

**1210790 [2012] RRTA 1061 (29 November 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1210790

**DIAC REFERENCE(S):** CLF2011/166539 CLF2011/207344

**COUNTRY OF REFERENCE:** Egypt

**TRIBUNAL MEMBER:** Adam Moore

**DATE:** 29 November 2012

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

## 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 [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant ] September 2011.
3. The delegate refused to grant the visa [in] July 2012 and notified the applicant of the refusal decision by letter dated that day. The applicant applied to the Tribunal for review of that decision [in] July 2012.
4. The applicant's spouse also applied for the visa at the same time as the applicant. He was also the subject of the same refusal decision. He is not included in the review application.

### RELEVANT LAW

5. 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. 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 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) 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 Refugees 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. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

9. 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.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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.
12. 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.
13. 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.
14. 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 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.
15. 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.

16. 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**

17. If a person is found not to meet the refugee criterion in s36(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').
18. '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.
19. 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.

### **CLAIMS AND EVIDENCE**

20. 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.

### **Application for a protection visa**

21. According to the Form 866C 'Application for an applicant who wishes to submit their own claims to be a refugee':
  - a. the applicant was born [date deleted: s.431(2)] at Alexandria, Egypt;
  - b. she speaks, reads and writes Arabic;
  - c. she identifies her ethnicity as Egyptian and her religion as 'Christian';
  - d. she was married in 1971;

- e. she is a citizen of Egypt, holds no other citizenship and has no right to enter and reside in any other country;
- f. she entered Australia as the holder of a Subclass 679 visa [in] August 2011;
- g. she holds a current passport issued by Egypt;
- h. the most recent Australian immigration visa granted to her is a Subclass 679 visa issued [in] July 2011 valid [until] October 2011;
- i. she has never otherwise lived or travelled outside Egypt;
- j. she gives the address she lived at for the 10 years prior to her arrival in Australia as an address in [Cairo];
- k. she had 10 years of schooling in Egypt;
- l. gives her usual occupation or profession as 'housewife'; and
- m. gives no employment history.

22. At question 41 of Form 866C she states that she is seeking protection in Australia so that she does not have to go back to Egypt. At questions 42 to 46, where she is asked about her claims for protection she states:

**Question 42 Why did you leave that country?**

To visit my family.

**Question 43 what do you fear may happen to you if you go back to that country?**

Arbitrary arrest, detention, imprisonment, persistent harassment, intimidation and discrimination.

**Question 44 who do you think may harm/mistreat you if you go back?**

People in my neighbourhood, Muslim extremists and the authorities of Egypt.

**Question 45 why do you think this will happen to you if you go back?**

Solely because of my faith.

**Question 46 do you think the authorities of that country can and will protect you if you go back? If not, why not?**

No. Egyptian authorities tolerate discrimination against Christians.

23. In Form 866B 'Persons included in this application and family composition' the applicant states that:

- a. she and her spouse are both applicants;
- b. she has not previously made application for a protection visa or refugee status;

- c. she has no members of her family unit in Australia not included in the application;
- d. she has no members of her family unit outside Australia at the time of application;
- e. she has a son and a daughter in Australia at the time of application;
- f. she has the following close relatives outside Australia at the time of application:
  - i. a son in the U.S.A.;
  - ii. a daughter in the U.S.A.;
  - iii. a sister-in-law in Egypt;
  - iv. a brother in Egypt; and
  - v. three brothers in the U.S.A.;
- g. she had the assistance of a registered migration agent in completing her application.

24. A Form 866D 'Application for a member of the family unit (who does not have claims to be a refugee)' was also submitted by the applicant's spouse with the application. Subsequently, the applicant's spouse submitted his own Form 866C 'Application for an applicant who wishes to submit their own claims to be a refugee' and a submission and correspondence with the delegate was made on his behalf. It is not necessary to set out this material because, although he was also the subject of the visa refusal decision, he is not an applicant in this review.

25. Accompanying the application forms are:

- a. a submission dated August 2009 from The European Association of Jehovah's Christian Witnesses to the UNHCR;
- b. extracts from the United States Commission on International Religious Freedom *Annual Report 2011* relating to Egypt; and
- c. a copy of some pages of the applicant's passport.

26. Subsequent to the application the applicant's representative made a written submission. It makes general references to the applicable law, and a reference to the following excerpt from the United States Commission on International Religious Freedom *Annual Report 2011*:

Jehovah's Witnesses

A 1960 presidential decree banned all Jehovah's Witnesses activities. According to the State Department, there are between 800 and 1,200 Jehovah's Witnesses living in Egypt. In recent years, Egyptian authorities monitored the homes, phones, and private meeting places of members of this small community. For years, the Jehovah's Witnesses pursued legal recognition through the court system. In December 2009, the

Seventh Circuit Administrative Court handed down a verdict denying Jehovah's Witnesses legal status. The local community is appealing the verdict.

27. Within the body of that submission, is a section headed 'Claims' which is expressed in the first person by the applicant. This reads as follows:

I, [the applicant] am writing this letter to explain my reasons behind applying for an Australian Protection Visa.

Many things make me feel unsafe back in my country, especially my husband's beliefs contradicting my own. Our different beliefs cause me fear all the time. My husband is not an aggressive person in nature; however he is aggressive towards my religion due to what he has about us (Jehovah's Witnesses) from his church leaders and fellow family members (being my husband's sisters and brothers).

There are many reasons to explain my husband's aggressiveness towards the witnesses. One of the reasons is due to the pressure from the church towards my husband when they found out that I was a Jehovah's Witness.

My family pushed me into marrying my [husband], who is a strong Coptic orthodox even though I am a baptized Jehovah's Witness. My husband knew I was a practicing Jehovah's Witness and he has never had a problem with this. My [marriage] caused me to be disfellowshipped from my fellow brothers and sisters (Jehovah's Witnesses). I was an inactive Jehovah's Witness due to my pregnancy with our [first born]. From time to time I tried to explain my beliefs to my husband. From my marriage till the birth of my [second child], I never practiced my religion. After the birth of [my second child] I continued to practice my religion and attended meetings without my husband knowing.

The Coptic Egyptian Orthodox church found out that I was a Jehovah's Witness (in 1986) when; my husband's fellow [brothers] (who have both since passed away) and his [sister] started to ask about my beliefs, where I go to church and what priest I tell my confessions to? My [husband] spoke in confidence about my beliefs and upon hearing this news my husband's siblings advised him to go to his church to confess this straight away to their priest. The priest told my husband that the witnesses originated from a Jewish background. This put my life in danger because if the Egyptian government finds out that I am attending Christian meetings then they will not only chase after me but also make up excuses to arrest me without charges (as they have previously done to my fleshly [brothers] who also are also of the same religion as me).

The priest told my husband to get me to change my beliefs otherwise they would help him get a divorce and help him get a new wife to look after his children. When my husband finished with the priest he went home and his siblings pushed him to stop me from attending my meetings; and to push him even further to stopping me they told him lies about my religion. They stated that we meet together in houses to have fornication with each other. Although we do meet in small house groups we do not practice fornication and adultery as we strongly follow the bible; where it clearly says in:

Ephesians 5:3,4,5 — "Let fornication and uncleanness of every sort or greediness not even be mentioned among YOU, just as it befits holy people; 4 neither shameful conduct nor foolish talking nor obscene jesting, things which are not becoming, but rather the giving of thanks. 6 For YOU know this, recognizing it for yourselves, that

no fornicator or unclean person or greedy person—which means being an idolater—has any inheritance in the kingdom of the Christ and of God."

After hearing these lies my husband confronted me and asked me how strong my beliefs were and if I would stop practicing them? Upon hearing my answer my husband became physically violent towards me, he kicked me out of home and separated me from my children. At this time I had my three month old son, my husband's friends told him he was crazy because if he divorced me then because I had a new born child that I would get the house. When my husband heard this he allowed me back into the home on the condition that I never practice my beliefs again.

A year after this occurred I started to attend my congregation meetings again, getting my older children to [babysit], without my husband knowing (due to him working fulltime 10am to 10pm).

Now going back to my country I am worried because now I live at home by myself with my husband as all my children are married. My husband is now due to getting older taking more time off of work because he is tired. This is making it harder for me to hide practicing my beliefs from him. I also am getting older and so I would not be able to handle any violent acts from my husband or any action from the Egyptian government.

Now due to the current political issues in my home country it is becoming extremely difficult to practice my religion. Because the government in Egypt has changed the members of the public are becoming more suspicious of what is happening around them.

I have a routine of going to the meetings on a Friday mornings at 10am. Because I live in an apartment building my neighbors are becoming suspicious as to where I am going at the same time every week. This puts my life at threat, especially since all my neighbors know my husband well.

At the moment there is a major problem between Egypt and Israel, if any of my Christian neighbors realize that I am attending meetings as a Jehovah's Witness they will inform the church, this will become obvious for the Muslim people since they believe that the Jehovah's Witnesses are part of a Jewish organization, this puts my life in danger,

On January 25th, 2011 there was a major strike in Egypt. The citizens in Egypt are not protected by the police anymore due to all the police slacking off and not completing their work duties properly.

This strike and others following caused the president of Egypt to step down and because of this action, illegal religious organisations (Muslims) are working hard to make the Christians life's hard for them to life and roam free without protection from their family members.

Due to this I am frightened to leave my own home as this puts my life at risk especially if I do not wear a scarf. As a housewife I have many duties before my husband however due to him working all day long, I am unable to go out in public by myself. This risk is associated with all Christians in general however I am a practicing Jehovah's Witness and so my position worse.

The government is now searching out for Jehovah's witnesses as they believe that they are weak, thus they capture them and interrogate them, as I am a woman and



getting old in age I would not be able to bear this torture, it scares me deeply. I especially became frightened after an incident that occurred to a dear friend of mine. She was attending meetings regularly with her children in secret from her husband, the government captured her and pushed her to confess about other Jehovah's Witnesses and sacred information. She refused and so they informed her husband and he harmed her physically and also emotionally from the government. From this experience I am frightened to practice my religion

After the birth of my youngest son my husband notified the government that I was a practicing Jehovah's Witness and because he did this we both were followed by government officials, they did this to find out more information as to where we were meeting and who else was a witness however because I wasn't practicing my beliefs when my son was first born they found no reason that I was a practicing witness.

More recently I have the feeling that my own neighbors have been following me to the meetings to see where I was going and what I was doing. Especially since my last daughter has just left me to go to America and so I have been alone with no protection or comfort from anyone close to me. And due to me being alone the government would find me as the best person to track as I have no one else to help defend me. By the government searching out Jehovah's Witnesses they find favour in the Christian Coptic Orthodox leaders. Especially since the many problems between the Christians and the government because of the many killings.

Therefore the main problems putting my life at risk and making me apply for the protection visa are first, to practice my religion in public especially in the Muslim law they could hand to the government if they found me practicing my religion in public that could risk my life and my husband's life as well.

I am frightened to walk on the street by myself because the religious groups on strike keep annoying Christian ladies who walk alone and sometimes abusing them. I have seen a lot of things lately make me more afraid especially after I seen in the news about some of these religious groups capturing Christian women who walk by themselves and force them to convert their religion.

My husband's family will stop me practicing my religion because they will tell me that by practicing I am putting my husband's life at risk. Due to my age I can't be pressured like this as this hurts my emotions and makes me feel sick.

28. Accompanying that submission is the following material:
- a. a translation of a marriage certificate between the applicant and her spouse;
  - b. a translation of the birth certificate for the applicant which notes that her parents are of the Coptic Orthodox faith;
  - c. a translation of the applicant's Egyptian identification card which states that her religion is Christian;
  - d. an internet news article from the Catholic News Agency dated 20 October 2011 entitled *Christian women in Egypt being converted to Islam by force, witness says*';

- e. an extract from the testimony of U.S. Commission on International Religious Freedom Commissioner Nina Shea on 21 January 2011 to the Tom Lantos Human Rights Commission, U.S. House of Representatives;
- f. an internet news article from 'globalpost' dated 9 October 2011 entitled *Egypt: 19 dead in violent clashes in Cairo*;
- g. an internet news article from 'The Daily Mail' dated 10 March 2011 entitled *Thirteen killed in Cairo after clashes between Christians and Muslims*;
- h. an internet extract from a website 'persecution.org International Christian Concern' about Egypt;
- i. an internet news article from 'The Christian Post' dated 13 October 2011 entitled *Egyptians Mourn Massacre of Coptic Christians*;

### **Decision of the delegate**

29. The applicant attended an interview with the delegate [in] November 2011. The delegate stated in the refusal decision, in relation to the applicant's claimed religion:

...the applicant spoke informatively about her practices and beliefs as a Jehovah's Witness. She indicated at interview that her parents were Coptic Christians and that while they and her husband were aware of her beliefs, she has practised her faith somewhat discretely for the duration of her life in Egypt. Hence I am prepared to accept that whilst she self identifies and practices as a Jehovah's Witness it is possible she has never officially registered her faith as being other than Coptic Christian with authorities in Egypt

30. The delegate made the following further findings:
- a. she rejected claims that the applicant's husband would restrict her religious freedom and/or be violent towards her as she was of the view that they had been living happily together for the past 10 months in circumstances where the applicant states that she has been regularly attending Jehovah's Witness meetings;
  - b. whilst accepting that the country information indicated that Jehovah's Witness have in the past faced restrictions from the authorities of Egypt on the ability to practice their faith and that in the past individual believers have been subject to surveillance, harassment and detention, the delegate found that applicant has herself practised irregularly in the past, including ceasing practise for periods of four years and one year, that she has not herself been the subject of surveillance or harassment and that further, the country information indicates the harassment has ceased. The delegate relied, in particular, on:
    - i. the European Association for Jehovah's Christian Witnesses report which states "*Witnesses in Egypt have seen some improvement in their ability to gather freely for worship and incidents of physical abuse have recently come to an end*" and that Egyptian authorities have expressed their opinion that Jehovah's Witnesses in Egypt now have

the right to meet together for worship and prayer without interference in groups of up to 30 people in private homes;

- ii. a DFAT report *Treatment of Jehovah's Witnesses* dated 9 September 2008 to the effect that proselytising activities of Jehovah's Witnesses in Egypt are generally aimed at other Christians and are "therefore not likely to concern the government or Islamic Communities" (CX209652);
- iii. the lack of reporting of abuse or harassment facing Jehovah's Witnesses in Egypt on the Watchtower Bible and Tract Society's website.

### **Further submission to the Tribunal**

31. The applicant provided to the Tribunal a letter [dated] July 2012 under the letterhead of the "[Arabic] Congregation] of Jehovah's Witnesses" The letter is signed by three men who print their names and give their telephone numbers. The letter confirms the applicant's attendance at meetings of the congregation.

### **Tribunal hearing**

32. The applicant appeared before the Tribunal [in] November 2012 to give evidence and present arguments. The Tribunal also received oral evidence from a witness, an elder and co-ordinator of an Arabic language Jehovah's Witness Congregation in Melbourne (one of the men who signed the letter above). The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
33. The applicant was represented in relation to the review by her registered migration agent, who attended the hearing.
34. The Tribunal discussed with the applicant her background, including her identity, citizenship, familial history and places of residence in Egypt. Her evidence was consistent with her written claims.
35. The Tribunal discussed with the applicant her visa application and her accompanying statement. She explained how this material was prepared with her representative and with the assistance of members of her family acting as interpreters. She confirmed that she had her statement read back to her in Arabic and that it was accurate. She said she did not wish to make any changes to her written claims, but would like to add some things at the hearing.
36. The Tribunal asked the applicant to explain how she became involved in the Jehovah's Witness faith. She said she was baptised into the faith in Alexandria in 1966. Her first contact was through a Jehovah's Witness who spoke to her father, who told her to speak to his children.
37. The Tribunal asked the applicant to explain the Jehovah's Witness faith to it. She spoke in detail and at length about the beliefs of that faith. When asked, she was able to explain some differences between the Jehovah's Witness faith and other Christian beliefs.
38. The Tribunal spoke to the witness. He confirmed that the applicant had been attending the meetings of his congregation since she came to Australia. He said she also participated in the

door-to-door ministry of the faith for about five to seven hours per month. When asked if he thought of the applicant as a genuine believer and practitioner of that faith, he said she was. He said that he also knew well one of the applicant's brothers was also a Jehovah's Witness follower, as he came from the same place in Egypt.

39. The Tribunal spoke to the applicant at length about her practise and participation in her religion in Egypt. In summary, she has practised since she was baptised, apart from a period of about five years when she was having and caring for her children. She said she ceased altogether after the revolution, as it was too dangerous for her to go outside. She said after the revolution she only went outside occasionally with her husband in the car to shop or complete paperwork for their travel to Australia. She said she would have to dress modestly.
40. When asked to describe what she had done in the past, she said she regularly attended meetings, study group and also 'preached' When asked to describe this, she said she would go out for several hours per week and speak to strangers about her faith. She said she did not speak to Muslims because it was too dangerous. She said she would speak to people whom she could identify as Christians, because of their dress, or the cross tattoo on their wrists or other religious symbols they wore.
41. She said she used to do this in the company of her children. She said, now that her children have all left Egypt, it was too dangerous for her to continue in this ministry alone. She said before when there was a problem, she would run away and hide. Now she said she is too old and she has problems with her vertebrae. She said now in Egypt, it is not safe for her to do this and she said it is not safe to go to the meetings. She said the house where she used to meet was raided and they moved it to a more distant house.
42. When asked if she had experienced any problems herself in the past, she described that she had been followed on a number of occasions. She said she would try and deceive those following her as to her destination.
43. The Tribunal asked her why it thought she would experience problems if she went back to Egypt. She said that it is impossible in Egypt for Jehovah's Witnesses who are crying that they cannot practise their faith. When asked what the source of that information was, she said it was from her brother.
44. The Tribunal asked what she thought would happen if she engaged in door-to-door ministry in Egypt. She said that she will be harmed and 'they' can do anything. She said 'they' think it is related to Israel. She said that she can't change anything however and that it [door-to-door] is the way she does her religion.
45. The Tribunal discussed the United States Commission on International Religious Freedom *Annual Report 2012 - Countries of Particular Concern: Egypt* report which suggested that Jehovah's Witness members are able to meet in groups of up to 30 people. She said they meet in smaller groups than thirty because if too many people gather at one place those in the neighbourhood will notice and start talking about it which will cause problems.

## COUNTRY INFORMATION

46. The United States Commission on International Religious Freedom *Annual Report 2012 - Countries of Particular Concern: Egypt*, 20 March 2012<sup>1</sup> states:

Jehovah's Witnesses

A 1960 presidential decree banned all Jehovah's Witnesses activities. According to the State Department, there are between 800 and 1,200 Jehovah's Witnesses living in Egypt. While government interference into the activities of the small community has abated somewhat since former President Mubarak stepped down in February 2011, Egyptian authorities continue to conduct surveillance and sometimes impede their private worship. In past years, secret police monitored the homes, phones, and private meeting places of members. The Egyptian government permits Jehovah's Witnesses to meet in private homes in groups of less than 30 people, despite the community's request to meet in larger numbers.

For years, the Jehovah's Witnesses have pursued legal recognition through the court system. Finally, in December 2009, the Seventh Circuit Administrative Court handed down a verdict denying Jehovah's Witnesses legal status. The local community continues to appeal the verdict.

## FINDINGS AND REASONS

47. The Tribunal is satisfied, based upon her passport and her oral evidence, that the applicant is a national of Egypt. Being also satisfied that she is outside that country, it will assess her claims against Egypt. The applicant has stated that she has no right to enter or reside in any other country. There is no evidence to suggest that she does enjoy such a right so the Tribunal finds that section 36(3) of the Act is not enlivened.
48. The Tribunal assesses the applicant to be a credible witness. Based upon the enthusiastic and detailed way in which she spoke about her faith and description of what she had done in the past in the practice of that faith, the Tribunal accepts that the applicant is a genuine and committed Jehovah's Witness practitioner. It accepts that she has, in the past, engaged in door-to-door ministry in Egypt, as well as attending meetings and Bible study.
49. The Tribunal also takes into account the corroborative evidence of her witness, which it accepts. The Tribunal accepts that the applicant has been attending meetings of a Jehovah's Witness Congregation in Melbourne and participating in door-to-door ministry in Australia. The Tribunal is satisfied for the purpose of section 91R(3) of the Act that she has engaged in this conduct otherwise than for the purpose of strengthening her claim to be a refugee, so it will take this conduct into account.
50. It is well-known that it is an aspect of the practice of the Jehovah's Witness faith that its practitioners engage in door-to door ministry. For example, the Tribunal's research request Non31443 states:

### **Proselytising and training:**

The Jehovah's Witnesses official website notes how they are commanded by the bible to preach to the unconverted:

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<sup>1</sup> <http://www.unhcr.org/refworld/docid/4f71a678c.html> [accessed 20 November 2012]

CHRISTIANS are commanded to "make disciples of people of all the nations," but this does not mean that they are to use pressure or convert others by force. Jesus' commission was to "tell good news to the meek ones," to "bind up the brokenhearted," to "comfort all the mourning ones." (Matthew 28:19; Isaiah 61:1, 2; Luke 4:18, 19) Jehovah's Witnesses seek to do this by declaring the good news from the Bible. Like the prophet Ezekiel of old, Jehovah's Witnesses today try to find those who "are sighing and groaning over all the detestable things that are being done."—Ezekiel 9:4.

The best-known way they use to find those who are distressed by present conditions is by going from house to house. Thus they make a positive effort to reach the public, just as Jesus did when "he went journeying from city to city and from village to village, preaching and declaring the good news of the kingdom of God." His early disciples did likewise. (Luke 8:1; 9:1-6; 10:1-9) Today, where it is possible, Jehovah's Witnesses endeavor to call at each home several times a year, seeking to converse with the householder for a few minutes on some local or world topic of interest or concern. A scripture or two may be offered for consideration, and if the householder shows interest, the Witness may arrange to call back at a convenient time for further discussion. Bibles and literature explaining the Bible are made available, and if the householder desires, a home Bible study is conducted free of charge. Millions of these helpful Bible studies are conducted regularly with individuals and families throughout the world.

Another way in which "the good news of the kingdom" is told to others is through meetings held at local Kingdom Halls. The Witnesses conduct meetings there weekly. One meeting is a public lecture on a subject of current interest, followed by a study of some Biblical theme or prophecy, using the Watchtower magazine as source material. Another meeting is a school for training Witnesses to be better proclaimers of the good news, followed by a part devoted to discussing the witnessing work in the local territory. Also, once a week Witnesses assemble in private homes, in small groups, for Bible studies. ('Ways They Use to Share the Good News' 2000, Watch Tower website, [http://www.watchtower.org/e/jt/article\\_05.htm](http://www.watchtower.org/e/jt/article_05.htm) - Accessed 14 March 2007).

Holden expands on this:

Under Knorr's presidency, door-to-door evangelists no longer carried a portable gramophone and collection of Rutherford's records. Rather, devotees were given a thorough training in speech and non-verbal communication that enabled them to deliver their own sermons. To this day, the Witnesses hold regular meetings, during which training and demonstrations take place to enable them to minister more effectively to the general public. ... (Holden, A. 2002, *Jehovah's Witnesses: portrait of a contemporary religious movement*, Routledge, New York, p.21).

There is, however, one remaining feature of the Watch Tower movement that helps to explain its appeal, and this concerns the high level of commitment it expects from its devotees. Once received into the community as a fully baptised member, the individual is expected to contribute to the movement's worldwide success. In other words, conversion means evangelism. The austerity of the Watch Tower regime ensures that commitment is sustained year on year, and that only those who demonstrate their millenarian convictions (by attending Kingdom Hall meetings and devoting as much time as they can to the doorstep ministry - details of which will be discussed in Chapter 4) are allowed to remain in membership. Not surprisingly, the Witnesses' renunciation of the world and their success in establishing a close-knit community appeal to those who have difficulty in embracing modern secular society and who feel very much at risk in an age of uncertainty. But it is the movement's propensity to screen out potential time-wasters that is particularly effective in generating and sustaining high levels of religious activity. (Holden, A. 2002,

*Jehovah's Witnesses: portrait of a contemporary religious movement*, Routledge, New York, p.56).

The Witnesses see themselves as members not just of a religious movement but of one that monopolises the word of God. For this reason, they feel they are called upon to proselytise. Nonconformist ideas that were widespread during the period in which the Society was founded provided the basis for some of its teachings. The one imperative belief, however, is that the Bible, from beginning to end, is the inspired word of God. This means that all Watch Tower teachings are scripturally supported and most, but not all, the Bible is interpreted literally. The exceptions are the recorded visions in the Books of Daniel and Revelation. (Holden, A. 2002, *Jehovah's Witnesses: portrait of a contemporary religious movement*, Routledge, New York, p.23).

51. The Tribunal's research response EGY40804 of 19 September 2012 discusses proselytising in Egypt (in the context of proselytising by Coptic Christians):

While proselytising is not specifically prohibited under Egyptian law, it is banned in practice by the government and reports indicate that Coptic Christians have been arrested for proselytising.<sup>2</sup> The Egyptian Government interprets proselytising to Muslims to be forbidden under Sharia law<sup>3</sup>, a body of law which is specified in the Egyptian Constitution as being the principal source of the country's legislation.<sup>4</sup> A 2011 US Commission on International Religious Freedom report states that "although neither the Constitution nor the Penal Code prohibits proselytizing or conversion, the Egyptian government has used Article 98(f) of the Penal Code to prosecute alleged proselytizing by non-Muslims."<sup>5</sup> Article 98(f) of the Penal Code states:

Whoever exploits religion in order to promote extremist ideologies by word of mouth, in writing or in any other manner, with a view to stirring up sedition, disparaging or contempt of any divine religion or its adherents, or prejudicing national unity shall be punished with imprisonment between six months and five years or paying a fine of at least 500 Egyptian pounds.<sup>6</sup>

While no reports could be found of Article 98(f) of the Penal Code being applied to Coptic Christians accused of proselytising, reports do refer to the arrest of Coptic Christians who have been accused of proselytising to Muslims.<sup>7</sup> A September 2009 news

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<sup>2</sup> 'Coptic arrests inflame Egypt's sectarian tensions' 2009, *The Media Line*, 9 February, para.2, accessed 13 September 2012 <[CISNET Egypt CX220224](#)>; 'Meca Coptic Activists Detained for Alleged Conversion Attempts' 2007, *The Daily News Egypt*, 11 November

<<http://www.thedailynewsegypt.com/article.aspx?ArticleID=10233>> Accessed 16 March 2010

<sup>3</sup> US Department of State 2012, *2011 Report on International Religious Freedom – Egypt*, 30 July, para.13 <<http://www.unhcr.org/refworld/country,COI,USDOS,,EGY,,502105c5c,0.html>> Accessed 12 September 2012

<sup>4</sup> Nasira, H 2011, 'Salafists, Copts and Sectarianism in Egypt after the Revolution' *Terrorism Monitor: The Jamestown Foundation*, Vol. 9, Issue 22, p.4 <[http://www.jamestown.org/uploads/media/TM\\_009\\_50.pdf](http://www.jamestown.org/uploads/media/TM_009_50.pdf)> Accessed 17 September 2012

<sup>5</sup> US Commission on International Religious Freedom 2011, *USCIRF Annual Report 2011 – Countries of Particular Concern: Egypt*, 28 April, para.42 <<http://www.unhcr.org/refworld/docid/4dbe90c4c.html>> Accessed 17 September 2012

<sup>6</sup> US Commission on International Religious Freedom 2009, *USCIRF Annual Report 2009 – The Commission's Watch List: Egypt*, 1 May <<http://www.unhcr.org/refworld/docid/4a4f272d38.html>> Accessed 23 February 2010

<sup>7</sup> 'Coptic arrests inflame Egypt's sectarian tensions' 2009, *The Media Line*, 9 February, para.2, accessed 13 September 2012 <[CISNET Egypt CX220224](#)>; 'Meca Coptic Activists Detained for Alleged Conversion

article reports the director of the Cairo-based Andalus Institute for Tolerance and Anti-Violence Studies<sup>8</sup> as stating that “[p]reaching and missionary work are considered serious security issues and the government is intent on maintaining control over them [via arrests] in order to avoid sectarian violence”<sup>9</sup>, although it is not known whether non-evangelical church work is included in the director’s definition of missionary work.

52. It would seem that in the near to medium term, the reins of power in Egypt will be held by the Muslim Brotherhood’s political party, the Freedom and Justice Party led by Mohamed Morsi. The following recent article written by Thomas Carothers and Nathan J. Brown for Carnegie Endowment for International peace is informative<sup>10</sup>:

Western observers worried about the fate of Egypt’s attempted democratic transition are closely watching the new Muslim Brotherhood–led government for any signs that it will impose an illiberal Islamist straitjacket on the country. It is true that the Brotherhood’s intentions regarding a number of sensitive social and political issues remain uncertain and that clashes between the Brotherhood’s vision for Egypt and some liberal values will surely occur. Yet the greater danger for Egypt’s fledgling democracy likely to arise from the Brotherhood’s new ruling position is not Islamist illiberalism but rather dominant party overreach. In other words, the bigger concern is the creeping but ultimately extremely corrosive array of political temptations and tendencies that seize a popular party after it sweeps into power following the ouster of a dictator, inherits the reins of a state long molded by absolutist rule, and faces only a fragmented opposition.

Such a warning would likely seem wildly premature to the Brotherhood’s ardent supporters. After all, the movement’s presidential candidate, Mohamed Morsi, barely eked out a victory in June. And the Brotherhood’s political arm, the Freedom and Justice Party (FJP), hardly achieved a crushing legislative majority in last year’s parliamentary elections. The alliance it led assembled an electoral list that won a 38 percent plurality in elections for the lower house and because its candidates did very well in individual districts its total share of the seats in parliament neared 45 percent—an impressive performance to be sure, but hardly an indication of an assured permanent majority. And that parliament was subsequently dissolved by court order.

Yet there are still worrying signs and they do not just concern the Brotherhood’s intentions, but also the new landscape of political power. Egypt currently has only two nationally elected bodies—the presidency and the weak upper house. The Brotherhood controls both. In Egypt’s politicized professional associations, Brotherhood slates have also done well. In the Constituent Assembly, the body tasked with drafting a new constitution that was named by the now-dissolved parliament, FJP members and their backers are in the driver’s seat.

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Attempts’ 2007, *The Daily News Egypt*, 11 November

<<http://www.thedailynewsegypt.com/article.aspx?ArticleID=10233>> Accessed 16 March 2010

<sup>8</sup> The Andalus Institute for Tolerance and Anti-Violence Studies website states it is an independent research organisation which aims to contribute to human development in Egyptian and Arabic societies - see Andalus Institute for Tolerance and Anti-Violence Studies n.d., *About Us* <<http://www.andalusitas.net/EN/About.aspx>> Accessed 17 September 2012

<sup>9</sup> ‘Coptic arrests inflame Egypt’s sectarian tensions’ 2009, *The Media Line*, 9 February, para.16, accessed 13 September 2012 <[CISNET Egypt CX220224](http://www.cisnet.org/egypt/CX220224)>

<sup>10</sup> <http://www.carnegieendowment.org/2012/11/12/real-danger-for-egyptian-democracy/eg5z> accessed 21 November 2012



The president has near-absolute powers. The impending new constitution as well as deeply ingrained habits of executive preeminence will ensure that the presidency remains the dominant presence in Egyptian political life. And just as worrying is the potential opposition—a mix of politically inexperienced Salafi parties and a jumble of non-Islamist parties, leading personalities, and amorphous activist networks. Unless future elections in Egypt are dramatically unlike those of the past year, the Brotherhood may easily be able to parlay its central, unified place in the middle of the political spectrum into an inevitable role in any future leadership.

53. Based upon the above, the Tribunal finds that in the reasonably foreseeable future, an Islamist political party and President will be in power in Egypt. This does not necessarily equate to the rise of strict or extreme Islam. However, it indicates, and the Tribunal finds, that there is no motivation on the part of those in power in Egypt to amend or ameliorate the in-practice prohibition of proselytising Muslims, which is based on Sharia law.
54. The Tribunal is satisfied that the applicant has proselytised in the past in Egypt because she feels called to do so because of her religion. She has modified the requirement that she proselytise to restrict it only to those whom she can identify as Christians, because it was too dangerous for her to proselytise a Muslim person. In the Tribunal's view, this has constituted past persecution of the type identified in *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, in that she has taken steps to modify the practice of her faith out of fear that she may suffer serious harm as a result.
55. The country information above about the use of Article 98(f) of the Penal Code is sufficient to satisfy the Tribunal that proselytising Muslims is now, and will continue to be, forbidden under Sharia law in Egypt and that those who proselytise Muslims, face a real chance of arrest and detention under that provision. Whilst the Tribunal notes that Article 98(f) is expressed in 'religion neutral' terms, the country information shows that it is implemented in a discriminatory way against non-Muslims, so the question of operation of a law of general application is disposed of.
56. The Tribunal is satisfied, therefore, that if the applicant does not act with discretion, there is a real chance she may be arrested and detained, which is a form of serious harm and which would be systematic and discriminatory. It would be visited on her by agents of the state of Egypt, thus it has an official quality. It would be visited on her because her personal religious belief is to proselytise generally. In sum, it would constitute persecution.
57. The following passage is from the joint judgment of McHugh and Kirby JJ in *Appellant S395* at [43] :

"... It is the threat of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance without determining whether the modified conduct was influenced by the threat of harm is to fail to consider that issue properly."
58. The Tribunal finds that this applicant would continue to modify the practice of her own genuinely held religious beliefs, if she were to return to Egypt, because she faces a threat of serious harm and would be to deny an inherent aspect of her faith. This amounts to a well-founded fear of persecution for the essential and significant reason of religion.
59. The Tribunal finds, on the basis of the country information extracted above, that the threat which the applicant would face upon her return to Egypt comes principally from the Egyptian authorities themselves.

60. The Tribunal therefore finds that state protection from the persecution in accordance with international standards would not be available to the applicant in Egypt.
61. The Tribunal is of the view that the applicant would be at risk of persecution in Egypt generally. Internal relocation is therefore not, in the view of the Tribunal, open to the applicant.

### **CONCLUSIONS**

62. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

### **DECISION**

63. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.