

# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*MZYLQ v MINISTER FOR IMMIGRATION & ANOR* [2011] FMCA 717

MIGRATION – Application for review of a decision of the Refugee Review Tribunal – Applicant citizen of Egypt – Applicant claiming persecution in Egypt on the grounds of religion.

*Migration Act 1958* (Cth), ss.36(2)(a), 91R(2)

*NAHI v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 10

*Win v Minister for Immigration & Multicultural Affairs* [2001] FCA 132

Applicant:	MZYLQ
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	MLG 439 of 2011
Judgment of:	Whelan FM
Hearing date:	12 July 2011
Date of Last Submission:	12 July 2011
Delivered at:	Melbourne
Delivered on:	16 September 2011

## **REPRESENTATION**

Solicitors for the Applicant: Sabelberg Morcos Lawyers

Solicitors for the Respondents: Australian Government Solicitor

## **ORDERS**

(1) The application filed 29 March 2011 be dismissed.

**FEDERAL MAGISTRATES  
COURT OF AUSTRALIA  
AT MELBOURNE**

**MLG 439 of 2011**

**MZYLQ**  
Applicant

And

**MINISTER FOR IMMIGRATION & CITIZENSHIP**  
First Respondent

**REFUGEE REVIEW TRIBUNAL**  
Second Respondent

**REASONS FOR JUDGMENT**

**Introduction**

1. This is an application for review of a decision of the Refugee Review Tribunal (“the Tribunal”) made on 23 February 2011. The Tribunal affirmed a decision of the delegate of the Minister for Immigration & Citizenship refusing to grant the Applicant a protection visa. On 29 March 2011, the Applicant sought judicial review of the Tribunal’s decision.

**Background**

2. The Applicant is an Egyptian citizen, who first arrived in Australia on 26 April 2007. The Applicant held a student visa issued on 16 April 2007. He left Australia on 14 April 2009 to return to Egypt, and re-entered Australia on 17 May 2009. His visa expired in November 2009. He was granted a further student visa on 11 March 2010, valid until March 2011.

3. On 7 September 2010, the applicant applied for a Protection (Class XA) Visa.<sup>1</sup> In his Protection (Class XA) Visa application, the Applicant claims to be an Evangelical Christian by faith, who practices outreach evangelism and is seeking protection on the grounds that he would have a well-founded fear of persecution by Government authorities and/or radical Islamists due to his religion should he be required to return to Egypt.
4. In his amended grounds, lodged on 30 June 2011, the Applicant claimed:
  - (i) That the Member of the Refugee Review Tribunal failed to consider country information adequately or at all;
  - (ii) That the Member of the Tribunal failed to adequately consider the restrictions on preaching as amounting to persecution under s.91R(2) of the *Migration Act 1958* (Cth) (“the Act”).
5. In his statutory declaration in support of his application, the Applicant claimed persecution on the Convention related ground of religion. He stated that he was born an Evangelical Christian, and a member of the Evangelical Church, El Machyakia.<sup>2</sup>
6. He further stated that he had been involved in outreach in Egypt since the age of 18 and continued to be involved in outreach activities including street preaching and distribution of religious material in Australia.<sup>3</sup>
7. He claimed:
  - It was becoming increasingly dangerous in Egypt to be involved in such activities.
  - He was threatened on countless occasions and on at least four occasions managed to escape from attackers who threatened him personal harm.

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<sup>1</sup> Court Book pages 8 - 49.

<sup>2</sup> Court Book page 22 at paragraph 8.

<sup>3</sup> Ibid at paragraph 12.

- He was involved in the conversion of two former Muslim brothers – as a result of which their family threatened to harm him and other members of his family.
  - As an Evangelist he was required to preach the gospel.
  - Such activities would expose him to serious harm because both radical Islamists and the authorities oppose preaching to Muslims.
  - To avoid serious harm he would have to resort to practicing his faith in a covert or restrictive manner.
  - Christians continue to be persecuted in Egypt.
  - He did briefly travel to Egypt in April 2009 but refrained from participating in any outreach activities while he was there.<sup>4</sup>
8. The delegate of the Minister considered the issue of freedom of religion in Egypt noting that while the Constitution provides for freedom of belief and the practice of religious rites, the government restricts those rights. The delegate also noted that while proselytising is not illegal in theory, in practice “it can lead to arrest, detention and mistreatment for ‘contempt of religion’”.<sup>5</sup> This is particularly the case if Christians are found proselytising to Muslims.
9. The delegate accepted that the Applicant was an adherent of an Evangelical Christian denomination. However, the delegate did not accept that the Applicant’s fear of persecution for religious reasons was well-founded and considered that the Applicant could continue to openly practice his faith in Egypt. Independent country information supported the proposition that Evangelical Christians could practice their religion lawfully within Egypt. The delegate acknowledged that they exercised the proselytising elements of their faith with some restraint. He considered it clear that, as the Applicant had made no claims that his church community had been the subject of adverse State attention, his church community must operate within the boundaries of proselytising only among other Christians.

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<sup>4</sup> Court Book pages 23 - 24 at paragraphs 13 - 23.

<sup>5</sup> Court Book page 6.

10. On 29 October 2010, a delegate of the First Respondent determined that the Applicant was not a person to whom Australia has protection obligations and refused the application.<sup>6</sup> The delegate notified the Applicant of this decision on 15 November 2010.
11. On 23 November 2010, the Applicant applied for review of the delegate's decision to the Tribunal pursuant to the provisions of the Act.
12. On 23 February 2011, the Tribunal affirmed the delegate's decision. On 29 March 2011, the Applicant applied to the Court for a judicial review of that decision.

### **The Applicant's case before the Tribunal**

13. Before the Tribunal, the Applicant stated that he started preaching at the age of 18, and that he had been preaching for six years before he left Egypt. The Applicant claimed that he had to be very careful and clever about the way he preached in Egypt. Even if he preached in this way in Egypt, the Applicant claimed that he may still be exposed to harm.
14. The Applicant also referred to his concern that hardline Islamic groups were gaining increased support in Egypt and to his ability as a Christian to adhere to core tenets of his faith, such as outreach, being further eroded by ongoing civil unrest.<sup>7</sup>
15. The Applicant stated that if he were to return to Egypt, he would proselytise and as a result would be in danger. As an Evangelical Christian, he was compelled to preach the gospel, in particular to Muslims, and would come to the attention of radical Muslims. Police protection would be absent no matter where he might preach in Egypt.
16. The Applicant acknowledged that he had never been harmed or arrested as a result of his preaching. He claimed that in Egypt he was threatened on "countless" occasions while preaching in the street.<sup>8</sup> Before the Tribunal, he claimed that on at least four occasions he

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<sup>6</sup> Court Book pages 57 - 78.

<sup>7</sup> Court Book pages 23 - 24 at paragraphs 19 - 21.

<sup>8</sup> Court Book page 23 at paragraph 14.

escaped from the attackers who threatened to harm him by running away from them.<sup>9</sup> The Applicant also claimed to have run away from the police.

17. The Applicant claimed that in Egypt he was involved in the conversion of two Muslim brothers to the Christian faith. He claimed that when their parents discovered religious material in their room, he was accused of preaching to their children and brainwashing them. The Applicant claims that the family of the two brothers caused him and his family a lot of harm, including threatening and harassing them and burning their crops.<sup>10</sup>
18. Since arriving in Australia, the Applicant also claimed to have done some voluntary work in Sydney for the sister channel of Al Hayat Television, Christian Media Television Channel. He also claimed to be a member of the Australian Coptic Movement and stated that he had participated in demonstrations in Australia about the mistreatment of the Christian minority in Egypt. The Applicant claimed that these activities are likely to bring him to the attention of Egyptian authorities and expose him to harm if he were to return to Egypt.

## **The Tribunal's decision**

19. The Tribunal found that the Applicant did not have a well-founded fear of persecution in Egypt arising from any activities in which he may have been engaged prior to his departure from that country or as a consequence of any events that have occurred since his departure.<sup>11</sup> As such, the Tribunal was not satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention and found that the application did not satisfy the criterion set out in s.36(2)(a) of the Act for the grant of a protection visa.
20. The Tribunal found the Applicant's evidence to be "unsatisfactory" in many respects, with exaggerated written claims not supported by oral evidence and "many internal contradictions" in his evidence.<sup>12</sup>

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<sup>9</sup> Court Book page 23 at paragraph 14.

<sup>10</sup> Ibid at paragraph 15.

<sup>11</sup> First Respondent's Supplementary Court Book page 24 at paragraph 89.

<sup>12</sup> First Respondent's Supplementary Court Book page 19 at paragraph 74.

21. The Tribunal found the Applicant's evidence about the difficulties he claimed to have faced while preaching in Egypt to be neither plausible nor credible. The Tribunal did not accept the Applicant's claims that he was surrounded by angry people on several occasions while preaching in the street, as his descriptions of these events were vague and lacking in detail. The Tribunal also found that it was implausible that on each occasion he was able to escape by running away.<sup>13</sup>
22. The Tribunal found the Applicant exaggerated either the extent or the consequences of his preaching in Egypt. The Tribunal was satisfied that, to the extent that the Applicant engaged in preaching in Egypt, he was able to do so without experiencing harm, or any serious threat of harm, over a period of six years. The Tribunal was satisfied that the Applicant could continue his involvement in these activities if he returned to Egypt and that there was no real chance that he would be harmed, arrested or killed if he continued to preach in the manner that he had done in the past.<sup>14</sup>
23. The Tribunal accepted that the Applicant may be obliged to preach in Egypt in a more careful and circumspect way than would be the case in Australia, as Christians may be viewed with more hostility in Egypt than is the case in Australia, but did not accept that such a restriction on his ability to practise his religion amounted to persecution. The Tribunal found that the Applicant was able to exercise core tenets of his faith (including attending church and preaching) in a manner satisfactory to himself and to the church while living in Egypt and would be able to do so again were he to return. The Tribunal stated that its view was confirmed by the independent country information that indicated that Evangelical Churches in Egypt have adopted conventions that limit the preaching activities of church members.<sup>15</sup>
24. The Tribunal also referred to the Australian Department of Foreign Affairs and Trade ("DFAT") *Country Information Report No. 10/35 (21 June 2010)* which refers to proselytising:

*Post is aware of reports of Evangelical Christians being affected by incidents of sectarian violence. The pattern of increased*

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<sup>13</sup> First Respondent's Supplementary Court Book page 20 at paragraph 77.

<sup>14</sup> Ibid at paragraph 78.

<sup>15</sup> First Respondent's Supplementary Court Book pages 21-22 at paragraph 81.



*attacks targeting orthodox Coptic Christians and their property in recent years can be broadly applied to non-orthodox Christians given most Egyptians, ninety percent of whom are Muslim, do not differentiate between the two schools. However, due to their much smaller numbers and less conspicuous public presence, non-orthodox Christians appear to experience relatively less violence than their orthodox counterparts.*<sup>16</sup>

25. The Tribunal did not accept the Applicant's claim that he had influenced two Muslim brothers to "internally" embrace Christianity, which subsequently caused their family to insult the applicant, burn his family's crops and threaten the Applicant.<sup>17</sup> The Applicant stated that he had claimed asylum in September 2010 because the problem represented by the conduct of his friends' family had got worse but he also described the insults, abuse, crop burning and threats as having persisted over a period of three and a half years. The Tribunal did not find it credible that the Applicant would have returned home in April 2009 in light of these threats or that he would have waited until September 2010, some 40 months after arriving in Australia to lodge his claim for refugee status. The Tribunal considered that this lengthy delay was inconsistent with the existence of a well-founded fear of persecution.<sup>18</sup>

## **The Applicant's contentions**

26. The Applicant referred to the article *US Department of State International Religion Freedom Report 2010*<sup>19</sup> in support of his submission that the Tribunal has failed to consider Country Information adequately or at all.
27. The Applicant referred to that section of the Report dealing with Egypt under the heading 'Legal/Policy Framework' and in particular to comments such as:

*The constitution, under article 46, provides for freedom of belief and the practice of religious rites; however, the government restricts these rights in practice. Islam is the official state religion, and Islamic law is the principal source of legislation.*

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<sup>16</sup> First Respondent's Supplementary Court Book page 14 at paragraph 62.

<sup>17</sup> First Respondent's Supplementary Court Book page 23 at paragraph 85.

<sup>18</sup> First Respondent's Supplementary Court Book page 22 at paragraph 82.

<sup>19</sup> Appearing as No. 1 in the Applicant's Supplementary Court Book pages 1 – 15.

*A January 2008 lower court ruling interpreted the constitution's guarantee of religious freedom as inapplicable to Muslim citizens who wish to convert to another religion. This ruling, which is not binding in other courts, remained under appeal at the end of the reporting period, although on April 27, 2010, an appellate court announced that it would not decide the appeal until the Supreme Constitutional Court ruled on a series of cases related to article 46. Courts ruled in previous years that the constitution's guarantee of freedom of religion does not apply to Baha'is.<sup>20</sup>*

28. Further, the Report also states that:

*While there is no legal ban on proselytizing Muslims, the government restricts such efforts. Neither the constitution nor the civil and penal codes prohibit proselytizing, but police have detained or otherwise harassed those accused of proselytizing on charges of ridiculing or insulting heavenly religions or inciting sectarian strife.<sup>21</sup>*

29. On the issue of failure by the Tribunal to adequately consider that restrictions on preaching amount to persecution pursuant to s.91R(2) of the Act, the Applicant submitted that the Applicant is an Evangelical Christian and a core tenet of his faith is preaching. His ability to preach is restricted. The Tribunal correctly set out the Applicant's claims at paragraph 79 of the decision,<sup>22</sup> in particular, that he feels an obligation to preach and that restriction on his ability to preach circumscribed his rights to freely practice core tenets of his faith. At paragraph 80 of the Tribunal's decision, the Tribunal states that it does not accept the Applicant's assertion.<sup>23</sup> The Tribunal went on to define what persecution consists of and refers to the decision of Madgwick J in *Win v Minister for Immigration & Multicultural Affairs* [2001] FCA 132.

30. The Applicant took the Court to an extract from James C. Hathaway's *The Law of Refugee Status* where he discusses freedom of religion:

*Religion as defined in international law consists of two elements. First, individuals have the right to hold or not to hold any form of theistic, non-theistic or atheistic belief... Second, an individual's right to religion implies the ability to live in accordance with a chosen belief, including participation in an abstention from*

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<sup>20</sup> US Department of State International Religion Freedom Report 2010 page 2.

<sup>21</sup> US Department of State International Religion Freedom Report 2010 page 2.

<sup>22</sup> First Respondent's Supplementary Court Book pages 20 - 21.

<sup>23</sup> First Respondent's Supplementary Court Book page 21 at paragraph 80.

*formal worship and the religious acts, expression of views, and the ordering of personal behaviour.*

*Because religion encompasses both the beliefs that one may choose to hold and behaviour which stems from those beliefs, religion as a ground for refugee status similarly includes two dimensions. First is the protection of persons who are in serious jeopardy because they are identified as adherent of a particular religion ...*

*Alternatively, because religion includes also behaviour which flows from belief, it is appropriate to recognise as refugees persons at risk for choosing to live their convictions ...*

*“Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others ...”*

*The peaceful expression of one’s beliefs, including engaging in worship, playing an active role in religious affairs, and proselytizing may give rise to a genuine need for protection.<sup>24</sup>*

31. Madgwick J in *Win* expressed the test to be applied in the following terms:

*The principle, it seems to me, is that a denial of such civil rights would amount to persecution when that denial is so complete or effective that it actually and seriously offends a real aspiration so held by an asylum seeker that it can fairly be said to be integral to his or her human dignity.<sup>25</sup>*

32. That is the test which ought to have been applied by the Tribunal. The wish of the Applicant to preach and live his religion would bring him within the definition of persecution.

## **The First Respondent’s contentions**

### **Response to Ground 1**

33. The Applicant firstly asserts that the Tribunal:

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<sup>24</sup> James C. Hathaway, *The Law of Refugee Status* (1993) pages 145 - 147.

<sup>25</sup> *Win v Minister for Immigration & Multicultural Affairs* [2001] FCA 132 at paragraph 20.

*failed to consider Country Information adequately or at all.*<sup>26</sup>

34. The Tribunal considered whether the Applicant had a well-founded fear of persecution for a Convention reason should he return to Egypt and, based on the evidence before it, reached the conclusion that the Applicant's fear of persecution for a convention reason was not well-founded. In the written reasons for its decision, the Tribunal referred to various independent evidence and country information relevant to the treatment of Christians in Egypt.<sup>27</sup> The weight to be given to the evidence before it, including the country information, and the conclusions drawn by the Tribunal on the basis of that evidence, are matters for the Tribunal, and are not susceptible to challenge on judicial review: *NAHI v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 10.<sup>28</sup>

## **Response to ground 2:**

35. The Applicant secondly asserts that the Tribunal:

*failed to adequately consider the restrictions on preaching as amounting to persecution under section 91R(2) of the Act.*<sup>29</sup>

36. Firstly, the First Respondent submits that the Tribunal formed the view that a number of the claims made by the Applicant about his preaching were not correct or plausible. In particular, the Tribunal rejected his statements about incidents where he was surrounded by angry crowds or policemen.<sup>30</sup> Secondly, the Tribunal rejected the Applicant's claims about having converted two Muslim brothers and the repercussions of this.

37. The Tribunal's rejection of these core claims about his prior preaching experience impacted on his subsequent claim that if he returned to Egypt he would be prevented from practicing his religion in the manner he wished to. The Tribunal's severe doubts about his credibility were

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<sup>26</sup> The Applicant's Amended Application filed 30 June 2011.

<sup>27</sup> Including the article cited in the First Respondent's Supplementary Court Book pages 16 – 18 at paragraph 68.

<sup>28</sup> *NAHI v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 10 at paragraph 13.

<sup>29</sup> The Applicant's Amended Application filed 30 June 2011.

<sup>30</sup> First Respondent's Supplementary Court Book page 20 at paragraph 77.

pertinent to its finding that the Applicant did not have a well-founded basis for his fear or persecution.

38. Secondly, the country information was that Evangelical Churches imposed their own restrictions on the practice of evangelism in order to fit with the societal norms. They set the framework for the practice of Evangelical Christians in Egypt and within these bounds he could return to Egypt and not be exposed to a real risk of serious harm.
39. The Tribunal noted that DFAT's advice was that there are similar members of Evangelical Churches in Egypt who are able to attend church and preach in accordance with the guidelines of their churches subject to some restrictions.<sup>31</sup>
40. The Tribunal, in its reasons by reference to the decision of Madgwick J in *Win*, found with respect to the effect of any restriction on the Applicant's ability to preach the following (emphasis added):

*I do not accept that any restriction on even a core tenet of a person's religious faith necessarily amounts to persecution. Persecution constitutes serious harm, such as, 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 mere fact that a particular right is restricted, or even denied, is not necessarily enough to establish refugee status; it is also necessary to ascertain the importance that the asylum-seeker places upon the exercise of that particular right.***<sup>32</sup>

41. His Honour in *Win* expressed the principle in the following terms (emphasis added):

*The principle, it seems to me, is **that a denial of such civil rights would amount to persecution when that denial is so complete and effective that it actually and seriously offends a real aspiration so held by an asylum seeker that it can be fairly said to be integral to his or her human dignity ...** But of course, the Convention did not aim at providing a universal right to change countries for every inhabitant of every oppressively ruled society*

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<sup>31</sup> First Respondent's Supplementary Court Book page 11 at paragraph 54.

<sup>32</sup> First Respondent's Supplementary Court Book page 21 at paragraph 80.

*on earth, however important civil and political rights may, as a matter of mere intellectual persuasion, be to such an inhabitant. The Convention was intended to relieve against actual or potentially real suffering.*<sup>33</sup>

42. The decision in *Win* is authority for not every restriction or denial of a right amounting to persecution within the meaning of the Convention. Whether a restriction or denial of a right amounts to persecution will always be a question of degree and one that should be answered with reference to the individual facts of a particular case.
43. In the present case, it is clear that after making the finding that the Applicant may be required to preach in a more careful way should he return to Egypt,<sup>34</sup> the Tribunal then went on to consider whether this restriction amounted to persecution. In doing so, the Tribunal asked itself the critical question that the tribunal in *Win* failed to ask. That is: would the Applicant face persecution by the very denial of his right to preach in a less restricted manner?
44. In answering this question, in addition to the Applicant's own evidence, the Tribunal referred to independent evidence that indicated that Evangelical Churches in Egypt have adopted conventions that restrict the preaching activities of church members. The Tribunal stated (emphasis added):

*I am satisfied that the applicant was able, prior to his departure from Egypt, to carry out fundamental aspects and core tenets of his religious beliefs, including attending church, and preaching. While he may have been obliged to be careful in the manner he went about preaching, **I do not accept that this so severely restricted his ability to practice his faith that the restriction itself can be said to constitute persecution.***<sup>35</sup>

45. Further on in its reasons, the Tribunal stated (emphasis added):

*[If the applicant] were required to preach under similar restrictions to those imposed on him in the past, that is, essentially being careful in how he approaches people, **this is not***

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<sup>33</sup> *Win v Minister for Immigration and Multicultural Affairs* [2001] FCA 132 at paragraph 20.

<sup>34</sup> First Respondent's Supplementary Court Book page 21 at paragraph 80.

<sup>35</sup> *Ibid* at paragraph 81.

*a denial of his religious freedom or freedom of his belief of such seriousness as to constitute persecution.*<sup>36</sup>

46. There was no history of the Applicant being persecuted. The Tribunal did not accept that he had been subjected to threats or harm. The fact that he might need to be more careful than in Australia did not amount to a prohibition on adhering to the core tenets of his faith. There was not a complete and effective denial of his rights. The letters from the pastor of his church also supported that conclusion.
47. The Tribunal's decision was based on the credibility of the Applicant, consideration of the country information and the conclusion that an inability to go beyond the contentions adopted by the Evangelical Churches did not amount to persecution. Further, his delay in making the application and his return to Egypt in 2009 did not support his contention of that he had a well-founded fear of persecution.

## **Conclusions**

48. The Applicant in this matter relies on two grounds of appeal. Firstly, that the Tribunal failed to consider country information adequately, if at all, and secondly, that the Tribunal failed to adequately consider the restrictions on preaching as amounting to persecution under s.91R(2) of the Act.
49. In support of the first ground, the Applicant identified the document *US Department of State International Religious Freedom Report 2010*. That document is referred to and quoted at paragraph 67 of the Tribunal's Decision at some length. I am satisfied that the Tribunal considered its contents. To the extent that the Tribunal gave more or less weight to information contained in the country information, I am satisfied that that was a matter for the Tribunal.<sup>37</sup>
50. The substance of the second ground is that it was a core tenet of the Applicant's faith that he preach and in particular that he preach to Muslims. The evidence of his activities in this regard and the harm he had suffered arising from those activities was not accepted by the

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<sup>36</sup> First Respondent's Supplementary Court Book page 22 at paragraph 81.

<sup>37</sup> *NAHI v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 10 at paragraph 11.

Tribunal. The Tribunal considered the Applicant's claims not to be plausible or credible. In particular, the Tribunal found that the Applicant was never harassed or arrested in the six years he claimed to have been engaged in 'outreach' activities.

51. The Applicant contended that the obligation he felt to preach could only be carried out if he were free to preach to anyone in any circumstance. As the Tribunal accepted that there were limitations on preaching, particularly to Muslims, then this represented a denial of his freedom to practice his religion.
52. There are a few problems with the Applicant's arguments. Firstly, the material before the Tribunal showed that there were a significant number of Evangelical Christians in Egypt who were "required to evangelise – that is to preach the Gospel and convert people to the Christian faith".<sup>38</sup> Secondly, the independent evidence indicated that the Evangelical Churches in Egypt place self-imposed restrictions on their preaching activities for the safety of their congregations, such as only seeking to convert other Christians. Thirdly, that some form of restriction on the manner of preaching was acceptable to the Evangelical Churches was evident from both the country information and the letter from the pastor of his own church in Egypt who described the Applicant as "consistent at studying the Holy Book and the delivering the spiritual services that the church carries out such as preaching, guidance and Christian teachings".<sup>39</sup>
53. There is no suggestion that either the Applicant or his church considered him to be failing in carrying out the core tenets of his faith because he had to be careful in how he approached people he wished to convert.
54. The Tribunal did not accept that *any* restriction on even a core tenet of a person's religious faith necessarily amounts to persecution. That is consistent with limitation on religious practices designed to protect public safety, order, health or morals and the rights and freedoms of others. Even in Australia there are restrictions on where a person may publicly preach.

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<sup>38</sup> First Respondent's Supplementary Court Book page 20 at paragraph 76.

<sup>39</sup> Court Book page 51.



55. The Applicant does not claim to be completely denied the right to preach. His evidence that his preaching practices over a period of six years caused him to be subjected to harm was not accepted by the Tribunal nor did the Tribunal accept that he could only carry out a core tenet of his faith by now preaching in a manner which he asserts would cause him to be in fear of persecution should he return to Egypt.
56. In my view, the Tribunal considered the decision of Madgwick J in *Win* and correctly applied the principles suggested by his Honour. It concluded that the Applicant would not be denied religious freedom or freedom of belief of such seriousness as to constitute persecution. The Tribunal correctly stated at paragraph 80 of its decision what constituted persecution for the purposes of s.91R(2) of the Act and concluded that the Applicant had not suffered persecution and did not have a well-founded fear of persecution in Egypt for reasons of his religion, either on the basis of activities undertaken previously in Egypt or likely to be undertaken there in the future.<sup>40</sup>
57. In reaching its conclusions, I am satisfied that the Tribunal did give adequate consideration to the restrictions on preaching in reaching the conclusion that such restrictions did not amount to persecution under s.91R(2) of the Act.
58. The application is therefore dismissed.

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**I certify that the preceding fifty-eight (58) paragraphs are a true copy of the reasons for judgment of Whelan FM**

Associate:

Date: 16 September 2011

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<sup>40</sup> First Respondent's Supplementary Court Book page 24 at paragraph 89.