

**1306192 [2013] RRTA 878 (21 November 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1306192  
**DIAC REFERENCE(S):** CLF2012/224007  
**COUNTRY OF REFERENCE:** Egypt  
**TRIBUNAL MEMBER:** R Mathlin  
**DATE:** 21 November 2013  
**PLACE OF DECISION:** Sydney  
**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

### BACKGROUND

1. This is an application for review of a decision made on [in] 2013 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 [in] 2012. He was assisted by a migration agent, who continues to represent him.
3. The applicant claims that he faces persecution in Egypt because he is homosexual.

### RELEVANT LAW

4. The criteria for a protection visa are set out in s.36 of the Act and 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).
5. 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. Article 1A(2) of the Convention 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.
6. 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, and the High Court has considered this definition in a number of cases<sup>1</sup>.
7. A person found not to meet the refugee criterion in s.36(2)(a), 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').
8. 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

---

<sup>1</sup> See *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.

status determination purposes, to the extent that they are relevant to the decision under consideration.

## **CLAIMS AND EVIDENCE**

9. The applicant stated in his protection visa application that he is a single Muslim male, born in Cairo in [a particular year]. He stated that he arrived in Australia [in] 2007 holding an Egyptian passport in his own name, a copy of which was submitted with the application. Information in the passport confirms the applicant's claims about his travel. He held a student visa on arrival in Australia.
10. The applicant provided one residential address in Cairo from his birth until his departure. He claims to have attended school and university in Cairo, and claims to hold a bachelor of law degree conferred in Egypt.
11. The applicant claimed that he is gay and it was very difficult to live in Egypt. Rumours spread about him at uni and he was insulted and treated badly. In 2005 he was with a man at a remote farm area and two boys who saw them screamed at them and called them names. In 2006 he was with a partner, [Mr A], and they were stopped and questioned by police and the applicant's parents were notified. When the applicant's parents arrived to pick him up the police referred to the applicant as their daughter. This caused a lot of family problems.
12. The applicant has tried to change his life over two periods because he was depressed and felt that what he was doing was wrong. In Australia he continued a "straight life" for about one year. He was close to his religion and tried to sort himself out. He had a relationship with a female but it was strained and he was not comfortable.
13. Now he has come to terms with his sexuality. Over the last two years he has led a free and open life. In August 2012 he told his parents that he will not marry and they understand that he is gay. His family does not accept him and he now has limited contact with them.
14. The applicant knows of two gay men who have been killed in Egypt and is afraid that this might happen to him. He will not be able to have gay relationships and he will be forced to marry. He will be persecuted by his family, the community and the authorities.
15. The applicant submitted to the delegate two letters from people stating that the applicant is gay. One, from [Mr B], stated that he met the applicant at [a certain establishment] and the applicant told him that he is gay and asked about the attitude of the Arab community in Australia to gay men. They met on different occasions in gay bars and [Mr B] saw the applicant kissing and dancing with gay men. The other letter stated that the author and the applicant had been good friends since 2008 and in 2010 the applicant told him he was gay, which confirmed his own suspicions. He stated that he had met some of the applicant's partners.
16. The delegate refused the visa because he did not believe the applicant was telling the truth. He noted a number of concerns about discrepancies between the information provided in the protection visa application and at interview, in relation to the applicant's employment and source of financial support in Australia, and in relation to details of the incidents which he claimed had occurred in Egypt. The delegate also found that the applicant's delay in applying for protection was inconsistent with a genuine fear of persecution.

17. The applicant appeared before the Tribunal at a hearing held on 29 October 2013 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr C]. The hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented at the hearing by a person (who is not a registered migration agent) from the office of his migration adviser.
18. The applicant told the Tribunal that his father made him study law but the applicant hated it and did not want to work as a lawyer. [After finishing university] he did not look for work as a lawyer and his father was angry with him. At first his father did not agree to the applicant studying overseas, but he and his mother were able to persuade him.
19. In Australia the applicant finished a course in business management and then started a course in IT but it was very expensive and he could only afford two terms. He then enrolled in a marketing course but said that he did not finish the course because he could not concentrate because of his problems. He last attended school about eighteen months ago and agreed that he has not held a student visa since [2012], as stated in his passport.
20. He said that he did not leave Australia when his visa expired because he had nowhere to go. He was fearful about returning to Egypt from the moment he left. Asked, in that case, why he delayed his application for so long, he said that at first he was studying; when he started to think about his problems he stopped being able to study; then he was trying to decide whether he could live his life as a straight man and return to Egypt.
21. Asked how life is different for him in Australia, he said that in Egypt he was always fearful, but here he can do anything and if there is any problem, the law and the police will protect him. Asked about the differences in terms of how he expresses his sexuality, he said that in Egypt he was afraid of doing certain things, he was afraid to walk down the street in case people recognised him as a homosexual; here he can go on the train, have a coffee and feel free; people can approach him and he them.
22. I asked the applicant when he first felt that he was different from others in terms of his sexuality. He said that he had a close friend at school and one day they hugged and the applicant knew he felt differently about that. He was [a certain age] at the time. Asked whether that was the first time he felt sexually attracted to a man he said that it was not, the first time was [Mr D], a worker at his father's farm. This was when the applicant was [a certain age].
23. The applicant said that he had a full sexual relationship with a colleague from university, [Mr E]. Asked why he did not mention [Mr E] or this relationship in his protection visa application or at the protection interview, the applicant said that he did mention it at the protection interview, but in the protection visa application he only mentioned the incidents that had caused problems. I have listened to the recording of the protection interview and am satisfied that the applicant did not mention the relationship with [Mr E].
24. The applicant said that he was in a relationship with [Mr E] for about eighteen months but one day he just disappeared.
25. He had other shorter relationships which lasted for two to three months. He met these men on the beach, or at a [particular] café, although he then said that he went there once but was afraid to speak to people and later went there with [Mr A]. Sometimes he met people by chance, for example, he once had sex with a taxi driver.

26. Asked about his relationship with [Mr A], the applicant said that he was a neighbour who rented an apartment in the applicant's block. They used to meet in the lift and one day he asked the applicant out. They went out for two or three months. I told the applicant that I found it problematic in terms of his credibility that he had not mentioned the mistreatment he had suffered from the police, which he described at the protection interview, in his protection visa application. He said that he felt ashamed to tell his adviser but she had encouraged him to reveal everything. I also noted that his failure to mention the relationship with [Mr E] might damage his credibility. He said that he had not mentioned it because it did not cause problems. I noted that he had also not mentioned what could be considered a significant problem, which was the beating by police. He said that for him the main issue was that the police called his father to pick up his "daughter"; he said this explains "the whole issue".
27. The applicant said that the detention took place in [2006]. During the ten or eleven months that he remained in Egypt after this his father avoided him and did not speak to him. He never saw [Mr A] again because he just disappeared. The applicant did not look for him and did not go to his apartment because he was afraid.
28. I told the applicant that although in some respects his evidence seemed believable, I had serious concerns about his credibility because of the discrepancies between the claims he had made at different times. I suggested that he attempt to locate some corroborative evidence during an adjournment.
29. After the adjournment the applicant said that a friend, [Mr C], was coming to give evidence. [Mr C] is not gay. The applicant met him through two gay men to whom [Mr C] rented rooms; the applicant met these men in a coffee shop. I asked how [Mr C] knows the applicant is gay and he said because he knew the two Filipinos were gay and the applicant is their friend. I asked whether the applicant had ever talked about his sexuality with [Mr C]. He said that they have spoken about it but there is nothing between them. He said that they talk about sexual issues. I asked whether they go out together and he said that sometimes they meet in the city for coffee. He mentioned two other possible witnesses who were not available to give evidence in person.
30. I asked the applicant whether he could show me anything on his phone to corroborate his evidence. He asked if I meant naked photos, and I explained that I meant texts, messages, contact details or photographs, but not necessarily naked ones. He said that four months ago he registered on a mobile phone app for meeting people, but he said it was a waste of money. He has not met anybody using this app. His details are not on there, he does not want people to contact him.
31. The applicant said that when he first arrived in Australia he had lots of casual sex. Now he has changed, he wants a stable relationship like a couple he sees on Oxford St who mutually respect and love each other. He feels that he will not meet a long term partner through casual sex or an app. The applicant's evidence was that he is not actively looking for, or taking steps to find a long term partner and establish a relationship.
32. The applicant said that he sometimes goes to a [certain] club, but he does not really like dancing.
33. The applicant said that he has had two failed relationships with women in Australia because he was trying to live as a straight man. One was soon after his arrival, the other was just before he was supposed to return to Egypt.

34. The applicant has not attended any counselling or support groups for assistance in dealing with his sexuality. He did not feel that he could talk to anyone about this issue. He said that this was why he delayed applying for protection, he was trying to sort out his sexuality and contemplating returning to Egypt to live as a straight man.
35. I asked whether he attends the doctor or a sexual health clinic to check on his sexual health. He said that he does not, he does not feel that he is at risk because he tries to be safe; he sometimes uses a condom and does not take drugs.
36. The applicant said that his housemates, with whom he has lived for some time, do not know he is gay.
37. I asked the applicant where he had met the people with whom he had sexual encounters. He said that he was working in [the inner city] and when he finished work he would go to [food outlets] on Oxford St and meet people there. He has never had a relationship of more than one month in Australia. The last relationship of that length was with a Brazilian who was here on holidays earlier this year. The applicant said he did not keep his contact details. He then said that when he updated the software on his phone he lost all his contacts.

*Evidence of witness*

38. The witness identified himself and produced his student identity card. He said that he met the applicant eighteen months ago through two gay men to whom he rented rooms. As far as he knows the applicant met them on Oxford St. He said that when he met the applicant he used to speak to him about his sexuality and told him that he does not like girls, he likes boys, he is gay. I asked how the subject came up and the witness said that he used to go with the Filipino men to gay venues, he knew the applicant was gay, he was always with men and had no girlfriend.
39. I asked had he been out socially with the applicant and he said that they meet [for coffee]. I asked where he had observed that the applicant was “always with men”. He said that he had seen the applicant in pubs with men. I asked whether he and the applicant go to the pub as well as [for coffee]. He said that he has seen the applicant in several places, sometimes he went to Oxford St out of curiosity, he might have gone out with the applicant once or twice. He cannot remember where they went, the last time was seven months ago.
40. He said that he had no further discussions with the applicant about his sexuality; as they are Middle Eastern men it is a very sensitive issue.
41. The applicant asked the witness whether he remembered that sometimes when one of the Filipino men was out the applicant would be in the room with the other one. The witness indicated that he could not say what they were doing.
42. The witness left and I asked the applicant why he had not mentioned that he had a sexual relationship with one of the Filipino men. He said that it did not last long. He is not still in contact with them because they broke up because of the applicant.

**CONSIDERATION OF CLAIMS AND EVIDENCE**

43. Having seen the applicant’s Egyptian passport I accept that he is a national of Egypt. His claims will be assessed against Egypt as his country of nationality for the purposes of the Refugees Convention, and as the receiving country for complementary protection.

44. Country information indicates that homosexual men in Egypt may face persecution. The issue in this case is whether the applicant is in fact a homosexual. For the following reasons, I do not accept the applicant's claims about his sexuality, and have concluded that the decision under review should be affirmed.
45. There are significant problems in the applicant's claims and evidence as presented at the different stages of processing which lead me to conclude that his claims are not truthful and should not be accepted. These problems were discussed with the applicant at the hearing, and in a letter dated 5 November 2013 the applicant was invited to provide comments on or a response to certain information which would, subject to his comments, be the reason or part of the reason for refusing to grant the visa. The applicant did not respond to the letter by the due date. The problems and discrepancies in the applicant's evidence which have led me to conclude that he is not telling the truth include the omission of significant claims from his protection visa application, inconsistencies in the claims made at different times, inconsistencies between the witness's evidence and that of the applicant, and the absence of independent evidence of any homosexual relationships or a homosexual lifestyle.

*Confusion about contents of protection visa application*

46. At the protection interview the applicant said that he knew what was written in the protection visa application. He expressed specific concerns that some information was not included in the application: this was that in [some time in] 2012 (he provided different dates for the event at different times) he phoned his father and indicated to him that he was gay. He told the delegate that it was because of his father's reaction to this information that he decided to apply for protection in [2012]. In fact, the claim about this conversation was included in the protection visa application. However, the applicant raised other new information at the interview with the delegate which was not mentioned in the protection visa application, and which was not mentioned by the applicant as having been omitted from the protection visa application. This included the claim that he was severely beaten by the police when he was detained, as well as claims about various homosexual relationships in which he claimed to have been involved in Egypt. Indeed, the applicant mentioned for the first time at the Tribunal hearing the significant information that he had a "full sexual relationship" for eighteen months with [Mr E], a colleague from university.
47. These discrepancies lead me to conclude that the applicant was not, at the protection interview, familiar with the claims included in his protection visa application. The fact that he specifically mentioned certain information that he thought had been omitted, but which was in fact included in the application; together with the raising of a great deal of new information that was not mentioned in the protection visa application, and which was not mentioned by the applicant when he was asked whether anything had been omitted, indicates to me that he did not know what was in the application and that it did not contain truthful information reflective of his actual experiences.
48. I do not consider that the applicant has satisfactorily explained these problems. He said that he had only mentioned in the protection visa application matters that had caused problems; yet he did not mention the police beating – presumably a problem- and he did mention the incident at the farm which, on his own account, cannot really be considered a problem, since he did not claim that any adverse consequences flowed from it. He stated that he had felt embarrassed to speak about some matters, yet told the delegate that he had told his adviser everything. The applicant's explanations thus, in my view, are inconsistent and lack internal logic. I do not accept them.

49. I would expect that if the applicant was telling the truth about his sexuality and the problems that he claims have flowed from that, he would have provided full details of significant events at the earliest opportunity. The fact that he did not mention his claimed longstanding same sex relationship with [Mr E] either in the protection visa application or at interview with the delegate leads me to conclude that the claim is not true. As noted above, because the applicant did not mention in the protection visa application that he had been severely beaten while in police custody, I do not accept his account of this either.

*Discrepancies in claims made at different stages*

50. In the protection visa application the applicant stated that the incident when he was discovered with a man at his father's farm occurred in 2005, at which time he would have been [an adult]. At the protection interview and at the hearing he said that this incident occurred when he was "little"; he said that he would have been [a teenager].
51. In my view, there is a significant difference between being "little" and being [an adult]; and between being "little", being [a teenager], or being [an adult]. In my view this is a major discrepancy as to the timing of this event, which represents one of only two sexual encounters mentioned in the protection visa application. Given the significance thereby placed on this event, I would expect that the information provided about it would be consistent if the applicant was telling the truth. I suspect that if this incident happened at all, it in fact occurred when the applicant was "little", and I do not consider that it demonstrates that the applicant is homosexual.
52. At the hearing the applicant said that when the police told his father to come and pick up his "daughter", the meaning was clear and this comment was the "source of the issue" (in his family about his sexuality). This evidence appears to be inconsistent with claims made at the protection interview, that his father would kill him if he knew that he was homosexual, and that he only knew this when the applicant phoned from Australia in 2012. The applicant's claims about fearing his father's extreme reaction to his sexuality is also inconsistent with his evidence suggesting that it must have been clear to his father in [2006], when he was detained by the police, that he was homosexual, but that he was nonetheless able to remain in Egypt until the following [year], living in the family home and supported by his father, who provided assistance for the applicant to study overseas. In my view, the applicant's claim to fear an extreme and violent reaction by his father is not consistent with the evidence suggesting that his father was aware of his sexuality long before he left Egypt, but did not respond with violence, and indeed continued to support the applicant. This leads me to doubt the truth of the applicant's evidence as a whole.

*Absence of independent corroborative evidence*

53. An applicant cannot necessarily be expected to provide evidence to support his or her claims, especially when they concern an issue such as his sexuality. However, the applicant claims that he has lived as an openly gay man in Australia for much of the period since he arrived here in [2007]. He claims to have had multiple casual sexual encounters and to have a number of gay friends, and says that he relishes the freedom of his lifestyle here. In these circumstances, it is of great concern to me that the applicant was not able to produce at the hearing any persuasive independent evidence which substantially supports his claims.
54. He has not provided corroborative evidence from, or of, any of his claimed partners. While his friend [Mr C] gave oral evidence at the hearing, I give no weight to his evidence, which



was vague and inconsistent with that of the applicant in various key aspects; in any event his claims about the applicant's sexuality were based on assumptions rather than direct knowledge.

55. For example, the applicant and the witness, when asked whether they go out together, both stated that they sometimes meet for coffee. Yet when the witness was asked how he knows the applicant is gay he said that he has seen the applicant "always" with men, and that he acts in a certain way with men. He then stated that he said that he had been in pubs and to Oxford St with the applicant, and that he may have gone out with him once or twice, but he could not remember where they went, how often or precisely when. I consider that if the applicant and the witness were telling the truth they would have mentioned these outings, rather than merely the coffee dates, when asked where they socialised together. In addition, when asked earlier for details of his past sexual relationships, the applicant did not mention a sexual relationship with one of the Filipino men through whom he claimed to have met [Mr C]. Nor did the witness volunteer this fact when he mentioned the Filipino men in the context of questions about how he met the applicant or how he knew that the applicant was gay. When the applicant asked the witness to confirm that he had been in a sexual relationship with the Filipino man, he was unable to do so. I would expect that, had the applicant been engaged in a sexual relationship with one of the Filipino men who were mentioned frequently throughout the evidence, he and the witness would have mentioned this. Given these inconsistencies, I give the witness's evidence no weight as independent corroboration of the applicant's claim to be homosexual.
56. I am aware that an applicant for refugee status cannot necessarily be expected to produce evidence which corroborates their claims, and an inability to do so is not fatal to a claim to refugee status. Given the very nature of claims based on a person's sexuality, they may be unlikely to produce documentary evidence or witnesses; and they may be ashamed or embarrassed to talk about their sexuality. On the other hand, the applicant claims that an element of the persecution he faced in Egypt is the necessity to live in secrecy, and the inability to freely express his sexuality. He claims that he has been able to do this openly in Australia for much of the period since 2007, and specifically, over the last two years. However, the applicant has not been able to provide any evidence at all of any homosexual relationships or interactions since he has been in Australia. The only evidence he has submitted, apart from that of [Mr C], was the two written statements given to the delegate, which, at their highest, express only assumptions about the applicant's sexuality, or repeat what he allegedly told the authors. These statements, from friends of the applicant, are not sufficient to overcome the many deficiencies in the other evidence. Another factor which causes me concern is the coincidental disappearance from his life of major figures who might have been able to provide corroboration of his claims if they were contactable. These are [Mr A]; [Mr E]; the two Filipino men; and the Brazilian with whom he claims to have been most recently in a relationship. I find the degree of coincidence in these "disappearances" to be highly implausible. I do not accept that the applicant would not have any record at all of the existence of these relationships, at least in his mobile phone. I do not accept his claim that his contacts were deleted when he upgraded his Apple software.
57. While the applicant showed me a gay social networking applicant on his mobile phone, his evidence was that he has not entered his details on the site because he does not want people to contact him, and that he has not used the app to meet anyone. In these circumstances, I am not satisfied that the presence of the applicant on the applicant's phone supports his contention that he is gay.

58. The applicant claims that apart from some periods when he tried to live as a heterosexual man, he has openly lived a homosexual lifestyle in Australia. However, I find that the absence of any persuasive, independent, corroborative evidence of homosexual relationships or activities is inconsistent with this claim. Not only is there no direct persuasive evidence of any past sexual relationships, the applicant claimed that in recent months he has stopped having casual encounters as he wants a stable long term relationship. However, he also said that he is not taking any steps to meet a partner. In these circumstances, I am not persuaded that the applicant is has ever been, or is now engaged in a homosexual lifestyle or that he seeks or intends to be, either here or in Egypt.

#### *Delay*

59. Finally, I consider that the applicant's the delay in lodging his protection visa application – for some five years after his arrival in Australia, and for some eight months after the expiry of his last visa - indicates that he does not genuinely hold a fear of persecution in Egypt.
60. In my view the explanations put forward by the applicant for the delay were themselves inconsistent, and generally unsatisfactory. Essentially, he stated that when his visa expired in [2012] he was still confused about his sexuality and was considering whether he could return to Egypt and live as a straight man. However, this claim is inconsistent with his other evidence that he has accepted his sexuality and lived an openly gay lifestyle for the past two years in Australia. Further, in my view his evidence that he was aware that he could be deported during the eight month period when he did not hold a visa is inconsistent with his claim that he had feared returning to Egypt from the time of his departure. I do not accept that a person who had genuinely feared persecution at the time of his departure from Egypt in 2007 would not have taken steps to regularise his immigration status and protect himself from returning to Egypt until five years later, and long after his last visa expired.

#### **CONCLUSION**

61. For the reasons discussed above, I find that the applicant is an unreliable and untruthful witness. I have no basis on which to find that the applicant is a homosexual, apart from his own assertion that this is the case. Because I find that the applicant is neither a truthful nor credible witness, I am not prepared to accept his unsupported assertion. I do not accept that the applicant is a homosexual. I do not accept that he was involved in homosexual relationships or activity in Egypt prior to his departure, and I do not accept that he has engaged in homosexual activity of any kind in Australia, or that he wishes to do so. I do not accept that the applicant would pursue a homosexual lifestyle or engage in homosexual activity if he returns to Egypt. I therefore do not accept that he would face persecution of any of the kinds claimed, for this reason, if he were to return to Egypt. I am not satisfied that the applicant has a well-founded fear of persecution in Egypt for any Convention reason arising from the credible evidence before me.
62. I am 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).
63. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa). As I do not accept that the applicant is a homosexual, or that he is, or has been or would be identified as a homosexual in Egypt, I do not accept that there is a real risk that he faces significant harm for this reason. He has not

identified any other basis on which he might meet the complementary protection provisions. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Egypt, the receiving country, there is a real risk that he will suffer significant harm of any kind for any reason. I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

64. 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**

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

R Mathlin  
Member