the reaction of the family to this news. The next day the applicant went to visit the family again, and escorted them to the police station. They were told that they were not allowed to see her.

The girl's father then started sending complaints to the governor of the province; these were supported by the church workers.

Later, the applicant went to the police station with Father Z to meet the girl. The applicant said that she was surrounded by Muslim people. She looked as though she had been beaten; she was conscious but looked exhausted and screamed and cried to be taken home.

I asked the applicant a number of questions about the claims made in his written statement about the publicity which he claimed had been given to this case. He said that everyone in the church community knew what had happened. I observed that I had found no reference to this particular alleged kidnapping on any Coptic website. The applicant said that not all cases are publicised; not all the problems that happen in Egypt are on the website. He said that maybe because of the reputation of the girl it didn't go any further; they did not tell all the details. The applicant said that he himself did not contact the international Coptic organisation. I noted that he said that he had encouraged others to do so and he replied that not everyone in Egypt is educated and able to write reports that would appear on a website.

I asked the applicant whether he had followed the case up since he had been in Australia. He said that he had not been able to because of psychological problems he had. Because of his involvement with the kidnapping case he had been imprisoned, beaten up and accused of a serious crime. He had to escape.

I asked whether the other youths from the church had experienced similar problems. He said that they had also been imprisoned; he was released because his family had interfered, but the others were still there as far as he knows. I asked at what point his family had intervened. He said that they intervened at the start; one relative is well known because of his army service.

At this point the applicant asked for a brief adjournment. When the hearing resumed he said that he had a bad headache and was unable to continue. The hearing was adjourned.

Meanwhile the applicant's adviser was asked to submit the translations of the documents he had referred to in his letter. After the hearing he informed the Tribunal in writing that the documents with translations had been sent by express registered post that day.

A further hearing was scheduled to take place. At the hearing the following documents, with translations, were submitted to the Tribunal:

- Report by a Senior Consultant Psychiatrist at a medical centre stating that the applicant had been referred to him in late 2006, and that he had seen him on several occasions and diagnosed with depression which he treated. This Psychiatrist was of the view that the applicant's history of physical and emotional abuse, trauma, "losses and lack of locus of control", and feelings of injustice were contributory factors to his illness.
- Various letters from members of the Coptic church in Egypt that were prepared at the request of the applicant to support his case: letter from Person C, a priest from the applicant's church, essentially confirming the applicant's account; a letter signed by two priests, and written to a bishop informing the bishop of the events recounted by the applicant, and referring to the "previous reports" sent at the time; a letter with an illegible signature, but which according to the applicant was written by a bishop in response to the letter from the priests, and which mentions that letter; a letter written by one bishop to another bishop, asking him to take care of the applicant, and outlining the events above.
- Report by a solicitor and member of the Al-Kaleme Centre for Human Rights, stating that he was requested to write the report by the applicant, whom he knew personally as an active steward in the church. He stated that the applicant first informed him about the kidnapping of the girl; that the applicant was recently attacked by "terrorist groups"; that the following day he was arrested and detained for several days; and that he was then referred to State Security Prosecution which issued a warrant to attend investigations in relation to state security offences.
- Two documents purporting to be summonses requesting the applicant to appear at the State Security Department for investigation in relation to

charges of inciting sectarian strife and contempt for religions. The investigating officer was named.

Country Information

Relevant extracts from the United States Department of State *Religious Freedom Report* for 2007 state that:

...estimated several thousand persons were imprisoned because of alleged support for or membership in Islamist groups seeking to overthrow the Government. The Government stated that these persons were in detention because of membership in or activities on behalf of violent extremist groups, without regard to their religious affiliation. Internal security services monitor groups and individuals suspected of involvement in or planning for extremist activity. Internal security agencies regularly detain such persons, and the state of emergency allows them to renew periods of administrative detention ad infinitum.

Religious Conversion

...were no reports of forced religious conversion carried out by the Government; however, there were again reports of forced conversions of Coptic women and girls to Islam by Muslim men. Reports of such cases are disputed and often include inflammatory allegations and categorical denials of kidnapping and rape. Observers, including human rights groups, find it extremely difficult to determine whether compulsion was used, as most cases involve a female Copt who converts to Islam when she marries a Muslim male. Reports of such cases almost never appear in the local media....

...are reports of government authorities failing to uphold the law in sensitive conversion cases. Local authorities sometimes allow custody of a minor Christian female who "converts" to Islam to be transferred to a Muslim custodian, who is likely to grant approval for a marriage opposed by the girl's Christian parents. (Although the minimum age for marriage is 18 for both men and women, girls who are at least 16 but not yet 18 may marry if they have the approval of their parents, or, in cases where the girl asserts that she has converted to Islam, with the approval of a Muslim guardian.)

...to the Government's Instructions for Notaries Public, which implement Law 114 of 1947, persons age 16 and above may convert to Islam without parental consent. Christian activists assert that ignorance of the law and social pressure, including the centrality of marriage to a woman's identity, often affect a girl's decision to convert. Family conflict and financial pressure also are cited as factors.

A report issued by the Center for Religious Freedom (Center for Religious Freedom, 1999, *Egypt's Endangered Christians, Summary of Findings*, June, accessed 1 November 2006 via <http://www.freedomhouse.org/template.cfm?page=1>) concludes that the religious freedom of Egypt's 6 to 10 million strong Coptic Christian community is compromised, and that "while generally able to practice its religion, [it] is threatened in varying degrees by terrorism from extreme Islamic groups, by the abusive practices of local police and security forces, and by discriminatory and restrictive Egyptian government policies". The report goes on to state that the

Egyptian government had failed to "take adequate measures to prevent the persecution and abuse of Copts at the local level, whether the perpetrators are terrorists, members of the community, or the government's own security forces. The report concluded that "Copts are persecuted by radical Islamic groups and at times by local police and other security officials", stating that while the "Egyptian government does not have a policy to persecute Christians, it discriminates against them and hampers their freedom of worship, and its agencies sporadically persecute Muslim converts to Christianity", and that "The cumulative effect of these threats creates an atmosphere of persecution". This situation exists against a background whereby:

Egypt has signed the International Covenant on Civil and Political Rights, which guarantees religious freedom, Islam is the state religion and the Constitution states that Islamic law is the major source of legislation. Egypt is also under attack by terrorist groups who want to enforce an Islamic state; but perhaps the more significant pressure for Islamization comes from militant but ostensibly nonviolent Muslims, such as those in the now-banned Islamic Brotherhood. As a result of such pressure, the legal system is increasingly incorporating Islamic law: for example, there is now a de facto law of apostasy. Sharia law in Egypt denies equal rights to Christians and non-Muslims in areas of conversion, marriage, and parenting.

The Report states that police at the local level frequently harass Christians, particularly converts, either out of sympathy with or fear of Islamic radicals, and that "While Egypt has no explicit law against apostasy, the influence of sharia law on the civil code is creating a de facto law. Converts from Islam to Christianity have been imprisoned and tortured by the police and charged with "insulting religion" or "disrupting national unity." In recent years, the security forces have tended not to deal with converts directly but to inform their families or others in the area, who have in turn mistreated and even killed the convert with impunity."

Significantly, the Report notes that:

addition, any report from Egypt on the question of religious persecution must be done with the knowledge that people who say that there is persecution can put themselves in real danger, either from terrorists or abusive local officials, or be liable under the law for possible capital offences. Any public statement must be judged against the knowledge that the speaker lives in a situation where it is illegal and can invite harsh punishment to "damage" "national unity or social peace," incite "sectarian strife," or, in the case of clergy, "insult or criticise" "an act by the administration."

While dated, this report is not contradicted by more up to date information. While various reports, for example the United States Department of State *Country Reports on Human Rights Practices* and *Religious Freedom Reports* for subsequent years discuss various measures taken by the Egyptian government to protect Coptic Christians and to reduce religious tensions, it is evident that underlying tensions remain and that discrimination and in some cases, persecution continue.

FINDINGS AND REASONS

Having sighted the applicant's passport at the hearing I am satisfied that he is a national of Egypt and that he is outside the country of his nationality. There is no

evidence before me to suggest that he has the right to enter or reside in any other country. Accordingly, his claims to refugee status will be assessed as against Egypt, as his country of nationality.

The applicant claims that he faces persecution if he returns to Egypt because of his religion. He claims that after he became involved in seeking to expose the alleged kidnapping of a Christian girl by Muslims, he was harassed and persecuted by the local police. He claims that the police threatened to lay serious criminal charges if he did not desist, and that he fled before they could do so.

I find that the applicant is a generally credible witness and consider that his account of the circumstances leading to his departure from Egypt, and the reasons for which he does not want to return, should be accepted. The account of events presented by the applicant at the hearing was reasonably consistent with that presented in his written statement in support of the protection visa application; to the extent that there are minor differences, I accept that this is because the applicant's written statement was not prepared by a qualified interpreter, or a person with any professional expertise. At the hearing the applicant was able to explain any apparent inconsistencies, and also to expand on and clarify additional matters to my satisfaction. The applicant has provided the Tribunal with a number of documents which corroborate various aspects of his claims, and his claims are broadly consistent with the independent country information set out above.

Given the foregoing, I accept that the applicant is a Coptic Christian who was active in his local church, and who fell foul of the local police when he became involved in the case of a local girl whose family, and other members of the Coptic Christian community, made allegations that she had been kidnapped and forcibly converted to Islam with the connivance of the police. It is not necessary for me to make findings about whether the girl was in fact kidnapped or not. It is evident from the independent country information referred to above, and the documentary material submitted by the applicant, that the Coptic community, as a whole, believes that such kidnappings occur frequently. The applicant's response to the events he described is totally plausible, in these circumstances. The country information also indicates that there are circumstances in which the state authorities do fail to provide adequate or effective protection to Coptic Christians, that discrimination against Coptic Christians by local police is not uncommon, and that if complaints contain a religious element, serious charges may be laid against the complainant (see Center for Religious Freedom report, above). In these circumstances, and in the light of the medical evidence submitted by the applicant, I accept that as a result of his attempts to intervene with the police on behalf of the church community and the parents of the girl, the applicant was detained by the local police, mistreated and threatened. I am satisfied that the mistreatment suffered by the applicant previously, which includes arbitrary detention, physical mistreatment and serious threats to his life and liberty, is sufficiently serious as to constitute persecution. I accept that, should the applicant return to Egypt, there is a real chance that the local police would continue to pursue him in relation to this matter. I accept that possible future harassment by the police could include the laying of false criminal or security charges against the applicant. I am further satisfied that if the police were to knowingly lay false charges in relation to extremely serious criminal offences against the applicant, in order to intimidate him, this too could constitute persecution. I accept that there is a real chance that the applicant could still

be of interest to the local police in relation to these events should he return to Egypt now or in the reasonably foreseeable future; moreover, I am satisfied that there is a real chance that the applicant may continue with his activism within the church, and that this could lead to further confrontations with the police which might in turn lead to similar persecution in the future.

While the delegate considered the application on the basis that the harm feared by the applicant was directed at him because of his actions, and not for any Convention reason, I am satisfied that religious differences are at the heart of the dispute, especially in the context of ongoing religious and political tensions between Christians and Muslims in Egyptian society as outlined in the country information referred to above. I am satisfied that the applicant's religion is the essential and significant reason for which the harm he fears may be inflicted on him.

I have carefully considered whether the applicant could reasonably be expected to relocate within Egypt and thereby seek to avoid any harm from the local police in his place of residence. However, because the harm feared by the applicant is directed at him by a state agency, I am not satisfied that he could avoid that harm by relocating. I am satisfied that the national authorities could locate the applicant elsewhere within Egypt should they choose to do so, and I am unable to dismiss as remote or insubstantial the possibility that they would wish to do so. In these circumstances, the applicant would be at risk of harm anywhere within Egypt.

I am satisfied that the applicant was, prior to his departure from Egypt, harassed, mistreated and threatened by members of the local police force because of his intervention in the alleged kidnapping of a Christian girl by Muslims, and her suspected forced conversion to Islam. I accept that the applicant's role in these events brought him to the adverse attention of the police, and that the mistreatment suffered by the applicant at their hands was sufficiently serious as to constitute persecution. I am satisfied that this persecution was directed at the applicant for the essential and significant reason of his religion, and that the whole series of events has the character of a religious dispute, taking place in the context of significant religious tension between Coptic Christians and Muslims. I am satisfied that there is a real chance that should the applicant return to Egypt there is a real chance that he would continue to experience similar mistreatment for the same reason. I am satisfied that because the harm feared by the applicant is perpetrated by the state authorities, he would be unable to obtain protection, or to avoid harm by relocating. Accordingly I am satisfied that he has a well founded fear of persecution for reason of his religion.

CONCLUSION

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) for a protection visa.

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.