

1214484 [2013] RRTA 631 (12 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1214484
DIAC REFERENCE(S): CLF2011/156129
COUNTRY OF REFERENCE: Egypt
TRIBUNAL MEMBER: Carolyn Wilson
DATE: 12 September 2013
PLACE OF DECISION: Adelaide
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 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, applied to the Department of Immigration for the visa on 13 September 2011 and the delegate refused to grant the visa on 27 August 2012.
3. The applicant appeared before the Tribunal on 12 July 2013 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's brother [Mr A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

RELEVANT LAW

5. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
8. 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.

9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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)). Examples of 'serious harm' are set out in 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.
11. 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.
12. 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.
13. 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 being persecuted for a Convention stipulated reason. 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. Whether an applicant is a person in respect of 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the

Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

19. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

20. The applicant is a married Coptic Christian from Cairo, Egypt. He travelled to Australia with his parents in August 2011 as the holder of a [Tourist visa]. His parents returned to Egypt before their visas expired, however the applicant remained in Australia and applied for a Protection visa. His wife and children remain in Egypt.

Protection visa application

21. The applicant claimed to fear harm if returned to Egypt for the following reasons:
 - Coptic Christians in Egypt face harm generally from Muslims, but he specifically started having problems in early 2010 when his wife's [relative]'s daughter was kidnapped. The girl was kidnapped by Muslims from in front of her own house.
 - The police refused to investigate the kidnapping. He went with his wife's [relative] to the police station about a month after the kidnapping to report that the family suspected a man named [Mr B] was involved. The police showed them a marriage certificate which stated the girl had married [Mr B] and converted to Islam.

- His wife's [relative]'s family started receiving threats that they would kidnap their other daughter. His wife's [relative]'s family fled and are living in hiding in Egypt. The applicant also received threats that his wife and daughter could be kidnapped.
 - The applicant kept his wife and children at home. He thought they would be safe until things changed following the revolution in Egypt in January 2011. Since then the situation for Coptic Christians has become critical.
 - In March 2011 [Town 1] was attacked by Muslims and a church was burnt down. The applicant had done service for the Church in [Town 1], including taking money and clothes for Christians in that town. The applicant went to [Town 1] and was threatened by Muslims never to return. He continued to do his service in [Town 1] and one Muslim said to him they were aware he had made complaints to the police about [Mr B], and this person threatened to kidnap his wife and children. The applicant never returned to [Town 1] again.
 - The applicant came to Australia because his brother who lives here wanted to see their parents. Because they are old the applicant accompanied them. He saw this as an opportunity to seek protection in Australia and then bring his wife and children. His parents have returned to Egypt as they are elderly and the Muslims are not harassing them.
22. The delegate refused the applicant as they had concerns about the applicant's credibility generally and the credibility of his claims. The delegate did not accept the applicant or his family had been or would be targeted for the reasons claimed. The delegate found that the chance of an ordinary Christian being harmed in sectarian violence in Egypt was remote.

Application for review

23. The applicant provided a statement responding to the delegate's decision and a translation of a report from the Office of Public Prosecutions dated [March] 2010 regarding a report made by [Mr C] on the disappearance of his daughter.
24. The representative provided a report from [a doctor] dated [March] 2013 stating the applicant presented as depressed, and was being treated with antidepressants and referred to a psychologist. At the hearing on 12 July 2013 the applicant confirmed he was well enough to participate in a hearing. The applicant actively participated and clearly understood the questions being asked of him and responded appropriately. There was nothing to indicate the applicant was unfit to participate.
25. The applicant's brother [Mr A] gave oral evidence at the hearing. He said he returned to Egypt in November 2012 to visit family. He saw the applicant's wife and children [information on applicant's accommodation].
26. Mr [A] said he invited his brother to accompany their parents to Australia when he heard his brother was having problems. The situation for Coptic Christians in Egypt is getting worse. He referred in particular to a priest from his [family member's] church who was killed recently. The Tribunal queried why he would visit Egypt with his wife and children if it was as dangerous for Copts as he claimed. Mr [A] said he took precautions and didn't venture out.

27. The applicant made claims at the hearing consistent with what he had put in his written application. He stated he is living in [Australia] with his brother, who is running a [business] there. There is no Coptic Church, but he sometimes attends a Catholic Church.
28. The applicant is in regular contact with his wife, who remains living in the same house in Cairo. [Information on children].
29. The applicant said he is not a political person. He did go to Tahrir Square with a group of young men, but only went once and was not there when there were troubles. He would not go to protest if he thought there would be problems, as he would want to avoid any trouble.
30. The applicant confirmed that since his wife's [relative] has gone into hiding there have been no more threats from the man who kidnapped their daughter. The applicant confirmed he had not received any threats from this man or people associated with this man since [2010]. When asked why he maintained he had a fear of harm from these people, when there had been no threats or action since [2010], the applicant said it was brought up by Muslims in [Town 1]. Although he was not in [Town 1] when the Church was burned down, he visited after and that was when he was threatened by Muslims who said they knew he had made a complaint to police about [Mr B]. He never returned to [Town 1] after that.
31. The applicant said he has been targeted and that is why it is not safe for him to return, even though his parents did and his brother has visited Egypt with his family.
32. The Tribunal indicated to the applicant it was not so concerned with inconsistencies between his application for the tourist visa and protection visa. The Tribunal accepted much of the inconsistency was due to errors by the migration agent completing the forms. However, the Tribunal put to the applicant its concerns about the genuineness of the claimed fears given that since the two claimed incidents there had been no threats to him or his family, no violence against his family, his family continued to live at the same address, his parents chose to return, and his brother chose to visit Egypt with his wife and children. The Tribunal put to him this information might indicate his fear was not well-founded.

Country Information regarding Coptic Christians in Egypt

33. An estimated 10 per cent of Egypt's population of 83 million are Christians.¹ Christians reside throughout the country, although the percentage of Christians is higher in Upper Egypt (the southern part of the country) and in some sections of Cairo and Alexandria.²
34. The 2013 United States Commission on International Religious Freedom (USCIRF) Annual Report states that although there was a 'significant decrease in the number of fatalities and injuries from sectarian violence' between 31 January 2012 and 31 January 2013, Coptic Orthodox Christians, and their property, continued to experience sustained attacks. Reports state that there was a reduction in the police and security presence in Egypt after the fall of the Mubarak regime in February 2011 and thus a concomitant increase in crime and lawlessness, particularly in Upper Egypt.

¹ CIA 2012, *The World Factbook - Egypt*, 10 September <<https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>>

² US State Department 2010, *International Religious Freedom Report 2010 – Egypt*, 17 November <www.state.gov/g/drl/rls/irf/2010/148817.htm>

35. DFAT has recently advised the Tribunal³, in response to a request for updated information on the situation for Coptic Christians in Egypt:

Since the 2011 revolution, post has been aware of reports of harassment and intimidation of Copts and/or non-conservative Muslims by more conservative Muslims. Post is aware of the sporadic harassment of uncovered women by other women and/or men in conservative dress. Post is also aware of anecdotal reports of Coptic men and women being encouraged - or cajoled - to convert to Islam. It is probable that, in many such cases, extremist individuals and groups in society have been emboldened by the ascendancy of Islamist political parties. The rise in these cases since the revolution is also related to the relative (in some cases absolute) lack of law enforcement presence, both in major cities and elsewhere in the country - this has contributed to a general rise in harassment, opportunistic crime and civil disorder in the country.

It remains the case that not all Egyptian Copts experience discrimination and harassment in their daily lives. Post's contacts tell us that most Copts continue to live peacefully with their Muslim neighbours - this is especially the case in urban centres. However, contacts also note that the absence of security and the rule of law, combined with increased agitation by Islamic extremists, has generally made life more difficult for Copts living in rural and remote communities. In these remote areas, the motivation behind some attacks against Copts are religious in nature, while in other cases incidents that are framed as religious in origin are in fact triggered by underlying poverty and socio-economic factors.

36. On 3 July 2013, Egyptian President Mohammed Morsi, the former Chairman of the Muslim Brotherhood's Freedom and Justice Party, was removed from office by the Egyptian military. The military's actions came after mass anti-government protests commenced on 30 June 2013, coinciding with Morsi's one year anniversary in office.⁴ Millions of Egyptians participated in protests held across the country, calling on the president to resign. Protesters charged that Morsi monopolised power and failed to resolve Egypt's economic woes.⁵ Morsi has been held in an undisclosed military facility since his removal from office.⁶ In addition, hundreds of Muslim Brotherhood members and supporters have been arrested and scores of protesters have been killed by security officials in pro-Morsi demonstrations.⁷ The tense and divisive political and security situation has precipitated a wave of attacks against Coptic Christians, who have reportedly been blamed in part for his ouster.⁸

37. Reports of harm perpetrated against Coptic Christians since the removal of Morsi include:

³ DFAT Report 1490, 5 April 2013.

⁴ 'Brotherhood Mursi sworn in as Egyptian president' 2012, *BBC News*, 30 June <<http://www.bbc.co.uk/news/world-middle-east-18656396>>

⁵ Fayed, S & Saleh, Y 2013, 'Millions flood Egypt's streets to demand Mursi quit', *Reuters*, 30 June <<http://www.reuters.com/article/2013/06/30/us-egypt-protests-idUSBRE95Q0NO20130630>>

⁶ 'Egypt freezes assets of top Islamists after ousting of president Mohamed Morsi' 2013, *Agence France Presse*, 15 July <<http://www.theaustralian.com.au/news/world/egypt-freezes-assets-of-top-islamists-after-ousting-of-president-mohamed-morsi/story-e6frg6so-1226679440140>> Gulhane, J & Taha, RM 2013, 'Morsi being held for his own safety: army', *Daily News Egypt*, 13 July <<http://www.dailynewsegyp.com/2013/07/13/morsi-being-held-for-his-own-safety-army/>>

⁷ Chulov, M & Kingsley, P 2013, 'Egypt's military arrest Muslim Brotherhood supreme leader', *The Guardian*, 5 July <<http://www.guardian.co.uk/world/2013/jul/04/egypt-military-arrest-warrants-muslim-brotherhood>>

⁸ Egyptian Initiative for Personal Rights 2013, Sectarian incidents and attacks, 30 June to 9 July, 2013, 15 July <<http://eiipr.org/en/pressrelease/2013/07/15/1765>>

- 3 July 2013
Dilga, Deir Mawas district, southern Minya governorate
Churches and Coptic-owned property came under assault following the announcement by General al-Sisi. Morsi supporters torched a building belonging to the Catholic Church, looted the Islah Church in the same village and attacked the homes of Copts. One person was killed and several were injured.⁹
- 3 July 2013
Marsa Matrouth
Hundreds of Morsi supporters attacked the Coptic Orthodox Church of the Virgin. Demonstrators destroyed parts of the main door and windows of the church before security forces were able to disperse them.¹⁰
- 4-5 July 2013
Nagaa Hassan, Luxor governorate
Four Copts were killed, 21 homes attacked and 100 families displaced in sectarian violence. One of the victims was a member of the Tamarod campaign¹¹ which called for the 30 June protests demanding Morsi's removal. Sectarian chants such as 'There is no God but God' were reportedly shouted during the assaults. Testimonies gathered by EIPR suggest collusion by the authorities and a pattern of 'Muslims storming the homes of Christians in the presence of security forces'.¹²
- 6 July 2013
Arish, North Sinai governorate
A Coptic Orthodox Priest was shot by two masked men while driving from his home to the Mar Mina Church. According to a priest at the North Sinai Bishopric, the victim was shot 12 times in the head and chest. The tense climate and incitement led churches in the area to close their doors and stop receiving worshippers.¹³
- 9 July 2013
Mar Mina Church, Manakh, Port Said governorate

⁹ Egyptian Initiative for Personal Rights 2013, *Sectarian incidents and attacks, 30 June to 9 July, 2013*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1765>> Egyptian Initiative for Personal Rights 2013, *Wave of attacks on Copts and churches: EIPR: authorities must take immediate action to protect citizens and houses of worship, bring perpetrators and inciters to justice*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1762>>

¹⁰ Egyptian Initiative for Personal Rights 2013, *Sectarian incidents and attacks, 30 June to 9 July, 2013*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1765>> ; Egyptian Initiative for Personal Rights 2013, *Wave of attacks on Copts and churches: EIPR: authorities must take immediate action to protect citizens and houses of worship, bring perpetrators and inciters to justice*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1762>>

¹¹ Tamarod is a grassroots protest movement in Egypt that has been behind the 30 June protests against President Mohammed Morsi. The group, whose name means "revolt" in Arabic, claims it has collected more than 22 million signatures for a petition demanding Mr Morsi step down and allow fresh presidential elections to be held. See 'Profile: Egypt's Tamarod protest movement' 2013, *BBC News*, 1 July <<http://www.bbc.co.uk/news/world-middle-east-23131953>>

¹² 'Egypt's Christians face backlash for Morsi ouster', *Associated Press*, 10 July, Bloomberg <<http://www.businessweek.com/ap/2013-07-10/egypts-christians-face-backlash-for-morsi-ouster#p2>> Accessed 16 July 2013 <Attachment>; Egyptian Initiative for Personal Rights 2013, *Sectarian incidents and attacks, 30 June to 9 July, 2013*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1765>>

¹³ Egyptian Initiative for Personal Rights 2013, *Wave of attacks on Copts and churches: EIPR: authorities must take immediate action to protect citizens and houses of worship, bring perpetrators and inciters to justice*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1762>> Egyptian Initiative for Personal Rights 2013, *Sectarian incidents and attacks, 30 June to 9 July, 2013*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1765>>

Masked men opened fire on the Mar Mina Church, shattering the glass facade of the pharmacy of the adjacent Mar Mina Charitable Hospital. Two people were injured.¹⁴

- 11 July 2013

Sheikh Zuweid, North Sinai governorate

A Coptic shopkeeper, Magdi Lamai Habib, was found beheaded after being kidnapped and held for ransom five days earlier. The kidnapping occurred on the same day that a Coptic Priest was murdered in the same governorate. Habib's body was found in a graveyard in Sheikh Zuweid. A security official reportedly stated that 'extremist groups' had kidnapped the man.¹⁵

Findings

38. The issue in this case is whether the applicant has a well-founded fear of persecution for his religion, his service in [Town 1] and/or his involvement in reporting the kidnapping of his wife's [relative]'s daughter. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
39. The applicant spoke of two incidents in Egypt that he says have led to him being a target of fanatic Muslims. The Tribunal finds his fears in relation to both incidents are not well-founded. Even if the Tribunal accepts the alleged kidnapping occurred, the applicant's role in accompanying his wife's [relative] to make complaints to the police appears to have been a minor, supportive role. The applicant claims that because he helped his wife's [relative] he was threatened and threats were made about his family. This occurred in [2010], around the time of the kidnapping. No threats and no retaliations have occurred since. Nothing has happened to the applicant and his family. The Tribunal also notes nothing has happened to his wife's [relative] and his family, although the Tribunal acknowledges the claim that his wife's [relative]'s family are now in hiding. In any event, there have been no consequential actions against anyone since the alleged kidnapping. The Tribunal finds the chance of the applicant being targeted for serious harm, should he return to Egypt in the reasonably foreseeable future, for events that happened nearly four years ago and for which there have been no ongoing threats, is so remote as to not amount to a real chance.
40. The applicant claims also to have been threatened in [Town 1] because of the Church service he did there. He claims this occurred shortly after clashes in [Town 1] in which the Church was destroyed. He claims his involvement in the complaints about the kidnapping was raised as part of the threats.
41. The Tribunal is aware that in 2011 a Coptic church in [Town 1] was torched by local Muslims after clashes between Christians and Muslims left two people dead. Coptic families reportedly fled the village.¹⁶ [Information of attack on church].¹⁷ [Information on incident].¹⁸

¹⁴ Egyptian Initiative for Personal Rights 2013, *Sectarian incidents and attacks, 30 June to 9 July, 2013*, 15 July <<http://eipr.org/en/pressrelease/2013/07/15/1765>>

¹⁵ Azzazy, N & Miller, C 2013, 'Christian man kidnapped and beheaded in Sinai', *Daily News Egypt*, 11 July <<http://www.dailynewsegypt.com/2013/07/11/christian-man-kidnapped-and-beheaded-in-sinai/>> Daragahi, B 2013, 'Attacks increase against Egypt's Coptic Christians', *Financial Times*, 12 July <<http://www.ft.com/intl/cms/s/0/281e19b6-eaf2-11e2-bfdb-00144feabdc0.html#axzz2ZGD01A00>>

¹⁶ [Source deleted]

¹⁷ [Source deleted]

¹⁸ [Source deleted]

[Information on incident].¹⁹ [Information on incident].²⁰ While the military rebuilt the church, the government did not prosecute anyone for church's destruction.

42. The Tribunal has doubts about whether the applicant, a person who described himself at the hearing as someone who avoids trouble, would go to [Town 1] at such a volatile time. However, if it accepts that he did go to [Town 1] shortly after these events and was threatened on that occasion, the applicant's evidence was that he never returned again and nothing has happened to him since. The Tribunal considers it highly unlikely the applicant's involvement in reporting his wife's [relative]'s daughter's kidnapping would have been raised by Muslims in [Town 1] and finds this to be an exaggeration or fabrication that was made in order to strengthen his claims. The Tribunal finds the chance of anyone targeting the applicant because he used to do service for his Church in [Town 1] to be so remote as to not amount to a real chance. The Tribunal finds that should the applicant maintain a fear of being harmed if he returns to [Town 1] to do service, then he can avoid doing so by not travelling there for that or any other purpose. The Tribunal does not accept that doing Church service in [Town 1] is such an integral part of his being that to require him to modify his behaviour amounts to persecution. The Tribunal notes the applicant has chosen in Australia to live in a [community] where there is no Coptic Church and whilst he is helping his brother in his business, has not engaged in nor sought out any Church service to do in Australia.
43. The Tribunal is aware of the political situation in Egypt and the many deaths that have recently occurred, particularly of protestors. The Tribunal has also taken into account the recent deaths of Coptic Christians, as referred to above. The Tribunal finds the applicant is an ordinary Coptic Christian who does not have a profile and does not undertake activities, such as political protest, that would put him at greater risk of being targeted than the general population or the general community of Coptic Christians. The applicant's family remain in an urban area, which the DFAT report indicates is safer for Coptic Christians than remote or rural locations. The applicant's evidence was that he went once to Tahrir Square, but otherwise he seeks to avoid such situations. There was no indication he would get involved in any political action in the near future. Although written submissions provided to the Department indicated the applicant was at risk for being involved in proselytising, the applicant did not claim to have proselytised to Muslims.
44. The Tribunal considered whether the applicant as an ordinary Coptic Christian has a well-founded fear of persecution, and has concluded that he does not. The Tribunal does not accept that all Coptic Christians, who make up about 10% of the population in Egypt, are persecuted or face a real chance of suffering serious harm in religiously motivated violence. The fear of harm must be well-founded, that is, there must be a genuine fear founded upon a 'real chance' of being persecuted. The Tribunal finds the chance of the applicant being harmed in an act of violence targeting Coptic Christians to be remote, because the Tribunal finds the applicant is an ordinary urban Coptic Christian without a high profile, who will not participate in political protest, and who will not be targeted for the reasons he claims, should he return to Egypt in the reasonably foreseeable future. The Tribunal finds there is not a real chance he would suffer serious harm if he returned to Egypt now or in the foreseeable future because of his religion.

¹⁹ [Source deleted]

²⁰ [Source deleted]

45. The applicant's representative also raised in submissions that the applicant feared harm as a member of the particular social group 'Coptic Christians' For the reasons given above, the Tribunal finds the applicant does not have a well-founded fear for his religion or identity as a Coptic Christian, and therefore does not have a well-founded fear of persecution for membership of this group. The representative also framed the group as 'Christian minority harassed and persecuted' However, the Tribunal finds this does not amount to a particular social group as a particular social group cannot be defined by a shared fear of persecution: *Applicant A v MIEA* (1997) 190 CLR.
46. The Tribunal therefore finds the applicant's claimed fear of persecution if returned to Egypt now or in the reasonably foreseeable future is not well-founded, and he therefore does not satisfy the requirements of s.36(2)(a) of the Act.
47. The Tribunal has also considered the application of s.36(2)(aa) to the applicants circumstances. In this regard, the Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, there is a real risk he will suffer significant harm.
48. For the reasons given above, the Tribunal does not accept the applicant has been targeted for significant harm and does not accept that as a Coptic Christians living in Cairo there is a real risk he will suffer significant harm.
49. The Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, that there is a real risk he will suffer significant harm. The applicant does not satisfy the requirements of s.36(2)(aa) of the Act.

CONCLUSION

50. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
51. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
52. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Carolyn Wilson
Member