

0806101 [2008] RRTA 519 (23 December 2008)

DECISION RECORD

RRT CASE NUMBER:	0806101
DIAC REFERENCE(S):	CLF2008/114892
COUNTRY OF REFERENCE:	Egypt
TRIBUNAL MEMBER:	Antoinette Younes
DATE:	23 December 2008
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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, maliginity 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.
20. In the application for a protection visa, the applicant claimed that:
 - a. He began his political career after he graduated. He discovered that the Alwafd Party reflected his ideas and ideals; he became a member of the Party. His activities involved participating in meetings, attracting new members and participating in demonstrations.
 - b. On a website, there was a call for a peaceful demonstration in protest of the economic situation in Egypt and the increase in prices and corruption. He and others were arrested and a list of charges against him was created "*to put me in prison for a long time such as participate in illegal demonstration, instigate against the ruling party*". He was then transferred to another court and the court will shortly decide his case.
 - c. He fears that he would be imprisoned for years and that he would be mistreated by the security forces because of his political activities. The authorities would not protect him because they are his persecutors.
21. In the application, the applicant noted that he would be providing a "*copy of sentence*".

Documents provided in support

22. The applicant provided:
 - a. An untranslated copy of his membership card of the Alwafd Party (Folio 1, DIAC)
 - b. A translated Court document referring to a case, against the applicant for his involvement in a demonstration (folios 55-56, DIAC).
 - c. A translated Certificate from an Egyptian prison referring to the applicant's spending "*in a solitary cell...from [date] until [date]*" (folios 57-58).

HEARING

23. 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.

24. The applicant was represented in relation to the review by his registered migration agent, who did not attend the hearing.
25. The Tribunal referred to the application for a protection visa and asked the applicant about any assistance he may have received in completing the application. The applicant stated that his representative had assisted him in its preparation. The applicant was asked and he confirmed that he had no changes to make to the application.
26. The Tribunal referred to the applicant's claim of being a member of the Alwafd Party. The applicant gave the date he had joined the Party. He said however he first became interested in the mid 1990s and he was introduced to politics by friends. He said he got to know the Party's politics and doctrines through the students' union while he was a student. The applicant explained to the Tribunal that he had studied from the mid 1990s to the early 2000s. He said subsequent to his graduation he was unemployed for a couple of years but he assisted his father by working at his father's business in the meantime. He said subsequently he worked in his profession until he came to Australia.
27. The Tribunal asked the applicant how he had joined the Alwafd Party. The applicant stated that he gathered information at the beginning and he got to know about the Party. He showed the Tribunal an untranslated membership card of the Party (folios 42-43). With the assistance of the interpreter, it was noted that the card has a membership number with an expired date of membership. The applicant said that the membership card is normally renewed once a year. He said the membership card is dated when he had joined the Party. He said although it is renewed every year, the membership card does not change. The Tribunal noted that the membership card does not state when it had been renewed. The applicant said he did not realise that the date of renewal was not noted on the card.
28. The Tribunal indicated to the applicant that it would not be difficult to make such a card; the Tribunal noted that it would not be difficult to unseal the plastic cover of the card and to have placed his photograph on the card. The Tribunal further noted that the photograph of the applicant appears to be superimposed on existing writing. The applicant did not agree with the Tribunal that it is easy to make such a card. He said it is not possible because the Party's stamp and membership cards are kept in the safe. He said the card is signed by the President of the Party. He said that the person who made the card may not have been a professional. The Tribunal indicated to the applicant that the Tribunal would consider further the authenticity of the card and/or the truthfulness of the information contained in the card and the weight that it would place on the card. The Tribunal invited the applicant to comment or respond. The applicant said he had no comments or responses to make.
29. The applicant gave evidence that the card is a number of years old and that he has other cards in Egypt. The applicant reiterated that he did not know that the card did not bear the date of the current year. He said usually the card should contain the year of the card. He said in this instance they appear to have failed to put the current year.
30. The Tribunal referred to the expired date appearing at the bottom of the card. The applicant said the renewal date is written at the bottom of the card. He said he thought the date had been written on the card. The Tribunal noted that the applicant's evidence in relation to the card appears to be unclear. The applicant stated that the card contains the membership number. The Tribunal indicated that the matter would be considered further.

31. The applicant gave evidence that he had joined the Party on a specific date and he was issued with the card a few days after he had completed the application form.
32. The Tribunal asked the applicant about his specific activities in the Party. The applicant stated that as a member, his main activities were to attract the biggest number of people to join the Party. He said he had explained to those people the Party's goals and activities. The Tribunal asked the applicant how he had attracted the biggest number of people. The applicant said he relied on printed material and CDs. He said he explained to people about the leaders of the Party, their past and that the Party is the oldest Party to have adopted democracy. He said he had attracted neighbours and friends to join the Party. The Tribunal asked the applicant about any other activities in which he may have been involved. The applicant said at the time of the parliamentary elections, he was trying to help the Party win elections. He said he was organizing cards to facilitate voting. He said he was trying to push people to vote for the Party's candidates. He said he also did whatever he was asked to do.
33. The Tribunal asked the applicant about any other activities in which he may have been involved in relation to the Party. He said he was trying to have youth representatives in the Party. He said he was preparing them for leadership.
34. The Tribunal referred to the applicant's claim in the application for a protection visa that he was also involved in participating in demonstrations. The Tribunal asked the applicant about those demonstrations. The applicant stated the time of the last demonstration in which he was involved. He said the demonstration was peaceful and it was against corruption and the standard of living in Egypt. He said he was also involved in different demonstrations such as those aimed at objecting to the situation of Palestine. He said he was involved in those demonstrations before he had joined the Party. He said he was also involved in a demonstration against the war in Iraq. He said all of those demonstrations were peaceful demonstrations.
35. The Tribunal asked him about any other activities of the Party in which he may have been involved. The applicant said he was mostly active in the Alwafd Party but he also took part in a named association, an organization in Egypt calling for reforms. The Tribunal noted that there is no mention of his involvement in the application for a protection visa in this named association. The applicant said he was not a member of the association but he appreciated their doctrines. He said he was astonished by their courage to express reforms openly. He said he admired the association and admired the fact that they spoke openly about their doctrines and policies.
36. The Tribunal indicated to the applicant that the Alwafd Party is not banned in Egypt, unlike other parties such as the Muslim Brotherhood. The applicant stated it is indeed correct that the Party is not banned in Egypt but its activities are restricted because they object to the current situation in Egypt. The applicant gave an example of a Party leader who went to jail and was convicted despite the fact that the two witnesses who gave evidence against him had criminal records. He said a ban is not openly declared by the Egyptian authorities because the government wants to give an impression of democracy but they do restrict the activities of the Party. The applicant gave examples about other parties whose leaders had been imprisoned.
37. The applicant gave evidence that he was arrested even though he was involved in a peaceful demonstration. The Tribunal asked him why he was arrested. He said because he

was holding up banners relating to reforms. He said he was calling for change of presidential leadership. He said they were demonstrating about the large gap between the rich and the poor and ranking in the Egyptian society. He said they were demonstrating against unemployment, the recession and the economy.

38. The Tribunal asked the applicant if he knew exactly why he was arrested. He said he was arrested because he was taking part in a peaceful demonstration. He said the police started to bash him up and they took other people as well. He said many people were arrested on that day. The Tribunal asked the applicant if he was charged with any offences. The applicant stated that he was imprisoned. He said when he came to Australia he discovered that he had been sentenced for several years. He said he was sentenced for threatening social order in Egypt.
39. As the applicant did not answer the question about being charged, the Tribunal asked him again if he was charged with any offences when he was arrested. The applicant said at the beginning he was just sent to jail. The Tribunal noted that in the application for a protection visa he had stated that he and others were arrested and that the list of charges against him was created. He said he was sent to jail initially and they conducted investigations, subsequent to which they laid charges. The Tribunal asked the applicant again to clarify if he was charged with any offences. He said during investigations, he was accused of hindering public rest and order. He said he was also accused of destroying property. The applicant stated that he was charged whilst he was in Australia and not when he was in Egypt. He said he was detained for several days however. The Tribunal asked him why he was released. He said he was released pending sentencing and there was a pressure from the civil committee. He said a lot of people had been arrested.
40. The Tribunal indicated to the applicant that given his qualifications it is difficult to understand why he was unable to respond to the Tribunal in a clear and coherent manner about whether he was charged whilst he was in Egypt. The applicant stated that accusations had been made against him. The Tribunal asked him what he meant. The applicant said the authority's investigations led to accusations being incorporated in a matter heard against him shortly after leaving for Australia. The Tribunal noted the lack of clarity in the applicant's evidence. The Tribunal noted that it is difficult to understand how he was released after several days of his arrest if he was of any adverse interest to the Egyptian authorities. He said the investigations conducted by the authorities took only one hour. The Tribunal indicated that the matter would be considered further.
41. The applicant confirmed that he had left Egypt a couple of months after the alleged incident. The Tribunal asked the applicant if he experienced any difficulties in departing Egypt. The applicant stated that one can do anything in Egypt. He said he knows people at the airport. The Tribunal indicated to the applicant that he has provided a Court document which refers to his claimed involvement in a demonstration. The applicant said that the Court document was from a specialist court. The Tribunal indicated to the applicant that this document would suggest that the issues in relation to his arrest concerned security issues.
42. The Tribunal discussed with the applicant country information that there are people on an Alert List in Egypt. The Tribunal noted that a person that may be wanted by the Egyptian authorities in relation to security matters would likely appear on the Alert List. The Tribunal noted that country information indicates that those who are on the Alert List would have difficulties in leaving Egypt. The applicant stated that he had paid a bribe in

order to leave Egypt. The Tribunal indicated to the applicant that country information suggests that whilst bribery does occur in Egypt, it would be difficult for a person who was on the Alert List to be able to obtain exit from Egypt by paying a bribe.

43. The applicant stated that he had left via a specific airport. He said he knew a high ranking person to whom he paid money. The Tribunal indicated that the information available to the Tribunal would suggest that the exit procedures and security standards appear to be the same at that airport as at other international airports in Egypt.
44. The Tribunal further suggested to the applicant that another document that he has provided entitled "*Certificate*" (Folios 57 to 58 DIAC file) states that he was released after all procedures had been completed which would appear to contradict his evidence that he had been charged after his release, whilst he was in Australia. He said that all procedures had been completed. He said the charges had been set down for hearing on a specific date. The applicant stated that being in jail does not mean that he was on the Alert List. The Tribunal indicated to the applicant that the matter would be considered further.
45. The Tribunal indicated that the Tribunal would further consider the documents that he had provided namely the *Court document* and the *Certificate*. The Tribunal indicated that the Tribunal would further consider the authenticity of those documents and/or the truthfulness of the information contained therein as well as the weight that the Tribunal would place on those documents.
46. The Tribunal asked the applicant if he was released on bail. The applicant told the Tribunal that there are three types of bail in Egypt, namely, by guarantee, confirmation of place of residence which means that a person cannot depart Egypt, and bail relating to minors. He said he was granted bail upon confirmation of residence. The applicant confirmed that he was therefore released on bail.
47. The Tribunal asked the applicant how he was able to depart Egypt if he was released on bail that required confirmation of residence. He said he paid money. He said he paid brokers who had facilitated his exit. He said in Egypt, with connections one can do anything. He said he had paid a person at the Borg Al Arab airport. The Tribunal indicated that the matter would be considered further.
48. The Tribunal asked the applicant if he had anything else to say and the applicant stated that if he were to return to Egypt he would be jailed for several years. He said he would like to stay in Australia where he could experience and enjoy freedom.
49. The Tribunal asked the applicant if he needed more time to comment or respond to the information that had been given in the course of the hearing that the Tribunal considered could or would be a reason for affirming the delegate's decision. The applicant stated that he did not need any more time.

Information noted subsequent to the hearing

50. The Tribunal became aware of another protection visa application that had a lot of similarities with the applicant's case.

Section 424A letter

51. The Tribunal sent to the applicant a s.424A letter inviting him to comment on and/or respond to potentially-adverse material, essentially the similar case (folios 47-48).
52. In a letter to the Tribunal, the applicant responded essentially by noting that he first met the person at an airport on their way to Australia. An Egyptian person introduced them to the same advisor. The applicant has been honest and truthful about his claims. What happened to the applicant is not strange in an oppressive regime. One cannot fabricate "*original documents issued by the court...*".

FINDINGS AND REASONS

53. On the basis of the available evidence, the Tribunal is satisfied that the applicant is a national of Egypt and that he is outside that country.
54. In consideration of the evidence as a whole and for the following reasons, the Tribunal does not accept that the applicant has a well-founded fear of persecution.
55. Essentially, the applicant has claimed that he was arrested in Egypt, he was detained in Egypt, he was released on bail whilst in Egypt, he arrived in Australia after paying a bribe and that he was sentenced after he came to Australia. The applicant gave evidence that he was arrested on a specific date because he was holding up banners relating to reforms. The Tribunal asked the applicant if he knew exactly why he was arrested. He said he was arrested because he was taking part in a peaceful demonstration. He said the police started to bash him up and they took other people as well. He said many people were arrested on that day. The Tribunal asked the applicant if he was charged with any offences. The applicant stated that he was imprisoned. He said when he came to Australia he discovered that he had been sentenced for several years. He said he was sentenced for threatening social order in Egypt.
56. As the applicant did not answer the question about being charged, the Tribunal asked him again if he was charged with any offences when he was arrested. The applicant said at the beginning he was just sent to jail. The Tribunal notes that in the application for a protection visa he had stated that he and others were arrested and that the list of charges against him was created. He said he was sent to jail initially and they conducted investigations, subsequent to which they laid charges. The Tribunal asked the applicant again to clarify if he was charged with any offences. He said during investigations, he was accused of hindering public rest and order. He said he was also accused of destroying property. The applicant stated that he was charged whilst he was in Australia and not when he was in Egypt. He said he was detained for a number of days however. The Tribunal asked him why he was released. He said he was released pending sentencing and there was a pressure from the civil committee. He said a lot of people had been arrested.
57. In response to the Tribunal's concerns, the applicant stated that accusations had been made against him. The Tribunal asked him what he meant. The applicant said the authority's investigations led to accusations being incorporated in a matter heard against him after his arrival in Australia. The Tribunal is of the view that given that he is legally qualified it is difficult to understand why he was unable to respond to the Tribunal in a clear and coherent manner about whether he was charged whilst he was in Egypt.

58. The applicant's essential claim is that he was arrested for his involvement in a demonstration. It is important to put the applicant's claims within the context of Egypt, a nation with human rights issues and low tolerance for actual or perceived anti-regime conduct. Participation in actual and/or perceived anti-government demonstrations could lead to ill-treatment. The US Department of State, *Egypt Country Reports on Human Rights Practices - 2007* (Released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008) states that the "*constitution provides for freedom of assembly; however, the government restricted the exercise of this right. Citizens must obtain approval from the MOI before holding public meetings, rallies, and protest marches. The MOI refused to grant permits for some political events, and the government tightly controlled public demonstrations. In numerous incidents, authorities showed little tolerance for peaceful demonstrations by opposition groups and activists protesting government policies....Police generally responded to political demonstrations during the year with high numbers of riot police deployed by the MOI to contain both the size and effectiveness of the demonstrations....*"
59. The applicant gave evidence that he was arrested on a specific date even though he was involved in a peaceful demonstration. The Tribunal asked him why he was arrested and he said because he was holding up banners relating to reforms. He said he was calling for change of presidential leadership. He said they were demonstrating about the large gap between the rich and the poor and ranking in the Egyptian society. He said they were demonstrating against unemployment, the recession and the economy. The Tribunal asked the applicant if he knew exactly why he was arrested. He said he was arrested because he was taking part in a peaceful demonstration. He said many people were arrested on that day. The Tribunal asked the applicant if he was charged with any offences. The applicant stated that he was imprisoned. He said when he came to Australia he discovered that he had been sentenced for several years. He said he was sentenced for threatening social order in Egypt. The applicant confirmed that he had left Egypt after the alleged incident. The Tribunal asked the applicant if he experienced any difficulties in departing Egypt. The applicant stated that one can do anything in Egypt. He said he knows people at the airport. In response to questions by the Tribunal, the applicant said that the *High State Security Prosecution Emergency* was a specialist body. The Tribunal is of the view that the evidence before the Tribunal, in particular his evidence that he was arrested for threatening social order in Egypt, indicates that the applicant's arrest concerned security issues.
60. The Department of Foreign Affairs and Trade (DFAT) provided the following advice on the Egyptian Emergency Law:

The Emergency Law, in effect since 1981, provides security forces with broad-based powers to arrest and detain terrorist suspects or suspected members of terrorist groups. In the context of the government's anti-terrorism crackdown, suspected members of terrorist groups have been subject to arbitrary arrest, ill-treatment and torture, and prolonged detention without charge or trial.

...Sources, which included reputable non-government organisations that document conditions in Egyptian prisons, estimated that between 14-15,000 people were currently detained without charge in Egypt - many had been in prolonged detention for periods of up to several years (DIMIA Country Information Service 2002, Country Information Report No.116/02 - Entry/Exit Procedures, (sourced from DFAT advice of 7 May 2002), 10 May)

61. A report published in 2007 by the Egypt-based Ibn Khaldun Center for Development Studies indicates that persons accused of political crimes in Egypt can be often detained without charge for extended periods:

The Emergency Law by which Egypt is ruled since 1981 restricts many basic rights. Its provisions allow for arrests without warrant and prolonged detention without charge. There were varied and conflicting estimates of the number of extraordinary detainees (i.e. citizens held by the government without trial for alleged political crimes). Credible NGOs estimated that there were 6,000-10,000 detainees in addition to those prisoners in the ordinary criminal justice system. The government did not release any official data on detainees` (Zaki, M. 2007, 'Civil Society and Democratization in the Arab World – Annual Report', Ibn Khaldun Center for Development Studies website, p. 53 http://www.eicds.org/english/publications/reports/Annual_Report_07.doc – Accessed 13 August 2007).

62. The 2007 US Department of State Report on Egypt (*supra*) provides information on the different provisions for detention under the Egyptian penal code, and under the current Emergency Law:

The Emergency Law allows detention of an individual without charge for up to 30 days, only after which a detainee may demand a court hearing to challenge the legality of the detention order. Detainees may resubmit a motion for a hearing at one-month intervals thereafter. There is no limit to the detention period if a judge continues to uphold the detention order or if the detainee fails to exercise his right to a hearing. Incommunicado detention is authorized for prolonged periods by internal prison regulations.

...The penal code also gives the government broad detention powers. Prosecutors must bring charges within 48 hours following detention or release the suspect. However, authorities may hold a suspect for a maximum of six months while they investigate. Arrests under the penal code occurred openly and with warrants issued by a district prosecutor or judge. There was a functioning system of bail for persons detained under the penal code but none for persons detained under the Emergency Law. The Penal Code contains several provisions to combat extremist violence, which broadly defines terrorism to include the acts of "spreading panic" and "obstructing the work of authorities."

63. Given that context, the Tribunal finds it implausible that if the applicant had been arrested and detained in relation to what are essentially security matters and/or that he was of adverse interest to the Egyptian authorities, he would have been released days after his detention.
64. As discussed with the applicant, country information indicates that there are people on an Alert List in Egypt. The Egyptian government maintains strict controls on the exit of all people out of Egypt. All Egyptians citizens exiting Egypt must have a valid Egyptian passport and a valid entry visa for the country to which they intend travelling. State authorities are responsible for checking that passport requirements are met. Airport staff members are generally responsible for checking that visa requirements are met.

New machine-readable passports are currently being phased-in. This process commenced in 2008. We assume this is the “seven year project to use sophisticated computer technology to limit passport fraud” referred to in DFAT Country Information Report No. 418/99 of 1999.

Interlocutors agreed that Egyptian citizens would be prevented from exiting Egypt if their name appeared on the official “alert list” (DFAT Country Information Report No.116/02 of 2002 refers). We are unable to clarify with the Egyptian government the exact details of how this alert process operates due to the sensitive nature of the matter. Interlocutors noted that whether or not a person appeared on the list would likely depend on the seriousness of the alleged crime. Any person that may be wanted by the authorities in relation to security matters would likely appear on the list (Department of Foreign Affairs and Trade 2008, DFAT Report No. 802 – Egypt: RRT Information Request: EGY33006, 3 April

65. The Tribunal notes that the information suggests that a person who may be wanted by the Egyptian authorities in relation to security matters would likely appear on the Alert List and that those who are on the Alert List would have difficulties in leaving Egypt. The applicant stated that he had paid a bribe in order to leave Egypt and that he was not on the Alert List. There is information relating to the prevalence of corruption and bribery in Egypt. The 2007 US Department of State report on Egypt indicates that a significant level of corruption subsists within the Egyptian police force:

There was widespread petty corruption in the police force, especially below senior levels. According to government statements, it investigated corruption and other instances of police malfeasance using an internal affairs mechanism but did not publicize how this process worked. The government prosecuted such cases in the judicial system. (US Department of State 2008, Country Reports on Human Rights Practices for 2007 – Egypt, 11 March)

66. Whilst the Tribunal accepts that bribery does occur in Egypt and that the possibility that bribery to enable exit cannot be ruled out, there is information also indicating that it would be difficult for a person who was on the Alert List to be able to obtain exit from Egypt by paying a bribe. DFAT Report No. 802 of 3 April 2008 provides information on whether the use of bribery may assist persons wanted by Egyptian authorities to exit the country:

..... we have no information to suggest that bribery would be effective or required for persons wanted by authorities to obtain exit. Interlocutors noted that bribery existed in many forms in Egypt, and the possibility that bribery can be used to obtain exit from Egypt could not be ruled out. However, it would be difficult to conceive that a person that was on the “alert list” would be able to obtain exit from Egypt by paying a bribe (Department of Foreign Affairs and Trade 2008, DFAT Report No. 802 – Egypt: RRT Information Request: EGY33006, 3 April).

67. The applicant stated that he left Egypt Burj Al Arab (Borg Al Arab) airport after bribery. Information available to the Tribunal suggests that the exit procedures and security standards appear to be the same at the Borg Al Arab airport as at other international airports in Egypt. DFAT Report No. 802 of 3 April 2008 provides the following information on Borg Al Arab airport:

Interlocutors indicated that the exit procedures and security standards appeared to be the same at Borg Al Arab airport as at other international airports in Egypt, including Cairo International Airport. In addition, half of Borg Al Arab airport is also used exclusively by the Egyptian armed forces, which may, if anything, heightened security.

We have no information concerning the extent to which security staff at Borg Al Arab were able to perform checks as to whether departing Egyptian nationals were wanted by authorities. Such information is not readily available from security authorities (Department of Foreign Affairs and Trade 2008, DFAT Report No. 802 – Egypt: RRT Information Request: EGY33006, 3 April).

68. The applicant has claimed that he was released on bail. He said he was granted bail upon confirmation of residence. On the basis of the available evidence, the Tribunal is satisfied that the fact that the applicant was able to depart Egypt is evidence that he is not of any adverse interest to the Egyptian authorities and that he was not on bail. Given the credibility concerns and independent country information, the Tribunal does not accept that the applicant knew a high ranking commander whom he bribed.
69. The applicant has provided a document entitled *Certificate* (Folios 57 to 58 DIAC file) stating that he was released after all procedures had been completed which contradicts his evidence that he had been charged after his release, whilst he was in Australia. He said that all procedures had been completed. He said the charges had been set down for hearing on a specific date. The Tribunal finds it implausible that if the applicant had been arrested and detained for his involvement in what is essentially an anti-authorities' demonstration he would have been able to depart Egypt. The applicant has also provided a Court document, which could appear to corroborate the applicant's evidence that he was sentenced after his arrival in Australia. In consideration of the evidence as a whole and given the credibility concerns, the Tribunal does not accept that those documents contain truthful and/or accurate information and as such the Tribunal does not give them weight.
70. In the course of the hearing, the Tribunal discussed with the applicant the untranslated membership card of the Party that he had provided. The card has a membership number with an expired date. The applicant said that the membership card is normally renewed once a year. He said the membership card is dated when he had joined the Party. He said although it is renewed every year, the membership card does not change. The membership card does not state when it had been renewed. The applicant said he did not realise that the date of renewal was not noted on the card.
71. The Tribunal is of the view that it would not be difficult to make such a card; it would not be difficult to unseal the plastic cover of the card and to have placed a photograph. The Tribunal notes that the photograph of the applicant appears to be superimposed on existing writing. The applicant did not agree with the Tribunal that it is easy to make such a card. He said it is not possible because the Party's stamp and membership cards are kept in the safe. He said the card is signed by the President of the Party. He said that the person who made the card may not have been a professional. The applicant said that the card is about six years old and that he has other cards in Egypt. The applicant reiterated that he did not know that the card did not bear the date of the current year. He said usually the card should contain the year of the card. He said in this instance they appear to have failed to put the current year. He said the renewal date is written at the bottom of the card. He said he thought the date had been written on the card.

72. The Tribunal is of the view that the applicant's evidence in relation to the membership card is unclear, raising some doubts about the card. In consideration of the evidence as a whole and given the credibility concerns, the Tribunal does not accept that the card is authentic or that it contains truthful and/or accurate information and as such the Tribunal does not give it weight.
73. The Tribunal has before it a case where apart from the political party, very similar claims had been made and similar documents had been provided except for minor changes. The Tribunal has doubts but it has been persuaded by parts of the s.424A submissions. Therefore the Tribunal has not adversely taken this matter into consideration.

Findings on the applicant's claims

74. For the above reasons and in consideration of the evidence as a whole, the Tribunal is not satisfied that the applicant is credible. Given the adverse credibility finding and in consideration of the evidence as a whole, the Tribunal is not satisfied that he was ever a member and/or supporter of the Alwafd Party or a named association or that he was ever perceived to be so, or that he was involved in any actual and/or imputed activities of the Alwafd Party or the named association, or that he was involved in any actual and/or imputed anti-Egyptian authorities activities, or that he was ever arrested, or detained, or ill-treated by the Egyptian authorities, or that there has ever been any action taken against him by the Egyptian authorities. In essence and for those reasons, the Tribunal is not satisfied that the applicant has suffered any Convention-related harm or that there is a real chance that he would suffer any such harm in the reasonably foreseeable future.
75. In essence, and for the stated reasons, the Tribunal finds that the applicant does not have a well-founded fear of persecution.

CONCLUSIONS

76. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

77. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

<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>
